

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

Sr. No.116

CR No.2902 of 2017
DECIDED ON: April 26, 2017

SUNIL

..PETITIONER

VERSUS

AMARJIT KAUR AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Amit Jain, Advocate,
for the petitioner.

JASPAL SINGH, J. (ORAL)

Through the instant civil revision petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside the impugned order dated March 24, 2017 (Annexure P-5) passed by learned Civil Judge (Jr. Divn.) Gurgaon, whereby an application under Order VII Rule 11 (Annexure P-4) filed by the petitioner/defendant No.4 seeking rejection of plaint has been disposed of.

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2. Undoubtedly, the plaintiff/respondent No.1-Amarjeet Kaur filed a suit for possession with consequential relief of permanent injunction in respect of house bearing Plot No.92-93 measuring 400 Sq. yards situated in the Revenue Estate of Village Choma, Palam Vihar Extension, Dharam Colony, Gurgaon. In the said suit, petitioner/defendant No.1 was not arrayed as one of the parties though he claims himself to be the owner in possession on the basis of the sale deed to be executed by Ms. Kanta Ahlawat, General Power of Attorney holder of Ms. Amarjeet Kaur, who is the original owner. Thus, the petitioner-defendant No.4 was constrained to move an application under Order I Rule 10 CPC which was allowed vide order dated November 03, 2016. Thereafter, an application under Order VII Rule 11 CPC was moved by the petitioner-defendant No.4 for rejection of the plaint on the ground that the suit property is under valued and ad valorem court fee is required to be affixed for the plaint as per the market value of the property. But that application has not been decided accordingly, rather the same has been simply disposed of on the ground that an issue to the effect has already been framed “whether the suit property is not properly valued for the purpose of court fees and jurisdiction? OPD”. But that is not the function of law consequently an application for the review of the order is required to be moved and is to be decided by the court concerned on merits considering the rival submissions made by learned counsel for the parties as well as legal proposition applicable to its facts. Thus on this score alone, the impugned order dated March 24, 2017 is not sustainable in the eyes of law. Consequently, the same is set aside. The trial court is directed to hear the learned counsel for the parties, afresh on the application that can be moved by the petitioner/defendant No.4 under

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Order VII Rule 11 CPC and then to decide the said application on merits in accordance with law. Prior to the passing of the instant order, notice has not been issued to the respondents as it is likely to burden with them with the peculiar loss as well as wastage of time. However, if respondents are so aggrieved of this order, they may approach this Court.

April 26, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No