

**202**

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

CR No. 3942 of 2017 (O&M)  
Date of Decision: 15.01.2019

Sham Kaur (now deceased) through LRs

-Petitioners

Vs

Sarabjit Singh and others

-Respondents

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

Present: Mr. Rajan Bansal, Advocate,  
for the petitioners.

Mr. Parvinder Singh, Advocate,  
for respondents No.1 and 2.

Mr. Satvir Singh, Advocate, for  
Mr. A.S. Manaise, Advocate,  
for respondents No.10 to 12.

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**RAJ MOHAN SINGH, J. (ORAL)**

**CM No.12302-CII of 2017:**

This is an application under Order 22 Rule 4 read with Section 151 CPC for bringing on record legal representatives of deceased-respondent No.9.

For the reasons mentioned in the application, the application is allowed and the legal representatives of deceased-respondent No.9 as shown in para no.1 of the application are ordered to be brought on record, subject to just exception.

Amended memorandum of parties is also taken on record.

**Main case**

This revision petition has been preferred by the petitioners against the order dated 02.11.2016 passed by Civil Judge (Junior Division), Bathinda vide which application filed by respondents No.1 and 2 for rejection of plaint was accepted. The revision petition has been directed against the order dated 18.04.2017 also vide which trial Court directed the petitioners to pay the Court fee on the market value/Collector rate of the land at the time of filing of the suit.

Learned counsel for the petitioners submitted that in case of agricultural land, Court fee payable is 10 times of the land revenue in view of Section 7(v) of the Court Fee Act, 1870.

The trial Court has not considered the nature of land while passing the impugned order and thus committed error of jurisdiction.

As against this, learned counsel for respondents No.10 to 12 submitted that when exact market value of the suit land is determinable, the deeming fiction cannot be applied in view of Section 7(v) of the Court Fee Act as the said provision is applicable only where the market value cannot be assessed at the relevant stage.

Learned counsel for respondents No.10 to 12 also relied upon **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010 (2) RCR (Civil) 564** and contended that the case in hand is governed by third principle as the plaintiff was not the executant of the sale deeds/transfer deeds and he sought possession as well, therefore he was required to pay *ad valorem* Court fee on the basis of market value of the suit property.

I have heard learned counsel for the parties.

As per pleadings made by the plaintiff in the suit, paras no.19 and 20 reads as under:-

*“19. That the value of the suit for the purposes of court fee and jurisdiction for three reliefs of declaration is Rs.485/- i.e. Rs.195/- for each relief of declaration and the value of the suit for the purposes of court fee and jurisdiction for the relief of permanent injunction is Rs.130/- and a fixed court fee stamp of Rs.150/- (i.e. Rs.50/- for each relief of declaration) plus Rs.50/- for the relief of permanent injunction (total Rs.200/-) is affixed on the plaint.*

*20. That the value of the suit for the*

*purposes of jurisdiction for the relief of possession of the suit property is Rs.600/- i.e. 30 times (Rs.20x30=600/-) of the annual land revenue of the suit property and the value of the suit for the purposes of court fee for the relief of possession of the suit property is Rs.200/- i.e. 10 times (Rs.20x10=200) of the annual land revenue of the suit property, for which a court fee stamp of Rs.20/- is also paid on the plaint.”*

In the application under Order 7 Rule 11 read with Section 151 CPC, defendants pleaded in para no.7 of the application that the market value of the suit property on the date of filing of the suit was more than Rs.35 lacs per acre and the plaintiff should have paid *ad valorem* Court fee on the basis of same.

In reply to aforesaid paragraph, plaintiff in para no.7 of the reply specifically denied that the market value of the suit property was more than Rs.30 lacs. In para no.9 of the reply, plaintiff further pleaded that contents of para no.9 of the application were wrong and denied. Proper Court fee had already been affixed in the plaint and the assertion of the defendants in terms of para no.7 cannot be expected without any evidence.

Learned counsel for respondents No.10 to 12 further relied upon the application filed by the plaintiff for clarification of order dated 02.11.2016 and also for extension of time for payment of Court fee.

Plaintiff pleaded in the application that the market value can be assessed only after evidence led by both the parties and at that stage, it was not possible to assess market value of the property. Since, there was no assessment of the Court fee, therefore, prayer was made to extend the time till clarification of the order was given by the Court.

In view of rival claims made by both the parties, it would be seen by the trial Court with reference to the evidence that how much Court fee is payable. Since, the trial Court has not adverted to the nature of the land being agricultural land, at the same time, Court has also not adverted to the fact that by way of filing second application by the plaintiff himself whether he has acquainted the factum of order earlier passed by the Court.

In view of pleadings made in the plaint, if the same have created an illusion in respect of cause of action, the same can be nipped in the bud in view of ratio of judgment rendered in **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706**

and the parties can be relegated to the stage of Order 10 CPC.

In case the Court finds that some additional Court fee is required to be affixed by the plaintiff, then in such eventuality, a contingent decree can be passed at a later stage as well.

In view of facts and circumstances of the case, this revision petition is disposed of.

15.01.2019

*Jyoti Yadav*

**(RAJ MOHAN SINGH)**  
**JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No