

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-2579-2023 (O&M)

Date of Decision: 15.05.2023

Tek Chand and another

....Petitioners

Versus

Sh. Manjeet and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Dr. Anand K. Bishnoi, Advocate
for the petitioners.

Mr. Abhishek Sobti, Advocate
for respondent No.1.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside impugned order dated 18.01.2023 (Annexure P-1) passed by learned Civil Judge (Sr. Divn.), Pataudi, whereby plaintiff/petitioners have been directed to affix the *advalorem* Court fee on the sale consideration mentioned in the sale deed in question.

2. The revision petition is premised on the averments that petitioner/plaintiffs filed a suit for declaration to the effect that as per Jamabandi for the year 2016-17 and mutation No.3700, 1038 respondent No.1/defendant, father of the plaintiffs, was owner in possession of suit land to the extent of his share. Aforesaid land is joint Hindu family coparcenary property/ancestral property of respondent No.1/defendant, namely, Manjeet Singh and his sister and mother. However, in order to deprive the rights of plaintiffs in the suit land, respondent No.1/defendant No.1 executed a sale

deed dated 09.06.2021, in favour of respondent No.2/defendant No.2. It was

further pleaded that said sale deed and subsequent entries in the revenue records on the basis thereof are illegal, null and void and not binding on the plaintiffs.

2.1. Respondent No.1 filed a written statement and denied that plaintiffs are entitled to get the share of ancestral property in question. Respondent No.2/defendant No.2 filed an application under Order 7 Rule 11 CPC for dismissal of suit claiming that the sale deed executed by respondent No.1/defendant No.1 in favour of respondent No.2/defendant No.2 is for sale consideration of Rs.27,38,738/- and as the plaintiffs are also seeking the relief of permanent injunction they are required to affix the *advalorem* Court fees on the basis of sale consideration as mentioned in sale deed instead of only stamp of jurisdiction value of Rs.200/- only.

2.2. Petitioner/plaintiffs filed a reply and submitted that application is not maintainable and has been filed just to prolong the case.

2.3. Vide impugned order, the Ld. Trial Court has allowed the application and plaintiffs were directed to file *advalorem* Court fees on the sale consideration as mentioned in sale deed in question.

3. Learned counsel for petitioners has handed over report of process server in the course of hearing, which is taken on record and marked as Annexure 'A'. Same reveals that even though respondent No.2 has himself given the address, in his application under Order 7 Rule 11 CPC filed before the Ld. Trial Court, on which summons were sent, yet the report of process server reveals that he does not reside at the given address and therefore, service could not be effected. Be that as it may, I am of the view that respondent No.2 herein has otherwise knowledge of the instant proceedings and he is choosing to not appear and answer the claim of petitioners. Service upon respondent No.2 is thus deemed to be effected.

4. Heard.

5. It is pleaded in para No.5 of the plaint that plaintiffs are seeking relief on the basis of assertion that suit property being ancestral the same has to be devolved upon Class-I legal heirs as per Hindu Succession Act, 1956 and as a consequence thereof, a declaration has also been sought to set aside the impugned sale deed dated 09.06.2021 and the subsequent mutation carried out on the basis thereof, being not binding on the plaintiffs as they were neither party to the same nor even otherwise property being ancestral, could not have been sold behind their back. In this regard, the prayer clause of the suit is relevant, which for ready reference is being reproduced herein below:

“It is therefore humbly prayed that a decree of joint possession accordance with their share be passed and alleged sale deed vasika No.424 dated 09.06.2021 and its mutation if any be set aside and be declared null and void and not binding upon the right of the plaintiffs with consequential relief of permanent injunction restraining the defendant No.1 & 2 from selling and alienating the land in question and from creating any type of charge over the land in question, fully detailed and described in para No.2 of the plaint in any manner whatsoever, may kindly be passed in favour of the plaintiffs and against the defendants with costs of this suit.

xxxx xxxx xxxx”

6. Perusal of the above reflects that Ld. Trial Court has committed manifest error while directing petitioner/plaintiffs to deposit *advalorem* Court fee since the pivotal issue is *qua* determination of the property being ancestral or not and the relief *qua* declaration of sale deed is merely consequential to the same depending upon the findings to be returned by Ld. Trial Court.

7. Controversy raised herein is succinctly summed up by a Coordinate bench of this Court, presided over by B.S. Walia, J. (as he then

was seized of the matter), while issuing notice of motion on 28.04.2023, which is as under:

“Learned counsel by relying on the decision of a Coordinate Bench of this Court in CR-1703-2021, titled Jasveer Kaur vs. Kiranpreet Kaur and others, decided on 26.08.2021, contends that the property in question being ancestral, the petitioner’s father had no right to transfer the land in excess to his share, therefore, in the circumstances, the suit filed by the petitioner seeking declaration to the effect that the petitioner’s father had no right to transfer the land in excess to his share, did not invite affixation of ad valorem court fee on the sale deed executed by him.

Notice of motion for final disposal for 15.05.2023.

Notice regarding stay.

Dasti also.

Liberty to effect service on the respondents through counsel representing them before the learned trial Court.

Copy of this order be sent to the respondents along with the notice.

To be shown in the list of urgent cases.”

8. In present case, the relief claimed is in regard to agricultural land. Hence, in terms of section 7(v) of the Courts Fees Act, 1870, the court fee has to be reckoned with reference to the revenue payable under sub-clauses (a) to (d) thereof.

9. Controversy raised herein, in any case, is no more *res integra*. Reference may be had to the Apex Court judgment in ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and others***¹, relevant part whereof is as under:

“5. The 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 the 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—xxxxx (c)for a declaratory decree and consequential relief.—to obtain a declaratory decree or order, where consequential relief is prayed, xxxx 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 the minimum court fee in each case 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 sub-clause (e) thereof.”

10. In view of the aforesaid, revision petition is allowed. Impugned order is set aside and application under Order 7 Rule 11 CPC is dismissed.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 15, 2023
ashish

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