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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1956-2017 (O&M)
Date of decision : 15.01.2018

Dharminder Singh

..... Petitioner

Versus

Jiwan Kumar and ors

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vivek Gupta, Advocate for petitioner.

Mr. Varun Jain, Advocate for
Mr. Rishab Jain, Advocate for respondents.

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)

Challenge in the present revision petition is against the order dated 21.1.2017 passed by the learned Civil Judge (Jr. Division), Sunam (Annexure P-1), vide which while deciding the application under Order 7 Rule 11 CPC regarding the rejection of plaint, on the ground of deficiency of Court fee, the issue was kept open and it is ordered that separate issues shall be framed and the plaintiff-respondent No. 1 is required to lead the evidence on the said issue.

Heard.

Learned counsel for the petitioner contends that in this case, plaintiff has challenged the sale deed executed by him on the ground of fraud and misrepresentation. Since, he was party to the suit, therefore, he is required to pay the ad valorem Court fee on the sale consideration.

Learned counsel for the petitioner has also relied upon authorities of this Court in *Ram Kaur vs. Sandeep and another, 2015(3) PLR 547* and *Tarsem Singh and others vs. Vinod Kumar and others, 2014(1) ICC 1054.*

I am of the view that the said authorities pertain to the case where the application for payment of Court fee has been finally decided. But in this case, in view of the pleadings the issue has been kept open.

Learned counsel for the petitioner has further argued that though in the order, it was stated that the issue regarding Court fee shall be framed but in fact no such issue has been framed.

In the circumstances, present revision petition is disposed of with a direction to the trial Court to frame specific issue regarding proper Court fee being affixed on the plaint, if not already framed. Both the parties shall be given an opportunity to lead evidence on the said issue. In order to ensure that if the petitioner having been required to pay the Court fee, does not escape the payment of Court fee, it is further directed that the judgment shall be first pronounced on the issue regarding payment of Court fee and if the trial Court finds that more Court fee is required to be paid, plaintiff shall be required to first pay the Court fee and thereafter, judgment on the main case would be pronounced.

Disposed of with aforesaid direction.

(KULDIP SINGH)
JUDGE

15.01.2018
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Whether speaking / reasoned
Whether Reportable:

Yes
No