

Civil Revision No.5522 of 2016

[1]

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

Sr. No. 102

Civil Revision No. 5522 of 2016

Date of decision: April 26, 2017

Balbir Singh

.... Petitioner

Versus

Suresh Kumar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ajay Kumar Gupta, Advocate,
for the petitioner.

Mr. Saurabh, Advocate,
for respondent Nos.3 to 5.

JASPAL SINGH, J.

Challenge in the present revision petition is to the order dated July 08, 2016 (Annexure P-1) passed by learned Additional Civil Judge (Sr. Divn.) Shahabad, by virtue of which an application under Order VII Rule 11 CPC for rejection of the plaint, on the ground of deficiency in the court fee was disposed of with the directions to the petitioner/plaintiff to give valuation of the suit as per Section 7(v) of the Court Fees Act, 1870 (for short 'Act') as amended by Haryana.

2. The contention of learned counsel for the petitioner is that petitioner filed a suit for declaration with consequential relief of joint possession and permanent injunction, mainly on the plea that petitioner/plaintiff is owner in joint possession of the suit property on the basis of succession from his deceased father Sh. Phoola Ram son of Sh. Ram Bhaj and particularly that the entire land in the hands of his father was an ancestral property and it being so, his father could not have exercised right to execute the impugned 'Dast-bardarinama' dated January 16, 2001 in favour of one of his grandson i.e. son of defendant No.1 and as such, the said "Dast-bardarinama" dated January 16, 2001 being illegal, null and void, inoperative, against the law of succession, forged and fabricated is not binding upon his rights and all subsequent mutations sanctioned on the basis thereof as well as the subsequent sales made by respondent No.1/defendant No.1 in favour of defendant Nos.3, 4 & 5 are also illegal, null and void, inoperative and not binding upon his rights. During the pendency of the said suit, an application under Order VII Rule 11 CPC was filed by respondents/defendants for rejection of the plaint or giving direction the petitioner/plaintiff to affix ad valorem court fees which has been disposed of by the learned trial court vide impugned order dated July 08, 2016.

3. Here it would be pertinent to mention that an application moved under Order VII Rule 11 of CPC by the respondents/defendants has neither been dismissed nor accepted, rather the same has been disposed of. The operative part of the impugned order reads as under:

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“After hearing both the parties, it is observed that this is a suit for possession where the plaintiff seeks joint possession in the suit land. He has to, therefore, valued the suit for the purpose of Court fee under Section 7(v) of Court Fee Act, 1870 as amended by Haryana. The plaintiff is therefore, directed to give valuation of the suit as per Section 7 (v) of Court Fee Act, 1870, as amended by Haryana. Now to come up on 10.08.2016 for the same.”

4. A perusal of the aforesaid order transpires that the respondent-plaintiff is not liable to pay ad-valorem court fee rather the petitioner is required to pay court fee under Section 7(v) of Court Fee Court, 1870.

5. An identical question came up for hearing before this court in CR No.4265 of 2005 decided on December 15, 2006 in case “*Dr. Ashok Kuamr Goyal vs. Arya Mittar and others*’ and after discussing the various judgments applicable in the facts and circumstances of the case, the direction was issued to the trial court to quantify the court fee payable under Section 7(v)(a) of the Act. In the case in hand also, the same direction has been given by the trial court while disposing of the matter. Thus, this court does not find any illegality or infirmity in the impugned order, rather the impugned order is absolutely in consonance with the legal proposition applicable to the facts and circumstances in the instant case.

6. Dismissed.

April 26, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

**Whether Speaking/Reasoned
Whether Reportable**

**Yes/No
Yes/No**