

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

1. Civil Revision No.4963 of 2017
Date of Decision: 22.08.2017

Smt. SantoshPetitioner
Vs
Virender Singh and othersRespondents

2. Civil Revision No.4978 of 2017

Smt. Sona DeviPetitioner
Vs
Virender Singh and othersRespondents

3. Civil Revision No.4972 of 2017

Shiv NarainPetitioner
Vs
Virender Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Sandeep K. Sharma, Advocate
for the petitioner(s).

Mr. Dinesh Arora, Advocate
for the respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Vide this common order CR Nos. 4963, 4978 and 4972 of 2017 are being decided as all these petitions involve common question of fact and law. Petitioner(s) have assailed common order dated 26.04.2017 passed by Addl. District Judge, Rohtak vide which application filed under Order 7 Rule 11 CPC was

held to be not maintainable, however the appeals filed by the petitioner(s) was rejected on the ground of deficiency of court fee. For brevity, facts have been culled out from CR No.4963 of 2017.

[2]. Brief facts are that respondent No.1 Virender Singh filed a civil suit for specific performance and possession. Petitioner-Shiv Narain was impleaded as defendant No.1, petitioner-Smt. Santosh was impleaded as defendant No.2 and petitioner-Sona Devi was impleaded as defendant No.3. It was alleged that defendant Nos.1 to 3 along with Smt. Nihali Devi wd/o Fateh Singh, Satwanti, Geeta Devi, Sita Devi all d/o Fateh Singh and Gobind Ram, Sat Narain, Ram Kumar sons of Fateh Singh entered into an agreement to sell dated 19.11.1998 with the plaintiff in respect of 16 *Kanals* of land situated in village Mouja Para, Tehsil and District Rohtak for a total sale consideration of Rs.25 lacs. An amount of Rs.2.5 lacs was paid as earnest money. The vendors including defendant Nos.1 to 3 got the land partitioned and mutation No.4043 was sanctioned by the Assistant Collector, 2nd Grade on 26.02.1999. On account of the said partition, Nihali Devi, Sita Devi, Geeta Devi, Satwanti and Ram Kumar became owner to the extent of 1/5th share each in the land measuring 8 *Kanals* comprised in Rect. No.72, Killa No.5/2(0-8), 7(7-12). Other vendors namely Gobind

Ram, Shiv Narain, Sat Narain, Smt. Santosh and Sona Devi also became owner to the extent of 1/5th share each in the land measuring 8 *Kanals* comprised in Rect. No.72, Killa No.6/1(3-16), 6/2(4-4).

[3]. Trial Court decreed the suit vide judgment and decree dated 29.11.2011. The valuation of the suit for the purposes of jurisdiction was fixed to be Rs.7.5 lacs and accordingly the court fee of Rs.34,370/- was paid by the plaintiff. It was on account of some settlement between the parties and on the basis of honouring the agreement to sell by some of the defendants, the valuation was decreased from Rs.25 lacs to Rs.7.5 lacs. The suit was decreed with costs. Decree for specific performance of the agreement was passed in favour of the plaintiff and against the defendants. The defendants were directed to get the sale deed registered in respect of the suit land in favour of M/s Panchsheel Housing Building Society on payment of balance sale consideration of Rs.3,80,000/- which was to be paid by the plaintiff. A decree for possession was passed in favour of the plaintiff to the extent of share of the defendants in the suit land.

[4]. Thereafter all the three defendants filed three different appeals before the lower Appellate Court after valuing the suit/appeal @ Rs.2.5 lacs each for the purposes of court fee. An amount of Rs.15,050/- was affixed on the memorandum of these

appeals.

[5]. The objection was taken by the plaintiff in the appeals. All the appeals were consolidated on 04.11.2014. Lower Appellate Court dismissed the application/objection on the ground that since consolidation of the appeals has been ordered, therefore, total court fee in all the appeals would cover the original valuation to the tune of Rs.7.5 lacs.

[6]. Three revision petitions i.e. CR Nos. 8028, 8029 and 8031 of 2014 were filed against the aforesaid order before this Court. Vide order dated 08.03.2017, the Co-ordinate Bench of this Court pleased to remand the cases to the lower Appellate Court for fresh decision after hearing the parties and order dated 04.11.2014 passed by the lower Appellate Court was set aside. Thereafter order dated 26.04.2017 came to be passed by the Addl. District Judge, Rohtak vide which it was held that the memorandum of appeal was deficient in terms of court fee and the appellants have not assessed the value of the appeals as per value of the suit, therefore, appeals were dismissed.

