

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5309 of 2012
Date of decision : April 11, 2016

Omaxe Chandigarh Extn. Pvt. Ltd.

..... Petitioner

Versus

Gurdarshan Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Munish Kumar Gupta, Advocate
for the petitioner.

Mr. Nakul Sharma, Advocate
for respondent No.1.

Mr. Rajbir Singh, 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?

Amit Rawal, J (oral).

The challenge in the present revision petition is to the impugned order dated 9.4.2012 whereby application under Order 7 Rule 11 CPC seeking rejection of the plaint on account of having not paid proper court fee in a suit seeking specific performance of the agreement to sell dated 22.9.2008 and as well as claim of declaration seeking setting aside the sale deed dated 22.7.2011 executed by defendant No.1 in favour of defendant No.2, has been dismissed.

Learned counsel appearing on behalf of the petitioner submits that the sale deed aforementioned was for a sum

of ₹1,80,18,323/- and therefore the respondents-plaintiffs are required to pay the court fee on the total sale consideration.

In support of the aforementioned arguments he has relied upon the judgment of Division Bench of this Court in CR No. 4753 of 2005 titled as **Tarsem Singh and others Vs. Vinod Kumar and others** wherein the controversy involved between the parties was identical, thus prays that the impugned order is not sustainable in the eyes of law.

Learned counsel appearing on behalf of the respondents submits that specific performance is being claimed on the basis of agreement to sell dated 22.9.2008 and the court fee has been paid on a sum of ₹81 lacs. Moreover the respondents-plaintiffs are not party to the sale deed and thus are not liable to pay court fee on the total sale consideration in view of the judgment rendered by Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010 AIR (SC) 2807.**

I have heard learned counsel for the parties, appraised the paper book and am in agreement with the contentions of learned counsel for the respondents, for the reason that the ratio decidendi culled out by the Division Bench of this Court is in a suit for declaration whereas in this case the claim is for specific performance of agreement to sell wherein court fee on for ₹81 lacs has already affixed. The consequential relief of challenging the sale deed during the currency of the agreement to sell is on account of an act done by the vendor in favour of subsequent vendee to which respondents-plaintiffs are not party. Moreover for adjudication of application under

Order 7 Rule 11 CPC averments in plaint are to be seen , thus, no ground for interference in the order is made out whereby application under Order 7 Rule 11 CPC has been dismissed.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction. The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

April 11 , 2016
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