

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

119

CR No.2259 of 2021

DATE OF DECISION : 27th OCTOBER, 2021

Satbir Singh & another

.... **Petitioners**

Versus

Rajender Singh

.... **Respondent**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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Present : Mr. Sandeep K. Sharma, Advocate for the petitioners.

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RAJBIR SEHRAWAT, J. (Oral)

The petitioners have filed this petition under Article 227 of the Constitution of India for setting aside order dated 03.09.2021 (Annexure P-1) passed by the learned Civil Judge (Junior Division), Rohtak vide which the trial court allowed the application under Order 7 Rule 11 CPC filed by the respondent therein and ordered payment of *ad valorem* court fee on suit property.

At the outset, the counsel for the petitioners submits that the petitioners have no objection qua payment of the *ad valorem* court fee on the property involved in the suit. However, it is submitted by the counsel for the petitioners that although the share of the petitioners mentioned in the suit is 4 Kanal 13 Marla, however, even in the plaint the petitioners have specifically mentioned that out of this 4 Kanal 13 Marla, a land measuring 1 Kanal 5 Marla was kept intact and the same was neither sold nor possession was handed over to the respondent; because it is a 19 feet

wide passage. Accordingly, the petitioners are not seeking back any possession qua the land measuring 1 Kanal 5 Marla. Hence, the order passed by the court below be clarified to the extent that the petitioners are not liable to pay *ad valorem* court fee on the land measuring 1 Kanal 5 Marla; out of the land measuring 4 Kanal 13 Marla mentioned in the suit.

Having heard the counsel for the petitioners and having perused the paper book, this court finds substance in the argument of the counsel for the petitioners. In the plaint itself it has been clarified that although the share of the petitioners in the land is 4 Kanal 13 Marla, however, a land measuring 1 Kanal 5 Marla was kept intact and outside the sale done in favour of the respondent. This land measuring 1 Kanal 5 Marla, is stated to be passage. Since the petitioners, statedly, had neither handed over the possession qua this land earlier nor are they seeking back the possession of this area, therefore, the petitioners may not be liable for paying *ad valorem* court fee to the extent of the value of the land measuring 1 Kanal 5 Marla. Hence, this point deserves to be reconsidered by the court below.

Accordingly, the order passed by the trial court is upheld to the extent of direction to pay the *ad valorem* court fee on the value of the land measuring 4 Kanal 13 Marla; minus the value of the land measuring 1 Kanal 5 Marla. So far as the payment of court fee on value of the land measuring 1 Kanal 5 Marla, is concerned, the same shall be considered and decided by the trial court at the time of passing of final decree.

The petition stands disposed accordingly.

27TH OCTOBER, 2021
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No