

**202 CM-6730-CII-2016 in
RA-CR-283-CII of 2015 in
CR-7305 of 2015**

Joginder Singh vs. Kulwant Singh and others

Present: Mr.B.S.Bhalla, Advocate,
for the applicant-petitioner.

CM No.6730-CII of 2016

In view of grounds taken by the applicant in the application, sale deeds Annexure A-2 and A-3 are taken on record.

Application is allowed subject to all just exceptions.

RA-CR No.283-CII of 2015

Applicant-petitioner seeks review of order dated 2.11.2015 passed by this Court on the ground that factum of plaintiff being executant of the sale deed escaped the notice of the Court while deciding the revision petition.

Learned counsel for the applicant-petitioner submitted that the aforesaid fact also escaped the notice of the learned trial Court at the time of deciding the application under Order 7 Rule 11 CPC. Learned counsel draws the attention of the Court to the written statement filed by the applicant-defendant, wherein as per preliminary objection No.6, it was mentioned that the plaintiff is liable to be estopped due to his own act and conduct as he himself has executed the sale deed in favour of answering defendant.

The aforesaid revision petition was dismissed by this Court by observing that the plaintiff is non executant of the sale deed and he has not claimed possession as substantive relief. On that premise, it was observed that only a fixed court fee was required to be affixed on the plaint. The trial Court also observed on these lines.

Learned counsel for the applicant-petitioner has placed on record the sale deeds, Annexure A-2 and A-3 (vide CM No.6730-CII of 2016), in order to show that the plaintiff was signatory and executant of the sale deed. Since the order dated 10.9.2015, passed by Civil Judge (Jr. Divn.) Moga, has been assailed in this revision petition, wherein entire stress was made on the fact that the plaintiff was not the executant of sale deed, nor claimed relief of possession as a substantial relief. At this stage, since notice of motion was not issued in the case, therefore it will remain a moot point whether plaintiff is the executant of sale deed or not. This question of fact is required to be debated at the relevant time. At this stage, without meaning anything on merits, I am of the view that the order passed by this Court is required to be recalled, leaving the parties to establish merits of the case.

In view of aforesaid, order dated 2.11.2015 passed by this Court is recalled. List the case as per roster.

April 29, 2016
anita

(RAJ MOHAN SINGH)
JUDGE

