

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

CR No. 2606 of 2021 (O&M)

Reserved on : 22.07.2022

Pronounced on : 26.07.2022

Ramniwas

...Petitioner

Versus

Ishwar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Raman Chawla, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting aside the order dated 29.09.2021 (Annexure P-1), passed by the trial Court/Additional Civil Judge (Sr. Divn.), Siwani, Bhiwani in ***Civil Suit No. CS/262/2020***, titled as ***Ramniwas vs. Ishwar Singh and others***, vide which the trial Court has allowed the application filed by respondent No. 1/defendant, under Order 7 Rule 11 read with Section 151 CPC, and has directed the petitioner/plaintiff to pay *ad-valorem* court fee on the market value of the suit property.

Brief facts of the case are that the petitioner has filed a suit for declaration that land in dispute, which is an agricultural land situated in village Dhani Bhakhran, Tehsil Siwani, District Bhiwani as detailed in the plaint itself, is a coparcenary property of the family of defendant No. 2 Amar Singh, in which the petitioner/plaintiff, being son of defendant No. 2, has a pre-existing legal right to the extent of 1/5th share by birth and the sale deed dated 15.10.2020, executed by defendant No. 2 being *Karta* of the

family is liable to be set aside as the same is without any legal necessity and without taking consent of the petitioner/plaintiff, who has birth right over the same. It is also prayed that mutation sanctioned on the basis of said sale deed be also set aside and a decree of permanent injunction be granted restraining the defendants from creating any encumbrance or alienating the suit property in any manner.

The respondents/defendants appeared before the trial Court and filed the aforesaid application under Order 7 Rule 11 read with Section 151 CPC plying that the plaintiff has not affixed the *ad-valorem* court fee and, therefore, the plaint is liable to be rejected. The trial Court, vide impugned order, allowed the said application by making following observations:

“5. I have both sides at considerable length and have perused the record. The instant application under Order 7 Rule 11 read with section 151 of CPC, is filed with the objection of court fees and jurisdiction. However, during the arguments only the objection regarding court fees has been pressed for.

In the present case, the plaintiff has challenged the sale deed No. 865, dated 15.10.2020 which is a registered document. The document place on record prima facie does not show that the suit land is ancestral in nature rather necessary revenue record to prima facie show, up the nature of the land which is claimed to be coparcenary property, is not placed on record. Further it is admitted by plaintiff that defendant no. 2 has been Karta of the joint Hindu Family coparcenary of which he himself is a member. A rebuttable presumption in favour of Karta of coparcenary exists that the alienation effected by the Karta are necessitated by legal necessity for care and maintenance of person/properties of co-parcenary land. The said presumption exists in favour of defendant

no. 2 as well. Since same is not prima facie rebutted by revenue record, place on record so far, and that the sale deed No. 865, dated 15.10.2020 which is a registered document has been challenged in favour of defendant no. 1, a third person, it is considered that though the plaintiff was not a party to the transaction, however, he being a challenger to the alienation effected by the Karta by way of a registered sale deed in favour of defendant no. 1, is liable to pay advalorem court fees, on the amount of sale consideration shown in sale deed No. 865, dated 15.10.2020. Accordingly, application stands allowed. Plaintiff is directed to affix advelorum Court fee. Adjournment sought.

Heard. Case is adjourned to 24.11.2021, for making the deficiency of court fee good by plaintiff.”

Learned counsel for the petitioner has argued that the petitioner/plaintiff himself is not the executant of the sale deed dated 15.10.2020 and being in possession as a coparcener has not prayed for any relief qua the possession as he is already in possession of the suit property.

Learned counsel further submits that since the challenge is to the alienation made by the *Karta* of the joint Hindu family, the petitioner being coparcener and in possession of the property is not liable to pay the *ad-valorem* court fee on the market value, therefore, assessing the value of the property, the petitioner/plaintiff has already affixed a court fee of Rs. 200/- and has also affixed Rs. 50/- regarding relief of declaration and injunction.

