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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4706-2016

Date of decision : 19.08.2016

Divya Yog Mandir

... Petitioner

Versus

Chandigarh Yog Sabha and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashish Aggarwal, Senior Advocate with
Mr. Govind Chauhan, Advocate
for the petitioner.

Mr. Anil Ghanghas, Advocate
for respondent No.1.

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?

AMIT RAWAL, J. (ORAL)

The petitioner-defendant is aggrieved of the impugned order dated 08.07.2016 (Annexure P-11), whereby the application for treating the issue No.4-A as preliminary has been dismissed.

Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Govind Chauhan, learned counsel appearing on behalf of the petitioner-defendant submits that the respondent No.1-plaintiff instituted a suit for possession claiming the following relief:-

“It is, therefore, respectfully prayed, that in the facts and circumstances narrated above a decree for possession may kindly be passed in favour of the plaintiff and against the

defendants directing the defendants to vacate and hand over the physical possession of Divya Yog Mandir, Shivalik Enclave, Manimajra to the plaintiff who is the absolute owner of the same, in the interest of justice.”.

He submits that an application under Order 7 Rule 11 CPC was moved by the petitioner-defendant and the same was allowed vide order dated 07.11.2015 (Annexure P-4), whereby the respondent No.1-plaintiff was called upon to make the deficiency of the Court fee till 01.12.2015.

The aforementioned order as per Mr. Ashish Aggarwal, was assailed in an appeal, but the same was dismissed and accordingly, the respondent No.1-plaintiff moved an application (Annexure P-6) by affixing the Court fee of ₹ 7,000/- and by requesting the Court to assess the market value of the land. The application was contested and it was stated that the Court fee on market value of the property had to be affixed instead of price mentioned in the allotment and this fact has been brought to the notice of the Court and he submits that the Court had rejected the prayer of treating the issue as preliminary.

Mr. Anil Ghanghas, learned counsel appearing on behalf of respondent No.1-plaintiff submits that Divya Yog Mandir, Shivalik Enclave, Manimajra was allotted land at a concessional rate with a rider of no further sale. The Court fee has been paid as per the price of the allotment and therefore, the petitioner-defendant cannot be called upon the plaintiff to pay the Court fee on market value of the property. No prejudice has been caused to the defendant as the matter of Court fee is between the plaintiff and the Court. The petitioner-defendant has no right to raise this objection as the ratio culled out by the Hon'ble Supreme Court in “*Sujir*”

Keshav Nayak V/s Sujit Ganesh Nayak” 1992 (1) RRR 172, would not be applicable as the issue in the aforementioned matter was with regard to the territorial/pecuniary jurisdiction of the Court. Since, the Court at Chandigarh did not have plenary jurisdiction and therefore, issue No.4-A viz-a-viz Court fee cannot be ordered to be as preliminary.

Learned counsel for the respondent No.1-plaintiff on instruction from his client submits that he is willing to pay the Court fee as and when the Court assesses the same, but not in the manner and mode as has been urged by the petitioner-defendant, thus, urges this Court upholding the order under challenge by dismissing the revision petition.

I have heard the learned counsel for the parties and appraised the paper book.

For the sake of brevity, issue No.4-A framed by the trial Court reads thus:-

“4-A What is the market value of the suit property for the purpose of Court fee is affixed on the plaint as per the Court Fee Act? OPP.

When the trial Court pointed out viz-a-viz treating of the issue as preliminary, the Court, in my view, has erroneously ordered the aforementioned issue to be tried as ordinary one instead of preliminary. The application (Annexure P-6) is at the instance of the respondent No.1-plaintiff, whereby they themselves called upon the trial Court to assess the market value of the property. It would be a matter of evidence whether the respondent No.1-plaintiff is required to pay Court fee at the market value or as per the allotment, but the fact remains that the issue No.-4-A has to be

treated as preliminary issue and accordingly, the impugned order dated 08.07.2016 (Annexure P-11) is hereby set aside. I direct the trial Court to decide the issue No.4-A as preliminary by affording two-two effective opportunities each as expeditiously as possible preferably within a period of three months from the receipt of the certified copy of the order and proceed further in accordance with law.

With the aforementioned observations, the revision petition stands disposed of.

19.08.2016
yogesh

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

Whether Reportable Yes/ No