

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

**CR No.2877 of 2018(O&M)
Date of Decision: 01.05.2019**

Haji Mohd. Hanif

....Petitioner

Versus

Mohd. Fariyad and others

.....Respondents

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

Present:Mr. Sunny K. Singla, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioner has challenged the order dated 31.03.2018 passed by Civil Judge (Junior Division), Malerkotla vide which the application filed by the defendant/petitioner under Order 7 Rule 11 CPC was dismissed.

[2]. Plaintiffs have filed a suit for declaration, possession and permanent injunction, challenging the sale deeds dated 08.12.1998 and 25.10.2000 being non-executant of the same. Plaintiffs have also sought possession of the land in question.

[3]. The application was filed on two grounds. Firstly, on the ground of limitation and secondly, on the ground of non-affixation of requisite Court fee.

[4]. The first ground of limitation was negated being a

mixed question of law and facts which can be only decided after framing of issues and leading of evidence by the parties. Second ground was also rejected by the trial Court on the ground that plaintiffs are not party to the sale deeds and therefore, there was no requirement of paying the Court fee on the sale consideration of sale deeds dated 08.12.1998 and 25.10.2000.

[5]. Notice of motion was issued on 10.05.2018 and thereafter, respondents No.1 to 4 were ordered to be served through their counsel appearing in the trial Court. As per office report, respondents No.1 to 4 have been duly served through their counsel appearing in the trial Court. Today, there is no representation on behalf of contesting respondents No.1 to 4 despite service.

[6]. I have heard learned counsel for the petitioner.

[7]. Learned counsel for the petitioner by relying upon **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 AIR (SC) 2807** contended that the plaintiffs are non-executant of the sale deeds dated 08.12.1998 and 25.10.2000 and are not in possession. In the suit, they have not only sought declaration that the sale deeds are invalid, but have also claimed consequential relief of possession, therefore, they are required to pay ad valorem Court fee as provided under

Article 7(iv)(c) of the Court Fee Act, 1870.

[8]. Perusal of para No.6 of the aforesaid judgment would show that aforesaid position has been reiterated and non-executant seeking possession of the land in question has to pay ad valorem Court fee as provided under Article 7(iv)(c) of the Act. There cannot be any exception to the aforesaid fact.

[9]. In view of aforesaid legal position, I deem it appropriate to set aside the impugned order dated 31.03.2018 passed by Civil Judge (Junior Division), Malerkotla. This revision petition is accepted. Trial Court is directed to issue notice to the plaintiffs to make good the deficiency in Court fee within the time to be prescribed by the trial Court. In case of non-payment of ad valorem Court fee, trial Court shall proceed to pass appropriate order in accordance with law.

01.05.2019

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**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**