

SUKHVIR KAUR VS GURPREET KAUR etc.

Present: Sh. Saurabh Kumar Gupta Advocate for the plaintiff.
Sh. Vikas Sharma Advocate for the defendant.

1. Arguments have been heard of both the Learned counsel for the parties on the application of defendant No.1 filed under order 7 rule 11 read with section 151 of CPC for rejection of plaint on account of deficiency of court fee and non-payment of ad-valorem court fee on the plaint as per the relief claimed. Request is also moved by the Ld. counsel for the defendant that till the pendency of the application, filing of the written statement may be suspended.

2. Vide this application, Ld. counsel for the applicant/defendant No.1 has prayed that in the head note of the present suit, the plaintiff has specifically mentioned and claimed the relief of recovery of an amount of ₹44,50,000/- + damages of the like amount thus, the total relief claimed by the plaintiff becomes ₹44,50,000 + 44,50,000/= 89,00,000/- (Eighty nine lakhs rupees) and at the same time the plaintiff has also challenged two sale deeds and claimed two reliefs of declaration besides seeking the relief of permanent injunction thus the plaintiff is bound to pay or affix the court fee as per the reliefs claimed by him under this suit but, while valuing the suit, the plaintiff has illegally and malafidely undervalued the suit for ₹44,50,000/- [forty-four lakhs and fifty thousand only] and ₹500/- for the relief of permanent injunction only and thus affixed the partial and deficient court fee of ₹1,04,550/- only whereas as per law, the plaintiff is

required to affix the requisite ad-valorem court fee on the collective amount of ₹89,00,000/- [Eight nine lakhs] as well as ₹100/- for the other two reliefs of declaration also as claimed by him in the plaint which comes to ₹2,04,600/- + ₹100/- = ₹2,04,700/-. Hence, the plaintiff has not properly valued the suit for the purpose of court fee and jurisdiction and as such the suit of the plaintiff is liable to be dismissed being undervalued, deficient, short & invalid. It is, further prayed that the present application may kindly be allowed and the suit of the plaintiff may please be rejected, in the interest of justice, equity and fair play on account of non payment of Ad-Valorem court fee and till then the filing of the written statement may please be suspended, in the interest of justice.

3. Upon notice, reply to the application is filed. Ld. counsel for the respondent/plaintiff has submitted that the present application is not maintainable and the relief of recovery damages is sought as an alternative relief and not as a main relief. It is prayed that no ad-valorem court fee is to be paid on the alternative relief. The plaintiff has rightly valued the suit for the purpose of court fee and jurisdiction. Accordingly prayed that application is not maintainable and may kindly be dismissed.

4. After hearing both the learned counsels, case file is perused. This civil suit in hand is filed by the plaintiff against the defendant for seeking possession by way of specific performance of agreement to sell dated 07.08.2019 allegedly executed by defendant No.1 in favor of plaintiff regarding the property which is detailed in the head note of the plaint. It is also prayed by the plaintiff that sale deed bearing document No.8448 dated 29.10.2021 executed by defendant No.1 in favor of

defendant No.4 and sale deed bearing document No.8524 dated 01.11.2021 executed by defendant No.1 in favor of defendant No.2 & 3, are also illegal, null and void. Ld. counsel for the plaintiff has prayed that around July-August 2019 defendant No.1 induced the plaintiff/applicant to purchase the suit property measuring 5 Marlas out of total land of 19 Marlas. That on inducement of defendant No.1 oral agreement was entered into between the plaintiffs and defendant No.1 vide which plaintiffs agreed to purchase the said property measuring 5 Marlas in sum of ₹44.50 Lacs. That as per oral agreement, defendant No.1 received different amounts from the plaintiffs on 19.07.2019 of ₹10 Lacs, on 22.07.2019 of ₹5 Lacs and thereafter the terms of oral agreement were reduced into writing on 07.08.2019 and defendant No.1 received ₹25 Lacs vide cheque and ₹4.5 Lacs in cash. So the total sale consideration of ₹44.50 Lacs was received by defendant No.1 from the plaintiffs. It is also submitted that defendant No.1 acknowledged the receipt of entire sale consideration of ₹44.5 Lacs. To the contrary so far no reply to this pleading of the plaintiff has been filed by the defendant No.1. In this application defendant has not denied the facts mentioned in the plaint, rather applicant/defendant No.1 has merely stated that plaintiff has not affixed Court fees over the damages claimed by him in alternative relief. This court is of the opinion that so far as per the pleadings on record the total sale consideration of the suit property between the plaintiffs and defendant No.1 is of ₹44.50 Lacs. As per the applicant entire amount has been paid by the plaintiff to the defendant No.1. The plaintiff has already paid the Court fees on the entire sale consideration of ₹44.50 Lacs upon which ad-valorem Court fees ₹104550/- has been paid by the plaintiff.

This Court is of the opinion that plaintiff has already filed the Court fees on the entire sale consideration of the suit property which was allegedly settled between the plaintiffs and defendant No.1 by virtue of the alleged agreement to sell in question. In the alternative relief plaintiff has claimed recovery of ₹44.50 Lacs i.e. the total value of sale consideration which has been allegedly paid by him to the defendant No.1. Plaintiff has also sought damages of the same amount may be ordered to be paid by defendant No.1 to plaintiffs. Hence, plaintiff has requested damages apart from the recovery of entire sale consideration which has allegedly already been paid by him to defendant No.1 and qua which he has already affixed the Court fees. This Court is of the opinion that damages sought by the plaintiffs apart from the interest or cost on the total sale consideration which has been allegedly paid by the plaintiff to the defendant No.1, same will be determined by the Court at the stage of granting final verdict. At this stage, for the purpose of jurisdiction plaintiff has already paid the Court fees on the entire sale consideration amount of the suit property which has been allegedly determined between the plaintiffs and defendant No.1. Hence, this court is of the opinion that the Court fee which is paid by the plaintiff on the total value of alleged sale consideration is appropriate. If at the time of passing final judgment, this Court will come to the opinion that apart from the recovery of alleged sale consideration the plaintiff is entitled for damages apart from interest and cost, then plaintiff will be made liable to pay the Court Fees on the said amount at the time of passing final judgment. Hence, at this stage, this application is not maintainable and is accordingly dismissed. Defendants

are directed to file their written statement. The case is adjourned to 29.11.2023 for filing written statements on behalf of defendants.

Dt. 05.10.2023
Kavita

(Karanvir Singh Maju,PCS)
Civil Judge (Junior Division),
Jalandhar/UID:PB00423