

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(111)

CR No.2978 of 2015
Decided on: May 4, 2015.

Bhateri Devi

.... Petitioner

Versus

Bhag Ram and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Vijay Singh Kajla, Advocate,
for the petitioner.

M.M.S. BEDI, J (ORAL)

This is defendant's revision petition against the order dated 14.01.2015 dismissing an application under Order 7 Rule 11 CPC filed by the petitioner on the ground that the plaintiffs-respondents have challenged the validity of sale deed dated 05.08.2013 and they being not a party to it would not be required to affix ad valorem Court fee.

Learned counsel for the petitioner places reliance on judgment of this Court in **Ajit Kaur Vs. Lakhbir Singh and others 2014 (4) Law Herald 3630**, in support of his contentions that as per the judgment of Supreme Court in case **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010 AIR (SC) 2807**, plaintiffs-respondents would be required to affix ad valorem Court fee.

I have heard learned counsel for the petitioner and I am of the opinion that the ratio of **Ajit Kaur's case** (supra) will not be applicable in the present case as in the said case the third party filing a suit challenging the sale deed had also sought possession and as such the Coordinate Bench

of this Court has held that in said circumstances, the plaintiffs were required to pay ad valorem Court fee. In the present case, the plaintiffs-respondents have filed a suit Annexure P-1 for declaration that the land belonging to Wakf has been sold by defendant No.2 in favour of defendant No.1. It is averred in the plaint that the suit land belongs to village panchayat. The suit of the plaintiffs-respondents is for declaration that the sale deed dated 05.08.2013 is fake and false and injunction has also been sought to restrain the defendant-petitioner from interfering in the possession of the plaintiffs-respondents. The plaintiffs claim themselves to be in actual physical possession.

In view of the fact that the plaintiffs-respondents have not claimed possession, the trial Court has rightly dismissed the application of the defendant-petitioner under Order 7 Rule 11 CPC.

This petition is dismissed. However, dismissal of the application will not debar the petitioner to raise the plea of inadequacy of the Court fee which will be determined on the basis of material produced by the parties in evidence in accordance with law.

Nothing said in this order will effect the adjudication of any such issue if raised challenging the possession of the plaintiffs.

(M.M.S. BEDI)
JUDGE

May 4, 2015
harsha