

116 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3750-2022 (O&M)
Decided on:-24.11.2022

Capt. Sukhjit Singh Mann

....Petitioner

vs.

Dr. Sukhmani Mann and ors.

....Respondents.

CORAM:HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Gaurav Dutta, Advocate for the petitioner.

HARKESH MANUJA J. (Oral)

CM-11504-CII-2022

Application is allowed as prayed for.

Main case

By way of present revision petition, challenge has been made to an order dated 04.08.2022 passed by the trial court, whereby an application filed at the instance of petitioner-defendant No.1, seeking rejection of plaint under Order 7 Rule 11 of the CPC for want of adequate court fee, has been dismissed.

2. The facts of the present case are that respondent No.1-plaintiff filed a suit for declaration as well as joint possession and permanent injunction qua two properties marked by letters 'X' and 'Y' and detailed in the plaint. It would be relevant to mention here that the property marked as 'X' in the plaint is the agricultural land whereas the property marked as 'Y' is the residential house. The relevant portion from prayer clause made in the plaint as regards joint possession is reproduced hereunder for reference:-

*“.....and for joint possession of the plaintiff over 3/8th
share of the suit property, mentioned at letters 'X' and*

'Y' above along with defendants No. 4 and 5;....”.

3. Upon notice, petitioner-defendant No.1 moved an application under Order 7 Rule 11 of the CPC with a prayer for seeking rejection of plaint for want of adequate court fee.

4. Respondent No.1-plaintiff filed her objections to the aforesaid application. The trial court vide its impugned order dated 04.08.2022 rejected the prayer made by petitioner-defendant No.1, dismissing the application under Order 7 Rule 11 CPC filed at his instance, which has been impugned by way of present revision petition.

5. Relying upon the judgment passed by Hon'ble the Supreme Court titled as “Suhrid Singh @ Sardool Singh vs. Randhir Singh and others”, (2010) 12 Supreme Court Cases 112, learned counsel for the petitioner submits that in case of suit property being a residential house, the court fee has to be assessed on its market value, in view of Section 7(iv) (c) read with Section 7(v) of the Court Fees Act, 1870 (for short, “the Act”). He refers to paragraphs 5 and 6 of the aforesaid judgment in this regard, which are reproduced hereunder:-

“5. Court fee in the State of Punjab is governed by the [Court Fees Act](#), 1870 as amended in Punjab (“the Act,” for short). [Section 6](#) requires that no document of the kind specified as chargeable in the First and Second Schedules to the Act shall be filed in any court, unless the fee indicated therein is paid. Entry 17(iii) of Second Schedule requires payment of a court fee of Rs.19.50 on plaints in suits to obtain a declaratory decree where no consequential relief is prayed for. But where the suit is for a declaration and consequential relief of possession and injunction, court fee thereon is governed by [section 7\(iv\)\(c\)](#) of the Act which provides :

“7. Computation of fees payable in certain suits : The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :

(iv) in suits - x x x x

(c) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed, x x x x x

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought:

Provided that minimum court-fee in each shall be thirteen rupees.

Provided further that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section."

6. The second proviso to [section 7\(iv\)](#) of the Act will apply in this case and the valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of the said section. Clause (v) provides that where the relief is in regard to agricultural lands, court fee should be reckoned with reference to the revenue payable under sub-clauses (a) to (d) thereof; and where the relief is in regard to the houses, court fee shall be on the market value of the houses, under clause (e) thereof."

6. I have gone through the paper book as well as the judgment cited on behalf of the petitioner, however, I am unable to accept the contention made in this regard.

7. From a careful perusal of plaint, it can be easily traced out that the prayer made therein is for declaration and joint possession of the joint Hindu family property as its coparcener, as such, court fee has to be computed as per Section 7(iv) (b) of the Act. Still further, prayer made in the plaint is for grant of joint possession and there is no clear cut ouster or abandonment of possession of respondent No.1-plaintiff from the joint

property, she cannot be called upon to pay *ad-valorem* court fee on the market value of the suit property. In this regard, the judgment cited by learned counsel for the petitioner in Suhrid Singh @ Sardool Singh's case (supra), rather, helps respondent No.1/plaintiff herein. Para No.7 of the same is reproduced hereunder for reference:-

“Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under [Article 17\(iii\)](#) of Second Schedule of the Act. But if 'B', a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under [Section 7\(iv\)\(c\)](#) of the Act.”

8. It is more than settled now that a co-owner has an interest in the entire joint property including every part of it. In fact, every co-sharer is deemed to be in possession of every inch of joint land, even if he is not in actual physical possession. Mere possession of larger portion or even of entire joint property by one co-owner does not necessarily amounts to ouster of others.

9. The Hon'ble Supreme Court in case titled as “Neelavathi and others vs. N. Natarajan and others”, 1980(2) SCR 307, has made the following observations in para 8, which are relevant for this case read as under:-

“8.The property to which the plaintiffs are entitled is undivided 'joint family property!'; though not in the strict sense of the term. The general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court fee under [Section 37\(1\)](#) of the Act on the ground that they had been excluded from joint possession, it is necessary that on a reading of the plaint that they had been "excluded" from joint possession to which they are entitled in law. The averments in the plant that the plaintiff could not remain in joint possession as he was not given any income from the joint family property would not amount to his exclusion from possession. We are unable to read into the plaint a clear and specific admission that the plaintiff had been excluded from possession.”

10. In the facts and circumstances of the present case as already discussed, reading of plaint, no where establishes a clear cut ouster or abandonment of possession of respondent No.1-plaintiff from the suit property, on the contrary, it has been claimed by her to be joint between the parties, resultantly, she cannot be called upon to pay court fee on the market value of the same as she is deemed to be in possession of every inch of it,

being one of its co-sharer.

11. My aforesaid view has also been derived from decision of this Court in case of “K.C. Gupta and another vs. Rajat Gupta and others”, 2015(1) ICC-523. Relevant para 9 is reproduced hereunder for reference:-

“9. In the present case, the claim is of a joint possession on the ground that the plaintiffs are coparceners in the joint Hindu family property and therefore, the Trial Court was justified in dismissing the application that there was any requirement of affixing the Court fees of the value of the property in question.”

12. In view of the reasoning recorded herein above, I do not find any illegality in the order dated 04.08.2022 passed by the learned trial court while declining the prayer made by petitioner-defendant No.1, requiring respondent No.1/plaintiff to affix ad-valorem court fee on the market value of the suit property and therefore, the same does not require any interference. Accordingly, the present revision petition is hereby dismissed.

13. Pending applications, if any, stand disposed of.

24.11.2022
sonika

(HARKESH MANUJA)
JUDGE

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