

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.1006 of 2018
Date of Decision: 17.05.2018

Varinder Singh

.... Petitioner

Versus

Mrs. Indu Handa

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Varun Sharma, Advocate,
for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Article 227 of the Constitution of India, the petitioner has laid challenge to order dated 15.12.2017 (Annexure P-1) of the trial Court, whereby the application of the respondent-defendant under Order 7 Rule 11 CPC for rejection of plaint was disposed of with direction to the petitioner to affix ad valorem Court fee for total sale consideration of ₹1,47,00,000/-.

Learned counsel for the petitioner *inter alia* contends that the respondent without disclosing that she was co-sharer in the suit land to the extent of only 9 kanals 9 marlas fraudulently entered into agreement to sell dated 13.05.2011 with the petitioner to sell 4.5 acres of land, have no right, title or interest beyond 9 kanals 9 marlas. Same inter se litigation was going on between the respondent and her co-sharer, qua the suit property, which also she never disclosed to the petitioner, while executing the agreement to sell aforesaid. Finally, on refusal of respondent to perform her part of contract, the petitioner filed a suit for possession by way of specific performance of the agreement to sell

dated 13.05.2011 against respondent only for the area measuring 9 kanals 9

marlas owned by her, value of which according to the agreement to sell aforesaid was ₹28.95 lacs.

The learned trial Court without appreciating the above fact that suit was for recovery of only ₹30.00 lacs, illegally asked the petitioner vide impugned order to pay ad valorem Court fee on ₹1,47,00,000/-.

Perusal of plaint shows that suit for possession of specific performance on the basis of agreement to sell dated 13.05.2011 has been filed only qua 9 kanals 9 marlas of land against the respondent. The agreement in question was 4.5 acres of land against total consideration of ₹1,47,00,000/- i.e. ₹32,66,667/- per acre. Therefore, value of the suit property measuring 9 kanals 9 marlas comes to ₹38,58,750/- (subject to correction in calculation). In such circumstances, learned trial Court instead of directing the petitioner to pay ad valorem Court fee at ₹1,47,00,000/-, could have asked him to pay Court fee beyond ₹38,58,750/-.

Learned counsel for the petitioner has offered to pay the Court fee on the said amount. Therefore, this petition is disposed of with direction to the petitioner to pay ad valorem Court fee on ₹38,58,750/-, subject to recalculation of Court fee by the trial Court on the value of the suit property, according to agreement to sell in question, less the Court fee, if any already paid. In case, value of the suit property on recalculation by the trial Court comes beyond the value mentioned by above, the petitioner would be liable to pay Court fee on the said value.

Disposed of with the above observations.

This order has been passed without issuing notice to the respondents with a view to impart justice to the parties and to save the huge expenses which

may be incurred by the respondents and also to avoid unnecessary delay in the adjudication of the matter. Still, if dissatisfied, the respondents may move this Court for recalling this order within six weeks from today.

17.05.2018
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No