

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

CR-4454-2017 (O&M)

Date of decision : 30.01.2018

Parveen Kumar

..... Petitioner

Versus

Inder Pal Singla

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Rakesh Gupta, Advocate for the petitioner.

None for respondent.

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)

None has put in appearance on behalf of respondent, despite service.

Heard, learned counsel for the petitioner.

Impugned in the present revision petition is the order dated 27.4.2017 (Annexure P-1), passed by learned Civil Judge (Junior Division), Patiala, vide which an application filed by the defendant-petitioner under Order 7 Rule 11 of the Code of Civil Procedure 1908 for rejection of the plaint, on the ground that it is not properly valued and proper Court fee was not affixed, was dismissed.

A perusal of the impugned order dated 27.4.2017 (Annexure P-1), shows that plaintiff has filed a suit for separate possession by way of

partition by metes and bounds. He also sought the declaration that he is entitled to mesne profits of the shop in dispute to the extent of 1/2 share in the suit property @ ₹ 20,000/- per month from 1.1.2013 to 9.12.2015 till the delivery of separate possession for use and occupation charges.

Defendant-petitioner, on appearance, took the objection that for the mesne profits claimed in the petition, the Court fee has to be affixed as per the claim made in the prayer clause for mesne profits. The said claim was rejected by the learned trial Court. Learned trial Court has taken the view that proper Court fee has been affixed.

I am of the view that plaintiff-respondent has claimed the Court fee for a particular period and also till the delivery of the possession. In the circumstances, it is deemed proper that learned trial Court should frame issue regarding the Court fee and record the findings on the same and before deciding the case, insist on the payment of additional Court fee, if found due from the plaintiff-respondent.

In view of the matter, impugned order dated 27.4.2017 (Annexure P-1), passed by learned Civil Judge (Junior Division), Patiala is set aside. Learned trial Court is directed to frame specific issues regarding Court fee and valuation and record the findings and thereafter, if some Court fee is found due, the same be recovered from the plaintiff before passing any final judgment.

Consequently, present revision petition is allowed with aforesaid observation.

(KULDIP SINGH)
JUDGE

30.01.2018

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Whether speaking / reasoned
Whether Reportable:

Yes
No