

Mukhtiar—Inder Kaur v. Avtar Singh and another (J. V. Gupta, J.)

withdrawn is quashed and by issuing a writ of *mandamus* the Municipal Committee, Patiala, is directed to permit the petitioner to continue with the construction of the building in accordance with the plan already sanctioned by its order dated 8th April, 1987. Thus, this petition is allowed with costs which are quantified at Rs. 500.

S C.K.

Before J. V. Gupta, J.

MUKHTIAR-INDER KAUR,—Petitioner.

versus

AVTAR SINGH AND ANOTHER,—Respondents.

Civil Revision No. 2362 of 1987.

December 12, 1988.

Court Fees Act (VII of 1870)—Ss. 7(v)(a) and 7(v)(d)—Suit for possession of agricultural land—Such land assessed to land revenue—Valuation of such suit for purposes of Court fee—Determination of.

Held, that the order directing the plaintiff to pay the Court fee on the market value of the land was not correct. It has been found as a fact by the trial Court itself that the suit land is an agricultural land and is assessed to land revenue. Once it is so found, then the plaintiff is entitled to pay Court fee under S. 7(v)(a) of the Court Fees Act, 1870 and not under S. 7(v)(d) as held by the trial Court. It has thus acted illegally and with material irregularity in exercise of its jurisdiction.

(Para 4).

Petition under section 115 C.P.C. for revision of the order of the Court of Shri M. S. Viridi, Sub-Judge 1st Class, Patiala dated 9th June, 1987 making correction under section 152 C.P.C. in the order dated 2nd February, 1987 and ordering that it was a clerical mistake and the section should have been written as Section 7(v)(d) and not Section (v)(a) and further directing the plaintiff to affix the Court fee on the market value of the suit land and to file the amended plaint on 20th July, 1987.

Bachhitar Singh, Advocate, for the Petitioner.

ORDER

J. V. Gupta. J. (Oral).

(1) This petition is directed against the order of the trial Court dated 9th June, 1987 and the order dated 2nd February, 1987.

(2) The plaintiff filed a suit for possession of a part of Khasra No. 485 situated in the revenue estate of village Badungar, Tehsil and District Patiala. One of the issues framed by the trial Court was 'whether the suit is not properly valued for the purpose of Court fee and jurisdiction?' The said issue was disposed of,—*vide* order dated 2nd February, 1987 in the following terms :—

“This issue was to be proved by the defendants where over no specific evidence was needed. It is a legal issue and a matter of documentary evidence only. In this case the suit land is the agricultural land and the suit is for possession of a part of it. Jamabandi shows Khasra No. 485 to be part of estate paying of revenue to the Government and the plaintiff wants the possession of part of it i.e. of land measuring about 1 Biswa. This specific Biswa has not been separately assessed to the revenue although it forms part of other Khasra numbers paying land revenue to State and as such the provisions of Section 7(v) (d) are applicable and not Section 7(v)(a)”.

Consequently, the value of the suit was determined and the plaintiff was directed to pay the Court fee according to the market value of the land and not 10 times of the land revenue as affixed by the plaintiff. However, in the said order, it was directed that “Plaintiff is, therefore, directed to affix the Court fees on the plaint according to the provisions of Section (v)(a).

(3) Later on,—*vide* order dated 9th June, 1987, it was clarified that in the earlier order there was a clerical mistake and the section should have been written as section 7(v)(d) and not Section (v)(a). Consequently, the said mistake was corrected and the plaintiff was directed to affix the Court fee on the market value of the suit land.

(4) After hearing the learned counsel for the petitioner, I find that the order dated 2nd February, 1987 directing the plaintiff to pay the Court fee on the market value of the land was not correct. It has been found as a fact by the trial Court itself that the suit land is an agricultural land and is assessed to the land revenue.

Inderjit Singh Sekhon and others *v.* State of Punjab and others
(G. C. Mital, J.)

Once it is so found, then the plaintiff is entitled to pay Curt fee under section 7(v)(a) and not under section 7(v)(d) as held by the learned trial Court. It has thus acted illegally and with material irregularity in exercise of its jurisdiction. Consequently this petition succeeds, and both the impugned orders are set aside. The trial Court will proceed with the suit on the ground that the plaint has been properly valued by the plaintiff. It is further directed that the parties will lead their evidence at their own responsibility in order to expedite the hearing of the suit. However, *Dasti* summons may be given to them, if so desired, as contemplated under Order XVI Rule 7-A of the Code of Civil Procedure. The parties have been directed to appear in the trial Court on 9th January, 1989.

P.C.G.

Before G. C. Mital and K. S. Bhalla, JJ.

INDERJIT SINGH SEKHON AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4381 of 1985

September 13, 1988.

Constitution of India, 1950—Art. 226—Sikh Gurdwaras Act (XXIV of 1925)—Ss. 87(1)(a)(b), 120, 121, 122 and 142—Membership of Managing Committee of Notified Sikh Gurdwara by nomination or by election—Question dependent upon the annual income of the Gurdwara—Disputed question of fact—Alternative remedy under S. 142—Whether adequate.

Held, that since the petitioner has not placed before this Court its accounts which may have been duly audited so as to find out the annual income the position remains disputed whether the annual income of the Gurdwara is more than Rs. 3,000 and such question can be decided on evidence. On a reading of the provisions of section 142 of the Sikh Gurdwara Act, 1925, we are of the view that application lies to the Judicial Commission against any office-holder of the Sikh Gurdwara and on the facts of the case that was the proper remedy to be adopted. Before the Judicial Commission, both the parties would have led evidence and keeping in view the provisions of the