

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

CR No.4942 of 2014(O&M)

Date of decision:23.8.2016

Sheela Devi

....Petitioner

VERSUS

Suman and another

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Parminder Singh, Advocate for the petitioner.

Mr. J.P. Sharma, Advocate for respondents No.1 and 2.

REKHA MITTAL, J.

By invoking Article 227 of Constitution of India, the present petition lays challenge against order dated 03.07.2014 (Annexure P-5) whereby the petitioner has been directed to pay ad valorem Court fee on market value of the house in question.

Counsel for the petitioner would submit that as the petitioner has filed a suit for mandatory injunction with the averments that the respondents are in its possession being licensees, the petitioner is not liable to pay Court fee on market value of the suit property. It is further submitted that an application under Order 7 Rule 11 CPC with regard to rejection of the plaint on any of the grounds envisaged under Rule 11 has to be decided on the basis of averments made in the plaint and none else. In support of his contention, he has referred to judgment of this Court Harish Chand Vs. Somnath and others, 2013(1) RCR (Civil) 367.

Counsel for the respondents, on the contrary, has supported the impugned order with the submissions that as the respondents are in

possession of the suit property not as licensees but under an agreement of sale executed by Sh. Bala Ram in whose favour an agreement dated 14.12.2010 was executed by the petitioner qua the suit house, the petitioner is liable to pay Court fee on market value of the property, as has been held by the trial Court.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

There cannot be any quarrel with the settled position in law that an application for rejection of plaint is to be decided on the basis of averments raised in the plaint, therefore, any plea raised in the written statement is not amenable to be taken into consideration for disposal of the said plea. In the case at hand, the respondents are the close relatives of the petitioner being her brother and bhabhi. The petitioner has categorically pleaded that in the first week of August, 2009 the respondents approached her to give the house on licence for a period of one year in order to enable them to construct their own house. The petitioner with a view to help the defendants/respondents agreed to give the suit property on licence basis for a period of one year but the defendants failed to vacate the house after one year despite repeated requests. The petitioner has filed a suit for mandatory injunction directing the respondents to hand over vacant possession of the suit property. Keeping in view the averments made in the plaint, it is difficult to sustain the order passed by the trial Court directing the petitioner to pay Court fee on market value of the suit property. The plea raised by the petitioner is squarely covered by the judgment of this Court in Harish Chand's case (supra), in her favour. Counsel for the respondents has failed to cite any contrary law.

For the foregoing reasons, the petition is allowed and the impugned order dated 03.07.2014 is set aside. Nothing stated in this order would prejudice either of the parties at the time of final disposal of the suit on merits.

AUGUST 23, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no