

CR-3637-2015 (O&M)

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

CR-3637-2015 (O&M).

Decided on: May 26, 2015.

Rajiv Satija

..... Petitioner(s)

Versus

Sanjay Satija and others

..... Respondent(s)

*** * ***

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

**PRESENT Mr.R.S.Budhwar, Advocate,
for the petitioner.**

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

The defendant- petitioner aggrieved by the order dated 23.4.2015, has approached this Court by way of present petition under Article 227 of the Constitution of India, by virtue of which the application under Order VII Rule 11 CPC, filed by the petitioner for dismissal of the suit for want of ad valorem court fee has been dismissed.

Counsel for the petitioner has contended that a perusal of the plaint indicates that the plaintiff-respondent No.1, has claimed property worth more than Rs.95 lacs while filing a suit for declaration and rendition of accounts and consequential relief of permanent injunction. He submits that court fee has to be affixed on the basis of the value of the property claimed. He has also submitted that in para 2 of the plaint, a reference has been made to an immovable property which is a house.

I have heard the learned counsel for the petitioner and gone through the impugned order and the plaint. The plea of suit being bad for non-filing of court fee has been raised by the petitioner in his written statement and issue in that context has also been framed. The rights of the petitioner have already been safeguarded. The dispute regarding affixation of court fee in the present case will certainly be a mixed question of law and fact which is to be determined during the course of trial.

Counsel for the petitioner has placed reliance on **M/s Maha Singh Ram Mehar Rice and General Mills vs. M/s Devi Dyal Amar Nath, 2010 (3) Civil Court Cases 878 (P&H) and Deepak Gupta Vs. Praveen Kumar Gupta, 2012 (4) Civil Court Cases 499 (Delhi).**

In **Deepak Gupta's case** (supra), the suit was not merely a suit for mandatory injunction but it was in fact a suit for recovery of possession and declaration. The Court had required the suit to be valued properly at market value of the property.

I have considered the contention and the impugned order and I am of the opinion that this petition deserves to be disposed of without expression of any opinion on merits as the trial Court has safeguarded the rights of the petitioner on the basis of pleas raised by framing of issue pertaining to the requirement of ad valorem court fee. In the present case, it would be a mixed question of law and fact on appreciation of pleadings and evidence whether

CR-3637-2015 (O&M)

the present case would fall under the provisions of Section 7 (v) (e) of the Court Fee Act or any other sub section of Section 7 of the Court Fee Act.

No ground is made out for interference in the impugned order.

The petition is dismissed without prejudice to the rights of the petitioner to be determined at the time of final adjudication of the case.

Nothing mentioned in this order will prejudice the rights of the parties at the time of final adjudication of the suit.

May 26, 2015.
rka

(M.M.S. BEDI)
JUDGE