

CR-7530-2017 (O&M)

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

CR-7530-2017 (O&M)

Date of decision : 24.01.2019

Badle

... Petitioner

Versus

M/s Commander Relaters Pvt. Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sudhir Aggarwal, Advocate
for the petitioner.

Mr. Sandeep Singh, Advocate for
Mr. Shekher Verma, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the petitioner-plaintiff claiming declaration by setting aside the sale deed dated 21.08.2012 executed by his attorney, in an application under Order 7 Rule 11 of the Code of Civil Procedure, filed by the defendant, has been called upon to pay the court fees.

Learned counsel for the petitioner submitted that while making the averment in para 2 of the plaint with regard to the execution of power of attorney dated 29.03.2010 which was cancelled on 25.10.2010, the question would arise whether the act done by the agent, who was not agent on the date of sale deed, whether the plaintiff would be signatory to the sale deed or not, cannot be adjudicated in the application under Order 7 Rule 11 of CPC and therefore, impugned order calling upon the petitioner to pay the

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court fees is wholly preposterous.

Learned counsel for the respondent submitted that any act done by the agent on behalf of the respondent-plaintiff would be that of a principal, even if the power of attorney was cancelled, thus, urges this Court for dismissal of the present revision petition by supporting the impugned order.

I have heard learned counsel for the parties, appraised the paper book.

It would be apt to reproduce the para No.3 of the plaint, which reads as under:-

"3. That the defendant illegally, unlawfully, secretly has succeed to registered a sale deed bearing Vasika No.3645 dated 21.08.2012 in its favour without knowledge and notice of the plaintiff and without any authority and said sale deed is quite illegal and the same was registered without consideration and without delivery of possession and without any legal authority and the mutation on the basis of said sale deed was alos got pending for a long time and same was sanctioned in month of March 2014. So no right, title or interest can be created in favour of the defendant on the basis of the above said sale deed but the defendant illegally and unlawfully want to alienate the above said property to some other person without any authority and in case if the defendant succeed in his illegal design then the plaintiff would suffer irreparable loss and injury which cannot be compensated in terms of money."

The sale deed is post cancellation. It is yet to be decipherd as to whether the averments were on the basis of the fraud and misrepresentation and the plaintiff can be called upon to pay the court fees. The law on this proposition has already been settled, but until and unless such evidence is

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not led, deficiency in the Court fee allegedly raised by the defendant, cannot make good.

Keeping in view the facts, aforementioned, I deem it appropriate to dispose of the present revision petition with a direction to the trial Court to decide the issue of court fees, if not framed, after framing it to be as preliminary, by affording 2-2 opportunities to the parties to the *lis*, in accordance with law.

With the aforesaid observations, the present revision petition stands disposed of.

24.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**