In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1969 of 2015

Date of Decision: 07.04.2016

Sukhwinder Singh and Others

... Petitioner(s)

Versus

Shaillinder Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. Atul Goyal, Advocate
for the petitioner(s).

Mr. Sandeep Jasuja, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 28.1.2015, passed by learned Additional Civil Judge (Senior Division), Fazilka whereby application under Order 7 Rule 11 CPC was allowed and plaintiffs were directed to pay *ad valorem* court fee.

Relevant facts of the case that plaintiffs had filed a suit for specific performance of agreement of sale dated 20.3.2013 and during pendency of the suit, application under Order 7 Rule 11 CPC was filed by the defendants for rejection of the plaint on the ground that plaintiffs arbitrarily valued the suit for the purpose of court fee and jurisdiction, whereas they have sought specific performance of the agreement and valuation of the entire property was settled at ₹ 3,75,00,000/- and plaintiffs agreed to sell their remaining share in the property in dispute worth ₹ 2,75,00,000/- in favour of the defendants.

Learned counsel for the petitioners submitted that parties to the litigation are owners of Shah Palace situated at Rampura, Tehsil Fazilka and they are family members. Petitioners have 60% share in the suit property and share of the respondents is to the extent of 40%, total value of the suit property was ₹ 3,75,00,000/-. On the basis of agreement of sale dated 20.3.2013, the petitioners had agreed to sell their share to the extent of 60% share in the land to the present respondents in lieu of ₹ 2,25,00,000/-. It was also settled that in case petitioners refused to execute the sale deed, in that eventuality, they would be liable to pay a sum of ₹ 50,00,000/-. However, while deciding application under Order 7 Rule 11 CPC, the Court below failed to consider the fact that specific performance was sought only to the extent of 1/3rd share of the 40% share of the defendants, which amounts to ₹ 50,00,000/- and the court fee, as per the rate of ₹ 50,00,000/-, has already been affixed and the order passed by the Court below is liable to be set aside. In support of his arguments, reliance has been placed upon the judgment rendered by Madras High Court in case ***D.Nagaraj v. A.Devaraj 2014(2) CTC 256***.

Learned counsel for the respondents submitted that the

Court below has rightly directed the petitioners to affix the court fee on the basis of valuation of the property as shown in the agreement and the present petition deserves dismissal.

Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that law on the point is settled that plaintiff is required to affix the court fee as per valuation of the suit to be assessed by the plaintiff. In this case, plaintiffs, who are petitioners before this Court, have rightly assessed the valuation of relief being claimed in the main suit, which comes to 1/3rd share of 40% share of the defendants and on that basis valuation has been assessed to be ₹ 50,00,000/- and the required court fee has been affixed by the plaintiffs. The Court below fell in error while directing the plaintiffs to affix the court fee on the total valuation of the property as shown in the agreement, though the same is not the relief claimed by the plaintiffs. Needless to mention that if at a later stage, during pendency of the suit and on the basis of evidence available on the file, the court comes to the conclusion that infact relief claimed by the petitioners was more than ₹ 50,00,000/-, the Court can pass order at that stage keeping in view the material and evidence available on the file. But at this stage, valuation of the suit has been correctly done by the plaintiffs and the required court fee has already been affixed and the order dated 28.1.2015 is liable to be set aside, whereby petitioners have been directed to affix the court fee to the extent of 60% share of the total valuation of the suit land. Similar view was taken by the Madras High Court in case ***D.Nagaraj v. A.Devaraj****(supra)* that valuation of the suit is to be taken keeping in view the relief being claimed in the suit.

In view of above, present petition is hereby accepted and order dated 28.1.2015 stands set aside.

(Shekher Dhawan)
Judge

April 7, 2016
"DK"