
(2018) 09 CHH CK 0193

Chhattisgarh High Court

Case No: Writ Petition (Art. 227) No. 297 Of 2018

Jagatram

APPELLANT

Vs

Beersingh And Ors

RESPONDENT

Date of Decision: Sept. 12, 2018

Acts Referred:

- Court Fees Act, 1870 - Section 7, 7(v)
- Code Of Civil Procedure 1908 - Order 7 Rule 11

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Rajkumar Pali, Arun Sao

Final Decision: Disposed Of

Judgement

Sanjay K. Agrawal, J

1. The petitioner who is plaintiff before the trial Court filed a suit for declaration of title, permanent injunction and vacant possession from the suit land

bearing Khasra No.1212/1 (part of), area 1089 sq.ft., which is the urban abadi land situate at Village Doundilohara. On being noticed, the defendant

filed an application under Order 7 Rule 11 of the CPC stating inter alia that the suit land is private urban abadi land which is not the land revenue

paying land and therefore in order to claim reliefs, court fees ought to have been paid in accordance with the present market value under Section 7(v)

of the Court Fees Act, 1870 which has been accepted by the trial Court partly and the plaintiff was directed to pay proper court fees on the plaint,

otherwise, the plaint would be rejected on the next date of hearing. Questioning that order, this instant writ petition has been preferred.

2. Learned counsel for the petitioner submits that the order impugned is unsustainable and bad in law, as the petitioner is ready and willing to pay court fees on the basis of sale deed dated 13-1-2003 by which he has purchased the suit property.

3. Learned State counsel would submit that the order passed by the trial Court is in accordance with law.

4. I have heard learned counsel for the parties.

5. Section 7 of the Court Fees Act deals with computation of fees payable in certain suits. Section 7(v)(c) and (d) read thus:

7(v) For possession of lands, houses and gardens . -- In suits for the 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 -

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such

revenue, and net profits have arisen from the land during the year next before the date of presenting the plaint - fifteen times such net profits; but

where no such net profits have arisen therefrom - the amount at which the Court shall estimate the land with reference to the value of similar land in

the neighbourhood;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as

above mentioned the market value of the land.

6. In the matter of Balu Deochand Kulmi and another v. Fundibai Amichand Kulmi AIR 1972 MP 22, before the Full Bench of the M.P. High Court,

the question was whether for purposes of assessing the Court fee in a suit regarding a fraction or part of a holding the whole of which is assessed to

revenue or to payment of the nature of rent in the absence of revenue, the plaintiff should be required to pay the Court fee on his claim on the market

value of the land under section 7(v)(d) of the Court Fees Act, or whether the subject-matter should be allowed to be valued on the basis of the

revenue payable on the entire estate and the plaintiff should be allowed to distribute the land revenue proportionately on the area claimed by him in the

suit.

7. The aforesaid question was answered by the Full Bench of the M.P. High Court as under: -

28. For the abovesaid reasons, it is clear that where a suit is filed for a part of an estate or a share of an estate, but where such part or share of the estate is not separately assessed to land revenue, the Court fee is payable on the basis of the market value. In those cases where the suit is for an entire estate, or a defined share of an estate, or a part of an estate, assessed to land revenue as a unit, and the suit is for possession of the whole unit, the Court fee is to be charged on the value to be worked out on the basis of the multiple prescribed. On this reasoning, even when a suit is filed for a share of an estate not being any specified part thereof, the Court fee payable would be on the market value and not on the multiple to be worked out.

8. Reverting to the facts of the present case in light of the judgment of the Full Bench in Balu Deochand Kulmi (supra), it is quite apparent that in the instant case, the land is urban abadi land which is not the land revenue paying land and therefore in accordance with the aforesaid Full Bench decision, court fees would be payable under Section 7(v) of the Court Fees Act i.e. on the basis of market value of the land.

9. Now, the question what would be the market value of the land, whether it is on the basis of sale consideration mentioned in the sale deed which the petitioner has purchased or it is the present market value, will be considered by the trial Court in accordance with law and the plaintiff is at liberty to demonstrate and satisfy the trial Court in that regard that his claim based on sale consideration is market value of the suit land. That will be considered by trial Court in accordance with law.

10. With the aforesaid observation, the writ petition stands finally disposed of. No order as to cost(s).