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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.6107 of 2016
Date of Decision: 14.09.2017

SATYA PARKASH MITTALPetitioner
Vs
DEVI RAM AND ORS.Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kul Bhushan Sharma, Advocate
for the petitioner.

Mr. Adarsh Jain, Advocate
for respondent Nos.30 and 31.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has challenged the order dated 31.08.2016 passed by the Civil Judge (Sr. Divn.) Faridabad vide which application under Order 7 Rule 11 CPC for rejection of the plaint on the ground of deficiency of the court fee was allowed.

[2]. Learned counsel for the petitioner by relying upon **Rajiv Kumar and Ors. vs. Rakesh Kumar and Ors., 2015(8) R.C.R. (Civil) 588** contended that in a suit for partition and possession of joint property, no such court fee is required to be paid, even if the plaintiff is not in possession of any part of it. The concept of co-sharership is fully attracted to the facts of the present case. The plaintiff cannot be called upon to pay the *ad valorem court*

fee viz-a-viz. challenging the sale deed as the plaintiff is not the signatory of the sale deeds.

[3]. The aforesaid proposition could not be disputed by learned counsel for the respondent Nos.30 and 31 by means of any precedent.

[4]. I have heard learned counsel for the parties.

[5]. It is a settled principle of law that in case of co-sharership, every co-sharer would be deemed to be in possession of every inch of land till the land is partitioned by metes and bounds. Plaintiff is non-executant of the sale deed in joint possession being co-sharer. The case of the plaintiff falls under principle No.2 laid down in **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors., 2010(2) R.C.R. (Civil) 564** i.e. a non-executant in possession of the land is only required to pay fixed court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Court Fees Act.

[6]. In view of aforesaid, the impugned order dated 31.08.2016 is set aside and this petition is accordingly allowed.

September 14, 2017

Atik

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No