

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 5306 of 2015 (O&M)

Date of decision: 09.02.2018

Rajeev Kumar Bhatia and others

...Petitioners

V/s.

Aman Parkash @Aman Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Maninder Singh Saini, Advocate for the petitioners.

Mr. Santosh Sharma, Advocate for respondents No. 1 to 5.

KULDIP SINGH, J. (Oral)

Heard.

The impugned in the present civil revision is the order dated 16.07.2015 passed by learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri (Annexure P-1) vide which plaintiffs were directed to pay the ad-valorem Court fee on the market value of the property.

In nutshell, the plaintiffs have filed a suit for declaration to the effect that the Will dated 13.07.2001 executed by Vidya Wanti is illegal, null and void and that plaintiffs are already in possession to the extent of 1/3rd share whereas the defendants No. 6 to 15 are already in possession to the extent of 2/3rd share. As a consequential relief, permanent injunction was also sought. In an application filed by the defendant before the trial Court under Order VII, Rule 11 CPC, 1908 the impugned order was passed.

I have heard learned counsel for the parties.

The trial Court had taken the view that the case is covered under Section 7(iv)(c) of the Court Fees Act, 1870 ('hereinafter referred to as 'the Act'). On the other hand, learned counsel for the plaintiff/petitioners

has argued that the case is covered under the Haryana Amendment Clause V of said Section which was inserted by way of amendment in which Court fee has to be paid. A perusal of the plaint shows that the land measuring 24 kanals 18 marlas is an agricultural land. The plaintiffs claim 1/3rd share in the said property and seeks joint possession. The provisions of Section 7 (iv)(c) of the Court Fees Act, 1870 and sub-Section (v) are reproduced as under:-

“(c)for a declaratory decree and consequential relief-to obtain a declaratory decree or order, where consequential relief is prayed.

(v) for possession of lands, houses and gardens- In suits for the possession of land, houses and gardens, according to the value of the subject matter; and such value shall be deemed to be,-

- (a) where the subject matter is land other than 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-perennical canal or by well, fifty rupees per acre; and
 - (iii) in the case of land which is Barani, Sailab, Bud, Thur, Sem, Banjar or of like nature, thirty rupees per acre; and
- (b) where the subject matter is house, garden, or land situated within municipal limits or Abadi Deh whether under cultivation or not, according to its market value.”

A perusal of the said Section shows that even as per Section 7 (iv)(c), the suit was to be valued and the Court fee has to be paid on the relief which is valued in the plaint. In the plaint suit it is valued at ₹400. However, as per the sub-Section (v), if the land is irrigated by perennial canal, the Court fee is to be paid @ 60 rupees per acre and in case it is irrigated by non-perennial, the Court fee is to be paid @ 50 rupees per acre.

I am of the view that in case of a declaration, the Court fee is to be paid as payable in a suit for declaration. The impugned order is therefore set aside. It is ordered that the Court fee in terms of Section 7 (v) of the Court Fees Act, 1870 is liable to be paid.

Civil Revision is accordingly allowed.

(KULDIP SINGH)
JUDGE

09.02.2018
Divyanshi

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