

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3156 of 2015 (O&M)

Date of decision: January 22, 2016

Rakesh Kumar

.....Petitioner

VS.

Mohinder Kaur and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE K.KANNAN

Present: Mr. Gagandeep Singh Sirphiki, Advocate
for the petitioner.

Mr. Prateek Gupta, Advocate
for respondent No.1.

Mr. Vipin Mahajan, Advocate
for respondent No.2.

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?**

K.KANNAN,J (Oral)

1. An amendment of the plaint was brought for additional prayer for mandatory injunction and additional pleas that the defendants have entered upon the property, erected a wall and occupied additional portion. As subsequent event, they are bound to be brought on record if the plaintiff seeks for relief which he could not have anticipated at the time of filing of the suit.

2. The counsel for the respondents have objection that the plaintiff is making it appear as though he could maintain the relief on mandatory injunction

when he was actually asking for recovery of possession in the hands of the defendants. It is also contended that the plaintiff himself is not the owner, and, therefore recovery cannot be ordered.

3. Both the above contentions raised by the respondents are issues on merits which can be countered by means of adequate pleadings. The Court shall examine the issue of adequacy of the court fee when the plaintiff is only attempting to camouflage the relief of recovery of possession as mandatory injunction to evade court fee. The court will consider such an objection as a preliminary issue and put the matter for payment of court fee. If it takes a decision that appropriate court fee for recovery of possession for the value of the property which is alleged to have been entered into possession has not been paid, the court will give appropriate directions with all the consequences in the manner contemplated under Order 7 Rule 11(c) CPC.

4. The impugned order is set aside and the revision petition is allowed with the observations made above.

JANUARY 22, 2016

Rajeev

(K.KANNAN)
JUDGE