

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No.1300 of 2012 (O&M).

Date of Decision: 17.08.2015.

Vijay Kumar Goyal

....Petitioner.

VERSUS

Sanjay Goyal and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Yogesh Goel, Advocate for the petitioner.

Mr. A.K. Kalsy, Advocate for respondents No.1 and 2.

SNEH PRASHAR, J.

This is a petition under Article 227 of Constitution of India for setting aside the order dated 15.11.2011 passed by learned Civil Judge (Junior Division), Ludhiana, vide which the application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure (for short, "C.P.C.") filed by the petitioner for rejection of counter claim was dismissed.

A matrix of the facts from which the instant revision cropped up are that petitioner-revisionist Vijay Kumar Goyal filed a suit for grant of

specific performance of agreement of sale dated 14.03.2011 executed by Surinder Kumar (respondent No.2) in his favour with regard to land measuring 24 Kanals 13 Marlas, situated at village Ghawadi, Tehsil and District Ludhiana. He also sought a decree of declaration to the effect that the transfer deed dated 07.04.2011 allegedly executed by Surinder Kumar in favour of his son Sanjay Goyal is illegal, null and void and had been executed just to defeat his (petitioner's) legal and valuable right. Further, as a consequential relief, a decree for permanent injunction restraining Surinder Kumar and others (defendants in the suit) from alienating the suit land and from interfering in his possession or dispossessing him from the suit land, was sought.

Respondent No.1 Sanjay Goyal appeared and filed a counter claim praying for a decree of possession of the suit land on the basis of transfer deed bearing vasika No.26 dated 07.04.2011 executed in his favour by his father Surinder Kumar. Petitioner-revisionist filed an application under Order 7 Rule 11 read with Section 151 C.P.C. for rejection of counter claim.

The main grievance of the petitioner was that Sanjay Goyal (respondent No.1) calculated the value of the counter claim for the purpose of jurisdiction for claiming relief of possession as “30 times of the land revenue i.e. Rs.150/-” and value of the counter claim for the purpose of court fee as “10 times of the land revenue i.e. Rs.50/-” and paid court fee of Rs.50/- only on the counter claim. Alleging that it was mandatory for respondent No.1 to affix court fee on the value of the property which had

been mentioned as Rs.14,50,000/- by Surinder Kumar (father of counter claimant) in the transfer deed, the petitioner prayed for rejection of the counter claim.

Respondent No.1 (defendant No.2 in the suit) contested the application. Vide the impugned order dated 15.11.2011 learned trial court dismissed the application filed by the petitioner.

Aggrieved by the said order passed by learned Civil Judge (Junior Division), Ludhiana, the petitioner filed the instant petition.

The submissions made by Mr. Yogesh Goel, learned counsel representing the petitioner and Mr. A.K. Kalsy, learned counsel representing respondents No.1 and 2 have been considered.

Disposing of the application of the petitioner, the findings recorded by learned trial court were as under:-

“After considering the application and reply and also considering the arguments, I have come to the conclusion that as far as the allegations with regard to falsify or forgery are concerned it will be subject to proof of all fact as alleged by all parties to suit. Now, coming to the affixation of proper court fee, suit property is the land which is subject to land revenue hence, court fee upon it will be assessed in accordance with it. Even the court fee Act, provides so. Thus, on that ground counter claim cannot be rejected. Application stands dismissed. So far as alleged forgery is concerned, that is a matter of evidence.”

Learned counsel for the petitioner argued that the observation of learned trial court that the suit land was subject to land revenue and therefore, court fee had to be assessed in accordance with it, was illegal. In the agreement of sale executed by Surinder Kumar (father of counter claimant) in favour of the petitioner, the sale consideration i.e. value of the

suit land, had been fixed as Rs.9 lacs. In the transfer deed executed by Surinder Kumar in favour of his son (petitioner) the value of the suit land, as per Collector rate, had been mentioned as Rs.14,50,000/-. It is a settled proposition of law that when a relief of possession of land is sought, the person claiming has to pay advalorem court fee on the value of the suit property. The petitioner, who has claimed a decree for specific performance of the agreement of sale dated 14.03.2011 has paid advalorem court fee on the sale consideration amount fixed in the said document. More so, the land is being used for running a brick kiln by the petitioner and for that reason also the suit land being a commercial property, the respondent was bound to pay advalorem court fee on his counter claim for seeking relief of possession of the suit land.

On the other hand, learned counsel for the respondents contended that since Sanjay Goyal (respondent No.1) has claimed relief of possession of the suit land which is agricultural land on the basis of transfer deed executed in his favour by his father, market value of the land is taken to be 10 times of the land revenue thereof as per section 7(iv)(a) of the Court Fees Act, 1870 and accordingly respondent No.1 has paid court fee on the said market value. He is not required to pay advalorem court fee on the actual market value of the suit land. To support his argument, learned counsel relied upon Manjula Mittal alias Manju Rani vs. Sohan Lal and others, 2014(1) RCR (Civil) 83 and Gurshinder Singh vs. Pal Singh and others, PLR Vol.CLXXI-(2013-3) 499.

Reliance has also been placed on Sant Ram vs. Atma Singh,

AIR(35) 1948 East Punjab 8 where it was held as under:-

“The term “land” is not defined anywhere in the Court-fees Act., It should, therefore, be interpreted in the ordinary sense and should cover all kinds of land regardless of the use to which it is put or may be likely to be put. The term “estate” is used in S.7 in a particular sense which is made clear by the Explanation, appended to cl.(v) of S 7. Even when a single field is separately assessed with revenue it can be regarded as an estate within the meaning of the Explanation and there being no other field comprised in that estate it would constitute “entire estate”. Sub cl (b) is not confined to the case of an entire estate. The last words of the sub-clause deal with lands forming part of an estate and when the part is recorded as assessed to revenue. Sub-cl. (b) applies.

Hence a suit for possession of land separately assessed to land revenue is governed by sub-cl.(b) of S.7(v).”

Having considered the rival contention of the parties, it transpires that admittedly respondent No.1 Sanjay Goyal was not party to the agreement of sale dated 14.03.2011 on the basis of which the petitioner has filed a suit for specific performance. Although during the course of arguments, learned counsel for the petitioner argued that a brick kiln was being run on the suit land but it was not so mentioned in his grounds of petition. In any case, the provision of Section 7(iv)(a) of the Court Fees Act is very clear and unambiguous. It postulates that in a suit for possession of land where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Collector's register as separately assessed permanently to such revenue, then the amount of court fee shall be computed on 10 times of the revenue so payable. Accordingly for the relief of possession the claimant (respondent No.1) was required to pay advalorem court fee on 10

times of the land revenue of the suit land. Also as held in Gurshinderpal Singh case (supra) the term “land” is not defined anywhere in the Court Fees Act. It should, therefore, be incorporated in the ordinary sense and cover all kinds of land regardless of the use to which it is put or may be likely to be put.

Thus, in the light of law discussed above, there appears no illegality or perversity in the order of learned trial court. Otherwise also, if at the time of decision of the case, the learned trial court comes to the conclusion that advalorem court fee on the market value of the suit land as mentioned in the transfer deed was required to be affixed on the suit for possession as it was a commercial property, it would still be open for it to order accordingly. Resultantly, finding no ground for intervention in the impugned order, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

17.08.2015.
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