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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-5142-2024 (O&M)
Date of decision: 21.03.2025

Ravinder Kumar Modi and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vijay Sharma, Advocate for the petitioners.

Mr. Surya Kumar, AAG, Punjab.

Mr. Rahul Deswal, Advocate for respondent Nos.2 to 10.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 22.04.2022 (Annexure P-2) and order dated 25.11.2021 (Annexure P-1) vide which the Civil Judge (Junior Division) had directed the petitioners/plaintiffs to pay the ad valorem court fees as per the market value.

2. Learned counsel for the petitioners has submitted that in the present case, initially the suit was filed by the present petitioners who were the plaintiff Nos.1 and 2 and the said suit was suit for possession and for declaration to the effect that the judgment and decree dated 29.02.1980 passed in Civil Suit No.342 of 21.11.1979 titled as "Babu Singh and others



Vs. State of Punjab” and the mutation sanctioned therefrom was null and void. It is submitted that challenge was also made to the sale deed dated 22.03.1955 which was alleged to have been executed by Banarsi Dass Modi in favour of Wasawa Singh. Prayer for permanent injunction was also made. Learned counsel for the petitioners has pointed out that the suit property was situated in Village Badungar, Tehsil and District Patiala and in para 1 of the plaint, it was specifically stated that the land was comprised in khasra No.677/543 in the revenue limits of Village Badungar, Tehsil and District Patiala. It is submitted that since two declarations were sought thus, the court fee at Rs.195/- each was affixed and for permanent injunction, the court fee at Rs.130/- was additionally affixed and since the land revenue had been exempted as such court fee at Rs.200/- was affixed for possession and accordingly, total court fees of Rs.350/- was affixed. It is further submitted that defendant Nos.11 and 12 were transposed as plaintiff Nos.3 and 4 vide order dated 24.04.2018.

3. It is pointed out that the respondents No.2 to 10 had filed an application under Order 7 Rule 11 and 14 CPC and the trial Court, vide order dated 25.11.2021, had observed that since the suit had been filed for possession and challenge was also to the decree and sale deed thus, ad valorem court fee was payable under Section 7(iv)(c) of the Court Fees Act, 1870 (hereinafter to be referred as “the 1870 Act”). It is submitted that the subsequently added plaintiff No.3 had filed an application under Order 6 Rule 17 CPC for amendment of the plaint and an application under Section 151 CPC for permitting plaintiff No.3 to affix the ad valorem court fee and the said plaintiff No.3 had deposited the court fee of Rs.2000/- after taking



into account the value of sale consideration mentioned in the sale deed dated 22.03.1955, of which the court fee was computed by plaintiff No.3 to be Rs.1730/-. It is submitted that however, the trial Court in its order dated 22.04.2022 had observed that the ad valorem court fee on the market value of the suit property was payable. It is submitted that the said order was challenged by plaintiff No.3 by filing a revision petition i.e., CR-1813-2022 and the Coordinate Bench of this Court, vide order dated 10.05.2022, was pleased to stay the operation of the order dated 22.04.2022.

4. It is submitted that thereafter, plaintiff No.3 suffered a statement before the trial Court for withdrawal of the suit and thus, the petitioners also filed the present revision petition i.e., CR-5142-2024 in which notice of motion was issued on 09.09.2024 and it was ordered that the present case would be heard along with revision petition filed by plaintiff No.3. It is further submitted that no specific stay order was pressed for by the petitioners at that stage since there was already a stay operating on the impugned order dated 22.04.2022 in the revision petition filed by plaintiff No.3. It is submitted that plaintiff No.3 on 16.10.2024 withdrew the said revision petition and thus, no stay was operating thereafter. Learned counsel for the petitioners has stated that during the pendency of the said revision petition filed by plaintiff No.3, issue No.3 was framed by the trial Court on 11.10.2023, which reads as under:-

“As to whether the suit has not been properly valued for the purpose of court fees and jurisdiction?.”