Learned counsel for the petitioner has relied upon **2013 (15) RCR (Civil) 544, Gulzar Singh vs. Balwant Singh and others**, wherein it is held by this Court that in case of agricultural land, the market value for the

purpose of court fee is to be fixed at Rs. 60/- per acre, Rs. 50/- per acre or Rs. 30/- per acre, depending on the nature of the suit land.

Learned counsel for the petitioner has further relied upon **2018 (2) Law Herald 1042, Annpreet Kaur Khera vs. Akhtiar Singh and another**, wherein this Court has made following observations:

“In the considered opinion of this Court, such direction issued by the learned trial Court is wholly erroneous. The dispute in the present case is with regard to the agriculture land measuring 51 kanals and 6 marlas and some construction over 18 marlas of land in the shape of house and 7 shops constructed separately. Learned counsel submits that as per the State amendment in Section 7 (IV) in case of agriculture land, the Court fee is payable on the basis of 10 time of the revenue payable and not on the value of the property or the sale deed. However, he admits that the Court fee shall be payable on the value of the property described under heading 'B' and 'C' in the plaint i.e. house and 7 shops.”

Learned counsel for the petitioner has, thus, submitted that the impugned order is liable to be set aside.

In reply, learned counsel for the respondents/defendants has submitted that the trial Court has rightly allowed the aforesaid application filed by the defendants and has relied upon a judgment of Hon'ble Supreme Court rendered in **2010(2) RCR (Civil) 564, Suhrid Singh @ Sardool Singh vs. Randhir Singh @ others**, which is relied upon by a Division Bench of this Court in **2011 (13) RCR (Civil) 709, Tarsem Singh and others vs. Vinod Kumar and others**. The operative part of the judgment passed by the Division Bench reads as under:

“In Suhrid Singh’s case (supra), the plaintiff

challenged the alienation on the ground that the sale deed executed by his father, Rajinder Singh, in respect of the ancestral property is illegal and not binding on him and that as a coparcener, the plaintiff is entitled to joint possession thereof. In the said suit, the plaintiff had affixed a fixed Court fee on the relief of declaration; joint possession and for permanent injunction, but the learned trial Court returned a finding that advalorem Court fee is payable on the sale consideration as the plaintiff has sought cancellation of the sale deed in the aforesaid case. The Hon'ble Supreme Court has held to the following effect:-

“7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the co-parceners” and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the Court fee was computable under Section 7(iv)(c) of the Act. The trial Court and the High Court were therefore, not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore, Court fee had to be paid on the sale consideration mentioned in the sale deeds.”

In view of the said example given an example in para No. 6 of the judgment and the finding recorded in para No. 7, we hold as follows:-

- i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed.
- ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est,

illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the advalorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.

In view of the aforesaid judgment of the Hon'ble Supreme Court, the issue leading to payment of the Court fee is decided in terms of the parameters laid down above. The single bench judgments rendered prior to the Supreme Court judgment mentioned above run counter to the aforesaid view and thus overruled. The Reference is answered accordingly. The Single Bench judgments rendered, so far as they run counter to the aforesaid view, are thus overruled."

After hearing learned counsel for the parties, considering the fact that in view of the amendment made by the State of Haryana in Section 7(IV) of the Court Fee Act, 1870, it is found that in case of agricultural land, the court fee is payable on the basis of 10 time of the revenue payable and not on the value of the property or the sale deed of the suit property.

Since the land in dispute is admittedly is an agricultural land and the petitioner/plaintiff is not the executant of the same and he has set up a case that he is in possession of the property and has not made any prayer for grant of decree of possession, this revision petition deserved to be allowed.

Accordingly, the present petition is allowed and the impugned order dated 29.09.2021 (Annexure P-1) is hereby set aside.

It is directed that the petitioner wil pay the court fee as per amended Section 7(IV) of the Court Fee Act regarding agricultural land i.e. Fee, payable on the basis of 10 time of the revenue payable and not on the value of the property or the sale deed.

26.07.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No