

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.5555 of 2017 (O&M)

Date of Decision: November 12, 2018

Moti Ram & others

...Appellants

Versus

Smt.Kamlesh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Lokesh Sinhal, Advocate,
for the appellants.

Mr. Tanmoy Gupta, Advocate,
for caveator/respondent No.2.

AMIT RAWAL, J. (Oral)

The sole question raised before this Court is whether a civil suit for mandatory injunction claiming possession of the suit property from the defendants in the absence of payment of court fees, much less branding them to be licenses would be maintainable or not.

Mr. Lokesh Sinhal, learned counsel appearing on behalf of the appellant- defendants has relied upon a decision dated 25.05.2009 rendered in Civil Suit No.161 of 2002 titled as “Smt.Kamlesh Versus Moti Ram etc.” (Ex.PB), wherein liberty was granted to the plaintiff to seek suit for possession instead of suit for permanent injunction as the ownership between the predecessor-in-interest of the parties ceased to exist w.e.f. 05.07.1999. In support of the aforementioned contention, he has relied upon the judgment rendered by Hon'ble the Supreme Court in **Joseph Severance and others Versus Benny Mathew and others, 2005(4) R.C.R. (Civil)**

559, wherein by relying upon the judgment rendered in **Sant Lal Jain**

Versus Avtar Singh, 1985(2) SCC 332, it has been held that such suits would though be maintainable in case they have been filed within reasonable time, otherwise relief for possession on payment of court fees is required to be sought.

There is caveat on behalf of the respondent-plaintiff.

Notice of motion.

Mr. Tanmoy Gupta, Advocate, who is on the caveat, accepts notice on behalf of respondent No.2.

When confronted with the provisions of law, learned counsel for respondent No.2, on instructions, says that since the possession has been sought and only court fees has to be paid, respondent No.2 may be granted 45 days time to pay court fees as per the provisions of the Indian Court Fees Act and decree may be modified by incorporating the amount of court fees. It was further contended that the trial Court did not grant any costs.

Accordingly, the judgments and decrees of both the courts below are hereby upheld. Forty five days are granted to make the court fees good, i.e., the *ad valorem* court fees on the value of the property as per the provisions of Section 7 of the Indian Court Fees Act. On payment of such court fees, Lower Court is directed to modify the decree by incorporating the amount of court fees, so that the same can be recovered during execution of the decree.

Appeal stands disposed of.

November 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No