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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7821-2015

Date of Decision : January 18th, 2016

Narinder Kaur and another

.... Petitioners

Versus

Kulwant Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr.Harkaran Singh, Advocate,
for the petitioners.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for setting aside order dated 10.09.2015 [Annexure P/5] passed by Civil Judge [Junior Division], Moga, whereby application under Order VII Rule 11 CPC for rejection of the plaint was dismissed.

2. Relevant facts of the case for the purpose of decision of the present petition; Plaintiff - Kulwant Singh filed a suit for declaration to the effect that he is exclusive owner in possession of the suit land on the basis of Will dated 9.8.2006 executed by Dalip Singh [father of the plaintiff] in favour of the plaintiff and defendants have no right, title or interest in the suit land. The plaintiff also challenged the sale deeds executed by defendants No. 2 to 7 in favour of defendant No.1 as illegal, null and void

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and prayed for setting aside the same.

3. During the pendency of the suit, an application under Order VII Rule 11 CPC was filed by the present petitioners taking the plea that the plaintiff has challenged the validity and genuineness of three sale deeds dated 14.3.2014 in favour of the present petitioners and he was required to pay the court fee on the market value of the suit property or at least on the sale consideration mentioned in the sale deeds, but he has not deposited the required court fee on ad valorem basis and prayed that the plaint be rejected. The plea taken by the petitioner was not accepted by the Court below while passing the order under challenge. Hence, this petition.

4. Learned counsel for the petitioners submitted that the Court below has not considered the factual position that to challenge the legality and validity of three sale deeds, the plaintiff was required to affix the required court fee on ad valorem basis, but as the same was not done, the plaint was liable to be rejected.

5. Having considered the submissions made by learned counsel for the petitioners, this Court is of the considered view that there are specific grounds for rejection of plaint as laid down in Order VII Rule 11 CPC and the same are extracted below :-

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred

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by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

6. Perusal of the above provisions reveals that if the relief claimed is undervalued and the Court had already passed the order to correct the valuation within a time frame and the party fails to do so, the plaint is liable to be rejected. Undisputedly, this is not the case in hand because by now, no Court has passed any such order that the claim is undervalued and the plaintiff was required to correct the valuation and to affix the Court fee accordingly. Another aspect is that such an order to make good the deficiency of the Court fee can be passed by the Court at any stage of the proceedings of the case and even at the time of final decision of the case because the Court may pass a conditional decree that suit of the plaintiff stands decreed subject to deposit of the Court fee within such and such period. Such a provision has been incorporated because in certain cases, this fact itself is in controversy whether ad valorem court fee is required to be paid or not.

7. The Court below has also recorded the finding while deciding the application that the plaintiff has not even claimed the relief of possession. The plaintiff has only sought the relief of consequential joint possession which is not the main relief. That way, the Court has rightly decided the application while passing the order under challenge. However, it is made

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clear that the above observations shall not be a bar for the Court below to record such a finding that Court fee shall be required to be paid by the plaintiff on ad valorem basis, if the Court below comes to that conclusion on the basis of some evidence at a later stage.

8. In view of the above, there are no grounds for setting aside the impugned order and the present revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

January 18th, 2016
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