

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.7573 of 2014

Date of Decision: 21.09.2016

Pritam Singh

.....Petitioner

Vs

Kehar Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Jagdish Manchanda, Advocate
for the petitioner.

None for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 03.09.2014 (Annexure P-4) passed by Civil Judge (Jr. Divn.) Pehowa directing the petitioner to pay *ad valorem* court fee on an amount of Rs.3,68,000/-.

[2]. Petitioner filed a suit for redemption of land measuring 8 *Kanals* 4 *Marlas* against respondents as well as for possession and permanent injunction. The averments made in the plaint were to the effect that mortgage deed No.2120 dated 05.03.1990 was executed . Suit land was 8 *Kanals* 0 *Marla* comprised in *Khewat* No.1 *Rect.* No.29, *Killa* No.10 min (1-0),

11 (7-0) situated in revenue estate of village Shahpur, Tehsil Pehowa, District Kurukshetra vide *jamabandi* for the year 1983-84. Plaintiff/petitioner was owner in possession of the land to the extent of 1 *Kanal* 10 *Marlas* being 30/160 share and the proforma defendant namely Harnam Singh was owner in possession of the remaining land measuring 6 *Kanals* 10 *Marlas* being 130/160 share. The land was mortgaged by the plaintiff as well as proforma defendant Harnam Singh to the extent of their shares in the total land in favour of defendant No.1 for a sum of Rs.10,000/- vide mortgage deed No.2120 dated 05.03.1990 registered in the office of Sub-Registrar. Consequent mutation No.428 was sanctioned on the basis of said mortgage deed. Plaintiff and proforma defendant in pursuance to the mortgage of their shares delivered their possession in favour of defendant No.1, but inadvertently, the description of the suit land mentioned in mortgage deed was mentioned under *Rect.* No.14 instead of *Rect.* No.29 *Killa* No.10 min (1-0) 11 (7-0) in *Rect.* No.14 as per *jamabandi* for the year 1983-84 and proforma defendant never remained in possession of *Rect.* No.14 *Killa* No.10 min (1-0) 11(7-0).

[3]. Defendant No.1 was recorded to be mortgagee of the suit land. The mortgage was created only for a period of three years. After expiry of period of mortgage, the suit came to be

filed for redemption and for delivery of possession to the plaintiff as per his share i.e. 1 *Kanal* 10 *Marlas*. Since the proforma defendant has already sold his share in favour of wife of defendant No.1 vide sale deed dated 15.01.1996, therefore defendant started putting off the matter on one reason or the other. In this background, the suit for redemption came to be filed as defendant No.1 flatly refused to accept the mortgage amount and to deliver the possession of the suit land.

[4]. The Collector, Pehowa without going into the merits of the case disposed of the case vide order dated 16.05.2013. The order passed by the Collector to the extent of redeeming the suit land after depositing Rs.3,68,000/- for payment to defendant No.1 was claimed to be illegal, null and void and not binding upon the rights of the plaintiff.

[5]. An application was filed by defendant No.1 Kehar Singh under Order 7 Rule 11 CPC for directing the plaintiff to make good the deficiency in court fee on the ground that the suit for declaration and injunction as sought by the plaintiff would require payment of *ad valorem* court fee as recovery of Rs.3,68,000/- is being sought by the defendant.

[6]. Apparently, the suit is for declaration, redemption of land and for possession. Due to wrong mentioning of Rect.

No.14 instead of Rect. No.29, the anomalous situation came to fore and the same was specifically pleaded in para No.4 of the plaint. Plaintiff and proforma defendant never remained in possession of Rect. No.14 Killa No.10 min (1-0) 11(7-0). The possession was duly transferred in favour of the mortgagee. Since the suit is for possession, therefore, according to plaintiff question of recovery does not arise. It is a settled principle of law that at the stage of Order 7 Rule 11 CPC, only averments made in the plaint are to be seen.

[7]. At the time of issuance of notice of motion on 11.11.2014, the following order was passed by this Court:-

“The plaintiff is in revision against the order of the trial Court on an application filed by the defendant under Order 7 Rule 11 of the CPC asking the plaintiff to pay adva-lore Court fee on a amount of ₹ 3,68,000/-.

Learned counsel has submitted that he has filed a suit for declaration and redemption of the suit property alleging himself to be owner and mortgagor to the extent of 1 kanal 10 marlas of land. In the said suit, he has prayed that he is not liable to pay ₹ 3,68,000/- on which the Court has asked him to pay the adva-lore Court fee.

Notice of motion for 18.12.2014.

In the meantime, the trial Court is directed to adjourn the case pending before it beyond a date given by this Court.”

[8]. As per order dated 18.12.2014 passed by this Court,

respondent No.2 was proceeded against *ex parte*. Petitioner was a mortgagor only to the extent of 1 *Kanal* 10 *Marlas* of land and was not liable to pay an amount of Rs.3,68,000/- on which *ad valorem* court fee was asked to be paid by him.

[9]. As per office report dated 03.03.2015, notice issued to respondent No.1 were received back duly served. Despite service, none appeared on behalf of respondent No.1 on 09.03.2015, 04.05.2015, 14.09.2015, 16.02.2016 and today also, none appeared on behalf of respondent No.1. Accordingly, *ex parte* arguments were heard.

[10]. In view of averments made in para Nos.4, 7 and 9 of the plaint, in considered opinion of this Court, the impugned order does not survive. The order of Collector dated 16.05.2013 itself is under challenge in the suit. In view of averments made in para No.4 of the plaint, the factual matrix of the case is sought to be explained, therefore, in my considered opinion, the plaintiff is not required to pay the *ad valorem* court fee on the amount of Rs.3,68,000/- as observed by the trial Court except the amount of court fee already deposited along with the plaint.

[11]. Having taken note of the facts and circumstances of this case, I am of the view that impugned order is liable to be set aside. This revision petition is allowed and the application under

Civil Revision No.7573 of 2014

6

Order 7 Rule 11 CPC filed by defendant/respondent No.1 is hereby dismissed.

September 21, 2016

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No