

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

CR No.4637 of 2014 (O&M)

Date of decision: 21.12.2015

Sadhu Ram

... Petitioner

versus

Rajashree and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.S. Sahu, Advocate for the petitioner.

Mr. Sanjiv Gupta, Advocate for the respondents.

K.Kannan, J. (ORAL)

The revision is at the instance of the defendant who had an objection about the valuation of the property adopted by the plaintiff. The Court allowed the plaintiff the benefit of fixed Court fee made under 7(iv) of the Court Fees Act. The plaintiff is revision petitioner before this Court.

To an argument by the counsel for the respondent that the defendant cannot be treated as an aggrieved person on an issue of Court fee and bring up a matter in revision relying on the judgment of the Hon'ble Supreme Court in Sri Rathnavarmaraja Vs. Smt. Vimla AIR 1961 SC 1299, I must observe that the observations of the Hon'ble Supreme Court in the context of what the expression 'case decided' under Section 115 cannot be taken to be a proposition that will bar a court from considering whether an appropriate court fee is paid or not in a challenge that is barred under Article 227. I will not characterize the defendant who is petitioner before this Court as an aggrieved person but I will treat it as an issue of consideration by the Court that the suitor who is before this Court for relief, pays appropriate Court fee and grants to the State the revenue that it deserves. I will, therefore, reject the first argument that the Court cannot examine the issue of Court fee.

Even as regards the manner of payment of Court fee, it is obvious that the reliance of provision under Section 7(iv) allows for notional valuation. This is a suit for recovery of possession of property which has constructions on land and the Court fee has to be paid under 7 (v) (b) or (c) as the case may be depending on whether the land is assessed to the revenue payable to the Government or not and also for the market value of the construction. There can be no argument that the defendant has contended in his counter claim that he is the owner of the super structure to allow for the plaintiff the benefit of recovery even without paying Court fee on the value of the super structure. The counsel for the respondents would argue that there can be a direction to the Tehsildar to assess where the building is situate and direct the valuation for such construction which is upon the land. I will decline any such facility in the manner sought by the respondent. The suit is brought on an assertion that the defendant is in unlawful possession of the land/property alongwith construction thereon. It is not the contention that the defendant has put up construction in several portions including the land over which plaintiff claim right in suit. The plaintiff himself cannot have the relief which he has sought unless it were to be understood that his grievance is that the defendant is in enjoyment of the property including the building which is unauthorized. It is not the contention that a portion of the property is unauthorizedly put up within some area of the land only. The whole of the building which is upon the land would require to be valued.

The Court shall appoint the bailiff who may accompany by Tehsildar of the District to make an assessment of value and give a report on the basis of which the Court shall issue the Court fee slip directing him to pay the court fee on the valuation of the land as per the revenue assessed and the market value of the building as assessed on the date of the suit. The Court fee shall be paid within the time as

directed by the Court and if it is not done, the Court will be at liberty to adopt the procedure as found in Order 7 Rule 11(c) CPC.

The impugned order is set aside and the revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

21.12.2015

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