

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

CR No.3476 of 2016
Date of decision : 03.05.2018

M/s Himanshu & Company

...Petitioner

Versus

Devinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anil Kumar Sharma, Advocate for the petitioner.

Mr. Varun Issar, Advocate for respondent Nos.1 to 4.

Mr. Maninder Singh, Advocate for respondent No.6.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-petitioner is in the revision petition against the order passed by the learned trial Court directing the plaintiff to affix the ad valorem court fee.

The plaintiff-petitioner filed a suit for declaration to the effect that the consent decree obtained by defendant Nos.1 to 4 & 5 vide judgment and decree dated 09.08.2010 is result of fraud and hence null and void. The plaintiff also prayed for consequential relief of permanent injunction. The prayer made in the suit is extracted as under:-

“It is, therefore, respectfully prayed that, a decree for declaration to the effect that the consent decree obtained by the defendant Nos.1 to 4 & 5 in case No.72/CS on 09.08.2010 by concealment of facts and by practicing fraud

is illegal, null and void and not binding on the right, title or interest of the plaintiff in industrial plot No.341, Phase-I, Panchkula which have accrued to him by virtue of agreement to sell dated 07.04.2008 executed by the defendant No.1 to 4 in his favour and for permanent injunction restraining the defendant No.7 for taking any action regarding execution of conveyance deed or transfer of the plot in favour of any other person, be passed in favour of the plaintiffs and against the defendants.

Any other order as the learned court deems fit under the facts and circumstances may also be granted.”

Learned trial Court directed the petitioner to affix the court fee on the ground that the plaintiff has challenged the consent decree involving immoveable property.

Learned counsel for the respondents has submitted that indirectly the plaintiff is wanting declaration that the agreement to sell in his favour is invalid. He submits that ad valorem court fee as directed is payable. He has further submitted that the plaintiff is not in possession and the possession has not been sought to avoid the payment of the court fee.

This Court has considered the arguments.

It is admitted fact that the plaintiff is not party to the aforesaid consent decree. A decree passed by the Civil Court is not a deed of transfer of the immoveable property

The arguments of the learned counsel for the respondents, in the considered opinion of this Court does not have any substance. At the stage of decision on the application under Order 7 Rule 11 CPC, only assertions made in the plaint are to be seen. On reading of the plaint and the

prayer made which has been extracted above, it is clear that the plaintiff has only filed a suit for declaration asserting that the Civil Court decree is result of fraud. In such suit, ad valorem court fee is not required to be affixed. This Court is not required to examine whether the plaintiff ought to have sought the relief of possession or not. This objection would be available to the respondents while filing the written statement and pray to the Court for framing the issue thereon.

In view of the aforesaid, the orders under challenge dated 06.05.2016 and 08.07.2015 are set aside.

Revision petition is allowed.

03.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No