

Civil Revision No. 8383 of 2016 (O&M)

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

**Civil Revision No. 8383 of 2016 (O&M)
Date of decision: 30.1.2017**

Bhupinder Singh and another

... Petitioners

Vs.

Gurdev Kaur and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Sh. K.K.Garg, Advocate for
Mr. Tajinder Pal Singh Makkar, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 11.11.2016 (Annexure P-4) passed by the learned trial court, whereby application of the defendants-petitioners under Order 7 Rule 11 of the Code of Civil Procedure ('CPC' for short), was dismissed, petitioners have approached this Court by way of present revision petition under Article 227 of the Constitution of India.

Heard learned counsel for the petitioners.

It has gone undisputed before this Court plaintiffs-respondents are seeking separate possession after partition of joint land, which is in joint possession of the parties to the suit. Since the plaintiffs as well as defendants are admittedly in joint possession of the suit property and

Civil Revision No. 8383 of 2016 (O&M)

plaintiffs are seeking only separate possession after partition of the joint khewat, no ownership rights were sought to be created for the first time in favour of the plaintiffs. Since the plaintiffs-respondents were not seeking a decree for declaration, they were rightly held not liable to pay ad valorem court fee by learned trial court and the impugned order deserves to be upheld.

During the course of hearing, when confronted with the cogent findings recorded by learned trial court in the impugned order, learned counsel for the petitioners could not point out any patent illegality or perversity therein, which may warrant interference at the hands of this Court, while exercising its supervisory jurisdiction under Article 227 of the Constitution of India. It has also gone undisputed before this Court that issue of court fee is primarily between the plaintiff and State. Defendants have hardly any role to play in this regard. Learned trial court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld, for this reason also.

Exactly similar issue fell for consideration before this Court in **Jaspal Singh and another Vs. Gurbinder Singh, 2015 (3) PLR 97**. Following the law laid down by Hon'ble the Supreme Court in **Rathnavarmaraja Vs. Vimla AIR 1961 SC 1299** and also two Full Benches of this Court in **Krishan Kumar Grover Vs. Parameshri Devi, (1966) 68 PLR 54** and **Arjan Motors Vs. Girdhara Singh, 1978 AIR (Punjab) 25** as well as another judgment of the Hon'ble Supreme Court in **Shamsher Singh VS. Rajinder Prashad and others, 1973 (2) SCC 524**, this Court in para 4 and 5 of its judgment in Jaspal Singh's case (supra), held as under:-

Civil Revision No. 8383 of 2016 (O&M)

*“The maintainability of the revision itself, firstly, comes under a cloud in view of the observations of the Apex Court in **Rathnavarmaraja Vs. Vimla AIR 1961 SC 1299** wherein it was noticed that entertaining petitions preferred before the High Court in exercise of revisional jurisdiction and stalling progress in the suits for trial could not be appreciated. The Court Fee Act, 1870 was primarily a question between the plaintiff and the State and not to give leverage to the contesting party to obstruct trial of the proceedings. Relevant observations read as under:*

“The Court-fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court-fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court fee on his plaint. Whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision

exercised by the High Court under section 115 of the Code of Civil Procedure is strictly conditioned by cls. (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior court by appeal or in revision against the order adjudging payment of court-fee payable on the plaint.”

*The said view was following by a Full Bench of this Court in **Krishan Kumar Grover Vs. Parameshri Devi (1966) 68 PLR 54**. The reference before the Full Bench was that whether the plaintiff could challenge the order whereby the Trial Court had directed the additional Court fees payable. It was, accordingly, held that a revision was maintainable at the instance of the plaintiff against an order directing payment of additional Court fees. The matter again came up before another Full Bench of this Court in **Arjan Motors Vs. Girdhara Singh & others 1978 AIR (Punjab) 25** as to whether the defendants had a right to file a revision. Placing reliance upon the judgment of the Apex Court in **Shamsher Singh Vs. Rajinder Prashad & others 1973 (2) SCC 524**, the Division Bench held that the question of Court fees could not be raised by the defendants under Section 115 CPC. In **Shamsher Singh's** case (*supra*) also, it has been held that unless the question of Court fee involves the jurisdiction of this Court, revision would not be maintainable.*

Civil Revision No. 8383 of 2016 (O&M)

Again, the Hon'ble Supreme Court, in para 9 and 12 of its judgment in **M/s Commercial Aviation and Travel Company and others Vs. Vimla Pannalal, (1988) 3 SCC 423**, held as under:-

“In this connection, we may refer to the provision of order VII, Rule II(b) of the Code of Civil Procedure, which provides, inter alia, that the plaint shall be rejected where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so. It is manifestly clear from the provision of order VII, Rule II(b) that a Court has to come to a finding that the relief claimed has been undervalued, which necessarily means that the Court is able to decide and specify proper and correct valuation of the relief and, after determination of the correct value of the relief, requires the plaintiff to correct his valuation within a time to be fixed by the Court. If the plaintiff does not correct the valuation within the time allowed, the plaint is liable to be rejected. The question is whether in a suit for accounts simpliciter, the Court can come to a finding as to the proper and correct value of the relief until the final determination is made. In our opinion, ordinarily it is not possible for the Court at a preliminary stage to determining the value of the relief in a suit for accounts implicit. If the Court is itself unable to say what the correct valuation of the relief is, it cannot require the plaintiff to correct the valuation that has been made by him. Indeed, in a suit for accounts it is also difficult for the Court to come to a finding even as to the approximate correct valuation of the relief. In such a case, the Court has no other alternative than to accept plaintiff's valuation tentatively.

Civil Revision No. 8383 of 2016 (O&M)

In the above decision, this Court took the view that the conversion of the plaintiff's undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. It is true that the Court did not consider whether the plaintiff had been given an absolute right or option to place any valuation whatever on his relief under the provision of section 7(iv) of the Court Fees Act, but the difficulty that would be felt by the Court in exercising its power under order VII, Rule 11(b) of the Code of Civil Procedure is that if it is unable to determine the correct value of the relief, it cannot direct the plaintiff to correct the valuation. Order VII, Rule 11(b) contemplates correct valuation and not approximate correct valuation and such correct valuation of the relief has to be determined by the Court. If the Court cannot determine the correct valuation of the relief claimed, it cannot require the plaintiff to correct the valuation and, consequently, order VII, Rule 11(b) will not be applicable.

The abovesaid view has also been reiterated by this Court in **Manpreet Singh Vs. Gurmail Singh and others, 2016 (3) PLR 751, Dr. B.L.Kapoor Memorial Hospital VS. Balbir Aggarwal, 2015 SCC OnLine P&H 1790 and S. Ajit Singh Kohar VS. Shahsi Kant (passed in CR No. 5638 of 2014 on 25.8.2014).**

Under such circumstances, defendants cannot be permitted for stalling the progress of the suit before the learned trial court, because they are not going to suffer any kind of prejudice due to alleged inadequacy of court fee paid by the plaintiffs. Although it may not be an absolute rule in every given situation, yet this Court would normally insist asking the defendant to show his locus standi and right to file and maintain a revision

Civil Revision No. 8383 of 2016 (O&M)

petition before this Court against an order passed by learned trial court, dismissing his application under Order 7 Rule 11 CPC, asking the plaintiff to pay adequate court fee.

Reverting to the peculiar fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court in the cases referred to hereinabove, this Court feels no hesitation to conclude that learned trial court neither exceeded its jurisdiction, nor committed any error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

30.1.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No