

In the High Court of Punjab and Haryana at Chandigarh

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CR No. 2985 of 2018

Date of decision:8.5.2018

RAM CHANDER & ANR

.....petitioners

Versus

KISHAN LAL

.....respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.N.C.Kinra, Advocate,
for the petitioners.

Mr.Deepak Girotra, Advocate
for the respondent/ caveator.

RAJ MOHAN SINGH, J.(oral)

Plaintiffs have filed a suit for declaration with a consequential relief of permanent injunction. Sale deed dated 23.6.1999 along with consequent mutation has been assailed by reciting the following plea in the plaint:-

“(a) That admittedly, the plaintiffs sold only 1/8th share to the defendant. The sale deed is self explanatory that the plaintiffs have sold only 1/8th share whereas in the mutation the share sold has been shown to be 1/6th share. There is overwriting in this illegal mutation at the time of mentioning share. It

is made clear that after selling 1/8th share by the plaintiffs, they are also co-sharers in the suit land because they have not sold their whole share.

(b) That in the said sale deed, the total area sold by the plaintiffs and other co-sharers comes to 4 kanal 18 marla whereas in the above said sale deed, it has shown to be 5 kanal 13 marla.”

Evidently, the suit land has not been partitioned among co-sharers. At the initial stage, an application under Order 7 Rule 11 CPC was filed by the defendant. Trial Court directed the plaintiffs to pay ad-valorem court fee on the basis of market value of the suit land. However, CR No. 4334 of 2015 was filed in the High Court, which was decided on 12.7.2017 and following order was passed:-

“During course of arguments, learned counsel for the petitioners has admitted that value of the property which has been sold, is ₹ 1,05,000/-. The plaintiffs-petitioners have challenged sale deed No.2610 dated 23.06.1999 and the plaintiffs being a party to the sale deed, have been directed to pay ad-valorem Court fee on the market value of the land in question. Perusal of the plaint indicates that considering the value for the purpose of Court fee and jurisdiction as ₹ 200, Court fee of ₹ 50/- only has

been affixed. There does not appear to be any illegality in the order passed by the trial Court allowing application under Order 7 Rule 11 CPC filed by the defendant-respondent but the only error in the judgment is that ad-valorem Court fee has been ordered to be affixed on the market value of the land in question, which value at present, would be a debatable question of fact, as such order dated 11.02.2015 is modified to the extent that the plaintiffs would be required to pay ad-valorem Court fee on the value of the property for the purpose of the Court fee and jurisdiction which would be the sale consideration mentioned in the sale deed. However, it is observed that in case the defendant-respondent raises the plea of inadequacy of the Court fee in the written statement and the Court fee is a fact in issue, it will be open to the trial Court to decide the said issue on the basis of material produced before the trial Court which would be binding on the parties as per law. The revision petition is dismissed with above modification. The deficiency in Court fee will be made good within a period of one month after the receipt of certified copy of this order.”

A perusal of the aforesaid order would show

that the payable court fee was on the basis of consideration shown in the instrument at the stage of Order 7 Rule 11 CPC. However, liberty was granted to the trial Court to decide the issue on the basis of material produced before it. The trial Court, on the basis of evidence under issue No.7, has held that the market value of the suit property was ₹ 45 lacs per acre as per collector rate in village Dobh, therefore, plaintiffs are liable to pay the ad- valorem court fee on the said amount.

The suit was dismissed by the trial Court. The first appeal was filed by the plaintiffs before the lower Appellate Court, wherein, the plaintiffs were directed to affix the court fee on the market value of ₹ 45 lacs per acre. This order has been assailed in the present revision petition.

Learned counsel for the petitioners vehemently submitted that as per the plaint, only recital of sale deed and tempering in the consequent mutation have been assailed by the plaintiffs.

Since the appeal is pending before the lower Appellate Court, all these pleas would be gone into by the lower Appellate Court at the relevant stage. At this stage, plaintiffs-petitioners can be asked to deposit court fee based on market value of the land in question as assessed under issue No.7 by the trial Court, however, without prejudice to their legal rights of

recovery in case lower Appellate Court comes to the conclusion that the area sold was only 1/8th share i.e. 4 kanal 18 marlas.

In view of aforesaid, the petition is disposed of .

May 08, 2018
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking Yes/No

Whether reportable Yes/No