

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

**CR No.7665 of 2016 (O&M)
Date of decision : February 20, 2018**

Shri Balwinder Singh Malhi and another Petitioners

Versus

Rajinder Singh Bath Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Satnam Chauhan, Advocate for the petitioners.
Mr. Divanshu Jain, Advocate for the 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)

Impugned in the present revision petition is the order dated 01.10.2016 (Annexure P-6) passed by learned Civil Judge (Sr. Divn.), S.A.S. Nagar, Mohali, vide which the application of the petitioner filed under Order VII, Rule 11(b) CPC, 1908 for rejection of the plaint and under Section 151 CPC, 1908 for framing of issues, was dismissed.

It comes out that the plaintiff has filed a suit for mandatory injunction and for future mesne profits on the ground that the defendants-petitioners are licensees. The defendants-petitioners in the written statement had claimed adverse and hostile possession and claimed that they have become the owner thereof. The plea raised in the application is that the plaintiff-respondent was required to file a suit for possession and pay ad valorem court fee on the value of the property and that proper issues have not been framed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

I have gone through the issues framed by the trial Court.

In this case, since plaintiff-respondent claimed that defendants-petitioners are licensees and the defendants-petitioners claimed that they became owners by way of adverse possession, therefore, issue in this regard was framed. Regarding the court fee, a specific issue has been framed. The findings are required to be recorded on the said issues and only thereafter, the Court can find as to whether the proper court fee is required to be paid or not and whether the claim of the plaintiff-respondent is required to be accepted or the claim of the defendants-petitioners is required to be accepted? The plaintiff-respondent is required to lead evidence after the defendants-petitioners prove their case that they have become owners by adverse possession. There is nothing wrong in framing of the issue as framed by the trial court. Regarding the payment of ad valorem court fee, a specific issue has already been framed and the same is to be tried and decided while finally deciding the suit. Therefore, there is no illegality or infirmity in the impugned order.

As such, the present revision petition is dismissed.

(KULDIP SINGH)
JUDGE

February 20, 2018

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Whether speaking / reasoned Yes

Whether Reportable: No