



CR No.121 of 2025
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.121-2025
Pronounced on : 26.03.2025

Dharinder Singh and others

...Petitioners

Vs

Anoopjot Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Sunny K. Singla, Advocate
for the petitioners.

Mr. Gaurav Vir Singh Behl, Advocate
Mr. Vidul Kapoor, Advocate and
Ms. Raageshwari, Advocate
for respondents No.1 to 3.

VIKRAM AGGARWAL, J

The present revision petition is directed against the order dated 03.12.2024 (Annexure P-3), passed by the Court of learned Addl. Civil Judge (Senior Division), Malerkotla vide which the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC'), filed by the petitioners-defendants No.2 to 4, for rejection of plaint was dismissed.

2. A suit for declaration, joint possession and permanent injunction was filed by respondents No.1 to 3-plaintiffs (hereinafter referred to as 'the plaintiffs') against the petitioners-defendants No.2 to 4 and proforma respondent No.4-defendant No.1 (hereinafter referred to as 'the defendants'). The plaintiffs are the daughters of Paramvir Singh and sisters of proforma respondent No.4-Sukhjinder Singh. The basic case set up was that they were a part of a joint Hindu family of which Paramvir Singh was the *karta* and land measuring 58 bighas 04 biswas (fully described in the

plaint) and further land to the extent of 1/4th share out of land measuring 01 bigha 3 biswa (fully described in the plaint) situated at Village Bullapur, Tehsil & District Malerkotla was ancestral property. A declaration to this effect was sought by the plaintiffs alongwith a declaration that transfer deeds executed by their brother Sukhjinder Singh in favour of Daljeet Singh (defendant No.4) and sale deed executed by him in favour of Gurjinder Kaur (defendant No.3) were illegal, null and void. Further, a declaration was also sought that agreement to sell dated 18.09.2021 executed by Sukhjinder Singh and the mother of plaintiffs namely Sukhpal Kaur in favour of Dharinder Singh (defendant No.2) was also liable to be set aside. The mutations on the basis of the transfer deeds and sale deeds were also challenged. Relief of joint possession was also prayed for alongwith the consequential relief of permanent injunction.

3. During the pendency of the suit, an application under Order 7 Rule 11 CPC for rejection of plaint was filed by the defendants. Two fold grounds were raised namely that *ad valorem* court fee was payable since sale deeds had been challenged and further that since the relief of possession had also been sought, the Court fee on the market value of the property was required to be paid. The said application was opposed by the plaintiffs. By way of the impugned order, the application for rejection of plaint was dismissed. As regards the sale deeds, it was held that since the plaintiffs were not the executants of the same, *ad valorem* Court fee was not required to be paid. As regards the relief of joint possession, it was held that since the plaintiffs claimed to be in possession of their share, no Court fee at the market rate was payable. Aggrieved by the same, the present revision petition has been filed.

4. Learned counsel for the parties were heard.

5. Learned counsel for the petitioners-defendants submitted that as regards the sale deeds, the finding that *ad valorem* Court fee on the market value of the land was not payable since the plaintiffs were not the executants is not being challenged and the only challenge to the impugned order is that since the plaintiffs had prayed for joint possession of the same, Court fee was payable. In support of his contentions, learned counsel placed reliance upon the judgments of Coordinate Benches of this Court in ***Annpreet Kaur Khedra versus Akhtiar Singh and another 2018 (2) Law Herald 1042*** (Law Finder Doc ID # 1022025), ***Smt. Harbhajan Kaur versus Pargan Singh 1987 RRR 134*** (Law Finder Doc ID # 52167) and ***Dr. Bhupinder Singh versus Paramjit Singh and others 2018 AIR Punjab and Haryana 92*** (Law Finder Doc ID # 1008939).

6. Per contra, learned counsel representing the respondents-plaintiffs submitted that there is no illegality in the impugned order. He firstly raised the issue of maintainability of the present revision petition and submitted that since the issue of Court fee is essentially a matter between the Court and the plaintiff, no revision at the instance of the defendants is maintainable. Learned counsel also submitted that as regards the issue of affixing of Court fee is concerned, the trial Court did not commit any illegality in holding that Court fee was not payable. It was submitted that the plaintiffs claimed to be in possession of the suit property and it was only averred that in case the Court found that they were not in possession, a decree of joint possession be passed. Learned counsel submitted that in case such a finding is eventually returned, Court fee, as per the provisions of the Court fees Act, 1870 (hereinafter referred to as 'the Court Fees Act') and especially Section 7(iv)(c) of the Court Fees Act would be payable. Learned counsel submitted that the plaintiffs, being in possession of the suit