[7]. Learned counsel for the petitioner(s) submitted that the original sale consideration was Rs.25 lacs. There was relinquishment of claim on the basis of understanding of the plaintiff with different vendors and the plaintiff himself curtailed

valuation from Rs.25 lacs to Rs.7.5 lacs for the purposes of valuation of the suit for jurisdiction fee. All the three defendants have appropriately affixed the requisite court fee to the tune of Rs.2.5 lacs on the memorandum of appeals to the extent of their share and the aforesaid mechanism was lawful in order to meet out the total valuation of the suit for the purposes of jurisdiction as per their shares. Therefore, the respondent No.1 is estopped to raise the contention that the defendants/petitioner(s) are liable to pay court fee on total valuation of Rs.7.5 lacs individually on the appeals filed by them separately.

[8]. Learned counsel by relying upon **Secretary of State vs. Rm. P. Rm. M. Subramanian Chettiar, 1938 AIR (Madras) 278** which was followed by this Court in **Basant Lal vs. Baru and another, 1967 AIR (Punjab) 188** contended that the deficit court fee corresponding to the part of relief in the suit/appeal is required to be affixed in the appeal i.e. only a part of the suit being comprised in the appeal. The suit as such is not before the Appellate Court, therefore, payment of total court fee as per valuation in the suit is not required to be paid at the appellate stage, when the defendant has cause of action *qua* his share. Since the appeal was relating to the share of individual defendant, the view expressed in **Secretary of State's** case (supra) which was followed by this Court in **Basant Lal's** case

(supra) wherein it was endorsed that where a part of the subject matter of suit is comprised in the appeal before the lower Appellate Court, then deficit court fee only in respect of that part of the suit can be levied and not in respect of entire subject matter of the suit.

[9]. Learned counsel further submitted that the facts on record are itself suggestive of the fact that the plaintiff himself has relinquished the total valuation of Rs.25 lacs on the basis of some understanding between him and other vendors and, therefore, valuation as per agreement to sell was not static, rather the plaintiff himself made it dynamic in nature according to share of the vendors. Since all the appeals were consolidated vide order dated 04.11.2014, the lower Appellate Court would still be at liberty to pass appropriate order on the aspect of clubbing so as to decide the controversy in one attempt.

[10]. Learned counsel also submitted that in the event of finding the court fee to be deficient by the lower Appellate Court, reasonable time should have been granted to the defendants/petitioner(s) for making good the deficiency as per law laid down in **A. Nawab John and others vs. V.N. Subramaniam, 2012(3) Recent Apex Judgments (R.A.J.) 430; Municipal Corporation, Faridabad and another vs. Suresh and others, 2007(3) R.C.R. (Civil) 7** and **Sat Paul and**

another vs. Jai Bhan, 1972 PLR 359.

[11]. On the other hand, learned counsel for the respondent No.1 vehemently opposed the contention of learned counsel for the petitioner(s) on the ground that the suit was valued at Rs.7.5 lacs by the plaintiff and the valuation has to be carried at the appellate stage because court fee is to be affixed on the memo of the appeal at the time of filing of the appeal and not at the time of consolidation of the same. The order of consolidation was passed for the purposes of common decision of the appeals by the appellate Court and not for the purposes of valuation for determining the court fee. The memo of appeal should have the *ad valorem* court fee as per valuation done by the plaintiff in the suit.

[12]. I have considered the submissions made at the bar.

[13]. The issue of court fee is between the Court and the plaintiff and appellant before the lower Appellate Court. The issue involved is common in all the three appeals pending before the lower Appellate Court. At one point of time, consolidation of appeals was ordered vide order dated 04.11.2014, however with the remand of the cases by this Court, it would be still open before the lower Appellate Court to pass an appropriate order in the light of decision of the present

revision petition.

[14]. In view of law laid down in **Secretary of State** and **Basant Lal's** cases (supra), I am of the view that the deficient court fee can be levied at the appellate stage only in respect of part which is before the lower Appellate Court. The part before the lower Appellate Court is relatable to the share of individual payment to which the defendants are answerable in the context of their obligation in agreement to sell or ultimate decision in the context of executing the sale deed pursuant to the decision of the suit for specific performance. The deficit court fee only in respect of that part of the suit can be levied which is in dispute as per the share of the appellant and not in respect of entire subject matter of the suit which was levied by the plaintiff at the time of filing of the suit.

[15]. Relinquishment of the claim by the plaintiff himself on the basis of understanding between him and the other vendors would also bring the same analogy in question. If the plea of the plaintiff is to be appreciated, then the plaintiff was also required to affix the court fee by taking into consideration the valuation of Rs.25 lacs for the purposes of jurisdiction at the time of filing of the suit.

[16]. In view of above, I do not subscribe the submissions

made by learned counsel for the respondents. In view of acceptance of first arguments of learned counsel for the petitioner(s), the second argument that in the event of finding deficit court fee by the lower Appellate Court, reasonable opportunity was required to be given by the lower Appellate Court to make good the deficiency of the court fee by the petitioner(s) has become inconsequential.

[17]. In view of above, I accept these revision petitions. Consequently, the impugned order is set aside. The Lower Appellate Court would be at liberty to pass appropriate order in the context of consolidation of the appeal for the purposes of making common decision in the appeals in accordance with law.

August 22, 2017

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No