

WP-4031-2014

(RADHEY SHYAM Vs BHURE SINGH)

16-12-2015

Mr.N.K.Gupta, learned senior counsel with Mr.Ravi Gupta, Advocate for the petitioners.

Mr.Dharmendra Rishishwar, learned counsel for the respondents No.2 and 3.

Mr.N.K.Jain, learned counsel for respondent No.5.

With the consent of parties, the matter is heard finally.

In this writ petition under Article 227 of the Constitution of India the petitioners have challenged the validity of the order dated 23.06.2014 passed by the trial Court, by which, the application filed by the respondents No.1 to 3 under Order 7 Rule 11 of the Code of Civil Procedure has been allowed and the plaintiffs are directed to value the suit and pay the *ad valorem* court fee in respect of the reliefs claimed in the suit.

2. Facts giving rise to filing of the writ petition, briefly stated, are that the petitioners have filed the suit seeking the relief of pre-emption. The plaintiffs have valued the reliefs claimed in the suit for the purpose of jurisdiction

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and paid the court fee 20 times of the land revenue. The respondents raised an objection before the trial Court, by way of an application under Order 7 Rule 11 of the Code of Civil Procedure, that the reliefs claimed in the suit have not been properly valued. Thereupon, the trial Court by impugned order has directed the plaintiffs to value the reliefs claimed in the suit

properly and make payment of *ad valorem* court fee.

3. Learned counsel for the petitioners submitted that the impugned order has been passed in contravention of Section 7(vi) of the Court Fees Act as well as Section 3 of the Suits Valuation Act and Rules framed thereunder. Learned counsel for respondents No.2 & 3 has supported the order passed by the trial Court.

4. I have considered the submissions made by learned counsel for the parties and have perused the record. From perusal of the plaint it is evident that the subject matter of the suit is in respect of the agricultural land. The plaintiffs have sought the relief of pre-emption.

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Section 7(vi) of the Court Fees Act, 1870, Section 3 of the Suits Valuation Act as well as Rules 2 & 3 of the Rules framed under the Suits Valuation Act, which are relevant for the purpose of controversy involved in this writ petition, are reproduced below for the facility of reference:-

"7. Computation of fees payable in certain suits.-

(vi) to enforce a right of pre-emption.- *In suits to enforce a right of pre-emption, according to the value of the subject-matter as specified in the document furnishing the cause of action for such right, and where there is no such document or where the plaintiff claims to pre-empt for a fair consideration, on the value of the subject-matter as stated in the plaint:*

Provided that where the value of the subject matter determined by the court exceeds the value stated in the plaint; the decree shall not be executed until the difference, between the fee actually paid and the fee which would have been payable on the value of the subject-matter as determined by the court, shall have

been paid.

3. Power of State Government to make rules determining value of land for jurisdictional purposes.- (1) *The State Government may make rules for determining the value of land for purpose of jurisdiction in the suits mentioned in the Court Fees Act,*

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1870, Section 7 paragraphs (v) and (vi) and paragraphs (x) clause (d).

(3) The rules may determine the value of any class of land, or any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

"Rule (2) In suits for the possession of land mentioned in paragraph (v) of Section 7 of the Court Fees Act, 1870 (VII of 1870), the value of the land shall be deemed to be as follows:-

(a) where the land forms an entire estate, or a definite share of the estate paying annual revenue to Government or where the land 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, twenty times the revenue so payable;

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

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where no such net profits have arisen therefrom, - 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.

Rule (3) *In suits to enforce a right of pre-emption mentioned in (vi) of Section 7 of the Court Fees Act, 1870; the value of the land shall be computed in accordance with sub-rule (2)."*

5. From conjoint reading of the aforesaid provisions it is evident that in a suit for enforcing the right of pre-emption, the plaintiff is required to value the reliefs in respect of the property wherein the right is claimed. Section 3 of the Suits Valuation Act empowers the State Government to frame Rules to determine the valuation of land for jurisdictional purposes. Admittedly, the suit of the plaintiffs falls under section 7(vi) of the Court Fees Act. Therefore, by virtue of Rules 2 & 3 of the Rules framed under the Suits Valuation Act, the plaintiffs are required to value the relief at 20 times the land revenue. However,

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the trial Court has not appreciated the aforesaid aspect of the matter. Therefore, the impugned order suffers from an error apparent on the face of record. Accordingly, it is quashed.

6. In the result, the writ petition is allowed.

(ALOK ARADHE)

JUDGE