

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

CR No.3696 of 2015 (O&M)

Date of decision: 20.09.2017

Malkit Singh

...Petitioner

Versus

Sukhwinder Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. A.P. Kaushal, Advocate for the petitioner.

Mr. P.S. Punia, Advocate for the respondents.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 07.05.2015 passed by Civil Judge (Jr. Div.), Jagraon whereby application filed by the respondents under Order 7 Rule 11 of the Code of Civil Procedure has been allowed and the petitioner/plaintiff has been directed to pay ad valorem Court fee.

Perusal of the plaint (Annexure P-1) would make it apparent that the petitioner has filed a suit for declaration to the effect that he is co-owner in joint possession of land measuring 7 kanal 11 marla 2 sarsahi, detailed in head note of the plaint on the basis of natural succession to the estate of Surjit Singh son of Hari Singh, by setting aside the alleged will dated 06.08.2006 purported to be executed by Surjit Singh in favour of the defendants being illegal, void, forged, fabricated etc. The petitioner has

also prayed for grant of permanent injunction restraining the defendants from alienating the suit property or change its nature in any manner whatever. In the alternative, a prayer for joint possession of the suit property has been made on the basis of declaration sought by the petitioner.

The learned trial Court allowed the application by recording reasons culled out in concluding para of the order dated 07.05.2015.

Counsel for the respondents is not in a position to justify plea of the respondents/defendants or the order passed by the trial Court as to how the plaintiff/petitioner who is claiming himself to be co-owner and in joint possession of the suit property can be directed to pay ad valorem Court fee. It appears that the trial Court failed to make a distinction between claim for possession and that of joint possession and for that reason misdirected itself by asking the petitioner to pay ad valorem Court fee. In this view of the matter, I find merit in contention of the petitioner that the order impugned is erroneous and liable to be set aside.

For the foregoing reasons, the petition is allowed, impugned order is set aside and application filed by the respondents/defendants under Order 7 Rule 11 CPC is dismissed.

20.09.2017

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No