



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

122

CR-4390-2025

Date of decision: 17.07.2025

BIR SINGH

...Petitioner

Versus

VINIT YADAV AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Ms. Savita Rana, Advocate
for the petitioner.

HARPREET KAUR JEEWAN, J.

1. Present civil revision petition has been filed under Article 227 of the Constitution of India by the petitioner-defendant No.1 for setting aside the impugned order dated 17.03.2025 passed by the learned Civil Judge (Junior Division), Gurugram (Annexure P-3) vide which the application filed by the petitioner for rejection of the plaint for want of proper ad valorem Court fee was dismissed.

2. The respondent No.1-plaintiff-Vinit Yadav filed a suit for possession and mandatory injunction against the petitioner-defendant No.1 and others alleging that plaintiff is owner in possession of the suit land, which is adjoining the land belonging to defendants. The defendants have encroached upon some area of the land owned by the respondent No.1-plaintiff. The petitioner-defendant



No.1 filed a written statement contesting the said civil suit and also filed an application under Order 7 Rule 11 CPC for rejection of the plaint on various grounds i.e. non-payment of proper Court fees; suit barred by limitation and absence of cause of action. The said application was contested by the respondent No.1-plaintiff and the same was dismissed by the Civil Judge (Junior Division), Gurugram by passing the impugned order dated 17.03.2025.

3. Learned counsel for the petitioner submits that proper ad valorem Court fee has not been paid by the respondent No.1-plaintiff. The petitioner-defendant had already constructed a boundary wall around the land way back in the year 2008 and he had not encroached any land of the plaintiff, as such plaintiff was not having any cause of action. He further submits that the plaintiff was required to pay ad valorem Court fee as the suit property is not agricultural land and the application has been wrongly dismissed by the trial court.

4. I have considered the aforesaid submissions and perused the paper-book.

5. The petitioner-defendant No.1 had filed a detailed written statement (Annexure P-2) and contested the suit filed by respondent-plaintiff. He has taken preliminary objection regarding cause of action and proper Court fee having not been filed. The plea of limitation has also been taken. Apart from various other preliminary objections raised in the written statement as observed by the Civil Judge, the plaintiff had already lead evidence.

6. The Civil Judge has dismissed the application under Order 7 Rule 11 CPC filed by the petitioner-defendant No.1 observing that the land which is alleged to have been encroached by the petitioner-defendant No.1 is agricultural



land and requisite Court fee has been affixed.

7. The Hon'ble Apex Court in *Sriratnavaramaraja vs Smt. Vimla 1961 AIR 1299* has observed that the Court Fees Act has been enacted to collect revenue and not to be used as a technical weapon by the defendant for obstructing the progress of the suit by approaching the High Court in its revisional jurisdiction against the order determining and adjudging court fees payable on the plaint. The observations by the Hon'ble Apex Court reads as under:

'xxxxxxx The Court-fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court-fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court- fee on his plaint. Whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under s.115 of the Code of Civil Procedure is strictly conditioned by cls. (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior court by appeal or in revision against the order adjudging payment of court-fee payable on the plaint xxxxxxxx'

8. Consequently, the Civil Judge has rightly dismissed the application filed by the petitioner-defendant No.1. However, the Civil Judge shall frame an issue regarding the valuation of suit and Court fee and decide the same at the time of final adjudication of the matter.



9. In view of the ratio of the aforesaid decision by the Hon'ble Apex Court, the present revision petition filed on behalf of the petitioner-defendant No.1 during the pendency of the Civil suit stands dismissed.

10. The observations by the Civil Judge in the impugned order regarding the land being agricultural and Court fee having been filed properly are set aside and would not be binding upon the trial Court at the time of final decision of the matter upon merits.

(HARPREET KAUR JEEWAN)
JUDGE

17.07.2025
P.Bhatt

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No