

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

244

**CR No.1904 of 2018(O&M)
Date of Decision: 18.1.2019**

BALIHAR SINGH AND ORS

.....Petitioners

Versus

SUKHCHARAN KAUR AND ORS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr.Raman Mohinder Sharma, Advocate
for the petitioners.

Mr.Narinder Kumar Awasthi, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

Petitioners have assailed the order dated 18.1.2018 passed by the Additional Civil Judge (Sr.Divn.), Sunam vide which the application under Order 7 Rule 11 CPC filed by respondent No.1/ defendant No.13 was allowed.

Plaintiffs filed a suit for declaration with the following relief:-

A) Suit for possession of land measuring 8 Kanals comprising of Khewat no.1265/1193, Khatauni no. 1884 Khasra No. 90//12(8-0) situated at village Daska, Tehsil Lehragaga as per jamabandi for the year 2011-12, in equal shares, on the basis of title and for declaration that the sale deed No.139 dated 23.5.1980, sale

deed No. 1556 dated 20.6.2011 and sale deed no. 3225 dated 9.1.2012 with regard to the above said land are quite illegal, null and void, against law and facts, without any right and authority, without consideration, have no effect on the rights of the plaintiffs and the same are liable to be set aside and the mutations no. 351 dated 15.4.1965, 1776 dated 27.1.1983 and 2216 dated 8.5.1987 with regard to the above said land are also illegal, null and void, have no effect on the rights of the plaintiffs and the same are liable to be set aside and the entry as "Jere Dafa 8" in the revenue records is also wrong and is liable to be deleted and be corrected in favour of plaintiffs accordingly.

(B) Suit for permanent injunction to the effect that the defendants no. 1 to 18 may kindly be restrained from alienating the suit land detailed in the heading (A) of the plaint or any share or portion thereof, in any way to any other person on the basis of illegal, null and void sale deeds and mutations in dispute and on the basis of wrong entries in the revenue records, illegally and forcibly."

Evidently, the challenge of the plaintiffs-petitioners

was in respect of 8 kanals of land out of total land contained in three sale deeds.

Learned counsel for the petitioners has pointed out that in the sale deed dated 22.5.1980, land to the extent of 4 hectare, 25 arre, 43 sataire was involved and the total consideration was Rs.30,000/-. The value of the land was shown to be Rs.2,823/-. Land of the petitioners was involved to the extent of 8 kanals only. In sale deed dated 20.6.2011, total land was 20 kanals 5 marlas for a consideration of Rs.25,90,000/-. For 1 kanal the value of the land involved was Rs.1,27,901/-. In the sale deed dated 9.1.2012, 33 kanals and ½ marla of land was involved for a consideration of Rs.37,50,000/-, 1 kanal of the land belonging to the petitioner was involved and the value of the land was shown. In the first application filed by respondent No.1/defendant No.13, the trial Court accepted the prayer and the plaintiffs were directed to affix ad valorem court fee as per ratio of **Sudrid Singh @ Sardool Singh vs. Randhir Singh and others 2010 (2) RCR (Civil) 564** after finding that the plaintiffs were non executants of the sale deed and sought relief of declaration challenging the sale deeds qua consequential relief of possession. Since no amount was affixed, therefore, defendant No.13 filed second application.

Before filing the second application, plaintiffs had already deposited an amount of Rs.18,500/- as ad valorem court fee according to their entitlement in the suit. In the second application, the trial Court vide the impugned order has assessed an amount of Rs.1,41,750/- towards court fee on the basis of total sale consideration involved in the sale deeds.

I am of the considered opinion that prima facie challenge made by the plaintiffs is only to the extent of 8 kanals of land out of total land involved in all the three sale deeds, therefore to that extent of 8 kanals, the plaintiffs are liable to affix court fee which they have already deposited i.e. an amount of Rs.18,500/-. For the time being, the trial Court can proceed with the suit without insisting upon any additional court fee. However, in case, the trial Court after due assessment of material on record finds that the additional court fee is required to be paid by the plaintiffs, in such an eventuality, the Court would be at liberty to pass a contingent decree, requiring the plaintiffs to file the additional court fee in accordance with law.

Accordingly, this revision petition is dismissed.

January 18, 2019

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Whether reasoned/speaking

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No