

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

121

CR No.277 of 2018 (O&M)

Date of decision: 16.04.2018

Kuldeep Singh

..... Petitioner

Versus

Rama Bai (since deceased) through her LRs

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Gaurav Singla, Advocate
for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

Defendant-petitioner is in the revision petition against the order passed by the learned trial Court dismissing the application under Order 7 Rule 11, CPC seeking rejection of the plaint on the ground that the ad valorem Court fee has not been affixed.

Learned trial Court has found that the plaintiff is a non-executant of the sale deed and hence, the plaintiff was not required to seek cancellation of the sale deed. The Court has noticed that the suit filed by the plaintiff is for declaration that the sale deed is not binding on her rights. Hence, the application under Order 7 Rule 11, CPC was dismissed.

Learned counsel for the petitioner has vehemently argued that the prayer for possession has not been made to avoid payment of the Court fee. He submits that since the plaintiff is not in possession, therefore, her suit is liable to be dismissed as per Section 34 of the Specific Relief Act, 1963.

Once the relief of possession has not been sought, the plaintiff cannot be directed to pay ad valorem Court fee on the relief of possession which has not been prayed for. At the stage of decision on the application under Order 7 Rule 11, CPC , only the pleadings as contained in the plaint are to be examined.

Still further, defendant is in the revision petition against the order rejecting the application under Order 7 Rule 11, CPC on the ground that the proper Court fee has not been affixed. Such revision is not maintainable as per the judgment of the Hon'ble Supreme Court rendered in Sh. Rathnavarmaraja Vs. Smt. Vimla, AIR, 1961 SC, 1299.

In view of the aforesaid discussion, the revision petition is dismissed on merits as well as being not maintainable.

16.04.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No