

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

CR-6367-2015

Date of decision-28.09.2015

**HIMMAT SINGH GREWAL
VS
SUSHIL KUMAR & ORS.**

...Petitioner

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Vivek Aggarwal, Advocate
for the petitioner.

RAJ MOHAN SINGH, J (Oral)

This is a revision petition filed by the plaintiffs against the order dated 03.09.2015 passed by Additional District Judge, Ludhiana, whereby clerical error crept in the judgment and decree of the trial Court was sought to be rectified by way of directing the trial Court to exercise powers under Section 152 CPC and to amend the judgment, so far as it relates to mistake occurred in issue No.6. Trial Court decided issue No.6 in para No.19 and 20 of the judgment which are also reproduced here as under:-

“Issue No.6:

19. Onus to prove this issue was put on the defendants. The plaintiffs have filed the present suit for possession of the property bearing Municipal No.B-XIX-386 to the extent of ½ share which comes to 169 sq.yards with building existing on it. The market value of the property in suit at the time of filing the suit in November, 1998 was not less than Rs. 35, 00, 000/-. The plaintiffs have also actually sought the relief of setting aside and cancellation of the sale deeds executed and registered in favour of defendant No.2 to 5 and thereafter in favour of defendant No.1. For that actual relief, the plaintiffs ought to had valued the suit for purposes of jurisdiction and court fee at advalorem. So, again for that relief court fee was required to be paid on the market value of the property in suit.

20. Thus, the suit is not properly valued for purposes of court fee and jurisdiction. A court fee of Rs. 19.50 only has been affixed to the plaint.

In spite of the objections taken by the defendants, the plaintiffs have failed to correct the valuation and pay the requisite court fee. This issue thus, liable to be decided against the defendants and in favour of the plaintiffs.”

While deciding issue No.6 in aforesaid para No 19, trial Court committed mistake by mentioning words defendants in place of plaintiffs. Once the trial Court was of the opinion that Court fee was required to be paid at the rate of market value of property in question, the issue was legally required to be decided against the plaintiffs in the event of non-affixing of the Court fee. By the impugned order, the aforesaid clerical omission has been ordered to be rectified by sending the case back to the trial Court. Since, the findings under issue No.6 have been recorded against the plaintiffs, therefore, Lower Appellate Court had directed the trial Court to provide one opportunity to the plaintiffs to make good the deficiency in Court fees. Even otherwise, such a direction is in consonance with the decree passed by the trial Court. Apparently, this direction cannot be read against the petitioner because in such an eventuality, the maintainability of the appeal before Lower Appellate Court was having a big question mark. This Court does not find any illegality or impropriety in the impugned order. The Appellate Court would still be in its jurisdiction to decide all the issues on merits in case compliance of the impugned order is done by the petitioner before the trial Court. Nothing expressed hereinabove would be construed to be an opinion on merits of the case. The Appellate Court is at liberty to decide issue No.6 on merits of the case.

With the aforesaid observation, this revision petition is dismissed.

September 28, 2015

vanita

(RAJ MOHAN SINGH)
JUDGE