

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 3454 of 2016

Date of Decision: 17.05.2016

Gurnam Singh and Others

... Petitioner(s)

Versus

Dev Raj and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Mahavir Sandhu, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition under Article 227 of the Constitution of India for quashing of order dated 5.4.2016, passed by learned Civil Judge (Junior Division), Kurukshetra whereby application dated 18.5.2015, filed by defendants No. 6 to 8 for rejection of plaint under Order 7 Rule 11 CPC on account of non payment of ad valorem court fee by the plaintiff, was dismissed.

Learned counsel for the petitioners submitted that the respondent/plaintiff had infact sought relief of possession apart from seeking declaration that sale deeds No. 3268 dated 17.1.2013, No. 3938

dated 29.3.2013 and No. 68 dated 10.4.2013 are illegal, null and void. Learned counsel for the petitioner submitted that infact petitioner is seeking relief of possession as well and in case the party is seeking relief of possession along with relief of declaration for seeking annulment of any document, then ad valorem court fee is required to be affixed. In support of his arguments, reliance was placed upon judgment rendered by Hon'ble the Apex Court in ***Suhrid Singh alias Sardool Singh v. Randhir Singh and Others 2010(2) RCR (Civil 564.***

Having considered the submissions made by learned counsel for the petitioners; perusal of the record of the case and order passed by the Court below, this Court is of the considered view that the Court below has taken the correct view and the facts of the present case are distinguishable from the facts of the judgment rendered by Hon'ble the Apex Court in ***Suhrid Singh alias Sardool Singh's case (supra)***. In fact, plaintiff is not claiming possession of his share after partition of the suit land. It is settled proposition of law that valuation of the suit is to be seen from the view point of plaintiff and valuation is to be assessed on the basis of relief claimed by him. If in the present case, plaintiff has not claimed possession of the suit land after partition, this Court cannot read in between the lines that plaintiff is seeking hidden relief and has simplicitor filed suit for declaration. More so, it is also settled proposition of law that deficiency of court fee can be made good at any stage. If the trial Court comes to the conclusion at any stage till passing of the judgment that relief claimed was for possession

of the suit property as well and sufficient court fee has not been affixed, then the Court can certainly ask a party to make good the deficiency of court fee and even conditional judgment can be passed. At any rate, at this stage, the Court below has taken the correct view that by now the plaintiff has not claimed relief of possession and he has to affix the required court fee as he is seeking relief of declaration that sale deeds are null and void.

Consequently, present petition is without any merit and the same stands dismissed, *in limine*.

(Shekher Dhawan)
Judge

May 17, 2016

"DK"