

Civil Revision No.1434 of 2018 (O&M)

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

Civil Revision No.1434 of 2018 (O&M)
Date of decision: 01.03.2018

Dr. Bhupinder Singh

.....Petitioner

versus

Paramjit Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Vaibhav Sehgal, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this revision under Article 227 of the Constitution of India petitioner-plaintiff has laid challenge to order dated 21.11.2017 (Annexure P-1) of the trial Court directing him to pay *ad valorem* court fee on the relief claimed in his suit, while accepting the application of respondent-defendants No.4 to 8 under Order 7 Rule 11 CPC.

Put pithily, petitioner-plaintiff claiming himself to be owner to the extent of 1/3rd share in the suit property on the basis of inheritance from his mother Braham Kaur @ Manjit Kaur, filed a suit for separate possession and permanent injunction and in the alternative for joint possession along with declaration that sale deed dated 25.10.2012 executed by his co-sharers in favour of respondent-defendant No.9, namely Paramjit Singh, third party, is illegal, void, without consideration and having no binding effect upon his legal rights, therefore, respondent-defendants be restrained from making any addition or alteration in the suit property or selling the same or any portion thereof till the partition by metes and bounds.

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Upon notice, respondent-defendants No.4 to 8 appeared and filed application under Order 7 Rule 11 CPC for rejection of plaint on the ground that since the petitioner-plaintiff has prayed for setting aside sale deed dated 25.10.2012 and also claimed separate possession of the property, therefore, he was required to pay *ad valorem* court fee, which he has not paid.

After hearing both the sides, trial Court vide impugned order directed the petitioner-plaintiff to pay *ad valorem* court fee.

Learned counsel for the petitioner relying upon the judgments in ***Surinder Singh v. Harvinder Singh and others***, 2018(1) Law Herald 47, ***Rajiv Kumar and another v. Rakesh Kumar and others***, 2015(4) Civil Court Cases 498, ***Baldev Kaur v. Hardeep Kaur and another***, 2015(4) Civil Court Cases 53, ***Lt. Col. Hargobind Singh (Retd.) v. Hargursharan Singh***, 2011(1) Civil Court Cases 155 and ***Vijay Kumar v. Harish Chand alias Hari Chand***, 1991(2) Recent Revenue Reports 494 *inter alia* contends the trial Court failed to appreciate that petitioner has challenged the sale deed in which he is not executant, besides claiming relief of separate possession in the suit property. The prayer for joint possession has been made in the alternative, therefore, he was not required to pay *ad valorem* court fee.

I have given considerable thought to the submission made by learned counsel for petitioner and find that the instant revision is completely devoid of any merit.

Perusal of the plaint shows that it has been cleverly drafted to evade payment of *ad valorem* court fee inasmuch as from its contents it is

evident that neither the petitioner-plaintiff nor any of the alleged co-sharer claimed by him is in possession of the suit property. Alleged co-sharers of

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the petitioner have already sold the suit property to a stranger, namely Paramjit Singh respondent No.9 and handed over the possession of the same to him. Thus, none of the co-sharers is in possession of the suit property. Therefore, suit of the plaintiff for separate possession or joint possession is against a stranger and not against his co-sharers.

That apart, petitioner has challenged the sale deed executed by his co-sharers in favour of third party i.e. respondent No.9. Therefore, taking the aid of decision of a Division Bench of this Court in ***Tarsem Singh and others v. Vinod Kumar and others***, 2011(31) R.C.R.(Civil) 709, the trial Court has rightly directed the petitioner to pay *ad valorem* court fee.

Facts and circumstances of the judgments, referred to above, relied upon by learned counsel for the petitioner are not identical to the facts of the present case, therefore, no benefit of the same can be given to the petitioner.

I have gone through the impugned order dated 21.11.2017 of the trial Court and find no illegality or perversity in the same. Hence, the petition is dismissed.

March 01, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.