

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.6448 of 2014.
Decided on:-6.5.2015.

Rakesh Kumar.

.....Petitioner.

Versus

Joginder Singh and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. Abhimanyu Singh, Advocate
for the petitioner.

None for respondent No.1.

Dr. Bharat Bhushan Parsoon, J.

This revision petition is directed against order dated 21.10.2013 (Annexure P-4) vide which the lower court instead of directing the respondent-plaintiff to comply with the earlier order of 22.5.2012 regarding payment of court fee, allowed deficiency in the court fee to be made good and application of the petitioner-defendant herein under Order VII Rule 11 CPC for dismissal of the plaint, was rejected.

2. The respondent-plaintiff had filed a suit for declaration with consequential relief of permanent injunction for declaring the sale deeds dated 31.1.2000 and 14.3.2003 respectively as illegal, null and void being result of fraud. Prayer has also been made for setting aside the mutations sanctioned pursuant to the said impugned sale deeds. Correction of entries in

the revenue record was also sought. Claiming that the requisite court fee had not been paid, the defendant in the suit, petitioner herein, in his application under Order VII Rule 11 CPC dated 19.7.2010 had sought rejection of the plaint. Order dated 22.5.2012 was made calling upon the respondent-plaintiff to pay the ad-valorem court fee. Thereafter, deficiency in the court fee was made good by the respondent-plaintiff.

3. The defendant, petitioner herein, claims that the court fee was to be paid within a stipulated time in terms of order dated 22.5.2012, whereas time for payment of the court fee, could not have been extended.

4. Arguments advanced by the counsel for the petitioner have been heard while going through the paper book.

5. Plea of the petitioner-defendant is simple and straight that deficiency in the court fee made good after stipulation of date fixed in order dated 22.5.2012 is of no consequence and the plaint accordingly was to be rejected.

6. It is clear from the record that two sale deeds, one for sale consideration of Rs.88,000/- and the other one for sale consideration of Rs.1,14,500/- are under challenge. The total court fee required to be furnished was Rs.13,425/-; the court fee filed earlier was found to be deficient. Deficiency in court fee was to be made good in 7 days. This order was complied with on 29.5.2012 when deficiency in the court fee was made good. To be on the safer side and treading the path cautiously, later, the respondent-plaintiff even paid some more court fee. On both the dates viz. 29.5.2012 and 26.7.2013, such deficiency in the court fee was accepted to be made good from the respondent by the concerned court without any objection from the defendant, petitioner herein. In these circumstances,

subsequent application of the petitioner-defendant for rejection of the plaint on the score of non-compliance of order dated 22.5.2012 regarding making good of deficiency in the court fee, was rejected.

7. So far as other grounds for rejection of the plaint such as resjudicata, limitation, concealment of facts etc. are concerned, the trial court was right in observing that these were mixed questions of law and facts and adjudication thereon could be made only after the parties lead their evidence.

8. Keeping in view the totality of facts and circumstances as discussed earlier, the application under Order VII Rule 11 CPC was rightly dismissed by the lower court and as such, there is nothing wrong with the impugned order.

9. Sequelly, affirming the impugned order, this petition, being devoid of any merit, is dismissed.

May 06, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes