

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

CR No.763 of 2015

Date of Decision-18.10.2016

Tarandeep Singh

... Petitioner

Versus

Subash Chander

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ayush Gupta, Advocate for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged order dated 10.12.2014 passed by Civil Judge (Junior Division), Ludhiana vide which application under Order 7 Rule 11 CPC filed by defendant-respondent was allowed and the plaintiff-petitioner was directed to pay *ad valorem* court fee as per market value of the suit property.

[2]. Plaintiff-petitioner filed a civil suit for permanent injunction, seeking to restrain the defendant, his associates, agents, servants, attorneys etc. from interfering in his possession in the suit plot. Plaintiff claimed ownership of the plot on the basis of sale deed dated 09.06.2006 having purchased the same from Gurdial Singh, Jora Singh and Nirbhay Singh for a sale consideration of Rs.4,98,000/-. Mutation was also sanctioned in favour of the plaintiff pursuant to aforesaid sale deed. Feeling positive apprehension of his dispossession at the instance of the defendant, he filed a suit for permanent injunction.

[3]. During pendency of the suit, defendant forcibly took over possession of the suit plot and raised some construction thereon. Plaintiff-petitioner amended the suit and also claimed relief of mandatory injunction directing the respondent to restore the possession of the petitioner over the suit property.

[4]. After the amendment of the suit, defendant moved an application under Order 7 Rule 11 CPC, claiming himself to be owner in possession of the suit property by virtue of sale deed dated 10.01.1980. Defendant asserted that since the plaintiff has prayed for possession in the shape of mandatory injunction, therefore plaintiff is liable to affix ad valorem court fee on the plaint.

[5]. The said application was contested by the plaintiff-petitioner by alleging that proper court fee was already affixed. No relief of possession was claimed. Mandatory injunction was claimed as he was dispossessed during pendency of the suit.

[6]. Civil Judge (Junior Division), Ludhiana vide order dated 10.09.2014 held that in fact the plaintiff has claimed real relief of possession and is therefore, required to pay the ad valorem court fee. The application was allowed. However, the plaintiff was granted an opportunity to furnish the proper court fee on 01.10.2014 vide order dated 10.09.2014.

[7]. Thereafter, another application was filed by the defendant under Order 7 Rule 11 CPC for rejection of amended plaint for not complying with the order dated 10.09.2014.

[8]. This application was contested by the petitioner by the petitioner by filing reply. It was claimed by the defendant that since order dated 10.09.2014 was not complied with by the plaintiff vide which opportunity was granted to him to furnish proper court fee, therefore, plaint has to be rejected. Minimum value of the suit property was claimed to be more than 20 lacs, therefore, ad valorem court fee was required to be affixed on the value of the suit property. The court fee already affixed on the plaint was pleaded to be inadequate as the sale deed was executed many years ago.

[9]. Per contra, plaintiff asserted that the plaintiff had filed the suit on the basis of registered sale deed dated 09.06.2006 wherein the sale consideration was mentioned as Rs.4,98,000/-. Plaintiff had already affixed requisite court fee of Rs.15,600/-, therefore, no further court fee was payable. If any construction was raised by the defendant over the suit property after execution of sale deed and if the value of the property has increased thereafter, the plaintiff was not liable to pay further court fee on the alleged current market value of the suit property.

[10]. Evidently, the first application of the defendant under Order 7 Rule 11 CPC was allowed on 10.09.2014 vide which plaintiff-petitioner was directed to file the requisite court fee. The amount of requisite court fee was required to be determined by the Court. In the amendment, the plaintiff had sought relief of possession by way of mandatory injunction. The possession was sought in

respect of suit property which was having construction over it. Plaintiff was required to pay court fee as per value of the property in the year 2014. As per Collector's rate, the value of the property was Rs.5660/- per sq. yard. The area of the property was 249 sq. yard and the value of the property came to be calculated as 13,94,400/-. Accordingly, court fee was assessed and the plaintiff was directed to deposit the requisite court vide order dated 10.12.2014. That is, how, the present revision petition came to be filed.

[11]. I have heard learned counsel for the petitioner.

[12]. Plaintiff-petitioner claimed possession by way of mandatory injunction of the suit property which he had purchased vide sale deed dated 09.06.2006. Plaintiff himself has pleaded that he had purchased the property for a sale consideration of Rs.4,98,000/-, but was dispossessed during pendency of the suit by the defendant and the defendant had raised some construction over the suit property. After the aforesaid construction having been raised by the defendant, the plaintiff got his suit amended and claimed relief of mandatory injunction directing the defendant-respondent to restore the possession of the suit property to the plaintiff.

[13]. As per Section 7 (v) of the Court Fees Act, 1870, plaintiff was to affix the court fee as per value of the subject matter of the suit. The value of the subject matter of the suit as per own showing of the plaintiff was to be calculated on the basis of additional construction allegedly raised by the defendant during pendency of

the suit. Though the plaintiff had purchased the suit plot for a sale consideration of Rs.4,98,000/- and an amount of Rs.15,600/- was affixed as court fee, but since the construction was raised by the defendant during pendency of the suit on dispossessing the plaintiff, for which proposed amendment was allowed, therefore, in view of Section 7(v) of Court Fees Act, an ad valorem court fee is required to be paid according to the value of the subject matter of the suit. The value of the subject matter of the suit has to be calculated as per Collector's rate which was found to be Rs.5660/- per sq. yard at the relevant time i.e. in the year 2014 when the amendment was allowed.

[14]. Having considered the submissions, I am of the view that the petitioner is liable to affix the additional court fee on the basis of Collector's rate on the value of the subject matter of the suit in the year 2014. No ambiguity can be found in the impugned order dated 10.12.2014 passed by Civil Judge (Junior Division), Ludhiana. Therefore, this revision petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

18.10.2016
Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No