

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

**CR No.1049 of 2015
Date of decision: 31.05.2016**

KishanPetitioner
Versus
Adesh Kumar & anotherRespondents

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CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ashok Tyagi, Advocate for the petitioner.

Respondents ex parte.

. . .

DARSHAN SINGH, J (ORAL)

The present revision petition has been preferred against the order dated 12.12.2014, vide which the application filed by the respondents under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (for short "CPC") has been allowed and the petitioner has been directed to affix the ad-valorem court fee.

2. Learned counsel for the petitioner contended that the petitioner/plaintiff has simply challenged the sale deed bearing vasika No.5785 dated 14.03.2012, executed by respondent No.1 in favour of his wife respondent No.2. He contended that the petitioner/plaintiff is non-exetutant of the sale deed and no relief of possession has been sought in the suit. So, he was not required to affix the ad-valorem court fee. He relied upon cases **Suhrid Singh @ Sardool Singh Vs. Randhir Singh, AIR (2010) SC 2807, Tarsem Singh & ors. Vs. Vinod Kumar & ors., 2014(1) ICC 1054** and **Krishan Vs. Adesh Kumar & anr. CR No.5855**

of 2013, decided on 29.09.2015.

3. I have duly considered the aforesaid contentions.

4. It is settled proposition of law that while deciding the application under Order 7 Rule 11 of the CPC, the Court is only required to take into consideration the contents of the plaint. While passing the impugned order, the learned trial Court has mentioned that the plaintiff has asserted that he is in possession of the suit property but there is no document on record to prima facie show his possession and pleadings have been drafted cleverly. At the time of deciding the application under Order 7 Rule 11 CPC, the Court is to take into consideration the plain contents mentioned in the plaint. The conclusions and inferences which require the reference to the evidence or the documents are totally unwarranted. Moreover, if the plaintiff will not be proved to be in possession on appreciation of the evidence, it is only he, who will suffer.

5. It is not disputed that the petitioner/plaintiff is not the executant of the sale deed dated 14.03.2012. It is also not disputed that in the plaint, the petitioner/plaintiff has not claimed the relief of possession rather he is alleging himself to be the owner in possession. So, he has simply sought a declaration to assail the validity of the sale deed dated 14.03.2012. As per the law laid down by the Hon'ble Apex Court in case **Suhrid Singh @ Sardool Singh Vs. Randhir Singh AIR (2010) SC 2807** and the Division Bench of this Court in case **Tarsem Singh & ors. Vs. Vinod Kumar & ors. 2014(1) ICC 1054**, the plaintiff/petitioner was not required to affix the ad valorem court fee. So, no fault can be found in the valuation

of the suit and the Court fee affixed by the petitioner/plaintiff.

6. In view of the above, the present revision petition is hereby allowed. The impugned order dated 12.12.2014 is set aside and the application moved by the respondents/defendants under Order 7 Rule 11 CPC stands dismissed.

31.05.2016
Vinay

[DARSHAN SINGH]
JUDGE