

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.8687 of 2016 (O&M)
Date of Decision: December 22, 2016

Jaideep & others

...Petitioners

Versus

Gurbhajan Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Arvind Singh, Advocate,
for the petitioners.

AMIT RAWAL, J. (Oral)

Petitioner-defendants are aggrieved of the dismissal of the application moved under Order 7 Rule 11 CPC for rejection of the plaint, as in view of the amendment caused in the plaint for converting the suit from permanent injunction to declaration with consequential relief of mandatory injunction by challenging the sale deed dated 10.10.2005, the respondent-plaintiff is required to pay the court fees.

Mr.Arvind Singh, learned counsel for the petitioner-defendants submits that in view of the amendment allowed, as noticed by this Court in the order dated 27.2.2016 (Annexure P-4), which was subject to rider of limitation, the court fees was required to be paid, thus, the trial Court has erroneously dismissed the application as there is construction raised, on the aforementioned property, much less in possession of the respondent-plaintiff and, therefore, there is gross illegality in the findings.

I have heard the learned counsel for the petitioner-defendants,

appraised the paper book and of the view that there is no force and merit in the submissions of Mr.Arvind Singh. For the sake of brevity, operative part of the order of this Court allowing the amendment in the suit reads thus:-

“In view of the above discussion, the instant revision is dismissed.

However, the defendants will be at liberty to show that relief (s) sought is/are barred by limitation and their vested rights cannot be defeated. It is also clarified that the amendment allowed by the trial Court shall be deemed to be allowed with a rider that amended relief should be deemed to have been claimed on the date of moving application for amendment of plaint. The amendment is permitted without prejudicing the rights of the petitioners and they will be at liberty to raise all the objections/pleas including limitation.”

Though the suit has been converted from permanent injunction to declaration with consequential relief of mandatory injunction challenging the sale deed, but the fact remains that the respondent-plaintiff is not signatory to the sale deed.

As regards the relief of mandatory injunction, it is yet to be proved who is in possession of the property. The question with regard to payment of court fees in a suit for mandatory injunction would be seen at the final stage and not at this state as it is a mixed question of law and fact and, thus, the plaint cannot be rejected on the ground of payment of court fees in a suit seeking mandatory injunction.

For the foregoing reasons, the order under challenge is perfectly legal and justified. No case for interference is made out.

Revision petition stands dismissed.

However, if the issue with regard to payment of court fees is not framed, the petitioner-defendants shall be at liberty to seek framing of

the issue by moving an appropriate application.

Revision petition stands dismissed.

December 22, 2016
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No