

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

Sr. No.112

CR-3016-2021 (O&M)

Date of decision : 30.11.2021

Ekta Goyal

..... Petitioner

VERSUS

Hindustan Petroleum Corporation Limited and another Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. S.K. Singla, Advocate, for the petitioner.

SUDHIR MITTAL, J. (Oral)

A suit for declaration and permanent prohibitory injunction has been filed by the plaintiff-petitioner. She claims that lease deed dated 06.11.2001 qua the suit land is null, void and ineffective and thus, a mandatory injunction be issued to respondent No.1 to hand over possession and further, for restraining the defendants from alienating the suit property to any other person or handing over possession. Upon receipt of notice, defendant No.1 filed an application under Order 7 Rule 11 C.P.C, for rejection of the plaint on the ground that the suit was barred by constructive *res judicata* as the earlier suit inter-parties had been withdrawn. Further, being a suit for possession, the plaintiff was liable to affix ad valorem Court fees. The application has been partly allowed vide impugned order dated 12.10.2021. It has been held that infact, the present suit is one for possession and thus, ad valorem Court fees has to be affixed.

Learned counsel for the petitioner submits that to obtain possession from a licensee, a suit for mandatory injunction is maintainable and ad valorem Court fees need not be affixed.

The argument cannot be accepted. According to the plaint, the lease deed dated 06.11.2001 is stated to be illegal and void. Thus, respondent No.1-plaintiff No.1, in whose favour the said lease deed exists, would become a trespasser. To obtain possession from a trespasser, a suit for possession is to be filed. Thus, suit for mandatory injunction is not maintainable. Clever drafting cannot come in the way of the Court in discerning the true intent behind the suit. Thus, the trial Court was justified in directing affixation of ad valorem Court fees.

In view of the above, the revision petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

30.11.2021

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No