

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

-.-

Civil Revision 3608 of 2017
Date of decision: 02.08.2017

Ramnish Kumar

..... *Petitioner*

Versus

Mohinder Singh and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Parvinder Singh, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 28.02.2017 passed by the Additional Civil Judge (Senior Division) SBS Nagar whereby application filed by the petitioner for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure (in short, CPC) has been dismissed.

Counsel for the petitioner has submitted that Mohinder Singh and others have filed a suit for permanent injunction restraining the defendants including the petitioner from claiming any right concerning land measuring 53K 10M out of land measuring 152 K 06M, detailed in head note of the plaint on the basis of agreement dated 22.03.2012. It is argued with vehemence that though the suit has been framed as simplicitor for permanent injunction but in substance, the respondents/plaintiffs are seeking cancellation of the aforesaid agreement to sell, therefore, they are liable to pay ad valorem Court fee. For this purpose, counsel has pointed

out pleadings in the concluding lines of para 4 of the plaint wherein the plaintiffs have made a reference to issuance of legal notice dated 02.12.2014 as well as gist thereof. In support of his contention, he has referred to judgments of this Court *N N Estate Private Limited v. Surinder Goyal, 2012 (5) R.C.R. (Civil) 591, Zora Singh and others v. Kehar Singh and others, 1981 RLR 491, Ranjit Singh v. Balkar Singh, 2001 (1) R.C.R. (Civil) 573, Ram Chander v. Rattan Lal, 2002 (2) R.C.R. (Civil) 157 and Man Singh and another v. Sumer Singh and others, 2009(1) R.C.R. (Civil) 125*. Further reference has been made to a judgment of the Allahabad High Court *Ashok Kundalia and another v. Dr. Nanak Chand Khanduja and another, 2012 (45) R.C.R.(Civil) 661*.

I have heard counsel for the petitioner, perused the grounds of revision, averments raised in the plaint and the judgments cited at bar but unable to accept plea of the petitioner.

Perusal of the plaint would reveal that the respondents/plaintiffs have rather admitted execution of the agreement, extension of time for performance of the agreement with a plea that at the time of last extension, a note was appended that no further extension shall be allowed beyond 30.11.2014. In para 4 of the plaint, there is reference to legal notice dated 26.11.2014 whereby the plaintiffs allegedly called upon the defendants to make payment of balance sale consideration and get sale deed of the remaining land executed on or before 30.11.2014 failing which amount of earnest money shall be forfeited. In para 5, it is averred that as the defendants failed to perform their part of the agreement, earnest money stands forfeited and the agreement stands rescinded. A prayer was made by the respondents/plaintiffs that the petitioner/defendant should be restrained

from claiming any right concerning the suit property except in due course of law. It is difficult to accept that the respondents/plaintiffs by filing the suit has sought the agreement to be declared as illegal, null, void and not enforceable. In this view of the matter, ratio of the judgments relied upon by counsel is not attracted in the given circumstances, requiring a direction to be issued to the respondents/plaintiffs to affix ad valorem Court fee. Asking the respondents/plaintiffs to pay ad valorem Court fee and relief claimed in the suit being otherwise not tenable are altogether two different things and the petitioner would be at liberty to raise all available pleas before the trial Court.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*.

(Rekha Mittal)
Judge

02.08.2017
mohan bimbira

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