

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 661 of 2016

Date of Decision: 01.02.2016

Smt. Saraswati and Another

... Petitioner(s)

Versus

Vikas Dhuper and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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

Present: Mr. P.R.Yadav, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 5.1.2016 passed by learned Civil Judge (Junior Division), Gurgaon, whereby application under Order 7 Rule 11 CPC, filed by the plaintiff for seeking rejection of the counter claim of the defendants for non-payment of appropriate Court fee was allowed and the defendants were directed to pay ad valorem Court fee on the market value of the suit property.

Learned counsel for the petitioners submitted that father of the petitioners was allotted residential plot by Government of Haryana free of cost under Indira Awas Yojna. Copy of the allotment certificate dated 25.6.1984 is Annexure P1 and jamabandi, showing father of the

petitioners as owner in possession, is Annexure P2. Father of the plaintiff died on 19.3.1993. Mutation of inheritance was sanctioned in favour of the present petitioners and proforma respondents. Mother of the petitioners also expired on 1.1.1994 and mutation of inheritance was sanctioned on 24.12.2011. Father of the petitioners was an illiterate person. On the basis of agreement of sale, the disputed plot was to be sold for a sum of ₹ 15,000/- to defendant No.1 on 9.9.1992. Subsequently, defendant No.1 alleged to have sold the said plot for ₹ 2,10,000/-. Petitioner had filed counter claim for seeking possession by way of mandatory injunction. Plaintiff moved an application under Order 7 Rule 11 CPC for direction to the petitioners to pay ad valorem Court fee on the market value of the land and the said application was allowed.

Learned counsel for the petitioners submitted that infact there is no value of the property in question and as such no ad valorem Court fee was required to be paid and the Court below fell in error while passing the order under challenge.

Having considered the submissions made by learned counsel for the petitioners, this Court is of the considered view that the Court below has rightly observed that ad valorem Court fee is required to be paid by the petitioners.

As per Order 7 Rule 6A(4) CPC, the counter claims are to be treated as plaint and are to be covered by the rules applicable to plaints. For that purpose, Court fee is required to be paid on ad valorem basis. For ready reference, Order 7 Rule 6A(4) CPC is reproduced

hereunder:

"6A. Counter-claim by defendant.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints."

The Court below has rightly taken a view that since relief of possession has been claimed, court fee is required to be paid in terms of Section 7(4) of the Court Fees Act, 1870 and in case the needful is done, counter claims are liable to be rejected. There is absolutely no illegality in the impugned order dated 5.1.2016 and present petition stands dismissed, *in limine*, being not maintainable.

**(Shekher Dhawan)
Judge**

February 1, 2016

"DK"