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

**C.R. No. 5628 of 2017
Decided on: 01.09.2017**

Guddi and otherspetitioners

versus

Lalita and anotherRespondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Amarjit Markan, Advocate,
for the petitioners.

Rajbir Sehrawat, J.(Oral)

This revision petition filed by defendants No. 2 to 9 who claimed to be purchaser of the property, the sale regarding which was challenged in the suit.

The plaintiff/respondent herein had filed a suit claiming certain rights in the suit property; being legally wedded wife of defendant No. 1. It was pleaded in the plaint that defendant No. 1- husband of the plaintiff had sold this property just to defeat the rights of the plaintiff qua her interest in the property.

In the suit, the present petitioners filed an application under Order 7 Rule 11 of Code of Civil Procedure for the rejection of the plaint. However, vide impugned order, the Trial Court dismissed the application on the ground that cause of action was disclosed from the reading of the plaint since the plaintiff has claimed certain rights qua the suit property. The Trial Court has dismissed the application by saying that although the extent of rights of the wife is yet to be

determined, which shall be done after evidence led by the parties, but she has definitely raised the claim qua the suit property. On the point of the court fees, the Trial Court has observed that without determining the extent rights of the plaintiff; the plaintiff cannot be compelled to affix *ad valorem* court fees.

As is clear, the issue of the court fees has been kept open by the Trial Court. There is absolutely no illegality in the order passed by the learned Trial Court. In an application of Order 7 Rule 11, what is required to be seen is, only the plaint and the averments contained therein. The plaint can be rejected only if a bare reading of the plaint does not disclose a cause of action. If the plaint does disclose a cause of action then the defence of the defendant or the possibility of absence of evidence with the plaintiff cannot be made a ground for rejection of the plaint under Order 7 Rule 11. It is not even the claim of the petitioner that the suit was barred by any other law. Therefore, the claim was not liable to be rejected being barred by any other law through any expressed provision.

So far as the question of insufficiency of the court fees is concerned; the Trial Court has observed that the question of court fees would be determined after assessing the extent of right of the plaintiff in the suit. There is no illegality on this count as well. The question of the court fees in this case would be a mixed question of law and facts and therefore, would be dependent upon the evidence led by the parties. In any case, the Court can ask the plaintiff to make the good court fees at any point of time. It is within the discretion of the Court to see when the court fees is to be obtained from the

plaintiff. It is pertinent to mention here that the Trial Court has not exempted the plaintiff from paying the court fee and this point has been kept open.

In view of the above situation, learned counsel for the petitioner submits that he be permitted to claim an issue qua the *ad valorem* court fees. It goes without saying that the defendant can claim issue on anyone of the facts in issue involved in the plaint/suit. Therefore, it is for the defendant to claim an issue over the payment of the *ad valorem* court fees but subject to the assessment of the Court.

Learned counsel for the petitioner submits that the issues have already been framed in the case vide order dated 04.05.2017. Therefore, an application has been filed for claiming an additional issue for *ad valorem* court fees. Needless to say that the Court would consider whether it is a fact in issue or not and decide accordingly.

Keeping in view the above situation, the present revision petition is dismissed being devoid of any merits.

1st September, 2017

shabha

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	Yes