

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4686 of 2019 (O&M)

Date of decision: 03.09.2019

Vinod Kumar

...Petitioner

Versus

Kulbhushan and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ravindra Jain, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge is to the order dated 23.05.2019 passed by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhri, whereby application under Order 7 Rule 11 CPC filed by defendants-respondents has been allowed and plaintiff-petitioner has been directed to pay the ad-valorem Court fee to the extent of 1/4th share of the suit property.

A perusal of the impugned order shows that plaintiff-petitioner is not in possession of the suit property. He is seeking possession being a co-sharer. Trial Court, while allowing the application, relied upon a judgment passed by this Court in Kuldeep Kaur and others vs. Smt. Surjit Kaur and others, 2015 (2) PLR 16, wherein it has been held that if, non executant of a document, transferring rights in the property, seeks declaration and is not in possession, he is liable to pay the ad-valorem court fee.

Learned counsel for the petitioner has referred to the judgments passed by this Court in Anand Varsha Anand and others vs. Ashok Kumar and others, 2012 (45) RCR (Civil) 31 and Sunil Narula vs. Shelly Juneja

and others, 2015 (3) RCR (Civil) 1027 on this issue.

A perusal of the judgment passed in **Sunil Narula's** case (supra) shows that where the plaintiff was found to be in joint possession of the property under partition and had not been excluded therefrom, he cannot be held liable to pay the ad-valorem court fee. In **Anand Varsha Anand's** case (supra), revision was filed against an order giving direction to the plaintiff to pay ad-valorem court fee. The said revision was allowed by referring to a judgment passed by Full Bench of the Lahore High Court in **Asa Ram and Ors. vs. Jagan Nath and Ors.,** (1934) AIR Lahore 563, wherein it has been held that if, in a suit for partition of joint property, the plaintiff alleges that he is in actual or constructive possession, the Court fee payable would be under Article 17 (vi) and if, the Court finds, on a plea being raised by the defendant, that plaintiff is found to be not in possession, the suit itself would be liable for dismissal unless the Court allows an amendment in the plaint on payment of requisite Court fee.

Both the above judgments will not be of any help to the petitioner because in the present case, petitioner is seeking possession of the house in dispute being a co-sharer. Hence, the impugned order has been rightly passed by the trial Court and no illegality, much less perversity, has been found therein warranting interference by this Court. Moreover, learned counsel for the petitioner has informed that pursuant to the impugned order, Court fee has already been assessed and paid by the petitioner.

Resultantly, finding no merits, present petition is dismissed.

(RITU BAHRI)
JUDGE

03.09.2019
ajp

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No