

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

**CR No.7108 of 2015**

M/s Intime Promoter Pvt. Ltd. & anr.

....Petitioners

Versus

Randhir Singh & ors.

....Respondents

**Date of Order: 08.3.2018**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Munish Gupta, Advocate for the petitioners.

Mr. Harish Bhardwaj, Advocate for respondent No. 1.

**AMIT RAWAL, J (ORAL)**

Defendants have preferred this petition against the order dated 22.9.2015 (Annexure P-4) passed by the Civil Judge, (Jr. Divn.), Sonapat whereby their application moved under Order 7 Rule 11 CPC for rejection of plaint for want of ad-valorem court fee has been dismissed.

Respondent No.1-Plaintiff filed a suit for declaration that power of attorney dated 17.5.2014 alleged to have been executed by the plaintiff in favour of respondent No. 4 and sale deeds Nos. 3415 and 3483 executed on the basis of the same are null and void; with further relief of permanent injunction restraining the defendants from alienating the suit land as also relief of possession of the suit land qua half share.

During the pendency of the suit, defendants filed an application under Order 7 Rule 11 CPC on the ground that the suit of the plaintiff was not properly valued for the purpose of Court fee and jurisdiction and in the absence of ad volerum Court fee, the plaint was liable to be rejected.

Respondent-plaintiff filed the reply to the application and

disputed the averments of the petitioners-defendants stating that the suit is properly valued for the purpose of Court fee.

After hearing both the sides, the trial Court dismissed the application vide the impugned order, hence the present petition.

Learned counsel for the petitioners submitted that the impugned order is not sustainable in the eyes of law as on the one hand the trial Court has observed that the Court fee is liable to be paid only in cases where consequential relief of possession is sought whereas on the other hand it rejected the present application. Reference was made to an order passed by this Court dated 26.10.2010 whereby the revision petition filed by the brother of the plaintiff challenging the impugned order of the trial Court qua payment of ad valorem Court fee has been dismissed.

On the other hand, learned counsel for the respondents has fully supported the impugned order.

It has been recorded by the trial Court that the plaintiff is non executant of impugned sale deeds as relief sought was declaration qua the sale deeds and the power of attorney in dispute besides seeking relief of possession to the extent of  $\frac{1}{2}$  share over the suit land along with consequential relief of possession to the extent of this share and therefore, was liable to pay the ad valorem Court fee as per Section 7 (iv) (c) of the Court Fees Act.

In my view, it is the duty of the court, where the suit is instituted, to ensure, at the time of institution of the suit, that proper court-fee has been paid according to the Court Fees Act. It is clear from the resume of the plaint, extracted above, that the suit filed is basically and substantially one for possession also and therefore, liable to pay the court

fee as per its provisions. Moreover, the averments in the plaint and the relief claimed essentially makes it so, therefore, advalorem court fees shall have to be paid by the plaintiff.

Accordingly, the present petition is allowed. The impugned order dated 22.9.2015 is set aside and one months' time is granted to the plaintiff to pay the ad valorem court fee, prescribed as per law.

**March 08, 2018**  
**manoj**

**^(AMIT RAWAL)**  
**JUDGE**

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