

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

**CR No.1973 of 2020(O&M)
Date of Decision: 08.10.2020**

**Dera Baba Bhumman Shah Sangar SaristaPetitioner
Vs**

Dr. Subhash NarulaRespondent

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

Present:Mr. Mohit Garg, Advocate
for the petitioner.

Mr. Sunil Kumar Verma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

[1]. The case has been taken up for hearing through video-conferencing.

[2]. Petitioner has preferred this revision petition against the order dated 07.03.2020 passed by the Additional Civil Judge (Senior Division), Sirsa, vide which application under Order 7 Rule 11 CPC filed by the respondent was allowed and petitioner was directed to pay the *ad valorem* Court fee as per the market value of the suit property.

[3]. Learned counsel for the petitioner submits that an application under Order 6 Rule 17 read with Order 1 Rule 10

and Section 151 CPC for amendment of the plaint is still pending before the trial Court. In the proposed amendment, the petitioner seeks to challenge sale deed(s) executed by the plaintiff. In the event of acceptance of the application under Order 6 Rule 17 CPC, the amended plaint would be tested at the threshold of Order 7 Rule 11 CPC. If the proposed amendment is allowed to be incorporated, the suit would be for declaration, challenging the sale deed(s) and for possession.

[4]. In view of first principle of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010(2) RCR (Civil) 564**, the executant of the sale deed if seeks cancellation of the deed, then the plaintiff has to pay the *ad valorem* Court fee on the consideration as shown in the deed. In such eventuality, the application under Order 6 Rule 17 CPC has to be decided before the decision of the application under Order 7 Rule 11 CPC. The impugned order dated 07.03.2020 passed by the trial Court prior to decision of the pending application under Order 6 Rule 17 CPC, in my considered opinion is an illegality committed by the trial Court. In any case, the pending application under Order 6 Rule 17 CPC ought to have been decided prior to the decision in the application under Order 7 Rule 11 CPC.

[5]. In view of aforesaid position, at this stage, without meaning anything on the merits of the case, it would be just and

appropriate to direct the trial Court to decide the application under Order 6 Rule 17 CPC. This revision petition is allowed. The impugned order is accordingly set aside. After lawful decision of the application under Order 6 Rule 17 CPC, the trial Court shall consider the application under Order 7 Rule 11 CPC in accordance with law. Nothing observed hereinabove, shall be construed to be an opinion on merits of the case. The trial Court shall decide both the applications under legal parameters.

08.10.2020

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No