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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1037 of 2016 (O/M)

Date of decision : 4.4.2018

Piyush

..... Petitioner

Versus

Asha Devi and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Akshay Jindal, Advocate, for petitioner.

None for respondent No. 1.

Respondent No. 2 already ex parte.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
- . - .-

KULDIP SINGH J. (ORAL)

Impugned in present revision is order dated 6.11.2015 (Annexure-P-4), passed by the learned Civil Judge (Junior Division), Panipat vide which an application filed by present petitioner-defendant for rejection of plaint under Order VII Rule 11 CPC, 1908, was dismissed.

Respondent No. 1 has not appeared despite service. Respondent No. 2 is already ex parte.

Heard.

It comes out that plaintiff Asha Devi has filed a suit for declaration that sale deed dated 25.3.2011 is illegal, null and void. It is claimed in the plaint that GPA was got executed from her through fraud and through said GPA, sale deed has been executed. The trial Court after considering the application took a view that in the present circumstances, it is a mixed question of fact and law and can only be decided after appreciating evidence led by parties.

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I am of the view that plaintiff claims fraud in execution of GPA on the basis of which sale deed was executed. It was only after recording the evidence that the trial Court will decide whether fraud was actually committed or not.

It being so, at the very outset, the Court cannot reject the plaint on the ground that proper Court fee was not affixed.

The learned counsel for petitioner relies upon the authority of Apex Court in *Suhrid Singh alias Sardool Singh Vesus Randhir Singh and others*, 2010 AIR (SC) 2807.

I am of the view that controversy is yet to be decided after recording evidence. Therefore, at this stage, no comments can be made on merits of the case. There is no illegality or infirmity in the impugned order. Consequently, revision is dismissed. The trial Court is directed to frame issue on Court fee and record finding on the same. Since main case has been dismissed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

4.4.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No