

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

**CR No.4791 of 2013(O&M)
Decided on.24.08.2016.**

Ashish and others

.....Petitioners

Versus

Ramehar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. J.S.Cooner, Advocate
for the petitioners.

Mr. Rishav Jain, Advocate
for respondents no.2 and 3.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 17.07.2013 passed by the learned Civil Judge (Jr. Division), Gohana, vide which the application moved by the defendants-respondents no.2 and 3 under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short C.P.C.) has been allowed and the plaintiff-petitioners have been directed to affix the Court fees as per the value of the property mentioned in the impugned sale deed.

2. I have heard Mr. J.S.Cooner, Advocate, learned counsel for the petitioners, Mr. Rishav Jain, Advocate, learned counsel for respondents no.2 and 3 and have meticulously gone through the paper book.

3. Learned counsel for the petitioner contended that the

petitioner is not the executant of the sale deed. He has challenged the sale deed being his coparcenary property. So, he is not required to affix the *ad valorem* court fees as per the sale price mentioned in the sale deed . For the relief of joint possession, he can only be required to affix Court fees as per Section 7 (v) of the Court Fees Act, 1870 (for short 'Act').

4. On the other hand, learned counsel for the respondents contended that as the plaintiff-petitioner has challenged the sale deed executed by his father and has also sought the relief of possession, he is required to affix the *ad valorem* Court fees as per the value of the suit property mentioned in the sale deed. Thus, he contended that there is no illegality in the impugned order passed by the learned trial Court.

5. I have duly considered the aforesaid contentions.

6. This fact is not disputed that the plaintiff-petitioner is not the executant of the sale deed dated 25.01.2013. He has challenged the sale deed executed by his father on the plea that the suit property was his ancestral and coparcenary property. He has also sought a decree for joint possession and permanent injunction. It is also not disputed that the suit property involved in the present suit is the agricultural land. The Hon'ble Apex Court in case **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors. 2010(2) R.C.R (Civil) 564** has laid down that where a non-executant is not in possession and he seeks only a declaration that the sale deed is invalid and he also seeks the consequential relief of possession, the value of the suit shall be calculated in the manner provided by Clause (v) of Section 7 of the Act. The Hon'ble Apex Court in the aforesaid judgment in the concluding paras has laid down as under:-

“7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "coparcenary" and for joint possession. The plaintiff in the suit was not

the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv)(c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds.

8. We accordingly allow these appeals, set aside the orders of the trial court and the High Court directing payment of court fee on the sale consideration under the sale deeds dated 20.4.2001, 24.4.2001, 6.7.2001 and 27.9.2003 and direct the trial court to calculate the court fee in accordance with Section 7(iv)(c) read with Section 7(v) of the Act, as indicated above, with reference to the plaint averments.”

Thus, in the aforesaid case, the Hon'ble Apex Court has directed the learned trial Court to calculate the Court fees in accordance with Section 7 (iv)(c) read with Section 7 (v) of the Act and the order passed by the learned trial Court as well as the High Court directing the payment of the Court fees on the sale consideration were set aside.

7. In case **Hardam Singh Vs. Angrej Singh and others** 2014(1) R.C.R (Civil) 929, this Court has laid down as under:-

“8. However, in view of Section 7 (v) of the Court Fee Act, 1870, plaintiffs are liable to pay court fee on ad-valorem value of the suit land for the relief of possession. The question to be determined, however, is as to what would be the market value of the suit land for this purpose. The trial Court has directed the plaintiffs to pay ad-valorem court fee on the market value of the suit land as per collector rates. However, there is no basis for order of the trial Court regarding collector rates of the suit land. On the contrary, according to Section 7 (v) of the Court Fee Act, 1870, in case of agricultural land, the market value shall be ten times the land revenue of the land. In the instant case also, the suit land is agricultural land.

9. Consequently, market value of the suit land has to be determined at ten times the land revenue thereof and on the value so determined, the ad-valorem court fee shall be

payable. In addition to it, plaintiffs have to pay requisite court fee for the reliefs of declaration and injunction. It is ordered accordingly in modification of impugned order Annexure P-1 passed by the trial Court.”

The same ratio of law has been laid down in cases **Bhupesh Kumar Sharma and others Vs. Manohar Kumari and others 2007(2) R.C.R (Civil) 784** and **Gulzar Singh Vs. Balwant Singh and others 2014(1) PLR 578**.

8. In view of the consistent ratio of law laid down in cases referred above, as the plaintiffs have claimed the relief of declaration with consequential relief of joint possession and permanent injunction, so the plaintiffs will be liable to pay *ad valorem* Court fees in accordance with Section 7 (iv) (c) read with Section 7(v) of the Act. As per Section 7 (v) of the Act, as amended by the State of Haryana vide Act No. 22 of 1974, in case of Agricultural land, the market value shall be as under:-

“(a) where the subject matter is land other than land situated within municipal limits or Abadi Deh whether under cultivation or not according to the market value thereof which shall be deemed to be,—

(i) in the case of land which is irrigated by perennial canal, sixty rupees per acre;

(ii) in the case of land which is irrigated by non-perennial canal or by well, fifty rupees per acre; and

(iii) in the case of land which is Barani, Sailab, Bhud, Thur, Sem, Banjar or of like nature, thirty rupees per.

In the instant case as already mentioned, the land in question is agricultural land, therefore the plaintiffs-petitioners will be required to pay the Court fees on the market value thereof as determined above in Section 7 (v) of the Act.

9. Resultantly, the present revision petition is hereby partly allowed. The impugned order dated 17.07.2013 is hereby modified that the plaintiffs-petitioners are required to affix Court fees on the market

value of the suit land as per Section 7(iv) (c) read with Section 7 (v) of the Act as applicable to Haryana i.e. by determining the market value at the rate of Rs. 60 per acre, Rs.50 per acre and Rs. 30 per acre as per the kind of the suit land.

24.08.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No