

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

CR No.4801 of 2015

Date of decision : 28.08.2015

Gurdial Singh

...Petitioner

Versus

Gurbaz Singh and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. J.K. Goel, Advocate for the petitioner.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the order dated 18.05.2015, whereby preliminary issues payment of courts fees has been ordered to be framed by this Court vide order dated 08.09.2011 passed in CR No.6560 2010 has been partly allowed.

Mr. J.K. Goel, learned counsel appearing on behalf of petitioner-defendant submits that impugned order has been passed on the basis of the evidence led by the parties to the lis and the trial Court has called upon plaintiff to affix the requisite court fees as per Section 2(a) Sub Clause (1) of Amended Section 7 of Clause (v) of Court Fees Act, 1870 which is ₹60 per acre.

He further submits that land is not subject to revenue and, therefore, Court fees as per Clause (d) Sub Clause (1) of Section 7 of Clause

(v) is required to be paid. In support of his contention, he has relied upon judgment of this Court in *Niranjana Kaur Vs. Nirbigan Kaur*, 1982 PLR 127 and Hon'ble Supreme Court in *Boda Ram Vs. Beermati Devi and ors.*, VOL.CLXXIV-(2014-2) Punjab Law Reporter, 31 to contend that advalorem Court fees is liable to be paid as the respondent-plaintiff had stepped into the shoes of their father namely Gurcharan Singh.

I have heard learned counsel for parties and appraised the paper book.

It would be apt to refer para 2 of the plaint, wherein essential relief has been sought:-

"2. That the plaintiffs are the owners of the land measuring 46 kanals 13 marlas being one half share of the total land measuring 93 kanals 7 marlas, detail of which is given below:

Khewat number 248/236, khatoni number 354 Rect. Number 37, khasra number 22(7-0), 23(8-0); Rect. Number 48, Khasra Number 1/2 (3-16), 2(8-0), 3(8-0), 4 (7-10), 5/1(1-12), 7/2(1-13), 8(7-13), 9(8-0), 10(7-16), 11 (8-0), 12(7-14), 13/1(2-0), Rect. Number 49, Khasra Number 6/1(1-5), 15(7-8), situated within the revenue estate of village Peont, Tehsil and District Karnal, vide jamabandi for the year 2002-03, copy of the same is enclosed herewith."

And as well as prayer Clause read thus:-

"Hence, it is, therefore, prayed that a decree for possession of the land measuring 46 kanals 13 marlas being 1/2 share of the total land measuring 93 kanals 7 marlas fully detailed in para number 2 of the plaint, may kindly be passed in favour of the plaintiffs and against the

defendants."

From the perusal of the pleadings culled out in plaint, it is evident that respondents-plaintiffs have filed suit for possession of the land and the declaration of the cancellation of the sale deed has not been sought. Therefore, ratio decidendi culled out in Boda Ram's case is not applicable to the facts and circumstances of the case vis-a-vis the decree which was passed. The trial Court had already called upon respondent-plaintiff to pay the courts fees as per Section 2(a) Sub Clause (1) of Amended Section 7 of Clause (v) of Court Fees Act, 1870. The contention that 2(d) would apply instead of 2(a) is not tenable as per averments made in paragraph 2 (supra) inasmuch as that plaintiffs have specified the definite share, whereas Clause (b) applies to situation where there is no determination of the definite share. In my view there is no illegality and perversity in the impugned order, whereby plaintiffs have been directed to affix courts fees of ₹60 per acre. Even otherwise in Annexure P-7, information obtained under Right to Information Act is not part of the record of the trial Court being a subsequent evidence. The petitioner has failed to bring this fact on record while leading evidence in support of evidence on preliminary issue.

In view of aforementioned observations, there is no illegality or perversity in the impugned order or cannot be said to have been passed without jurisdiction.

Revision petition is accordingly, dismissed.

28.08.2015

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**(AMIT RAWAL)
JUDGE**