

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7417-2023
Date of decision: 05.01.2024

Kulbir Singh ... Petitioner

Versus

Parmod Gupta and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Rajesh Bansal, Advocate,
for the petitioner.

Mr. Akshay Jindal, Advocate,
for the respondent-caveator.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the orders dated 25.10.2023 (Annexure P-1) and dated 06.01.2020 (Annexure P-2) passed by learned Civil Judge (Junior Division), Karnal in a civil suit No.333/2019, dated 08.02.2019 titled as *Kulbir Singh Versus Parmod Gupta and others*, whereby the petitioner has been directed to pay ad valorem court fee on the market value of the suit land.

2. In brief the facts as culled out from the petition are that the petitioner-plaintiff (hereinafter referred as “plaintiff”) filed a suit for possession of property as mentioned in the head note of the plaint, along with consequential relief of permanent injunction. Upon notice, some of

the respondents-defendants (hereinafter referred as “defendants”) appeared and filed two applications i.e. one application dated 07.03.2019 (Annexure P-4) by defendants No.4 and 18 and the other application dated 20.03.2019 (Annexure P-5) by defendants No.6 to 9, 11, 13, 16, 19, 22, 23, under Order 7 Rule 11 CPC for rejection of the plaint on the ground that appropriate court fee has not been affixed by the plaintiff at the time of presentation of plaint. Vide order dated 06.01.2020, said prayer of defendants was allowed and the plaintiff was held liable to affix court fee on the plaint as per the market value of suit property and thereafter, court proceeded to determine market value of the suit property. The plaintiff examined Charanjit, Clerk of Registry, office of Sub-Tehsil Gharaunda as PW1, who proved copy of collector rate as Ex.PX. On the other hand, defendants examined Bhagat Ram, defendant No.18, as DW1; Mr. Nitin Goyal, Civil Engineer/Expert as DW2; and Mr. Abhi Sharma, Sales Officer, ICICI Bank as DW3. The defendants produced the documentary evidence as Ex.D1-certificate; Ex.D2-office order; Exs.D3 to D6-photographs of property; Ex.D8-Valuation report by a registered valuer; Ex.D9-Loan application; Ex.D10-Valuation report; Ex.D11-Loan account statement; Ex.D12-Mutation No.1414, dated 27.07.2021; Ex.D13-Mutation No.584, dated 27.06.2023.

3. After appreciating the evidence, learned trial Court, vide order dated 25.10.2023, assessed the market value of the suit property as

Rs.23,61,03,225/- and the plaintiff was directed to pay the court fee as per the assessed market value of the suit land.

4. Learned counsel for the petitioner has argued that the petitioner-plaintiff is seeking possession of the suit property on the basis of title. The respondents-defendants are mere trespassers. Some of the defendants have constructed kacha shops on the front portion of the said property and at the back portion, some kacha residential houses have been constructed and remaining area of suit property lying vacant. The demarcation had been conducted through Total Station Machine. Plaintiff remained busy in getting demarcation report and in the meantime, defendants after demolition of their kacha constructions, raised construction of their pucca houses, shops etc. It is submitted that the defendants have unauthorizedly occupied suit property, so the plaintiff is not bound to affix ad valorem court fee on the market value of the suit land. The plaintiff has sought possession of only vacant land after demolishing the construction raised over the suit land which is an agricultural land and as such, the plaintiff is liable to affix the court fee as per the provisions applicable for the agricultural land and for which appropriate court fee has already been affixed with the plaint. It is further contended that the learned trial Court failed to appreciate the evidence properly. DW2-Nitin Goyal admitted in his cross-examination that he did not see sale deed of any shop or the house. He had perused the Collector rate of suit land online. He did not take into consideration the Collector

rate of the suit land for the year 2015-16 but he mentioned the collector value of the suit land for the year 2021-22. DW3-Abhi Sharma proved the valuation report of the property and disbursement of loan to Happy Gupta, Monika Gupta and Sohan Lal Gupta and valuation of the property had been assessed as Rs.5,03,43,000/- but the trial Court did not consider the fact they were sanctioned the loan with some ulterior motive. The said valuation report is of no help as the person, who prepared the report, was not examined. PW1-Charanjit had stated that the Collector rate of commercial property is Rs.19,000/- per square yard and of residential property is Rs.8,100/- per square yard but the same were not considered by the learned trial Court while passing the impugned order. Both the orders passed by the trial Court deserve to be dismissed.

5. Notice of motion.

6. At this stage, Mr. Akshay Jindal, Advocate, has caused appearance on behalf of respondent No.18 as caveator. He submits that the order regarding payment of ad valorem court fee was passed on 06.01.2020. The petitioner-plaintiff accepted that order and thereafter, led evidence for determining the market value of suit property. The petitioner-plaintiff only examined Registry Clerk who proved the Collector rate but Collector rate cannot be the market rate of the suit property. The suit property is situated in the Municipal area. For possession of suit property, the court fee is required to be affixed as per

the prevalent market rate. The court below has rightly assessed the market value of the suit property on the basis of evidence led on the file.

