

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Date of decision:16.01.2015

Sanjay Saluja

.....Petitioner

v.

Somnath Saluja and others

.....Respondent

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH

Present:- Mr.Bhupinder Malik,Advocate for the petitioner

Jaswant Singh,J.(Oral)

Defendant no.1 is in revision assailing the order dated 15.12.2014 (P-5) passed by learned Civil Judge (Junior Division) Panipat whereby his application under Order 7 Rule 11 CPC for dismissing the suit for non-affixation of ad valorem Court fee, has been dismissed.

After hearing learned counsel for the petitioner this Court finds no merit in the present revision petition.

Plaintiff no.1 is brother of petitioner/defendant no.1 and defendants 2 and 3 are their sisters. Dispute is regarding the residential house which was purchased by their mother Smt.Kailash Rani from the previous allottee of the Housing Board,Haryana. Conveyance deed in favour of Smt.Kailash Rani has not been effected although application for transfer of the original allotment in favour of Kailash Rani is pending. After the death of Kailash Rani one of the brothers has filed a

suit for separate possession by way of partition. Case of defendant no.1/ petitioner is that since the plaintiff is not in possession of any portion of the suit property he is required to pay ad valorem court fee on the value of the suit property.

The argument is totally mis-placed since possession of a co-sharer/defendant no.1 is also to be construed as possession of the plaintiff in accordance with settled principles of law, therefore, on this ground no case for affixation of ad valorem Court fee is made out.

In view of the above no ground exists for interference under Article 227 of the Constitution.

Dismissed.

16.01.2015
joshi

(Jaswant Singh)
Judge