property, had prayed for the relief of injunction also and, therefore, by no stretch of imagination, it could be said that they were not in possession of the suit property. In support of his contentions, learned counsel placed reliance upon the judgment of Supreme Court of India in ***Suhrid Singh @ Sardool Singh versus Randhir Singh & Ors. 2010 AIR Supreme Court 2807*** (Law Finder Doc ID # 209047); judgment of the Full Bench of this Court in ***Jai Krishan Das and others versus Babu Ram and others (1967) 1 I.L.R. Punjab and Haryana***, judgment of a Division Bench of this Court in ***Anil Kumar and Ors. versus Maninderbir Singh 2025 (1) Law Herald 382*** (Law Finder Doc ID # 2691681); judgments of Coordinate Benches of this Court in ***Janak Raj Dogra and others versus Sohan Lal and others 2024 NCPHHC 158569*** (Law Finder Doc ID # 2673120); ***Arun Kumar Goyal versus Payal Aggarwal 2013 (4) RCR (Civil) 93*** (Law Finder Doc ID # 474000); ***Harjinder Singh and Ors. versus Kuldeep Kaur 2022 (2) PLR 565*** (Law Finder Doc ID # 2007690) and the judgment of this Court in ***Baldev Singh versus Major Singh 2023 (4) Law Herald 2691*** (Law Finder Doc ID # 2404236).

7. I have considered the submissions made by learned counsel for the parties and have perused the paper book.

8. Coming first to the issue of maintainability of the present revision petition, reliance has been placed upon the judgment of a Coordinate Bench of this Court in the case of ***Janak Raj Dogra and others versus Sohan Lal and others*** (supra). In this case, the Coordinate Bench, while relying upon the judgment of another Coordinate Bench in the case of ***Arun Kumar Goyal v. Payal Aggarwal 2013 (4) RCR (Civil) 93*** held that no revision petition would lie at the instance of the defendant against the decision on the question of inadequacy of Court fee as the question of non-

payment of Court fee is a dispute between the litigant and the Registry. The said revision petition i.e. Janak Raj Dogra and others versus Sohan Lal and others (supra) arose out of an order dated 10.10.2024 vide which the application filed by the defendants to issue directions to the plaintiffs to affix the *ad-valorem* Court fee had been dismissed. This judgment would not apply to the facts of the present case because in the present case, the application for rejection of plaint has been dismissed and the petitioner has approached this Court under Article 227 of the Constitution of India and not under Section 115 CPC. Under the circumstances, the present revision petition is duly maintainable. Still further, the judgment in the case of ***Arun Kumar Goyal v. Payal Aggarwal*** (supra) was pertaining to the maintainability of the revision petition under Section 115 CPC and not under Section 227 of the Constitution of India. Even in that case, the order under challenge was vide which the application filed by the defendants for directing the plaintiffs to affix the *ad valorem* Court fee had been dismissed. The Coordinate Bench held that a revision or an appeal could be filed where there is a dispute of jurisdiction. While relying upon certain judgments of this Court, the Kerala High Court, the Apex Court as also the Full Bench of this Court, it was held that the question of Court fee cannot be agitated by the litigants in a revision petition preferred under Section 115 CPC. The issue of maintainability of a petition under Article 227 of the Constitution of India was never in question before the Coordinate Bench. Under the circumstances, the said judgments would not come to the aid of the respondents. This Court has already taken a similar view in the case of ***Baldev Singh versus Major Singh*** (supra);

11. Before advertng to the merits of the issue, I would first deal with the objection raised by learned counsel for the respondent/plaintiff that the question of Court fee is a matter

between the plaintiff and the State and that where it has been decided against the contention of the defendant, the defendant would have no right to move the superior Courts by way of appeal or revision. Reliance was placed upon a judgment of the Hon'ble Apex Court in Sri Rathnavarmaraja's case (supra). In this case, a suit was filed by the plaintiff Smt.Vimla seeking a decree of possession. The properties of which the possession was sought were valued and accordingly Court fee was affixed. An objection was raised by the Office with regard to the Court fee on which the Presiding Officer ordered that the Court fee paid by the plaintiff was adequate. In the written statement, the defendant raised an objection with regard to the adequacy of the Court fee upon which the trial Court addressed the issue. An application was filed by the defendant for appointment of a Commissioner to value the properties. The same was dismissed

