

(2014) 03 P&H CK 0250

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 1984 of 2014

Nar Singh

APPELLANT

Vs

Desbir

RESPONDENT

Date of Decision: March 18, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, 151
- Constitution of India, 1950 - Article 227

Citation: (2014) 175 PLR 463

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: Virender Kumar, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Mehinder Singh Sullar, J.

The challenge in this revision petition preferred by petitioners-defendants Nar Singh & Ashok sons of Singh Ram (for brevity "the defendants"), is to the impugned order dated 14.1.2014 (Annexure P4), by virtue of which, the trial Court dismissed their application (Annexure P2) for rejection of plaint of respondents-plaintiffs Desbir and others (for short "the plaintiffs") under Order 7 Rule 11 read with Section 151 CPC. After hearing the learned counsel for the petitioners, going through the record with his valuable help and after deep consideration over the entire matter, to my mind, there is no merit in the instant revision petition in this context.

2. Ex facie the argument of learned counsel that since the plaintiffs were required to affix the ad valorem Court fee on the plaint, so the trial Court committed the legal mistake to dismiss the application of the defendants under Order 7 Rule 11 read with Section 151 CPC, is neither tenable nor the observations of Hon'ble Apex Court in case [Biswanath Agarwalla Vs. Sabitri Bera and Others,](#) and this Court in case Dr. Ashok Kumar Goyal v. Arya Mittar and others (2007-1)145 PLR 798 are at all

applicable to the facts of the present case, wherein, it was ruled that where the plaintiff filed the suit regarding the property situated within the municipal limits or abadi deh, then, he is required to pay the ad valorem Court fee. There can hardly be any dispute with respect to the aforesaid observations, but, to me, the same would not come to the rescue of the petitioners in the instant controversy for the reasons mentioned here-in-below.

3. As is evident from the record that the plaintiffs have filed the present suit (Annexure P1) seeking relief of possession of land measuring 3 kanals 0 marla against the defendants in the manner depicted here-in-above. Taking into consideration the contents of the plaint, the trial Court came to a *prima facie* conclusion that the suit land is Gairmumkin Bara and does not fall within the municipal limits or abadi deh. Even if the defendants have raised illegal construction over the land of plaintiffs, then, the party seeking relief is not required to pay the ad valorem Court fee on super structure raised on the agricultural land at this stage. In case, the defendants are able to prove by adducing cogent evidence at any subsequent stage that the land in litigation falls within the municipal limits, in that eventuality, the Court would naturally decide the question of Court fee at the final conclusion of the trial and would ask the plaintiffs to pay the deficiency of Court fee (if any).

4. Moreover, the trial Court has correctly dismissed the application (Annexure P2) of the defendants under Order 7 Rule 11 CPC, through the medium of impugned order (Annexure P4), which, in substance, is as under (para 4):--

"I have heard learned counsel for the parties and have gone through the case file very carefully. In the present case, it is necessary to state at the out set that at the time of adjudication of application u/o 7 rule II CPC it is settled law that contents of the plaint are to be seen and court cannot look into the defence of the defendant or the stand taken in the written statement. In the present case, it is case of the plaintiff/respondents that the suit land is Gair Mumkin Bara and does not come within the Municipal limits or Abadi Deh which is even not denied by the defendants. It is further stated that if the defendants/applicant raises the construction over the suit land subsequently then the party seeking the relief is to value the land and not the superstructure constructed by the defendant. Reliance is placed on Kewal Kishore Vs. Hamad Ahmad Khan and Others, On the other hand, Ld. counsel for the defendant has relied upon Biswanath Agarwalla Vs. Sabitri Bera and Others, "as well as Dr. Ashok Kumar v. Arya Mittal Ors 2007(2) RCR (Civil) 798. In the present case, the relief of possession is claimed with respect to the suit land which exists in shape of agriculture lands and admittedly is not within the Municipal limits/Abadi Deh. Therefore, accordingly, amended court fee Act as applicable to State of Haryana, Court fee is not required to be affixed on the market value of the suit land. Accordingly, this court is of the view that present application is devoid on merits. Consequently, the same is hereby dismissed."

5. Meaning thereby, the trial Court has examined the matter in the right perspective and has recorded the cogent grounds in this behalf. Such order, containing the valid reasons, cannot legally be set aside, in exercise of superintendence power of this court under Article 227 of the Constitution of India, unless & until, the same is perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for petitioners, so, the impugned order (Annexure P4) deserves to be and is hereby maintained in the obtaining circumstances of the case.

6. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the petitioners. In the light of aforesaid reasons, as there is no merit, therefore, the instant revision petition filed by the petitioners-defendants is hereby dismissed as such.