

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.6257 of 2016 (O&M)
Date of Decision:28.8.2017**

Shiv Darshan Lal

...Petitioner

Versus

Sukhjinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Varun Mittal, Advocate for
Mr.Vikas Mohan Gupta, Advocate for the petitioner.
None for the respondents.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant civil revision petition, filed under Article 227 of the Constitution of India, at the hands of plaintiff, is directed against the order dated 9.8.2016 (Annexure P-1) passed by the learned trial court, whereby application moved by the defendants under Order 7 Rule 11 of the Code of Civil Procedure was allowed and the plaintiff was directed to pay ad valorem court fee in a suit for actual possession after partition by metes and bounds, on the basis of title and in the alternative the suit for redemption of accounts and also a suit for permanent injunction.

Notice of motion was issued to respondents No.1 and 2 only and in the meantime, further proceedings before the learned trial court were stayed.

As per office report dated 31.3.2017, service was complete.

However, nobody came present to oppose the present revision petition.

Heard learned counsel for the petitioner.

A bare perusal of the impugned order would show that the law laid down by the Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 AIR (SC) 2807** as well as this Court in **Bharpoor Singh Vs. Lachhman Singh, 2017(1) Law Herald 609** has not been followed by the learned trial court, while passing the impugned order. The ownership of the petitioner-plaintiff was not in dispute. Once the ownership as well as the possession of the plaintiff was not being denied by the defendants and the relief claimed by the plaintiff was only for separate possession by way of partition by metes and bounds, he was not liable to pay ad valorem court fee.

Similarly, if alternative relief was to be granted to the plaintiff on account of redemption of accounts, nobody including the defendants and the learned trial court was in a position to point out the exact amount at this stage of the suit on which the plaintiff might be directed to pay the ad valorem court fee. It is so said because the learned trial court is yet to determine the exact amount and that will be possible only after appreciation of documentary as well as oral evidence, which is yet to be led by the parties. Having said that, this Court feels no hesitation to conclude that the learned trial court misdirected itself, while passing the impugned order and the same cannot be sustained.

Since the law laid down by the Hon'ble Supreme Court in **Suhrid Singh's** case (supra) as well as by this Court in **Bharpoor Singh's** case (supra) has not been referred and followed by the learned trial court,

before passing the impugned order, the same has resulted in miscarriage of justice. In fact, under the peculiar fact situation obtaining in the present case, application on behalf of the defendants under Order 7 Rule 11 CPC was not maintainable. However, since the learned trial court could not appreciate the above-said factual as well as legal aspect of the matter, while passing the impugned order, it cannot be sustained for this reason also.

None has come present on behalf of contesting respondents No.1 and 2 to oppose the present revision petition, despite service. As the impugned order has been found suffering from patent illegality, it cannot be sustained.

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 learned trial court failed to follow the law laid down by the Hon'ble Supreme Court as well as this Court in the cases referred to hereinabove and the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 9.8.2016 is hereby set aside. Application moved by the defendants under Order 7 Rule 11 CPC would stand dismissed. The learned trial court shall proceed further with the suit to decide the same as early as possible.

Resultantly, with the above-said observations made, the civil revision petition stands allowed, however, with no order as to costs.

28.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No