

In the High Court of Punjab and Haryana at Chandigarh

CR No. 1929 of 2015

Date of decision: 19.03.2015

Amandeep Singh and another

.....Petitioners

Versus

Bugar Singh and Others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Satbir Gill, Advocate
for the petitioners.

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SABINA, J

Petitioners have filed this petition challenging the order dated 30.1.2015 (Annexure P7) whereby application moved by the petitioners under Order 7 Rule 11 of the Code of Civil Procedure, 1908 ('CPC' for short), was dismissed.

I have heard the learned counsel for the petitioners and have gone through the record available on the file carefully.

In the present case, respondent No.1 had earlier filed suit for declaration that he was owner in possession of the suit property to the extent of his share. The said suit was withdrawn by respondent No.1 and following order was passed by the trial Court on 27.8.2012:-

“In response to the notice issued to the opposite counsels, they have appeared, who have opposed that the plaintiff cannot withdraw the suit at this stage. On the other hand, Id. Counsel for the plaintiff has made a statement that due to technical

defect in the suit, he does not want to proceed further with the present suit and the same be dismissed as withdrawn. He also requested that permission may be granted to file the fresh suit. Heard. In view of the statement of the plaintiff recorded separately, present suit is hereby dismissed as withdrawn and permission is granted to file the fresh suit on the fresh cause of action. File be consigned to the record room after due compliance.”

Thereafter, respondent No.1 had filed the present suit for declaration to the effect that he was owner in possession of the suit land to the extent of his share and the sale deeds in favour of the petitioners were null and void. During the pendency of the suit, petitioners moved an application for rejection of the plaint under Order 7 Rule 11 CPC. The said application was rightly declined by the trial Court as respondent No.1 was not party to the sale deeds in question. Respondent No.1 had sought relief for possession as he was co-sharer in the suit land with the defendants. The sale deeds have been challenged by respondent No.1 on the ground that the defendants/vendors had sold more than their share vide sale deeds in question. In these circumstances, respondent No.1 was not required to affix the advalorem court fee. No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

March 19,2015
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