

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

CR No. 3076 of 2017(O&M)

Date of decision: 16.8.2017

Banso Bai and another

....Petitioners

VERSUS

Prakash Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. G.S. Sandhu, Advocate for the petitioners.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 13.02.2017 passed by the Civil Judge (Senior Division), Fazilka whereby application filed by the petitioners/defendants under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC') for rejecting the plaint on account of non-payment of advalorem Court fee has been dismissed.

Counsel for the petitioners has submitted that the respondent/plaintiff has valued the suit for the relief of declaration at Rs.1,000/- and consequential relief at Rs.500/- and paid a Court fee of Rs.150/-. It is argued that as the respondent/plaintiff has prayed for joint possession on the basis of declaration declaring the transfer deed i.e. Vasika No.841 dated 18.06.2015 executed by the defendant No.1 in favour of defendant No.2 and 3 to be null and void, the respondent/plaintiff is liable to pay advalorem Court fee as per the Collector's rate of agricultural land, subject matter of the lis. In support of his contention, he has referred

to judgment by a Co-ordinate Bench of this Court **Harinder Singh and others Vs. Gurminder Kaur, 2012 (5) RCR (Civil) 138.**

I have heard counsel for the petitioners, perused the paper-book and various annexures appended with the petition including the order impugned.

Indisputably, the respondent/plaintiff is not executant of vasika No.841 dated 18.06.2015 alleged to be illegal, null and void having no binding force. The respondent/plaintiff has claimed co-ownership of the land on the basis of Will dated 28.06.2006 purported to be executed by Smt. Khusian Bai (since deceased). As the respondent/plaintiff is not executant of the sale deed nor has prayed for a decree of possession and has only sought the relief of joint possession, the Court fee is rightly computed on the amount at which relief sought has been valued in the plaint, as has been held by this Court in **Harinder Singh and others case** (supra). As such, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

AUGUST 16, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no