

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1237 of 2016

Date of Decision.18.02.2016

Davinder Singh and others

.....Petitioners

Vs.

Sukhwinder Singh and others

.....Respondents

Present: Mr. Sanjiv Gupta, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. The revision petition is against an order dismissing the application under Order 7 Rule 11 CPC taking an objection to the frame of the suit. The plaintiff has claimed that the defendant has brought the suit claiming that one Satpal has sold property in excess of his share and it cannot bind him. The defendant's contention is that the plaintiff has not set out anywhere in the plaint as to how he is the owner or how he is entitled to claim relief of setting aside. It is also the objection by the defendant that the ad valorem court fee has to be paid on the market value of the property. The Court has rejected the objections taken in the application and the defendant is the revision petitioner before this Court.

2. On the issue of maintainability of whether the plaintiff could obtain any relief for setting aside the sale without disclosing his own right to the property, it will be a matter which the Court will

consider on an adjudication at trial of what right the plaintiff claiming and it will be pre-judging the issue by knocking off the plaint at the threshold. Even an objection that the plaintiff would require to pay ad valorem court fee is not sound since the plaintiff himself is not party to the document and it does not require to be set aside. The relief of setting aside must be construed as euphemism as the transaction as not binding on the plaintiff to the extent to which he claims and that the vendor was not entitled to such a share which he has sold. If there is also any bar for reovery of possession there is no way that the defendant can compel the plaintiff to pay the ad valorem court fee on the basis of the valuation of the property.

3. The order impugned is maintained and the revision petition is dismissed.

(K. KANNAN)
JUDGE

February 18, 2016
Pankaj*