

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 8514 of 2015

Date of decision : January 21, 2016

Bhagwan Dass

..... Petitioner

Versus

Bhanwar Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Harkesh Manuja, Advocate
for the petitioner.

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 petitioner is aggrieved of the order whereby an application filed under Order 7 Rule 11 CPC for calling upon the plaintiff to pay ad valorem court fee viz-a-viz claim of possession has been declined.

Learned counsel for the petitioner submits that once there is a categoric averment in the suit seeking possession of the property, ad valorem court fee as per value of the property is required to be paid. The trial court has committed illegality in declining the application by holding that affixation of court fee being a mixed question of fact and law shall be seen at the final stage, which is not sustainable as for seeking possession, ad valorem court fee is required to be paid.

He has drawn attention of this Court to suit for declaration Annexure P-1 to show that there is a specific prayer with regard to the possession being sought from defendant No.5.

I have heard learned counsel for the petitioner and appraised the paper book.

It would be apt to reproduce the head note of the suit as under:-

“Representative suit for declaration to the effect that the plaintiffs and Proforma defendant are owners of the plots no.1289, 1290, 1291 & 1330 situated at sector no.11-12 Part-II, HUDA Panipat as per their share mentioned in the sale deed bearing Vashika No.1309 dated 27.5.1982 S.R.Panipat and sale deed bearing Vashika No.1341 dated 7.6.1983 S.R.Panipat and as consequential relief for mandatory injunction directing the defendants no.1 to 4 to hand over the vacant, clear physical possession of all the four plots of two kanals each mentioned above to the plaintiffs and Proforma defendant, having no encumbrances thereon and further for permanent injunction restraining the defendant no.5 from alienating or creating any kind of charge illegally and forcibly in collusion with the defendants no.1 to 4 over the suit property and further restraining the defendant no.1 to 4 from granting re-allotment of the said plot in view of any illegal acts caused by the defendant no.5 Sh. B.D.Dawar designated himself as president of the Gandhi Karykarta Avash Sahkari Samiti, Gandhi Nagar Panipat in favour of strangers.”

On perusal of the above, it is seen that mandatory injunction has been sought against defendant Nos. 1 to 4 i.e. HUDA and not against the petitioner to hand over the possession. Basically, the prayer is not for possession but for re-allotment on the ground stated in the suit, which shall be subject matter of the decision of suit as to whether the plaintiffs are entitled or not. At this stage, plaintiffs cannot be called upon to pay ad valorem court fee in the absence of specific prayer. Even otherwise, the court fee has to be seen as per the averments made in the suit, which reveal that only prayer for mandatory injunction has been sought.

The trial court is at liberty to see at the final stage of the suit, whether the relief actually tantamounts to possession or not but not at this stage, much less even if the issue with regard to payment of court fee is made, that would be pressed into by the plaintiffs at the relevant stage.

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

January 21 , 2016
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