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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.3169 of 2018
Date of Decision: 28.11.2018

HARI RAM

.....Petitioner

Vs

SHEESHPAL AND ORS

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.S. Mittal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Notice of motion was issued on 11.05.2018. Operation of the impugned order dated 19.04.2018 was also stayed.

[2]. As per office report respondents have been served, but there is no representation on their behalf.

[3]. Petitioner has assailed the order dated 19.04.2018 passed by the Civil Judge (Jr. Divn.) Ellenabad, District Sirsa vide which the application filed by the defendants under Order 7 Rule 11 CPC was allowed and the plaintiff was directed to pay *ad valorem* court fee.

[4]. Perusal of para no.18 of the plaint would show that the plaintiff has pleaded that the suit land is a *gair mumkin* land situated outside the abadi of village Peerkhera. Valuation of the

suit property was assessed at Rs.10 for the purposes of court fee i.e. Rs.30/- per acre.

[5]. Learned counsel for the petitioner relied upon amendment in Section 7(v)(a) as applicable to the Haryana in the Court Fees Act, 1870. As per the aforesaid amendment, where the subject matter is a land other than the land situated within municipal limits or *Abadi Deh* whether under cultivation or not, according to the market value thereof which shall be deemed to be,

- (i) In the case of land which is irrigated by perennial canal, sixty rupees per acre;
- (ii) in the case of land which is irrigated by non-perennial canal, sixty rupees per acre;
- (iii) in the case of land which is Barani, Sailab, Bhud, Thur Sem, Banjar or of like nature, thirty rupees per acre.

[6]. According to learned counsel, the third situation is attracted to the facts of the case because land is *gair mumkin* situated outside the abadi of the village.

[7]. The application in question came to the filed at belated stage, when the case was fixed for defendants evidence, whereas the defendants did not conclude their evidence despite 3/4 last opportunities. Even two last opportunities were availed

by the defendants subject to payment of costs. When there was no witness present on behalf of the defendants, the application in question came to filed.

[8]. The issue of court fee is between the plaintiff and the court. It appears that the defendants have tried to misuse the process of the Court by filing the application at such a belated stage when the case was fixed for their evidence by granting last opportunity that too with costs. Even otherwise, no reasons have been given by the trial Court for not agreeing with the contents of the plaint in respect of amendment in question and even on merits at such a belated stage.

[9]. For the reasons mentioned hereinabove, the present revision petition is allowed. Impugned order dated 19.04.2018 passed by the Civil Judge (Jr. Divn.) Ellenabad, District Sirsa is set aside.

November 28, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No