

(2013) 07 P&H CK 0531

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2583 of 2012

Gurshinder Singh

APPELLANT

Vs

Pal Singh and Others

RESPONDENT

Date of Decision: July 2, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Constitution of India, 1950 - Article 227
- Court Fees Act, 1870 - Section 7(iv)(a)

Citation: (2013) 171 PLR 498

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: J.S. Chandail, for the Appellant; R.K. Girdhar for Respondent Nos. 1 to 8 and Mr. Munish Raj for Mr. S.S. Majithia for Respondent Nos. 9 to 20, for the Respondent

Final Decision: Allowed

Judgement

L.N. Mittal, J.

Plaintiff Gurshinder Singh by filing this revision petition under Article 227 of the Constitution of India has challenged order dated 6.2.2012, Annexure P/1 passed by learned trial court thereby allowing the application moved by defendants No. 1 to 8/respondents No. 1 to 8 under Order 7 Rule 11 of the CPC (in short, "CPC"). Petitioner-plaintiff has in the suit interalia claimed relief of possession of agricultural land in suit measuring 143 kanals 10 marlas and 11.046 hectares and has also challenged certain sale deeds, mutations etc.

2. Defendants No. 1 to 8 in their application alleged that the plaintiff is required to pay ad valorem court fee on sale consideration mentioned in the sale deeds challenged in the suit and also on market value of the suit land because the plaintiff has claimed relief of possession of the suit land but has not paid the requisite court fee and therefore, plaint is required to be rejected.

3. The plaintiff by filing reply opposed the application alleging that he being not party to the sale deeds under challenge is not required to pay ad valorem court fee.
4. Learned trial court vide impugned order Annexure P/1 allowed the defendants' application and has directed the plaintiff to affix ad valorem court fee as per value of the suit property. Feeling aggrieved, the plaintiff has filed this revision petition.
5. I have heard counsel for the parties and perused the case file.
6. Counsel for the petitioner reiterated that the petitioner being not party to the sale deeds under challenge is not required to pay ad valorem court fee on the sale consideration recited in the said sale deeds. It was also argued that for claiming relief of possession of agricultural land in suit, market value of the land is taken to be 10 times of the land revenue thereof as per section 7(iv)(a) of the Courts Fee Act, 1870 and the plaintiff has accordingly paid the court fee on said market value and is not required to pay ad valorem court fee on the actual market value of the suit land.
7. On the other hand, counsel for respondents No. 1 to 8 contended that since the plaintiff has claimed relief of possession of the suit land, the plaintiff is required to pay ad valorem court fee on market value of the suit land and has been rightly directed to do so by the trial court.
8. I have carefully considered the rival contentions.
9. It is undisputed that plaintiff is not party to the sale deeds under challenge as also observed by the trial court in the impugned order. Consequently, the plaintiff is not required to pay ad valorem court fee on sale consideration recited in the said sale deeds.
10. As regards court fee payable for relief of possession of the suit land, there is no dispute that advalorem court fee has to be paid for the same. However, the question to be determined is as to what is to be taken as market value of the land in question for the purpose of ad valorem court fee. This question need not detain me because provision of section 7(iv)(a) of the Courts Fee Act itself is very clear and unambiguous. According to this provision, in suits for possession of land where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Collector's register as separately assessed permanently to such revenue, then the amount of court fee shall be computed on 10 times of the revenue so payable. Accordingly, for the relief of possession, the plaintiff has to pay ad valorem court fee on 10 times of the land revenue of the suit land. Impugned order of the trial court directing the plaintiff to pay ad valorem court fee on actual market value of the suit land is thus illegal and beyond jurisdiction. Resultantly, the instant revision petition is allowed. Impugned order Annexure P/1 passed by the trial court is set aside. Application moved by defendants No. 1 to 8 under Order 7 Rule 11 CPC stands dismissed subject to the condition that if the plaintiff-petitioner has not paid the court fee on

amount of 10 times of the land revenue of the suit land, he shall be granted one opportunity to make good the deficiency in court fee failing which appropriate order in accordance with law shall be passed by the trial court.