

110.

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

Civil Revision No.2211 of 2016

Date of decision:05.04.2016

Balbir Chand

... Petitioner

versus

M/s Kapila Agencies and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. D.S. Gurna, Advocate,
for the petitioner.

K.Kannan, J. (Oral)

1. In a suit for possession as owner by specific performance of agreement/allotment for Shop No.109-D and for mandatory injunction directing the 4th defendant who joined with defendants 1 to 3 to complete the title of the plaintiff and by executing the sale deed, the plaintiff has valued the contract at an amount of ₹1.75 lakhs and paid court fee thereon. There is also a prayer in the suit that the sale purported to have been made by defendants 1 to 3 in favour of 4th defendant was null and void and for the relief of possession and mesne profits. The objection taken by the defendants was that the recovery of possession is consequential to the relief of declaration that the defendants' sale was not valid and, therefore, separate court fee must be paid for

recovery of possession. The court below rejected this objection brought by the defendants through application under Order 7 Rule 11 CPC.

2. The learned counsel argues that there is no contract which is required to be specifically enforced and the plaintiff is making it appear as though there is a contract to be enforced when there existed none. There is no basis even for a valuation of the contract at ₹1.75 lakhs. The relief of recovery of possession from the defendants must be separately valued and while the court was referring to the judgment in **Suhrid Singh @ Sardool Singh Versus Randhir Singh-2010(2) CCC 510 (SC)**, it has failed to understand to its true import and has wrongly rejected the objection taken by the defendants.

3. The learned counsel for the petitioner reiterates the arguments which are rejected by the court below. The issue of court fee will be decided on the relevant claim in the plaint and the manner in which the suit is framed. If the plaintiff were to contend that there is a contract by the defendants 1 to 3 to transfer/allot the shop and would make a case that the value of the contract at ₹1.75 lakhs, the court will consider the issue of court fee from the point of view of how the suit has been framed. It can be no argument at the stage of consideration of court fee whether any contract has been filed in court. The plaintiff will succeed or fail by what he has

asserted and the ultimate result in suit cannot be presaged at the time of consideration of an objection regarding the valuation adopted by the plaintiff. If there is a prayer for specific performance, the relief of possession is consequential to the same and the valuation of the relief for specific performance will extend to include the prayer for recovery of possession as well. The argument that the relief of possession must be taken as consequential to the declaratory relief for applicability of Section 7(v) ought to be rejected for the declaration that a sale by defendants 1 to 3 in favour of 4th defendant is not valid would not require to be valued on the market value and the ad valorem court fee to be paid, for, the plaintiff himself was not a party to the document. Such a relief is quite competent to be valued notionally and a fixed court fee to be paid thereon under Section 7(iv) of the Court Fees Act. The determination of mesne profits and for possession are quite consistent with prayer for specific performance and if there is an adequate court fee paid thereon, I will not find any error in the order passed by the court below in rejecting the objection taken by the defendants.

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

(K.KANNAN)
JUDGE

05.04.2016
sanjeev