

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 6238 of 2017 (O&M)

Date of Decision: 25.9.2017

Hajra and others

.....Petitioners

Versus

Yakoob and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Saleem Ahmed, Advocate
for the petitioners.

AVNEESH JHINGAN, J.

The present revision petition is at the instance of the plaintiffs challenging the impugned order dated 4.11.2016 passed by Civil Judge, (Junior Division), Mewat. Vide said order, an application under Order 7 Rule 11 (d) of the Code of Civil Procedure, 1908 (for short 'CPC') was decided holding that the plaintiffs have to pay ad-volens Court fee on the market value of the suit property.

Learned counsel for the petitioners challenged the said order on the ground that though the suit was filed for possession and mandatory injunction but infact it was a suit under the Specific Relief Act, 1963 (for short 'the Act') and therefore, no ad-volens court fee had to be paid.

Learned counsel for the petitioners relied upon Section 6 (2) of the Act, to state that since the suit has been filed within six months of the date of dispossession, therefore, the suit is under Section 6 of the Act.

The brief facts are that as per the petitioner, the plaintiffs are relatives and they jointly owned the suit property on which they

constructed a boundary wall in the year 2014. It is alleged that the defendants raised construction in the middle of the land on which they had no right, title or interest to retain possession. The petitioners filed a suit with the following prayer clause:

"It is therefore prayed that a decree for possession in respect of the portion marked by letter ABCD may kindly be passed in favour of the plaintiffs and against the defendants with a Mandatory injunction directing the defendants to remove the construction from the suit property on their own expenses. And further prayed that a decree for permanent injunction to restraining the defendants to make further encroachment over the marked by letters ABCD shown in site plan in any manner may kindly be passed in favour of the plaintiffs and against the defendants with costs."

On notice, an application was moved under Order 7 Rule 11 (d) CPC for direction to the plaintiffs to pay ad-voluerum Court fee. In the application it was stated that the suit land is being used for residential purpose. A reply was filed and the Civil Judge (Junior Division), allowed the application holding that the suit was for possession in respect of the portion marked by letters "ABCD" along with mandatory injunction, directing the defendants to remove the construction from the suit property. It was evident that the plaintiff is seeking possession over the suit property and it was nowhere mentioned that the suit filed is merely a summary suit under Section 6 of the Act.

The argument of learned counsel that since the suit has been filed within six months, therefore, same should be considered as suit under Section 6 of the Act, is bereft of merit. A perusal of Section 6 (2)

of the Act, shows that the said section fixes a limitation that no suit under this Section shall be brought after the expiry of six months from the date of possession. It cannot be read to mean that a suit which is filed within six months of the date of dispossession, shall be treated as suit under Section 6 of the Specific Relief Act.

From the perusal of the suit filed, it is evident that the main relief claimed is for possession of the land which is marked by letters “ABCD” in the site plan.

In such circumstance, no fault can be found with the impugned order.

Consequently, I do not find any illegality in the impugned order dated 4.11.2016 passed by the learned trial Court.

Thus, the revision petition, having no merit, is hereby dismissed.

25.09.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No