

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

**C.R. No.1766 of 2016 (O&M)
Date of Decision.20.12.2018**

Krishan Lal

...Petitioner

Vs

Suman Sharma and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Jammu, Advocate
for the petitioner.

Mr. N.D. Achint, Advocate
for the respondents.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order dated whereby the application moved by respondent No.1-plaintiff under Order 7 Rule 11 CPC in the counter-claim set up by defendant No.9, has been allowed and the petitioner-defendant No.9 has been directed to pay the ad valorem court fee as under the garb of mandatory injunction, possession of the suit property has been sought.

Mr. P.S. Jammu, learned counsel appearing on behalf of the petitioner submitted that the order under challenge is not sustainable, as it was a simpliciter counter-claim wherein petitioner-defendant No.9 had sought mandatory injunction. It was specifically pleaded that the petitioner purchased property vide registered sale deed dated 22.12.2010 from one Mukesh Kumar. In case the petitioner is ousted or not found in possession, relief of mandatory injunction to direct the plaintiff to hand over the possession was sought. A counter claim is an independent suit and required to be

adjudicated upon separately. The whole approach of the court below is erroneous and therefore, the impugned order is liable to be set aside.

Mr. N.D. Achint, learned counsel appearing on behalf of the respondents supported the impugned order by contending that the counter-claimant cannot get away from payment of the court fee by drafting the same in a vague and guarded manner. As per prayer clause, it is not a case of licensee and licensor. Relief of simplicitor possession has been sought, as there was no breach of obligation as per the provisions of Section 39 of the Specific Relief Act, which empowers the Court to issue mandatory injunction.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jammu. It would be apt to reproduce prayer clause of the suit and the counter claim, which are extracted herein below:-

“Prayer.

That the plaintiff, therefore, humbly prays that a decree for declaration to the effect that the plaintiff is owner in possession of the house in question fully detailed and described in para No.1 of the plaint above and the defendants have got no right, title and interest with the plot in question and that the sale deed bearing Vasika No.14456 dated 23.08.2010 is illegal, null and void and based upon forged and fraudulent document of GPA dated 23.07.2010 and the above said sale deeds dated

23.08.2010, 21.09.2010 and 22.12.2010 are liable to be set aside and are not binding upon the plaintiff with consequential relief of permanent injunction restraining the defendants from further selling and alienating the plot in question and from interfering in the peaceful possession of the plaintiff and from taking forcible possession of the house in question may kindly be passed in favour of the plaintiff and against the defendants with costs of this suit.”

Prayer (counter claim)

It is, therefore, prayed that in the interest of justice and under the cited circumstances a decree for mandatory injunction by way of counter claim may kindly be passed thereby directing the plaintiff or its musclemen to hand over the vacant and peaceful possession of the house in question to the answering defendant in case he is ousted or otherwise not found to be in possession of the house in question, in favour of the answering defendant/counter claimant and against the plaintiff with costs of the counter claim.”

On juxtaposition of the relief sought in the plaint as well as the counter-claim, it is not the case of petitioner-defendant No.9 that the relationship between the plaintiff and him was of a licensor and licensee. He alleged to have purchased the property by virtue of sale deed *ibid* and had been in possession and as a counter-claimant sought the possession, owing to the circumstances explained therein.

The order of the trial Court directing the petitioner-defendant No.9 to pay the court fee is in accordance with provisions of Section 7(v) of the Court Fees Act. The impugned order is upheld and the revision petition is dismissed.

(AMIT RAWAL)
JUDGE

December 20, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No

“It is, therefore, prayed that in the interest of justice and under the cited circumstances a decree for mandatory injunction by way of counter claim may kindly be passed thereby directing the plaintiff or its musclemen to hand over the vacant and peaceful possession of the house in question to the answering defendant in case he is ousted or otherwise not found to be in possession of the house in question, in favour of the answering defendant/counter claimant and against the plaintiff with costs of the counter claim.”