5. Learned counsel for the petitioners has submitted that since issue with respect to court fees has already been framed, thus, the trial Court



be directed to consider all the arguments raised by both the parties while deciding the said issue and the impugned orders be set aside. It is submitted that it is the case of the present petitioners that with respect to the sale deed, the court fee has already been affixed. It is further the case of the petitioners that with respect to possession, since the land is situated in the revenue limits of Village Badungar, thus, a joint reading of Section 7(iv)(c), Section 7(v)(a)(b)(c) as well as Section 9 of the 1870 Act would show that even in case no revenue is payable then also the court fee is to be affixed on the basis of net profits if any net profits arises from the land in question and the said net profits are to be assessed in accordance with Section 9 of the 1870 Act by issuing a commission. It is submitted that the same would require leading of evidence and since issue No.3 has been specifically framed, the aspect of court fee be determined under the said issue, as any final order by this Court would make the said issue redundant. It is further submitted that in case the issue is decided against the petitioners, then the petitioners would pay the court fee as assessed by the Court.

6. Learned counsel for the respondents, on the other hand, has submitted that a perusal of the plaint would show that in the plaint, it had been stated that the suit property consists of “kothi, compound and garden” and the said fact is also reflected in the family partition as well as in the sale deed relied upon by the plaintiffs themselves. Learned counsel for the respondents has further pointed out that while reading Section 7(iv) along with sub-Section (v)(e), it would be apparent that with respect to houses and gardens, the market value of the houses or gardens is to be taken into consideration for the purpose of assessing the value of court fee. It is



submitted that thus, the impugned orders have been rightly passed and it was incumbent upon the plaintiffs to have affixed the said court fee.

7. This Court has heard learned counsel for the petitioners as well as learned counsel for the respondents.

8. It is not in dispute that the orders (Annexures P-1 and P-2) were challenged by plaintiff No.3 by filing two separate revision petitions i.e., CR-1813-2022 and CR-3026-2024 and in CR-1813-2022, vide order dated 10.05.2022, the Coordinate Bench of this Court had stayed the operation of the impugned order dated 22.04.2022, which order is reproduced hereinbelow:-

“Learned counsel for the petitioner would contend that vide order dated 25.11.2021 the petitioner was directed to pay ad valorem court fees which stands duly paid. However, on an application filed by the respondents, the petitioner has been asked to affix ad valorem court fees on the market value of the suit property holding therein that vide order dated 25.11.2021 the plaintiffs were directed to pay ad valorem court fees on the market value of the suit property. Learned counsel for the petitioner would further contend that a perusal of the order dated 25.11.2021 nowhere states that ad valorem court fees was to be affixed on the market value of the suit property.

Notice of motion returnable 04.08.2022.

Ms. Deepali Puri, Addl. AG Punjab accepts notice on behalf of respondent No.1-State. Mr. Rahul Deswal, Advocate accepts notice on behalf of respondent No.5 and has filed his vakalatnama.

Meanwhile, operation of the impugned order dated 22.04.2022 shall remain stayed.

10.05.2022”



The said revision petition was withdrawn by plaintiff No.3 on 16.10.2024. However, prior to the withdrawal of the said revision petition, the trial Court vide order dated 11.10.2023 had framed the following issue:-

“As to whether the suit has not been properly valued for the purpose of court fees and jurisdiction?.”

9. It would be relevant to mention that learned counsel for the petitioners as well as learned counsel for the respondents have vehemently projected their side of the case. Both the counsel have relied upon Section 7 of the 1870 Act and thus, it would be relevant to reproduce Section 7 of the 1870 Act. Relevant portion of Section 7 of the 1870 Act reads as under:-

“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 :-

for money.-(i) In suits for money (including suits for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically)- according to the amount claimed;

for maintenance and annuities.-(ii) In suits for maintenance and annuities or other sums payable periodically-according to the value of the subjectmatter of the suit, and such value shall be deemed to be ten times the amount claimed to be payable for one year;

for other moveable property having a market-value.-(iii) In suits for moveable property other than money, where the subject-matter has a marketvalue-according to such value at the date of presenting the plaint;

(iv) In suits-

for moveable property of no market-value.-(a) for



moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property.-(b) *to enforce the right to share in any property on the ground that it is joint family property,*

for a declaratory decree and consequential relief.-(c) ***to obtain a declaratory decree or order, where consequential relief is prayed,***

for an injunction.-(d) *to obtain an injunction,*

for easements.-(e) *for a right to some benefit (not herein otherwise provided for) to arise out of land, and*

for accounts.-(f) *for accounts-*

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 1[***];*

for possession of land, houses and gardens.-(v) ***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-

(a) 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 with such revenue;

and such revenue is permanently settled-ten times the revenue so payable;

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid; and such revenue is settled, but not permanently-



five times the revenue so payable;

(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 there from-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;

Proviso as to Bombay Presidency.-*Provided that, in the territories subject to the Governor of Bombay in Council, the value of the land shall be deemed to be-*

(1) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government-a sum equal to five times the survey-assessment;

(2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government-a sum equal to ten times the survey assessment; and

(3) where the whole or any part of the annual survey-assessment is remitted-sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment, or the portion of assessment, so remitted.

