

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

Civil Revision No.782 of 2016

Date of decision : 04.02.2016

Kuljeet Singh

.....Petitioner

Versus

Vikramjeet and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Gagandeep Rana, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 06.11.2015, passed by learned Additional Civil Judge (Senior Division), Pataudi, Distt. Gurgaon, vide which the application moved by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter called the 'CPC') for rejection of the plaint has been dismissed.

2. Plaintiff-respondent No.1 has filed the suit for seeking decree for partition of the suit property by metes and bounds.
3. The petitioner moved the application under Order 7 Rule

11 CPC alleging therein that the respondent-plaintiff has intentionally under-valued the suit and has not affixed the proper court fees on the plaint. He was bound to pay the ad valorem court fees on the value of the property. The plaintiff is not in possession of any portion of the property in question. Defendant No.1/petitioner is in exclusive possession of the suit property.

4. The said application was contested by plaintiff-respondent No.1 on the grounds inter alia that the suit has been properly valued for the purpose of court fees and jurisdiction. He is co-owner in possession of the suit property and has filed the suit for partition. So, there is no deficiency in the court fees.

5. The learned trial court dismissed the application filed by the petitioner. Hence, this revision petition.

6. I have heard Mr. Gagandeep Rana, Advocate, learned counsel for the petitioner and gone through the paper-book carefully.

7. Learned counsel for the petitioner contended that the plaintiff-respondent is out of possession. Petitioner-defendant No.1 is in exclusive possession of the suit property. Plaintiff in fact has no concern with the suit land. So, he was bound to affix the ad valorem court fees as per the value of the property as he is out of the possession of the suit property. Thus, he contended that the application filed by the petitioner has been wrongly dismissed by the learned trial court.

8. I have duly considered the aforesaid contentions.

9. It is the settled principle of law that in order to determine

the valuation of the suit the recitals/averments in the plaint are to be considered. The proposed defence of the defendant cannot be taken into consideration.

10. In the instant case, plaintiff-respondent No.1 has pleaded that he is co-owner in joint possession to the extent of one half share with the defendant in the residential house i.e. the disputed property, which was jointly purchased by them vide registered sale deed dated 20.05.1993 and 10.11.1993 respectively and after purchasing the plots the residential house was constructed thereupon by them jointly. So, as per the averments in the plaint the plaintiff-respondent No.1 has sought the partition of the suit property claiming himself to be the joint owner in possession to the extent of $\frac{1}{2}$ share. There is no dispute with the proposition of law that every co-sharer is deemed to be in possession of every inch of the joint land. So, it cannot be stated at this stage that plaintiff-respondent No.1 was out of possession. Thus, he was not required to affix the ad valorem court fees according to the value of the suit property. Thus, as per the averments in the plaint, there is no defect in the valuation of the suit for the purpose of court fees and jurisdiction.

11. Consequently, the impugned order passed by learned trial court, dismissing the application of the petitioner under Order 7 Rule 11 CPC does not suffer from any illegality.

12. Resultantly, the present revision petition being without any merits is hereby dismissed.

04.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**