

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

VIKAS CHANDER
2018.12.10 11:49

CR no.7177 of 2018

Date of Decision: 06.12.2018

Subash Chand and others

...Petitioners

Vs.

Saroop Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Chetan Bansal, Advocate, for the petitioners
Mr. M.L. Saggar, Senior Advocate with
Mr. Tajeshwar Singh Sullar, Advocate, for the respondents.

Amol Rattan Singh, J (Oral)

Pursuant to the order passed by this Court yesterday, i.e. 05.12.2018, learned counsel for the petitioners has produced in Court today a photocopy of the exchange-deed stated to have been entered into between the parties in June 2015.

The petitioners are aggrieved of the order of the trial court, firstly holding that what is contended to be an exchange-deed relied upon by the petitioners-plaintiffs is not a document admissible in evidence and secondly, that it has been referred to as an agreement of exchange and thirdly, the words “agricultural land” have not been allowed to be inserted in the main body of the plaint as also in the prayer clause.

Lastly, the petitioners are aggrieved of the fact that the court fee *ad valorem* has been ordered to be paid, holding that the suit is actually one in which the petitioners-plaintiffs are seeking possession of the suit property.

Having heard learned counsel for the petitioners, as also learned Senior Counsel appearing for the respondents, as regards the prayer on the addition of the words “agricultural land” at appropriate places in the body of the plaint as also in the prayer clause thereof, in view of the fact that it is not denied even by the respondents that the suit land is actually agricultural land, I see no reason to deny the petitioners that relief and consequently that part of the impugned order is set aside, with the petitioners permitted to amend the plaint and prayer clause thereof by stating that the suit land is agricultural land.

As regards the remaining grievances of the petitioners, in view of the fact that the last part of the document relied upon by the petitioners as has been produced in Court today (in *Gurumukhi*) shows that the exchange was still to take place upon consideration being paid, which the parties agreed to do by a particular date.

That being so and effectively the suit being one seeking possession of the suit property, even though it is cloaked in a language to suggest that it is only an alternative prayer, I find no error in the order of the learned trial court as regards court fee being paid *ad valorem*.

The contention of the petitioners that sub-clause (v) of clause (b) of Section 7 of the Court Fees Act, 1870 and not sub-clause (a) of clause (iv) of the same Section would be applicable, is therefore rejected, because once this Court has found that the suit is actually one seeking eventually possession of the suit land on the basis of an agreement entered into

between the parties for exchange of the land and effectively therefore the suit is one seeking specific performance of that agreement with a consequential relief also sought, it would be Section 7(iv) (a) and not Section 7(v) (b) of the Act, that would be applicable.

Consequently, other than what has been allowed by this Court qua that part of the impugned order, on the issue of an amendment in the plaint adding the words “agricultural land” wherever necessary, this petition is dismissed qua the other reliefs sought.

It is to be noticed that the learned counsel for the petitioners has relied upon a judgment of a coordinate Bench of this Court in **Prahlad Chander Kapoor & others v. Vishwadeep Kapoor and others** (CR no.342 of 2011, decided on 17.09.2014), wherein it was held that first it had to be determined by leading evidence as to whether the document in question (in that suit) was a family settlement or a transaction of a sale and therefore court fee at the initial stage could not have been ordered to be paid *ad valorem*, in the present case, with the last line of the document relied upon specifically stating that the exchange would be entered into upon payment of particular sum by a particular date, and the petitioners also having asked for the relief of possession, though cloaked in a language to show it as an alternative relief, I see no reason to not hold that court fee would be payable *ad valorem* in terms of Section 7(iv) (a) of the Act.

It is also to be noticed that though in the initial parts of the document relied upon (i.e. an agreement for exchange of the land), it has

been stated that the parties have become owners in possession of the suit property, eventually, to repeat yet again, it has been stated that they would within a period of 2 months, i.e. by 25.08.2015 “clear their ownership qua each other by handing over documents and upon payment of the requisite consideration”.

Nothing stated herein above shall be taken to be an observation on the merits of the case of either of the parties, which would eventually be decided by the trial court on the basis of the evidence led before it, all observations having been made here only in the context of court fee being payable in terms of the nature of the suit filed by the petitioners-plaintiffs.

Since this petition has remained pending before this Court for the past two months, time to affix the necessary court fee is extended till 08.01.2019.

06.12.2018
vcgarg

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes