

214.

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

Civil Revision No.4579 of 2014 (O&M)

Date of decision:13.01.2016

Dr. R.P. Jain @ Raghbir Parkash Jain

... Petitioner

versus

Kaushalya Devi and others

.... Respondents

II. Civil Revision No.7396 of 2014 (O&M)

Dr. R.P. Jain @ Raghbir Parkash Jain

... Petitioner

versus

Raman Mittal and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Kanwal Goyal, Advocate,
for Mr. Amarjit Markan, Advocate,
for the petitioner.

Mr. Ajay Pal Singh, Advocate,
for the respondents.

K.Kannan, J. (Oral)

CM No.549-CII of 2016 in Civil Revision No.4579 of 2014

Application is allowed, as prayed for. Annexure R1 is
taken on record.

Civil Revision No.4579 of 2014

1. The plaintiff, who was the appellant before the court

below after dismissal of his suit and a decree granted in favour of the defendant-cross claimant, is aggrieved that the appellate court has directed the court fee to be paid of what was voluntarily given by the defendant for the relief for the cross-claimant after the decree was passed. When the court fee was assessed by the trial court after the decree, no notice had been given and, therefore, the plaintiff had no chance to counter the valuation made by the defendant. He should have an opportunity to bring appropriate evidence or question the valuation as adopted by the defendant on the date of the cross-claim, namely, in 2009. Since the whole exercise has been done behind the back of the plaintiff, I am satisfied that the order cannot be sustained and the court cannot compel the plaintiff-appellant to pay the court fee for the valuation adopted by the defendant after the decree. The appellate court will allow the parties to let in evidence and give opportunity to cross-examine each other before a definite decision is taken. If the appellate court affirms the valuation already taken, the plaintiff-appellant will pay court fee for the value already assessed. If, on the other hand, the valuation determined by the appellate court is lower than of what was determined by the trial court after the judgment is delivered, it shall order refund of the amount paid in excess by the defendant and call upon the plaintiff to pay the court fee for the value which it adopts.

2. With these observations, the impugned order is set aside and the revision petition is disposed of.

II. Civil Revision No.4579 of 2014

3. The appellate court will decide the stay application pending before the court and will not use the fact that the issue of court fee has not been decided pursuant to the order passed by this court today. The stay application shall be decided within 2 weeks from the date of receipt of copy of the order, after allowing for both parties to make submission. The decree for possession will remain stayed till the order is passed.

4. The revision petition is disposed of as above.

(K.KANNAN)
JUDGE

13.01.2016
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