

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4083 of 2015 (O&M)

Date of decision: 02.08.2017

Meer Singh and others

... Petitioners

Vs.

Shamsher Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rakesh Nehra, Advocate
for the petitioners.

Mr. S.P. Chahar, Advocate
for respondents No.5 to 11.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the order dated 08.04.2015 passed by the learned trial Court, whereby application under Order 7 Rule 11 of the Code of Civil Procedure moved by the defendants was allowed, plaintiffs have approached this Court by way of present civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued and operation of the impugned order was stayed, directing the learned trial Court to proceed further with the suit.

Learned counsel for the petitioners submits that there was an earlier decree passed by the learned Court of competent jurisdiction in favour of the petitioners-plaintiffs. In spite of the said decree dated 14.11.1990 passed by the learned Civil Court in Civil Suit No.429/1, defendants forcibly dispossessed the plaintiffs, which became the compulsive necessity of the plaintiffs-petitioners to file the present suit for possession on the basis of title. He further submits that in

such a situation, since the petitioners were not claiming any declaration, as they were already owners of the suit property, they were not liable to pay the ad valorem Court fee.

Having heard the learned counsel for the petitioners, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the learned trial Court misdirected itself, while passing the impugned order and the same cannot be sustained. It is so said because provisions of Section 7(v) of the Court Fees Act, 1870 would not be attracted to the facts of the case in hand. The view that has been taken by this Court also finds support from the judgment of this Court in **Ravinder Kumar Vs. Narinder Kumar and others, 2007 (2) RCR (Civil) 1.**

Since the learned trial Court failed to appreciate the abovesaid undisputed fact situation obtaining on record of the present case, a serious prejudice came to be caused to the plaintiffs-petitioners, directing them to pay the ad valorem Court fee, for which they were not liable. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial Court acted without jurisdiction, while passing the impugned order and the same 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 passed by the learned trial Court has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 08.04.2015 passed by the learned trial Court is hereby set aside.

Resultantly, with the abovesaid observations made, present revision petition stands allowed, however, with no order as to costs.

This revision petition was allowed vide order dated 19.07.2017. However, when it was brought to the notice of this Court that the order dated 06.05.2016 passed by this Court had not been complied with by the petitioners, by effecting service on respondent No.13, case was ordered to be listed for re-hearing.

Heard learned counsel for the parties.

Learned counsel for the petitioners, at the very outset, fairly states that so far as respondent No.13 is concerned, he gives up the claim of the petitioners qua respondent No.13. He further submits that let the present petition be dismissed as not pressed qua respondent No.13. Ordered accordingly.

Since the matter has been put up for re-hearing, learned counsel for respondents No.5 to 11, during the course of resumed hearing of the case, could not raise any substantive argument in support of the impugned order passed by the learned trial Court.

In view of the above, instant revision petition is disposed of.

[RAMESHWAR SINGH MALIK]
JUDGE

02.08.2017
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No