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

CR No.3670 of 2015

Date of decision: May 27, 2015

M/s Bhai Shamsheer Singh and Sons
and another

.....Petitioners

Versus

Rakesh Babu Gupta and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sumit Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate
for the petitioners.

Mr. Divanshu Jain, Advocate for
Mr. Ashok Kanwal, Advocate
for the respondents-caveators.

SABINA, J

Petitioners have filed this petition challenging the order dated 30.04.2015, whereby application moved by defendant Nos.1 and 2 under Order 7 Rule 11 of Code of Civil Procedure, 1908, was allowed.

Learned Senior Counsel for the petitioners has submitted that the trial Court has erred in directing the petitioners to affix *ad valorem* Court fee. In fact, petitioners had sought a declaration that the sale of lease hold rights of the property in question by their attorney was illegal, null and void and had sought mandatory injunction directing defendant Nos.1 and 2 to hand over physical vacant possession of the premises in question to the plaintiffs.

Therefore, it could not be described as a suit for possession. Hence, petitioner were not required to affix *ad valorem* Court fee.

Learned counsel for the caveators-respondents has submitted in the year 1996, petitioner No.1 through its partners had executed various documents in favour of respondent No.1 and since then, the respondent No.1 was in possession of the premises in question. In fact, the partners of petitioner No.1 had executed General Power of Attorney, Special Power of Attorney, Sale Agreement, Indemnity Bond and affidavits in favour of respondent No.1.

Petitioners and respondent Nos.5 and 6 have filed suit for declaration that petitioner No.1 was the owner of Industrial Plot in question. It was further prayed that the proceedings qua civil suit decided on 05.10.2006 for specific performance of agreement dated 12.12.1996, 14.10.1996, 14.10.1996 and 02.01.2005 had been passed in collusion with defendant Nos.1 and 2 and a fraud had been committed on the plaintiffs. Further, declaration was sought to the effect that the transfer of lease hold rights of the Industrial Plot in question by defendant No.1 being General Power of Attorney holder of plaintiff No.1, in favour of defendant No.2 was a result of fraud and mis-representation. Further, mandatory injunction was sought directing defendant Nos.1 and 2 to hand-over the vacant physical possession of the Industrial

Plot in question to the plaintiffs.

Thus, in the present case, plaintiffs have challenged the transfer of lease hold rights by their attorney in favour of defendant No.2. Although, plaintiffs have claimed that mandatory injunction directing plaintiffs Nos.1 and 2 to hand-over the vacant physical possession of the Industrial Plot in question to the plaintiffs be issued, but virtually the plaintiffs are claiming the relief of possession of the premises in question. In these circumstances, the learned trial Court rightly held that the plaintiffs were liable to affix *ad valorem* Court fee.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

May 27, 2015

m.singh