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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-416-2017 (O&M)

Date of decision : 09.02.2018

Ujjar Singh

... Petitioner(s)

Versus

Gurmit Kaur Bains and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Behl, Senior Advocate with
Mr. Nitish Garg, Advocate
for the petitioner.

Mr. Munish Kapila, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the order dated 01.12.2016 (Annexure P-4), vide which, *ad valorem* court fee has been assessed by considering the Collector rates.

Mr. Vikas Behl, learned Senior Counsel assisted by Mr. Nitish Garg, learned counsel for the petitioner-defendant submits that the respondent(s)-plaintiff(s) instituted a suit (Annexure P-1) for declaration and partition of joint property No.116, Sector 8-A, Chandigarh, in which, an application for rejection of the plaint under Order 7 Rule 11 was filed. The trial Court vide order dated 09.02.2015 while framing seven issues, treated issue Nos.3, 4 and 6 as preliminary issues. Copy of the order dated 23.09.2013, whereby the issues have been framed, has been handed over to this Court, but vide impugned order, only decided the issue of Court

fee and remained oblivious of other two issues, despite the fact that both the parties have led the evidence on all the issues.

Learned counsel for the respondent(s)-plaintiff(s) submits that the petitioner-defendant has adopted all possible delaying tactics as the respondent(s)-plaintiff(s) is 87 years' old. She appeared in Court and was present for her testimony, but instead cross-examining her, the petitioner-defendant chose to file the application. This is an attempt to tire out the plaintiff(s) to come in the pressure of the petitioner-defendant. The decision rendered on issue regarding court fee is perfectly legal and justified and do not call for interference. The amount of court fee as ordered to be paid, had already been paid.

The factum of payment of court fee is not controverted by learned Senior Counsel for the petitioner-defendant.

I have heard the learned counsel for the parties and appraised the paper book. It would be apt to extract the relevant part of order dated 23.09.2013, whereby the issues have been framed and order dated 01.12.2016, whereby the issue with regard to the court fee has been decided, which read thus:-

“Issues

- 1. Whether the plaintiff is entitled to declaration and partition as prayed for? OPP*
- 2. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 3. Whether the present suit is barred by limitation? OPD*
- 4. Whether the present suit is not properly valued for the purpose of Court fee and jurisdiction? OPD*
- 5. Whether the plaintiff has suppressed the material facts from the Court, if so, its effect? OPD*

6. *Whether the present suit is not maintainable in the present form? OPD*

7. *Relief.*

"Order dated 01.12.2016

After hearing both the learned counsels at length on the court fees point and after due consideration to all facts and circumstances, I am of the considered opinion that applicant/defendant is relying upon the report of AW2 Ramandeep Khanna according to whom the value of property is approximately Rs.37 Crores but when this witness came up for cross-examination has deposed that the reference copies of sale deed in his report were supplied by Ujjal Singh and Arvinder Atwal. He further deposed that he has seen the building plan but had not seen the sanctioned plan. He further deposed that sanctioned plan was not provided by Ujjal Singh and Arvinder Atwal, at the time of preparation of report. Hence the opinion of AW2 cannot be said right opinion on which this Court can give the finding. On the other hand respondent/plaintiff has also not come forward with any substantial proof which can help the court in determining the actual price of the property. Hence in this scenario the suit of the plaintiff cannot be rejected on the mere asking of the Defendant/applicant that required court fees is not paid. As per law also plaintiff can be given opportunity to pay the court fees if found the deficient so at this stage, when no specific evidence is available on file which can tell the right value of the property the suit cannot be straight way rejected and also on the other hand plaintiff cannot be allowed to contest the suit without paying the proper court fees. Hence, plaintiff is required to affix court fees at the collector rate, prevailing at the time of filing the present suit. Regarding this testimony of AW3 is important who is a official witness and according to him the Collector rate was ₹ 399930 per square yard in April 2011. Hence, in view of the above said discussion, the plaintiff

is required to affix the court fees of the questioned property at the rate of ₹ 39930 per square yard. Now to come up on 22.12.2016 for placing on record the required court fees as well as for evidence on all the issues.”

On going through the findings rendered in the impugned order, the Court below has only rendered the findings on issue with regard to Court fee, which fact has not been controverted by Mr. Kapila. I am of the view that the trial Court has, thus, abdicated in not deciding all the issues, on which, the parties have already led the evidence. Though Mr. Behl, has raised the argument with regard to the valuation of the property on which, the Court fee has already been paid. Be that as it may, I do not intend to delve further upon the merits and demerits of the matter as it would be seriously prejudice the right of the parties to the *lis*. In my view, there is an error in the impugned order, therefore, the impugned order is not sustainable in the eyes of law and the same is hereby set aside. The matter is remitted back to the trial Court to decide the preliminary issue Nos.3, 4 and 6 afresh in accordance with law within a period of one month from the date of the receipt of the certified copy of this order.

With the aforesaid observations, the present revision petition stands disposed of.

09.02.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**