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

CR-7349-2017 (O&M)

Date of decision : 03.04.2019

Nihali

... Petitioner

Versus

Kaur Singh @ Kanwar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rakesh Nagpal, Advocate
for the petitioner.

Mr. Rajinder Goyal, Advocate
for respondent Nos.1 to 5.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the petitioner-plaintiff, in a suit claiming following relief, has been called upon to pay the Courts fee:-

"That the plaintiff prays that a decree for declaration to the effect that the impugned release deed No.482/1 dated 16.5.2013 and mutation No.14126 are null & void, result of collusion, fraud, misrepresentation by defendants No.1 to 6 and does not confer any right and interest in their favour and be set aside and a decree for actual possession of the land mentioned above in para No.2 of the plaint which was subject matter of Sanad Takseem dated 05-12-2011 and a decree for joint possession of the land mentioned above in para No.1(b) & 1(c) of the plaint and further a decree for permanent injunction restraining the defendants from alienating the suit land and creating any charge by taking loan etc., on the suit

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land mentioned above in para No.1 & 2 of the plaint may kindly be passed with costs in favour of the plaintiff and against the defendants.

An y other relief to which the plaintiffs are found entitled to may also be granted."

Mr. Rakesh Nagpal, learned counsel appearing on behalf of the petitioner submitted that no relief of possession has been sought, much less, value of the release deed is not mentioned. It is amongst the family members, therefore, it would not have carried any value, resulting into, determination of some courts fee.

Mr. Rajinder Goyal, learned counsel appearing on behalf of respondent Nos.1 to 5, submitted that the value of the property for the purpose of obtaining the declaration by challenging the release deed is a determining factor for the payment of the courts fee. The petitioner has used guarded language in claiming the possession as well.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Nagpal.

On perusal of the prayer, as extracted above, it is clear that the plaintiff sought only declaration in setting aside the release deed and for joint possession. The preliminary and secondary reliefs are not for separate possession. The possession is only as per the terms and conditions of the *Sanad Takseem* i.e. already partitioned land. It is a mix question of fact and law and cannot be determined, at this stage, by hearing the proceedings of an application under Order 7 Rule 11 of the Code of Civil Procedure. The impugned order, under challenge, calling upon the petitioner to pay the Courts fee, is not sustainable in the eyes of law and the same is hereby set

aside.

However, this order will not preclude the parties to lead evidence on the aforementioned issue and the trial Court to form an opinion, at the final stage of the suit.

With the aforesaid observations, the present revision petition stands allowed.

03.04.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**