

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

CR No.6994 of 2017 (O&M)
Date of decision : 10.10.2017

Babban Zaidi

...Petitioner

Versus

Ilmas Murtaza and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ANIL KSHETARPAL, J. (ORAL)

The defendant-petitioner is in revision petition against the order dated 05.04.2017 passed by the learned Additional District Judge, Panchkula while accepting the appeal filed by the plaintiffs and dismissing the application filed by the defendant for direction to the plaintiffs to pay the ad valorem Court fee.

Learned trial Court while treating the suit to be for possession had directed the plaintiffs to pay ad valorem Court fees. Learned First Appellate Court has noticed that the suit is for passing a decree for mandatory injunction and as the ad valorem Court fee is not payable.

Defendant-petitioner has filed this revision petition.

Learned counsel for the petitioner has argued that the suit is for possession. This assertion is incorrect. The suit is for mandatory injunction.

The head note of the plaint is extracted as under:-

“Suit for a decree for mandatory injunction directing the defendants to deliver the vacant possession of House No.803, Sector 2, Panchkula built upto double storey measuring 10 marlas, and further for grant of decree of future mesne profit at the rate of Rs.25,000/- per month which otherwise also is the market rental of the similarly situated premises. Further for a decree of permanent injunction restraining the defendants from handing over the possession of the premises in question to any third party, suit is based on documentary as well as oral evidence under Order VII Rule 1 of the Code of Civil Procedure, 1908 as amended.”

A reading of the head note of the plaint would show that the suit is for mandatory injunction and not for possession. The decree for possession is not being sought for. Still further no appeal or revision is maintainable at the hands of the defendant against order dismissing application under Order 7 Rule 11 CPC for direction to plaintiff to pay Court fee. This was held by the Hon'ble Supreme Court in the judgment reported as *AIR 1961 SC 1299 titled as Sri Ratnavaramaraja vs Smt. Vimla*.

In view thereof, I do not find any good ground to interfere with the order passed by the learned Additional District Judge.

Revision petition is dismissed.

10.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**