Explanation.-*The word "estate", as used in this paragraph, means any land subject to the payment of*



revenue, for which the proprietor or a farmer or ryot shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue;

for houses and gardens.-(e) *where the subject-matter is a house or garden-according to the market-value of the house or garden;*

xxx xxx”

10. Section 9 of the 1870 Act, which has been additionally relied upon by learned counsel for the petitioners is also reproduced hereinbelow:-

“9. Power to ascertain net profits or market-value.-If the Court sees reason to think that the annual net profits or the market-value of any such land, house or garden as is mentioned in section 7, paragraphs (v) and (vi), have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.”

11. It is the case of the petitioners that the land is situated in the revenue limits of Village Badungar, Tehsil and District Patiala and comprised in khewat No.854, khatauni No.2017/1995, khasra No.677/543(8-2), khatauni No.2018/1996, khasra No.677/543 (8-2) total measuring 16K-4M as per the jamabandi for the year 2013-14. It is further their case that since the revenue had been exempted thus, even under sub-clause (c) of Section 7(v) of the 1870 Act, the value of the subject matter would be dependent upon the fact as to whether any net profits have arisen from the land in question or not and if not, then the Court is required to



make an estimation with reference to value of similar land. It is submitted that for the purpose of said computation, the Court has the power to issue a commission under Section 9 of the 1870 Act and thus, necessarily, evidence would be required to be led. It is further their case that the present case is not a case of the suit property being a house and garden in an urban estate and any small construction made on an agricultural land would not fall within the purview of Sub-Clause (e) of Section 7(v) of the 1870 Act as argued by the learned counsel for the respondents. On the other hand, it is the case of the respondents that in the plaint, there is a reference to kothi, compound and garden and thus, Sub-Clause (e) of Section 7(v) of the 1870 Act would apply. It is further the case of the respondents that the property is not an agricultural land.

12. There is nothing in the plaint to show the extent of the house or garden or vacant land and in the plaint, the suit property is stated to be comprised in khasra numbers, in the revenue limits of Village Badungar and while deciding the application under Order 7 Rule 11 CPC, the Court is only required to see the averments in the plaint whereas while deciding the issue of court fee, as framed, the trial Court can look at the entire evidence produced by both the parties. The arguments raised by learned counsel for the petitioners as well as learned counsel for the respondents raise a debatable issue which can best be decided after necessary evidence is adduced by both the parties and since the said issue No.3 has already been framed, it would be in the interest of justice that both the parties are given due opportunity to raise their submissions and to lead their evidence in support of their arguments on the said issue No.3. Any final adjudication by



this Court would lead to the said issue No.3 being rendered redundant. It is a matter of settled law that in case the said issue is decided against the plaintiff, then, before taking the benefit of decree, if any, he would be required to pay the court fee as assessed under the said issue and thus, the right of the defendants-respondents would be adequately protected. In case the said issue is decided in favour of the petitioners-plaintiffs then it would be unfair to burden the petitioners with heavy court fees at this stage of the case. Thus, in the interest of both the parties, let the trial Court decide issue No.3 as it has been framed instead of this Court finally adjudicating the present issue.

13. Keeping in view the aforesaid facts and circumstances and also in view of the subsequent event of issue No.3 having been specifically framed, the impugned orders (Annexures P-1 and P-2) are set aside and the trial Court is directed to decide issue No.3 in accordance with law.

14. It is made clear that this Court has not finally opined on the said aspect and it would be open to both the parties to raise all the pleas and lead all evidence in support of their respective pleas on the said issue No.3 which would be independently considered by the trial Court.

15. In view of what has been observed above, the present revision petition is disposed of.

16. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

21.03.2025

Pawan

Whether speaking/reasoned:-

Whether reportable:-

(VIKAS BAHL)

JUDGE

Yes/No

Yes/No