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

**Civil Revision No.1429 of 2017 (O&M)
Date of Decision: 09.05.2019**

Sat Pal Jain

.....Petitioner

Vs

Suresh Kumar Jain and another

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Dhruv Mittal, Advocate
for the petitioner.

Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

CM No.25935-CII of 2018

For the reasons mentioned in the application, the same is allowed. The accompanying document i.e. Annexure P-7 is taken on record.

Civil Revision No.1429 of 2017 (O&M)

[1]. Petitioner has challenged the order dated 14.09.2016 passed by the Civil Judge (Jr. Divn.) Tohana vide which the application filed by respondent No.1 under Order 7 Rule 11 CPC for rejection of plaint was allowed and further seeks

direction to the trial Court to proceed in the case in accordance with law.

[2]. Plaintiff filed a suit for declaration to the effect that he is owner of the suit properties which are house, one shop and one plot as detailed in the headnote of plaint. Defendant No.1 filed an application under Order 7 Rule 11 CPC for rejection of the plaint for want of fixation of *ad valorem* court fee. The said application was contested by the plaintiff. Plaintiff-petitioner is father of defendant No.1 and grandfather of defendant No.2. Plaintiff being adopted son of Sh. Ranjit Singh Jain got the suit properties through Will dated 13.01.1956. Ranjit Singh Jain died on 11.10.1990 and after his demise, the plaintiff became absolute owner of the properties in question.

[3]. As per mutual agreement/memorandum of family arrangement dated 08.10.1995, house bearing MC No.322/5, new House No.328/11 situated at Jain Gali, Tohana was given to defendant No.1 with the condition that he will keep the parents i.e. the petitioner and Smt. Darshana Devi Jain with him in the house till their death. It was the responsibility of defendant No.1 to carry out necessary repairs renovations and reconstruction of the house. In case the petitioner and his wife find any incident of disrespect and non-cooperation from defendant No.1 and any other member of the family of

defendant No.1, they will be entitled to get 1/3rd portion of the house divided from north side complete width and in length towards southern side and in such eventuality defendant No.1 and his family members will not object for the entry of temporary stay of his other four brothers and their family members, who will visit to see the petitioner and his wife.

[4]. Plaintiff further pleaded that defendant No.1 did not act upon the family arrangement and with *mala fide* intention played fraud got the impugned judgment and decree in his favour by keeping the plaintiff in dark and by making false representation and concealing the material facts. Wife of the plaintiff has already expired and after her death, defendants started misbehaving with the plaintiff and created hurdles in smooth use of the house by the plaintiff. Defendant No.1 fraudulently transferred the house in favour of his son i.e. defendant No.2 vide transfer deed dated 15.05.2015. The suit was filed in view of the aforesaid facts and circumstances.

[5]. In addition to the aforesaid suit, the petitioner also invoked provision of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. Ultimately a CWP No.24688 of 2017 (O&M) was filed by the petitioner against the order passed by the Appellate Tribunal-cum-District Judge, etc. Mauza Tohana. In pursuance of the order passed by the writ Court, the

Sub-Divisional Magistrate exercising the powers of Presiding Officer, Maintenance and Welfare Tribunal Tohana appointed local Kanungo for the delivery of possession of the house in favour of the petitioner. Proceedings were undertaken and the possession of the house was delivered to the petitioner in the presence of all concerned parties. Possession of entire House No.325/5, new House No.328/11 situated in Mauza Tohana was delivered to the petitioner. Defendant No.2 Ashwani Kumar Jain son of Suresh Kumar Jain amicably removed his locks and delivered possession to the petitioner. The proceedings dated 06.11.2018 were signed by the petitioner, Ashwani Kumar and other officials.

[6]. The trial Court vide the impugned order dated 14.09.2016 accepted the application under Order 7 Rule 11 CPC. Relevant para Nos.7 and 8 of the order reads as under:-

“7. It is pertinent to mention here that the plaintiff has preferred the present suit for obtaining the possession by way of declaring himself as the owner of the suit property. Further it is specifically mentioned in the para No.7 of the plaint that on 02.07.2012 the defendant No.1 had turned out the plaintiff from the house. The present suit was filed on 28.09.2015. It is pertinent to mention here that by way of judgment and decree dated 25.11.1995 the defendant No.2 had become the owner of the suit property and this decree has not been set aside yet. Meaning thereby that defendant No.1 is owner in possession of the suit land and the relationship between plaintiff and defendant No.1 is not of licenser-licencee, as argued. Hence in the

considered opinion of this court, objections raised by the plaintiff are not sustainable. The arguments out of the context of the present application are not discussed here for the sake of brevity. On the basis of above discussion, as the present suit is for obtaining the possession of the suit property from the defendant and insufficient court fee has been affixed, hence, the present application is hereby allowed.”

8. *Accordingly, S.D.O. (PWD) is directed to inspect the suit property for the assessment of its market value as on the date of filing of the suit i.e. 28.09.2015 and to file his report before 31.10.2016.”*

[7]. Perusal of the aforesaid operative part of the order would show that though the application was allowed, but there is no recital whether the plaint was rejected or sometime was given to the plaintiff to make good the deficiency in court fee. Para No.8 of the impugned order is suggestive of the fact that the trial Court was not sure about the payable court fee and that is why S.D.O (PWD) was directed to inspect the suit property for assessment of its market value as on the date of filing of the suit and to file his report.

[8]. In the event of undertaking the aforesaid exercise by the S.D.O. (PWD) his report would be subject to legal criticism. In view of above, triable issues would come to fore for which the trial Court can be obligated to decide the question of court fee in accordance with law after receiving evidence from the parties. The ratio of **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010(2) R.C.R. (Civil) 564** in such a

situation will not answer the lis. Out of the three properties, which are subject matter of the suit, possession of one of the property has been delivered to the plaintiff/petitioner and the same is also the subject matter of the suit itself.

[9]. Valuation of the property as directed by the trial Court vide the impugned order would involve leading of evidence by the parties and legal criticism thereto at the instance of the opposite party. Report of S.D.O. (PWD) if any, tendered on record would be subject to objection by the opposite party and ultimate decision by the trial Court.

[10]. In view of facts and circumstances of the case, it would be appropriate to direct the trial Court to proceed with the suit after receiving relevant evidence on the issue of court fee and then decide the same in accordance with law. With the aforesaid observations, this revision petition is disposed of.

[11]. Till such time fixation of additional court fee, if any, may not be insisted upon by the trial Court.

May 09, 2019

Atik

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No