

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-658-2018 (O&M)
Date of decision: 11.07.2022

Dayal Singh

... Petitioner

Vs.

Attar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rakesh Dhiman, Advocate
for the petitioner.

Mr. B.S. Mamli, Advocate
for respondent No.1.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 18.11.2017 passed by the Civil Judge (Jr. Divn.), Gurugram, vide which the application filed by defendant-respondent No.1, who is contesting respondent, under Order 7 Rule 11 CPC, for returning the plaint, was dismissed.

Brief facts of the case are that respondent No.1/plaintiff filed a suit praying for a decree of partition and possession of the land in dispute, in which an application was filed by defendant No.1 that the plaintiff is required to affix the ad-valorem court fee, according to market value of the suit property. The application was contested by the plaintiff on the ground that he is joint owner in joint possession of the suit property and the suit is filed for passing a specific

decree of possession by separating the same. The Civil Court, vide impugned order dated 18.11.2017, dismissed the application, holding that prayer in the plaint is only to pass a decree for partition and separate possession and it is admitted case that the parties are joint owners in joint possession of the property. It is also held that in view of settled law that every co-sharer is deemed to be in possession of the joint land and the plaintiff is not required to affix the ad-valorem court fee according to value of the suit property.

Learned counsel for the petitioner has argued that the trial Court has erroneously passed the order, as it is a suit for possession and therefore, the plaintiff should affix the ad-valorem court fee of the market value of the suit property.

Learned counsel for respondent No.1 has submitted that the trial Court has rightly passed the impugned order.

After hearing learned counsel for the parties, I find no merit in the present petition, as the pleadings of the petitioner that being joint owner in possession of property, a decree of partition along with separate possession be granted and it is not case of defendant that plaintiff is not in possession of suit land, therefore, the same is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

11.07.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No