

11 CS DJ 524/2016 7958/16 ASHUTOSH JANA Vs.
DHARMENDAR SINGH

17.01.2023

Present: Sh. Rahul Tripathi, Counsel for defendant no. 2.
Sh. Ashutosh Chakradhar Pandey/ LAC.
Sh. PK Aggarwal, Counsel for defendant no. 3.

Arguments heard on Order 6 Rule 17 application filed by plaintiff and also Order 7 Rule 11 application filed by defendant.

The present is a suit filed by plaintiff for cancellation of a set of documents which were executed by him in favour of defendant no. 1 and another set of documents which were executed by him in favour of defendant no. 2. An unregistered GPA, agreement to sell, Will receipt, possession letter has been executed in favour of defendant no. 1 wherein the consideration amount for the creation of such interest is mentioned as Rs. 25 lacs. Similarly there is an unregistered GPA, agreement to sell, Will receipt, possession letter, affidavit in favour of defendant no. 2 wherein consideration amount of Rs. 23 lacs has been mentioned. It is settled Law that a party to a document who seeks its cancellation is required to pay ad-valorem Court Fee on the amount which is mentioned on the document itself.

At this stage, it is submitted by counsel for plaintiff that in such circumstances, he is willing to forego the relief of cancellation of documents and would only opt for relief of possession. However, it is apprised to the counsel that defendants

are claiming themselves to be the owner of this property. In such circumstances, the plaintiff cannot seek mere possession unless he seeks a declaration of his own title to the suit property.

Hence plaintiff is required to pay ad-valorem Court Fee on Rs. 48 lacs. Plaintiff is also claiming mesne profits of Rs. 2 lacs. Court Fee is required to be make payment on the same also.

Also an application is moved by plaintiff by way of which plaintiff has sought valuation of the suit for the purpose of Court fee and jurisdiction at Rs. 8,15,000/- as is mentioned in the amended plaint para 18 which is filed on record. The present is a suit filed by plaintiff wherein he is seeking a declaration that documents be declared as null and void along with consequential relief of possession. In view of Section 8 of suit of Valuation Act, jurisdiction for the purpose of Court fee and suit valuation shall be the same. Hence plaintiff is required to value his suit as well as make payment of Court fee in view of Section 7 (iv) (c) on ad-valorem basis. Hence amendment application is allowed accordingly and **plaintiff is directed to value his suit at Rs. 50 lacs for the purpose of court fee as well as jurisdiction.** Order 6 Rule 17 CPC application is accordingly disposed off. Amended plaint is directed to be filed along with Court Fee on record within a month.

Arguments also heard on Order 7 Rule 11 applications filed by defendant no. 2 wherein it is mentioned that suit is liable to be rejected for non-payment of ad-valorem Court fee. However as I have already decided Order 6 Rule 17

application thereby directing the plaintiff to make payment of the ad-valorem Court fee, hence this plea does not survive anymore.

It is submitted by Counsel for defendant no. 2 that this property is still lease hold and DDA is a necessary party. Hence the suit is liable to be dismissed/ rejected for non-joinder of DDA as a necessary party. However the present is a suit thereby seeking cancellation of documents executed between plaintiffs and defendants. The role of DDA is that it is merely required to produce the documents to show if the property is lease hold or free hold, if that issue arises at any point of time at the instance of defendant. Further plaintiff is master of his own suit. Further, whether the unregistered documents so executed are valid or not, to decide this issue, DDA is not a necessary party as DDA is only the authority who has allotted this property and is the authority for converting the property from lease hold to free hold. Hence the plea of non-joinder of parties is declined. **No merits in Order 7 Rule 11 application filed by defendant no. 2 and the same is dismissed.**

Arguments also heard on the Order 7 Rule 11 application filed by defendant no. 1 wherein it is mentioned that the present Court does not have jurisdiction because the suit was valued at Rs. 2,15,000/- only and also the ad-valorem Court fee is required to be paid as cancellation is sought. However I have already allowed this Order 6 Rule 17 application of the plaintiff and these issues do not survive anymore.

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No merits in the application filed by filed by defendant no. 1 under Order 7 Rule 11 CPC and the same is dismissed.

Be put up 14.03.2023 for filing of amending plaint by plaintiff as well as payment of Court fee on the NDOH.

(TWINKLE WADHWA)
ADJ-04/South-East, Saket Courts,
New Delhi/17.01.2023