

(104) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5170 of 2014 (O & M)

Date of decision: 13.03.2018

Kela Petitioner

Versus

Randhir Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Ashwani Bhardwaj, Advocate
for the petitioner.

Mr. Shailender Mohan, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.(Oral)

Dispute in the present case is regarding the quantum of Court fee payable by the petitioner-appellant while filing appeal against the judgment and decree passed by the Court granting relief of specific performance of the agreement to sell with respect to land measuring 68 kanals and 10 marlas. Appellant before the learned First Appellate Court is the petitioner in this Court has challenged the decree for specific performance of agreement to sell by filing the first appeal only with respect to 22 kanals and 17 marlas of land claiming that he is owner of the property i.e. 22 kanals and 17 marlas pursuant to a registered sale deed. Petitioner, appellant before the learned First Appellate Court, affixed the Court fee, according to the subject matter to be decided in the appeal, i.e. Rs.30,170/-. Learned First Appellate Court has ordered the petitioner to pay the Court fee, which was affixed at the time of filing of the suit on the ground that if the appeal is allowed, the decree for specific performance with respect to entire land ultimately shall have to be reversed.

Payment of ad-valorem Court fee is governed by Court Fee Act, 1870 and the Schedule attached thereto. Article 1 of Schedule 1 provides that plain written statement pleading a set off or counter claim or Memorandum of Appeal or of cross-objections to any civil or revenue Court except those mentioned in Section 3 would be required to pay Court fee on the subject matter in dispute. In the present case, subject matter in dispute before the learned Appellate Court is only 22 kanals and 17 marlas. Article 1 Schedule 1 as applicable to State of Haryana is extracted as under:-

Sr.No. 1	Nature of documents 2	Amount of Value 3	Proper fee 4
As in Haryana only			
1.	Plaint, written statement, pleading of set-off or counter claim or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any civil or revenue court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed one hundred rupees, for every ten rupees or part thereof. When such amount or value exceeds one hundred rupees, but does not exceed five hundred rupees, for every twenty rupees, or part thereof, in excess of one hundred rupees upto five hundred rupees. When such amount or value exceeds five hundred rupees, for every fifty rupees, or part thereof, in excess of five hundred rupees, upto	One rupee. Three rupees. Eight rupees.

	three thousand rupees.	
	When such amount or value exceeds three thousand rupees, for every one hundred rupees, or part thereof, in excess of three thousand rupees, upto ten thousand rupees.	Twenty rupees.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, upto twenty thousand rupees.	Seventy-five rupees.
	When such amount or value exceeds twenty thousand rupees, for every one hundred rupees, or part thereof, in excess of twenty thousand rupees, upto fifty thousand rupees.	One hundred rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Two hundred rupees.

In the present case, the subject matter of dispute in the appeal is only with respect to 22 kanals and 17 marlas. Such being the position, learned First Appellate Court committed material irregularity in overlooking the provisions of Court Fee Act. If the subject matter of the appeal is 22

kanals and 17 marlas, appellant cannot be forced to pay Court fee with regard to entire suit property i.e. 68 kanals and 10 marlas.

In view thereof, the revision petition is allowed. Impugned order is set aside. Learned First Appellate Court is requested to proceed with the decision of the Court.

13.03.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No