

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

CR No.3475 of 2019 (O&M)

Date of decision: 02.08.2022

Sunita

....Petitioner

Versus

Abhishek Kumar Yadav and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Amar Vivek, Advocate for the petitioner.

None for the respondents.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for setting-aside the order dated 14.05.2019 passed in Civil Suit No.403 of 2018, titled as "*Sunita vs Abhishek Kumar and others*", vide which the trial Court has directed the petitioner/plaintiff to affix the court fees on the value of the suit property.

Counsel for the petitioner has argued that the petitioner is the mother of the respondent/defendant No.1 Abhishek Kumar and mother-in-law of respondent/defendant No.2 Madhu Bala and has filed a suit for mandatory injunction praying for a decree to direct the defendants to hand over the possession of the suit property, which is a house as the licence in favour of the defendants stands terminated.

The respondents/defendants appeared and moved an

application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that though the petitioner/plaintiff is seeking relief of possession indirectly by way of filing a suit for mandatory injunction, however, the plaint be rejected for not affixing the court fees as per the market value of the house, in question

The petitioner/plaintiff filed a reply and contested the same on the ground that the court fees of Rs.500/- is affixed as the prayer is for grant of decree of mandatory injunction as the defendants were licensee and their licence stands terminated and therefore, the petitioner/plaintiff is not liable to pay the *ad valorem* court fees. The trial Court vide impugned order dated 14.05.2019, allowed the said application and directed the petitioner/plaintiff to affix the requisite court fees on the value of the house, in question. The trial Court while directing the petitioner/plaintiff to pay the *ad valorem* court fees has relied upon the judgment passed by the Hon'ble Supreme Court in Civil Appeal No.2811-2813 of 2010 titled as "***Suhrid Singh @ Sardool Singh vs Randhir Singh and others***", decided on 29.03.2010.

Counsel for the petitioner has also submitted that there is no dispute with regard to the proposition laid down by the Hon'ble Supreme Court in ***Suhrid Singh's case (supra)***, however on facts, the same is not applicable in the present case as the petitioner/plaintiff being the mother/owner in possession of the house, in question, has allowed her son and daughter-in-law i.e. the respondents/defendants, to stay in the house as licensee and on termination of licence a simplicitor suit for mandatory injunction has been filed, with a prayer to direct the respondents/defendants to hand over the possession of the suit property

and therefore, the trial Court wrongly assumed it to be a suit for possession.

Counsel for the petitioner has further contended that the trial Court has failed to make a distinction between the provisions of Section 7(iv)(d) of the Court Fees Act, which permits a plaintiff in a suit for injunction to value the same at the amount deemed appropriate by the plaintiff whereas Section 7(v) of the Court Fees Act, relates to suits for possession and requires such suits to be valued according to the market value of the property. It is also submitted that once it is specifically pleaded in the plaint that the petitioner herself is residing in the suit property and has prayed for the ouster of her son and daughter-in-law on termination of licence, it cannot be termed as a suit for possession as wrongly observed by the trial Court.

As per the office report, the respondents are duly served by way of affixation, however, there is no representation on their behalf.

After hearing the counsel for the parties, I find that the trial Court has erroneously allowed the application filed by the respondents/defendants, under Order 7 Rule 11 CPC, directing the petitioner/plaintiff to pay the *ad valorem* court fees on the suit property. Apparently, the petitioner/plaintiff's case is that she is owner in possession of the house in question and part of the same was given to her son and daughter-in-law, as a licensee and on termination of the licence, she has filed the suit for mandatory injunction directing the respondents/defendants to vacate the house, in question and this fact is not properly appreciated by the trial Court by observing that prayer is to grant a decree of possession.

Accordingly, the present petition is allowed and the impugned order dated 14.05.2019, is set-aside.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

02.08.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No