

CR No.8126 of 2016

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

CR No.8126 of 2016

Date of decision:02.12.2016

Shree Mahavir Techno

... Petitioner

Vs.

Kehar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Shyam Singh Chhokar, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner-defendant is aggrieved of the impugned order dated 03.09.2016 (Annexure P-9), whereby, the Court below had disposed of the application dated 31.08.2016 filed under Order 7 Rule 11 CPC with the observation that the court fees paid in pursuance to the order dated 17.08.2016 shall be considered at the evidence stage.

Mr. Shyam Singh Chhokar, learned counsel for the petitioner-defendant submits that the respondent-plaintiff instituted the suit for declaration with consequential relief of permanent injunction by challenging the judgment and decree dated 18.08.1982, sale deed dated 17.06.1991 and mutation bearing No.2904. The trial Court on the application moved by the petitioner called upon the respondent-plaintiff to pay the court fees but the plaintiff paid less amount than the prescribed one and this fact has not been brought to the notice of the Court below and the same shall be seen at the later point of time.

He further submits that the impugned order is not sustainable

in the eyes of law, in view of the ratio decidendi culled out by the Hon'ble Karnataka High Court in **Damegunta Rajeshwaramma and another vs. Jayalakshmamma and others 2010 (4) RCR (Civil) 682** . The value of the property has to be seen on the date of filing of suit.

I have heard learned counsel for the petitioner-defendant and appraised the paper book and of the view that the finding given by the trial Court keeping the question open that the same shall be seen at the time of evidence stage is perfectly legal and justified. Once the respondent-plaintiff had paid the amount of court fees, therefore, the impugned order does not require any interference. In fact, it is a mixed question of fact and law. The petitioner shall be at liberty to lead evidence in this regard but not in the manner and mode as indicated above.

The contention of Mr. Chhokkar that D.C rate is higher than the market value. I am of the view that the evidence has to be brought and proved on record but not to be looked into as qua adjudication of the application filed under Order 7 Rule 11 CPC, the averments made in the plaint, have to be seen.

No ground is made out for interference in the impugned order.

Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

December 02, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No