

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

CR-4259-2015 (O&M)

Date of decision : 23.3.2018

Subhash Chander and another

..... Petitioners

Versus

Rakesh Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. S.C. Arora, Advocate for the petitioners.

Mr. Rajesh Narang, 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)

CM-442-CII-2017

For the reasons mentioned in the application, LR's of respondent No. 6 and 16 as mentioned in *para 2* of the application are ordered to be brought on record for the purpose of present petition. Amended memo of parties is taken on record. Registry is directed to tag the same at appropriate place.

CR-4259-2015

Impugned in the present revision petition is the order dated 20.5.2015 (Annexure P-1), passed by learned Additional Civil Judge (Senior Division), Fazilka, vide which an application filed by defendants-respondents under Order VII Rule 11 of the Code of Civil Procedure, 1908 was allowed and plaintiffs were directed to affix advalorem Court fee on the plaint.

It comes out that plaintiffs have filed a suit for declaration to the effect that Thakkar Dwara at Village Khippan Wali and The Piau Seth Ram Rattan at Village Ram Pura Teh. and District Fazilka are the owners of the suit land and are entitled to possession. Permanent injunction was also sought. In the suit, certain sale deeds were challenged. In an application filed by defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint, due to non payment of the requisite Court fee, the impugned order dated 20.5.2015 (Annexure P-1) was passed by learned Additional Civil Judge (Senior Division), Fazilka.

Learned trial Court had taken a view that plaintiffs are not executing the sale deeds. Plaintiffs have not only sought declaration but also sought possession thereof.

Learned counsel for respondents relies upon an authority passed by a Division Bench of this Court delivered in **Tarsem Singh and others versus Vinod Kumar and others, 2011 (31) RCR (Civil) 709,** wherein it was held that since the relief of possession is also claimed, advalorem Court fee is payable. A perusal of the authority **Tarsem Singh's case (supra)** shows that in the said case, co-parceners had challenged the sale deed and sought possession. It was found that he was not in possession and accordingly, he was directed to pay the advalorem Court fee as provided under Section 7 (iv) (c) of The Court Fees Act, 1870 (for short 'the Act').

In the present case, the situation is different. Plaintiffs are not seeking declaration and possession for themselves but for Thakkar Dwara at Village Khippan Wali and The Piau Seth Ram Rattan at Village Ram Pura

Teh. and District Fazilka, the possession is also sought for their benefit. Since, the plaintiffs are not seeking declaration as well as possession for themselves, therefore, the said authority Tarsem Singh's case (supra), was wrongly applied by the learned trial Court.

Consequently, present revision petition is allowed and the impugned order dated 20.5.2015 (Annexure P-1), passed by learned Additional Civil Judge (Senior Division), Fazilka is set aside. It is ordered that Court fee is to be paid as per Section 5 of the Act and not on the market value of the property.

Since the main petition is allowed, the miscellaneous application pending, if any, stands disposed of.

(KULDIP SINGH)
JUDGE

23.3.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No