

SAO No.11 of 2009 (O&M)

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

Sr. No.202

**SAO No.11 of 2009 (O&M)
DECIDED ON: April 17, 2017**

BALWINDER SINGH

..APPELLANT

VERSUS

HARBANS SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Hardip Singh, Advocate,
for the appellant.

Mr. Krishan K. Vohra, Advocate,
for respondent No.1.

JASPAL SINGH, J.

The instant appeal has been directed by Balwinder Singh-appellant-defendant No.1 against judgment dated March 24, 2009 passed by the learned Additional District Judge, Rupnagar, whereby the judgment and decree dated November 05, 2007 passed by the trial court has been set aside and the suit has been remanded back to the trial court to grant one more opportunity to the plaintiff to make the deficiency of the court fee good.

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2. Briefly stated the facts in the rise to the instant appeal are that respondent No.1-plaintiff filed a suit for declaration to the effect that sale deed dated February 13, 1986 alleged to have been executed by respondent No.1-plaintiff in favour of appellant-defendant No.1 and the sale deed dated May 28, 1997 further executed by appellant-defendant No.1 in favour of proforma defendants are illegal, null and void, inoperative and in the alternative suit for possession. The appellant-defendant No.1 resisted the suit and filed written statement inter alia raising objection that the suit is not properly valued for the purposes of court fee. As such, a specific issue no.8 was framed in this regard. During the pendency of the suit, issue No.8 with regard to the valuation was treated as preliminary issue and the trial court came to the conclusion that the plaintiff is required to affix ad valorem court fee on the valuation of the sale deeds under challenge vide order dated October 17, 2007. Accordingly, respondent No.1-plaintiff was directed to deposit the necessary court fee on or before November 03, 2007. The order dated October 17, 2007 was not challenged by the respondent No.1-plaintiff which attained finality. Instead of making the deficiency of the court fee good within the stipulated period, respondent No.1-plaintiff moved an application under Order XXXIII Rule 1 CPC for declaring him as an indigent person. However, the trial court while coming to the conclusion that despite specific direction given vide order dated October 17, 2007, respondent No.1-plaintiff has moved this frivolous application to circumvent or wriggle out the order of the court, rejected the plaint.

3. Aggrieved against the order dated November 05, 2007, respondent No.1-plaintiff preferred an appeal, which has been accepted vide

order dated March 24, 2009 passed by learned Additional District Judge, Rupnagar, whereby the trial court was directed to afford one just and fair opportunity to the respondent No.1-plaintiff to make the deficiency of the court fee good. In case, despite availing opportunity the respondent No.1-plaintiff failed to comply with the orders of the trial court in this regard, the trial court may proceed further with the matter as per law. Aggrieved against the remand of the order and direction to make the deficiency of the court fee good, appellant-defendant No.1 came up before this court with the instant appeal.

4. Assailing the impugned order, learned counsel for the appellant has contended that the lower appellate court has committed material illegality while entertaining the appeal of the respondent No.1-plaintiff without getting the court fee as ordered by the trial court vide order dated October 17, 2007 affixed on the Memorandum of appeal and without considering this aspect of the matter set aside the well reasoned judgment and decree passed by the learned trial court. The approach of the lower appellate court to entertain and decide the appeal with insufficient court fee vide impugned judgment is wrong and illegal and deserves to be set aside.

5. Moreover, there was no pleadings under Sections 148, 149 or 151 CPC before the lower appellate court or the trial court nor there was any prayer by the respondent-plaintiff with regard to the extension of time to affix the court fee, but the lower appellate court without pleadings of prayer has set aside the well reasoned and elaborated judgment & decree of the trial court dated November 05, 2007. Otherwise also, the sufficient opportunity was given by the learned trial court to the respondent No.1-

plaintiff to make up the deficiency of the court fee good in compliance of the order dated October 17, 2007. Since, respondent No.1-plaintiff did not avail the opportunity, the plaint was rightly rejected under order VII Rule 11 CPC. Learned lower appellate court has acted beyond jurisdiction while passing the impugned order dated November 05, 2007 and setting aside the judgment & decree of the lower appellate court dated October 17, 2007. Accordingly, learned counsel for the appellant has submitted that the impugned order dated March 24, 2009 is not sustainable in the eyes of law and is liable to be set aside by way of accept of the instant appeal.

6. This court has given a deep thought to the aforesaid submissions made by learned counsel for the appellant-defendant No.1, but does not find the same to be of any legal weight.

7. Undisputably, learned trial court arrived at a conclusion that the respondent No.1-plaintiff is required to affix ad valorem court fee on the valuation of the sale deed under challenge vide order dated October 17, 2007 and only a single opportunity was afforded to pay the ad valorem court fee on or before November 05, 2007 and on November 05, 2007 on account of non-payment of ad valorem court fee, the plaint was rejected. Grant of one opportunity to affix the ad valorem court fee cannot be said to be sufficient or ample opportunity especially in the circumstances that an application under Order XXXIII Rule 1 CPC was moved by the respondent No.1-plaintiff claiming himself as an indigent person. The trial court was under legal obligation to entertain and decide the application moved by the respondent No.1-plaintiff under Order XXXIII Rule 1 CPC. It should have been enquired into the matter to find out and determine whether the

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respondent No.1-plaintiff is an indigent person or in a position to pay the ad valorem court fee but instead of doing so, the plaint was out rightly rejected vide order dated November 05, 2007. It clearly reflects that order was passed without application of judicious mind and just on the ground that instead of making the payment of court fee in compliance of order dated October 17, 2007, an application has been filed by the respondent No.1-plaintiff claiming himself to be an indigent person. Learned lower appellate court has neither travelled beyond its jurisdiction nor committed any illegality or error, so as to cause interference by this court in the impugned order dated March 24, 2009. This court is of the considered view that setting aside of the judgment and remand of order with a direction to afford one just and fair opportunity was legally and factually unwarranted and it has been done rightly by the learned lower appellate court.

8. In the light of what has been discussed above, this court does not find any merit in the instant appeal. As such, the same is dismissed, whereby impugned order dated March 24, 2009 is upheld.

9. No order as to costs.

April 17, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No