

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

CR No.5667 of 2015

Date of decision : 03.11.2015

Abhimanu Shukla @ Abhinav

...Petitioner

Versus

Jagpal and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Parminder Singh, Advocate for the petitioner.

Mr. Harinder Singh, Advocate for the respondent No.1.

AMIT RAWAL, J. (Oral)

The challenge in the present revision petition is to the impugned order dated 28.05.2015 (Annexure P-6), whereby application filed on behalf of petitioner-defendants under Order 7 Rule 11 of CPC for rejection of the plaint as the suit for mandatory injunction tantamounts to seek the possession and, therefore, advalorem court fees was required to be paid, has been dismissed.

Mr. Parminder Singh, learned counsel appearing on behalf of the petitioner submits, that according to the averments made in the plaint,

licence was revoked in 2010, whereas suit has been filed in 2015, and, therefore, in view of ratio decidendi culled out in the judgment of Hon'ble Supreme Court in *Sant Lal Jain Vs. Avtar Singh* 1985 AIR (SC) 857 and judgment of High Court of Jammu and Kashmir in *Th. Milka Singh and ors. Vs. Th. Diana and others* 1964 AIR (J&K) 99, suit for possession would lie and not for mandatory injunction.

Mr. Harinder Singh, learned counsel appearing on behalf of respondent No.1-plaintiff submits, that similar view has been upheld by the Hon'ble Supreme Court in *Joseph Severance and ors. Vs. Benny Mathew and ors.*, 2005(4) RCR (Civil) 559. He further submits that vide averments made in the suit leads to an irresistible conclusion that the Panchayat was convened in the month of January, 2015 and the suit was filed immediately thereafter and, therefore, suit for mandatory injunction would lie and not for possession.

I have heard learned counsel for the parties and appraised the paper book.

Vide impugned order, while declining the application under Order 7 Rule 11 CPC, the trial Court had also framed issue No.6 with regard to the valuation of the Court fees and jurisdiction and onus of the same has been fastened upon petitioner-defendants. I am of the view that instead of deliberating the issue in the present revision petition as to whether the licence would be revoked in 2010 or 2015 or whether a suit for mandatory injunction or possession would lie, I deem it appropriate to direct the trial Court to treat issue No.6 as preliminary issue.

Parties shall lead the evidence on the preliminary issue and, the

trial Court shall decide as to whether suit is for mandatory injunction or possession would lie or not.

With the aforementioned direction, revision petition stands disposed of.

03.11.2015

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**(AMIT RAWAL)
JUDGE**