

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

**CR No.4829 of 2018(O&M)
Date of Decision-31.01.2019**

Amrit Son of Sh. Devtiya (deceased) through LRs ... Petitioners

Versus

Pritam Singh and others

... Respondents

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

Present: Mr. Richudeep Bajaj, Advocate for
Mr. Rajeev Sharma, Advocate for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 16.07.2018 passed by Additional Civil Judge (Senior Division), Pehowa vide which application filed by the respondents under Order 7 Rule 11 read with Section 151 CPC was disposed of thereby directing the plaintiffs to value the suit property at the market value and pay Court fee accordingly with respect to relief of possession within a specified period.

[2]. Notice of motion was issued on 31.07.2018 for 11.10.2018. As per office report, respondents have been served. There is no representation on behalf of the respondents despite proper service for 11.10.2018 and for today i.e. 31.01.2019.

[3]. Plaintiff filed a suit for possession in respect of *gair mumkin bara* measuring 5 kanals 15 marlas comprised in khewat No.162, khatoni No.225, killa No.88 (5-15) situated in revenue estate of village

Ramgarh Rohar, Tehsil Pehowa, District Kurukshetra as per *jamabandi* for the year 2011-12.

[4]. Defendants filed an application under Order 7 Rule 11 read with Section 151 CPC for rejection of plaint on the ground of non-payment of *ad valorem* Court fee. Defendants claimed that value of the suit property was not less than Rs,1,25,000/- per marla. They also alleged that they have spent huge amount on the construction of the premises. At last, they claimed that the plaintiff is bound to pay *ad valorem* Court fee on the value of the suit property at the market rate.

[5]. The application was opposed by the plaintiff. Plaintiff claimed that the value of the *bara* was not more than Rs.200/- as *bara* in question was part of agricultural land and the same was being used for agricultural purposes. The construction raised by the defendants was illegal and possession of vacant plot was sought.

[6]. Learned counsel for the petitioners contended that even if, the property in question is mentioned as *gair mumkin bara* in the revenue record, but the same has to be co-related with the purpose for which the same is being used. *Gair mumkin bara* is being used for the purposes subservient to agriculture and therefore, nature of such property has to be treated as agriculture in nature. Learned counsel referred to **Balak Ram Vs. State of Punjab, 2001(4) RCR (Civil) 811** and contended that the very nature of the land being *gair mumkin bara* as per *jamabandies* for the year 2011-12 and 2016-17, will not take away the land from the ambit of agricultural land. The *baras* are

oftenly allotted and maintained to serve purposes subservient to agriculture, therefore, necessary Court fee on the basis of land being agricultural has already been affixed.

[7]. I have perused the *jamabandies* for the year 2011-12 and 2016-17. In coloumn No.4 of the *jamabandies*, name of the plaintiff was shown to be owner/co-sharer and the nature of property was *gair mumkin bara*. In case of agricultural land, the Court fee is to be assessed on the basis of 10 times of the land revenue of the land in question. Since bara in question is to be treated as land maintained to serve purposes subservient to agriculture, therefore, the issue of Court fee has to be treated between the Court and the plaintiff.

[8]. For the reasons recorded hereinabove, I deem it appropriate to accept this revision petition. Impugned order dated 16.07.2018 passed by Additional Civil Judge (Senior Division), Pehowa is hereby set aside. Normal consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

31.01.2019

Prince

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No