7. I have heard the submissions of learned counsel for the parties and have gone through the paper book.

8. The petitioner-plaintiff instituted the suit on 08.02.2019 for possession of the suit property. The head note of the plaint reads as under:-

“Suit with a view to secure a decree for possession of the property comprised in Khewat No.125, Khatoni No.148, Killa No.421/1(5-10), Gair Mumkin situated at Railway Road, Kasba Gharaunda, Tehsil Gharaunda, District Karnal, as per jamabandi for the year 2015-16 along with consequential relief of Permanent Injunction.”

Two different applications at Annexures P-4 and P-5 were moved by the some of the defendants for rejection of the plaint on the ground that the plaintiff be directed to pay ad valorem court on the market value and in case, he fails to do so, the plaint be rejected.

9. The amended provisions of Section 7(v)(b) of Haryana Court Fees Act, 1870, reads as under:-

“(v) in suits for the possession of land, houses and garden, according to the value of the subject matter; and such value shall be deemed to be:-

(a) where the subject matter is land, according to the market value thereof which shall be deemed to be,—

(i) to (v) xxx xxx

(b) where the subject matter is house or garden, according to its market value.”

As per the version of the petitioner-plaintiff, the suit property is gair mumkin situated at Railway Road, Gharaunda, Tehsil Gharaunda, District Karnal. In other words, suit property is not an agricultural land. The version of the plaintiff is that some of the defendants had raised construction of their pucca houses, shops and few of them raised banquet hall and other allied buildings in the shape of godown etc. during the period from 2015 to 2017. In the application (Annexure P-4) filed by defendants No.4 and 18, it was specifically mentioned that the plaintiff moved an application for demarcation before the Tehsildar Gharaunda, who reported that pucca houses as well as shops are situated in the alleged khasra number for the last 40-50 years back and few persons have demolished the old construction and raised new construction and persons are having their title deed with them and this colony is an approved colony and they are paying the house tax to the Municipal Committee, Gharaunda. So, this Court is of the view that the petitioner-plaintiff is liable to pay ad valorem court fee as per the market value of

the suit property. The version of petitioner that possession is sought after demolition of construction is without any merit as property is no more agricultural land but is an approved colony falling in the Municipal area. Since the petitioner-plaintiff is seeking possession of the land on which construction is existing, so plaintiff is liable to pay ad valorem court fee of the market value of the suit property. So, the order dated 06.01.2020 passed by the trial Court is in accordance with law.

10. In case ***Naresh Kumar and others Versus State of Haryana and another, 2004(4) R.C.R.(Civil) 217*** whereby the value of the property was determined as per the rate fixed by the Collector, it has been held that the value of property so fixed was without application of mind and thus, the Collector rate cannot be the market value of the suit property. In the case in hand, the petitioner-plaintiff only examined Charanjit, Clerk of Registry, office of Sub-Tehsil Gharaunda as PW1, who produced the Collector rate of the property situated in that area. But it is an admitted fact that there is lot of construction at the suit property by different persons and the petitioner-plaintiff failed to prove the market value and on the other hand, respondents-defendants examined Mr. Nitin Goyal, Civil Engineer/Expert as DW2, whose cross-examination reads as under:-

“I have seen the photo Ex.D3 and the shops which are seen in Ex.D3 all are disputed shops. The shops which are seen in Ex.D5 and Ex.D6 is photograph of front side of disputed

land. Residential house and vacant land is there on the back of disputed land. Vacant space is almost 40% and residential houses almost 60%. Shops which are in Ex.D3 and D4 are approximately 10 feet wide and length 25 feet. Self-stated that dimension of all shops are different, which I have not shown in my report. It is wrong that the affidavit which I have made in Court is wrong. The value of land which I have shown in my affidavit for that I have not seen the registry of any shop holder or registry of any house. I have online seen the collectorate of suit property which is different-different for different-different area. I have not seen the collectorate of suit property of 2015-16. The value which I have written in the report is as per 2020-21 collectorate. It is correct that the value which has written in the report is not based upon the registry. I am resident of Sector 7, Karnal. I have visited the disputed land first time, not visited earlier. It is wrong that the value which I have written in my affidavit is not based upon any document or registry.”

Even no suggestion was given to said witness about the market value of suit property. Rather the petitioner-plaintiff failed to bring any document on the file regarding the market value of the suit property. So, the trial

Court has rightly relied upon his report.

11. So, under such circumstances, this Court is of the view that the court below has correctly determined the market value of the suit property. The orders so impugned have been passed in accordance with law. There is no merit in the revision petition and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

January 5, 2024

sanjeev

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No