

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

CR-3980-2017(O&M)

Date of decision:-9.12.2022

Amarjit Singh and others

...Petitioners

Versus

Sinha Mittu and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Harmanpreet Kaur Simi, Advocate  
for the petitioners.

Mr.Rajan Bansal, Advocate  
for respondents No.1 and 2

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**H.S. MADAAN, J.(ORAL)**

1. In nutshell, the facts of the case are that plaintiffs Amarjit Singh and others had filed a suit against Sinha Mittu and others seeking possession of land measuring 2 kanals 3 marlas situated at village Goniana Khurd, Tehsil Goniana Mandi, District Bathinda excluding land measuring 170 square yards, which has been acquired by Union of India for widening/four laining of National Highway No.15 under the National Highway Act, 1956 as well as recovery of Rs.1 lakh as damages on account of use and occupation of the suit land by the defendants.

2. As per the version of the plaintiffs, they are owners of the suit land with which the defendants have no concern but they are in wrongful possession of the same, therefore they are liable to deliver the vacant

possession of that land to the plaintiffs besides paying Rs.1 lakh as damages for use and occupation. In the suit, the plaintiffs craved for grant of permanent injunction also restraining the defendants from alienating the suit land to any other person.

3. On getting notice the defendants No.1, 2 and 4 put in appearance, whereas defendant No.3 did not appear despite service and was proceeded against ex-parte.

4. The defendants No.1 and 2 had filed an application under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint contending that the value of the suit property as per the market price in the locality is approximately Rs.5,000/- per square yards i.e. Rs.65,03,750/-on which a Court fee stamp of Rs.1,50,685/- should have been affixed by the plaintiffs and if the Collector rate are assessed then the same comes out to be Rs.17,000/- per marla, total value of the land of which possession is sought becomes Rs.7,31,000/- on which a Court stamp of Rs.20,798/- should have been fixed by the plaintiffs but they have assessed the value of the land as Rs.500/- only, therefore the plaint deserves to be rejected under Order 7 Rule 11 CPC read with Section 151 CPC. According to the applicants/defendants No.1 and 2, the relief claimed is undervalued and the plaint is insufficiently stamped. Therefore, the plaint be rejected.

5. The plaintiffs opposed the application taking preliminary objections that suit has been properly valued for the purpose of Court fee and jurisdiction in terms of Article 17(vi) of the Court Fees Act, 1870 since the suit is for possession, therefore application is not maintainable; that the value of the land in question at the time of notification dated

5.7.2013 was Rs.25,000/- per square yard but the suit has been properly valued as the present case is covered by Article 17 (vi) of the Courts Fees Act, 1870. The plaintiffs craved for dismissal of application.

6. The application was disposed of by the trial Court of Civil Judge (Jr.Divn.), Bathinda vide order dated 15.4.2017. For ready reference, the operative part of the order is being reproduced as under:

*5. By way of present application, applicant/defendant sought rejection of plaint on the ground of non-payment of court fee. Perusal of judicial file reveals that plaintiff has filed present suit for possession of land measuring 2 kanals 3 marlas comprised in Khasra number 507/291-19), 508/2( 0-4), khewat/Khatauni no. 149/442situated within the revenue limits of village Goniana Khurd, Tehsil Goniana Mandi,District Bathinda. It has been specific case of the plaintiff. It has been specific case of the plaintiff that plaintiffs are owners of the suit land, fully detailed in the heading of the plaint. It has been further specific case of the plaintiff that he has filed partition application which has been finally decided and possession of the suit property was also delivered to him but later on defendant took the possession of the suit property illegally from the plaintiff. And Presently, plaintiff is in illegal possession of the suit property. Meaning thereby the main relief claimed by the plaintiff is for possession of the suit property and The plaint has to be valued on the main relief if the other reliefs are only ancillary to the main relief. To see if a relief is subsidiary or main, the real test is to see whether one relief can be*

*granted without the other. Here in this case in view of the very facts alleged, either of the reliefs of injunctions cannot be granted unless the petitioner seeks possession. Therefore, the possessory relief becomes dominant and constitutes as the main. Raj Kumar and others Vs. Shri Dadu Dayal Trust and others, 2007(2), All India Land Laws Reporter, 699, wherein it was observed that the court fee was required to be paid on the basis of the substantive relief claimed by the parties. Therefore, plaintiff is liable to pay the Ad-volerum court fee. Now the question arose, what amount has to be paid by the plaintiff. Plaintiff himself admitted in his reply that value of the land in question at the time of notification dated 05.07.2013 was Rs./ 25,000/- per sq. yard. Thus plaintiff/respondent is liable to pay court fee as per above stated amount on or before next date of hearing.*

7. The trial Court found merit in the assertions made in the application concluding that plaintiffs are liable to pay the ad valorem Court fee referring to the admission made by the plaintiffs in their reply dated 5.7.2013 that value of the land at the time of notification was Rs.25,000/- per square yard, the plaintiff was held liable to pay Court fee on the stated amount. In that way, the application was accepted.

8. This order left the plaintiffs aggrieved and they have filed the instant revision petition, notice of which was issued to the respondents, who have appeared through counsel.

9. I have heard learned counsel for the parties besides going

through the record.

10. I find that the order under revision is not sustainable. The reasons for saying so are as under:

According to the observation made by the trial Court in the impugned order, the dominant relief by the plaintiffs is for possession and therefore the plaintiffs are liable to pay ad valorem Court fee. For arriving at the amount of Court fee, which was to be got affixed from the plaintiffs on the plaint, the trial Court has mainly relied upon the value of the land mentioned by the plaintiffs in the written reply that at the time of notification dated 5.7.2013 the value of the land in question was Rs.25,000/- per square yard. In my considered view this approach of the trial Court was erroneous and has not led to arriving at a proper figure. The trial Court should have held an inquiry in depth and thorough manner. Keeping in view the fact that plaintiffs are seeking possession of land measuring khasra numbers, which is basically meant for agricultural purposes. The prevalent collector rate is a relevant consideration to determine the value of the land so is the land revenue payable. Simply by referring to some lines in the written reply filed by the plaintiffs and then arriving at a particular inference does not reflect proper application of mind and a judicious approach. Sometimes evidence is required to assess the market rate of the property. For that the trial Court can frame specific issue in that regard and grant opportunities to the parties to lead evidence and thereafter giving finding thereon. Affixation of Court fee is a matter between a litigant and the Court. The defendants should not be unduly concerned about the same, rather their focus should be to present their

case on merits, rather than trying to get the claim of a litigant buried in a technical manner.

11. Therefore, the order under revision is set aside with a direction tot he Court to decide the application afresh in accordance with law.

12. The revision petition is allowed accordingly.

Since the revision petition is allowed, the miscellaneous application(s), if any, stand disposed of accordingly.

9.12.2022

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**(H.S.MADAAN)**

**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**