

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-4799 of 2019 (O&M)
Date of decision: 31.10.2022

Smt. Amardeep Kaur Randhawa

..Petitioner

Versus

Sukhbir Singh and others

..Respondents

CR-6190 of 2019 (O&M)

Smt. Amardeep Kaur Randhawa

..Petitioner

Versus

Sukhbir Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Raman Mahajan, Advocate, for the petitioners.
Mr. P.S.Thiara, Advocate, for respondent no.1.
Mr. Japsehaj Singh, Advocate, for
Mr. Aman Pal, Advocate, for respondent no.3.

ANIL KSHETARPAL, J(Oral)

1. The dispute is with regard to the question of payment of court fee on the counter claim filed seeking to enforce the right of pre-emption.

2. The petitioner claims that she has a superior right of pre-emption as against a sale deed executed by a co-owner in favour of the respondents in the year 2002. On the objection of the respondents, the court has directed the petitioner to pay ad valorem court fee @ 50% of the market value of the subject matter of the suit prevalent on the date of filing the suit.

3. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

4. The learned counsel representing the petitioner submits that the court fee has to be deposited on the amount of sale consideration. He

submits that the trial court has erred in directing the petitioner to deposit the court fee on the market value of the subject matter of the suit.

5. On the other hand, the learned counsel representing the respondents while drawing the attention of the Court to Clause V and VI of Section 7 of the Court Fees Act, 1870, submits that the court fee is payable according to the value of the subject matter. Section 7 (v) and (vi) are extracted as under:-

Section 7. Computation of fees payable in certain suits

(v) for possession of land, houses and gardens.—*In suits for (the – in Himachal Pradesh and Haryana) possession of land, houses and gardens—according to the value of the subject-matter; and such value shall be deemed to be— where the subject-matter is land, and—*

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue, and such revenue is permanently settled— ten times the revenue so payable:

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid; and such revenue is settled, but not permanently— ten times the revenue so payable:

(vi) to enforce a right of pre-emption.—*In suits to enforce a right of pre-emption according to the value (computed in accordance with paragraph (v) of this section) of the land, house or garden in respect of which the right is claimed:”*

6. It is evident from the amendment in Clause 5, applicable to the States of Punjab, Himachal Pradesh, the National Capital Territory of Delhi and Union Territory of Chandigarh that where the subject matter of a suit is land, the court fee payable is 10 times of the revenue so payable upon it. However, there is no amendment with regard to a constructed house. Clause (vi), in turn, refers to computation of the value of the property in accordance

with paragraph 5 of this section which provides for affixing ad valorem court fee on the value of the subject matter of the suit. The value is required to be seen on the date of filing of the suit. Herein, a suit claiming superior right of preemption is sought to be enforced against a sale deed which was executed 10 years prior to the filing of the suit. Such sale consideration cannot be considered as the current market value.

7. The learned counsel representing the petitioner submits that he is not a party to the sale deed and therefore, no ad valorem court fee is payable.

8. This is not a suit for grant of decree of declaration. Hence, the judgment passed by the Supreme Court in *Suhrid Singh alias Sardool Singh vs. Randhir Singh and others, (2010) 12 SCC 112* shall not be applicable. It is a suit for claiming a superior right of pre-emption which is governed by a separate clause. The petitioner (plaintiff) also seeks the relief of possession.

9. At this stage, the learned counsel representing the petitioner prays for one months' time to make good the deficiency in the court fee.

10. The learned counsel representing the respondents has no objection. Hence, the permission is granted.

11. With these observations, the revision petitions are disposed of.

12. All the pending miscellaneous applications, if any, are also disposed of.

October 31, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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