and it was held that the Court fee was adequate. The defendant preferred a revision petition. The High Court set aside the order of the trial Court and the trial Court was directed to ascertain the value of the properties for the purposes of Court fee in accordance with law. A Commissioner was appointed. Valuation was done. Additional Court fee was affixed. Both sides, however, again came to the High Court. The High Court again directed the trial Court to hear both parties and to take a decision. The matter reached the Hon'ble Supreme Court and the Hon'ble Supreme Court held that the matter was essentially between the State and the plaintiff and the defendant would have no right. This judgment, in the considered opinion of this Court, would not apply to the facts of the present case, since in the present case, an application under Order 7 Rule 11 CPC has been decided which had been moved by the defendant and, therefore, the defendant would have every right to challenge the order passed on the said application. Even otherwise, the present revision petition has been preferred under Article 227 of the Constitution of India and not under Section 115 CPC.

9. Now coming to the merits of the case, there is no challenge to the finding that no Court fee on the market value of the land was payable on account of the challenge to the sale deeds and transfer deeds, for, the plaintiffs were not the executants of the same and still further, the dominant relief prayed for is that of joint possession. This finding even otherwise is strictly in accordance with law keeping in view the ratio laid down by the Supreme Court of India in the case of *Suhrid Singh @ Sardool Singh versus Randhir Singh & Ors.*(supra).

10. As regards the issue as to whether the plaintiffs had sought the relief of joint possession or not and as to whether under such circumstances, *ad valorem* Court fee would be payable or not, the contents of the plaint would have to be examined. A decree for joint possession has been prayed for in addition to the decree for declaration and permanent injunction. Still further, sale deeds and transfer deeds have been assailed on the ground that they would not be binding on the rights of the plaintiffs as they were co-parceners and the property could not, therefore, have been alienated. On one hand, the plaintiffs have claimed that they are in possession of the suit properties and have sought injunction also. On the other hand, they have prayed that if they are not found to be in possession, a decree of joint possession be passed. They have also sought injunction restraining the defendants from raising construction. Under the circumstances, it is clear that the relief of joint possession has been prayed for and somewhere, as a result of clever drafting, the plaintiffs have tried to project that they are in possession of the suit property. Under the circumstances, Court fee in terms of the provisions of Section 7 (iv)(c) and 7(v) of the Court Fees Act would be payable. The dominant relief claimed is for joint possession and not for

cancellation of the sale deeds. In this view, I draw support from a judgment of a Coordinate Bench in the case of *Smt. Harbhajan Kaur versus Pargan Singh* (supra);

“3. It is not disputed before me by the learned counsel for the parties that in order to determine the amount of Court-fee payable on the plaint in question only its contents have to be seen and in case I come to the conclusion that their dominant relief claimed in this suit is for joint possession of the agricultural land and not for cancellation of the above noted sale deeds, then the petitioners are to pay court fee in terms of Section 7(iv)(c) read with clause (v) of the Court Fees Act, 1870. If that is so, then according to the learned counsel for the respondents the petitioner have already paid the requisite or proper court-fee. Having perused the contents of the plaint, I am of the considered opinion that it is a clear case where the dominant relief claimed by the petitioner is for joint possession of the agricultural land in question and not for cancellation of the above noted sale deeds. Almost on similar facts and identical circumstances, this Court has already expressed a similar view in Civil Revision No.499 of 1985 Tara Singh and others v. Tarsem Singh and others, 1987 R.R.R. 373, decided on May 14, 1986 after noticing the relevant cases. In the light of this conclusion of mine the impugned order has essentially to be set aside and I order accordingly. For clarity’s sake it may be mentioned here that this order of mine only governs the relief so far as it relates to joint possession of the agricultural land in question and with regard to the rest of the claim i.e. the house, tractor, diesel engine etc., the order of the trial Court stands. I, however, pass no order as to costs.”

11. The trial Court erred in holding that since the plaintiffs had averred that they are in possession over their share in the disputed property, they could not be compelled to pay the *ad valorem* Court fee on the market value. To the extent that they could not be asked to pay the Court fee at the

market vlaue is correct. However, as has been observed earlier, Court fee in terms of Section 7(iv)(c) and 7(v) of the Court Fees Act would be payable.

Accordingly, the impugned order dated 03.12.2024, passed by the Court of learned Addl. Civil Judge (Senior Division), Malerkotla is set aside and the revision petition is disposed of in terms of the above observations. Court fee in terms of the provisions of Section 7(iv)(c) and 7(v) of the Court Fees Act be paid within six weeks, if not already paid.

Pending application(s), if any, stand(s) disposed of accordingly.

26.03.2025

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**(VIKRAM AGGARWAL)
JUDGE**

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