

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-1397-2019
Date of Decision:07.01.2020

Karnail Singh

....Petitioner

Versus

Mansa Singh and ors

...Respondents

CORAM:HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Harsh Goyal, Advocate
for the petitioner.

Mr. Amarjit Singh Ahluwalia, Advocate
for respondent No.1.

Despite service, none for respondent No.3.

MAHABIR SINGH SINDHU, J.(Oral)

Present petition is filed under Article 227 of the Constitution of India for setting aside the impugned order dated 01.09.2019 passed by learned Additional Civil Judge (Jr. Division), Bathinda, whereby the application of the petitioner-defendant No.1, filed under Order 7 Rule 11 C.P.C. has been dismissed.

Facts giving rise to the present controversy are that respondent No.1-plaintiff filed a civil suit for claiming:-

- i) Recovery of Rs.10 lacs on the basis of agreement dated 11.01.2016;
- ii) To declare the sale deeds No.2729 and 386 dated 29.02.2016 and 05.11.2017, respectively, along with mutation Nos.1334 and 1360, as illegal, null and void, and
- iii) Permanent injunction not to alienate the suit property.

Upon receiving notice, present petitioner filed an application under Order 7 Rule 11 read with Section 151 and Section 17 of CPC for rejection of the plaint on two counts:-

- i) Non-affixation of proper Court fee for challenging the sale deeds; and
- ii) Territorial jurisdiction in view of the fact that suit property was situated within Tehsil Malerkotla and both the sale deeds were executed at Malerkotla, District Sangrur.

Plaintiff - respondent filed reply to the above said application and after hearing both sides, learned trial Court dismissed the same, hence the present petition.

It is contended by learned counsel for the petitioner that learned trial Court while passing the impugned order has not taken into consideration the first point raised in the application as well as at the time of arguments, i.e. non-affixation of the proper Court fee for challenging sale deeds in question, wherein sale consideration is reflected as Rs.53,50,000/- + Rs.95,00,000/-, i.e. total Rs.1,48,50,000/-.

On the other hand, learned counsel for respondent No.1-plaintiff submitted that in case, the learned trial Court finds that there is any deficiency in the Court fee, the same shall be made good without any further delay.

Heard learned counsel for the parties and perused the paper-book.

Concededly, two submissions were made in the application under Order 7 Rule 11 CPC as well as at the time of arguments, but learned trial Court while passing the impugned order has not adverted to

the first point raised on behalf of the petitioner i.e. non-affixation of the ad valorem Court fee on the basis of total sale consideration reflected in both the sale deeds i.e. Rs.1,48,50,000/- and as such the impugned order is indefensible only on this short ground.

Consequently, the petition is allowed. Impugned order dated 01.09.2018 is set aside and the matter is remitted back to learned trial Court to pass a fresh order, in accordance with law, within a period of four weeks from the receipt of certified copy of this order.

The above observations may not be construed as an expression of opinion in any manner, while considering the application of the petitioner under Order 7 Rule 11 CPC.

[MAHABIR SINGH SINDHU]
JUDGE

January 07, 2020

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Whether speaking/reasoned
Whether reportable?

yes/no
yes/no