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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No.1457 of 2016

Date of Decision : 26.09.2017

MANJIT KAUR

....PETITIONER

VERSUS

MANMINDER SINGH AND OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Deepak Aggarwal, Advocate for the petitioner.

Respondents ex parte.

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**RAMESHWAR SINGH MALIK, JUDGE (ORAL)**

The present civil revision petition under Article 227 of the Constitution of India, at the hands of plaintiffs, is directed against the order dated 11.02.2016, passed by the learned trial Court, whereby application moved by defendant No.5 under Order VII Rule 11 CPC was allowed, directing the plaintiffs-petitioner to pay *ad valorem* Court fee.

Notice of motion was issued and operation of the impugned order was stayed.

All the respondents have been proceeded against ex parte vide different orders passed by this Court.

Heard learned counsel for the petitioner.

A bare perusal of the heading of the suit (Annexure P-1) would show that it is a suit for separate possession by way of partition as the plaintiffs are claiming 1/4<sup>th</sup> share in the suit property which is a double

storey residential house. Once the plaintiffs are not claiming possession, as such, because they are claiming 1/4<sup>th</sup> share in the suit property and it is not a suit for possession but a suit for separate possession through partition, plaintiffs were not liable to pay *ad valorem* Court fee. However, since the learned trial Court misdirected itself, while passing the impugned order, it cannot be sustained.

As noticed hereinabove, since the plaintiffs are claiming only separate possession by way of partition to the extent of their share, being co-sharers in the suit property, it goes without saying that the plaintiffs would be treated to be in possession as per the law laid down by two Hon'ble Full Benches of this Court in '**Bharthu Ram versus Ram Sarup, 1981, P.L.J. 204** and '**Ram Chander versus Bhim Singh and others,**' 2008 (3) RCR (Civil) 685. Since, the learned trial Court could not appreciate true nature of the suit filed and status of the plaintiffs in the suit property before passing the impugned order, a serious prejudice has been caused to the plaintiff-petitioners and the impugned order cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 11.02.2016, passed by the learned trial Court is hereby set aside. The learned trial Court is directed to decide the suit at an early date, in accordance with law.

With the abovesaid observations made and directions issued, the instant revision petition stands allowed, however, with no order as to costs.

**( RAMESHWAR SINGH MALIK )**  
**JUDGE**

**September 26, 2017**  
rajneesh

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| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |