

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5895 of 2015 (O/M)
Date of decision : 9.9.2015

Darshan Singh (deceased) through his legal heirs Revisionists

Versus

Kashmir Singh and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. D.S. Kahlon, Advocate, for the revisionists.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

Impugned in the present revision is the order dated 10.4.2015 (Annexure-P-5), passed by the learned Civil Judge (Junior Division), Baba Bakala Sahib, District Amritsar, vide which the application moved by the defendant No. 1/revisionist under Order 7 Rule 11 of Code of Civil Procedure, 1908 ('CPC') for rejection of the plaint of the plaintiff/respondent No. 1, was dismissed.

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The present revisionist though legal heirs has sought the rejection of the plaint under Order 7 Rule 11 of Code of Civil Procedure before the lower Court on the following grounds :-

- (i) There is no cause of action in favour of the plaintiff ;
- (ii) Ad valorem court fee has not been affixed ; and
- (iii) The suit of the plaintiff is time barred.

The question as to whether there is cause of action or not is to be decided after recording the evidence. In the given circumstances, when the revisionist/defendant does not claim to be party to the sale deed under challenge, the question whether ad valorem court fee is required to be affixed is also a question of fact to be decided after the trial. Similarly, whether the suit is time barred or not is also a question of fact since defendant is not a party to the sale deed under challenge. It being so, the suit cannot be summarily rejected merely on the plea of the revisionist/defendant. Therefore, there is no illegality or infirmity in the impugned order. However, the revisionist/defendant can always take the plea in written statement, which shall be disposed of on merits after recording the evidence. The present revision is accordingly dismissed.

(KULDIP SINGH)
JUDGE

9.9.2015
sjks