

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

**CR no.7653 of 2016 (O&M)
Date of Decision: 31.05.2019**

Dalwinder Singh

...Petitioner

Vs.

Paramjit Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vipin Mahajan, Advocate, for the petitioner.
Mr. Rajeshwar Singh, Advocate, for the respondent.

Amol Rattan Singh, J (Oral)

Instead of repeating what is already noticed earlier, the order of this Court dated 09.05.2019 is reproduced herein

“CM no.8636-CII of 2019

By this application, the respondent in the accompanying petition seeks to place on record an agreement of sale dated 07.10.2013 as Annexure R-1 with the accompanying petition, as was directed by this Court vide an order passed on 28.02.2019..

Notice in the application to the counsel for the non-application petitioner, who accepts the notice and does not oppose the application.

Consequently, the application is allowed and the agreement of sale dated 07.10.2013, shown to be entered into between the respondent and the petitioner, along with its translated copy, are ordered to be taken on record as Annexure R-1 with the accompanying petition.

CR no.7653 of 2016

By this petition, the petitioner challenges the order of the learned trial court (Civil Judge, Sr. Divn.-cum-Vacation Judge), Gurdaspur, dated 14.09.2016 (Annexure P-4), by which, while allowing the application of the respondent-defendant directing the petitioner-plaintiff to make good the deficiency in court fee, the petitioner has been

directed to pay court fee *ad valorem* as per the value of 10 kanals and 7 ½ marlas of land.

The petitioner has challenged the said order on the ground that the suit instituted by the petitioner is one seeking possession of only 7 kanals and 7 ½ marlas of land along with the electric tubewell connection installed therein, and not 10 kanals and 7 ½ marlas of land.

Learned counsel for the petitioner has submitted that though undoubtedly the agreement of sale as has been taken on record today (dated 07.10.2013) is in respect of sale/purchase of 10 kanals and 7 ½ marlas of land, however a sale deed in respect of 3 kanals of land was actually executed by the respondent-defendant in favour of the petitioner-plaintiff on 16.04.2014, which fact is not denied by the learned counsel for the respondent.

He therefore submits that court fee has to be paid only *qua* the value of the land as is subject matter of the suit.

Learned counsel for the respondent on the other hand submits that the learned trial court has not erred in holding that, as per Section 7 of the Court Fee Act, 1870, the court fee must be affixed on the total sale consideration amount.

As regards the principle contained, as is sought to be propounded by the learned counsel for the respondent reiterating what is contained in the impugned order, that would be apparently incorrect even in terms of settled law on the issue, as would be seen from a judgment of the Supreme Court in **Kinny Kapur and another v. Gunveer Kapur & others**, (Civil Appeal no.885 of 2012, decided on 12.09.2017) (Law Finder Doc Id # 902650).

Consequently for the learned counsel for the parties to address arguments in terms of the aforesaid judgment of the Supreme Court on that issue, as also in terms of Section 7 of the Court Fee Act, adjourned to 13.05.2019.

It is to be noticed that learned counsel for the parties are *ad idem* that the suit land is an agricultural land and therefore, in the opinion of this Court *prima facie* at least at this stage, it would be clause (v) of

Having considered the matter, with the judgment of the Supreme Court in **Kinny Kapur and another v. Gunveer Kapur and others** (Civil Appeal no.885 of 2012, decided on 12.09.2017), having very clearly enunciated to the effect that it is only the proportionate share that the plaintiff seeks possession of, on which the court fee is to be calculated, this petition has to be allowed.

Consequently, the petition is allowed and the impugned order is set aside, with the trial court to now determine as to whether the petitioner has paid court fee *ad valorem* in respect of the remaining sale consideration to be still paid for the land claimed by him by way of specific performance of an agreement; and if so, it would proceed with the trial without insisting upon any further court fee to be paid. If, of course, court fee has not been paid even as per the value of the consideration still to be paid, it would grant the petitioner only 10 days time to do so (if it has not been deposited on account of any miscalculation), failing which the suit would be dismissed on that ground alone, with the application under Order 7 Rule 11 of the CPC filed by the respondent-defendant to be then allowed.

31.05.2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes