

**CR-2425-2021 (O&M) and
other connected case**

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**130-1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1.CR-2425-2021 (O&M)

Rajesh Saini and others

....Petitioners

Versus

Naresh Jain and others

..Respondents

2.CR-371-2022 (O&M)

Naresh @ Naresh Kumar Jain

....Petitioner

Versus

Rajesh Kumar and others

..Respondents

Date of decision: 15.11.2022

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ravi Dutt Sharma, Advocate for the petitioners
in CR-2425-2021

Mr. Neeraj Goel, Advocate for the petitioner
in CR-371-2022
for respondent no.1 in CR-2425-2021

ANIL KSHETARPAL, J (Oral)

By this order, two revision petitions i.e CR-2425-2021 and
CR-371-2022 shall stand disposed of.

These two cross revision petitions have been filed by the
plaintiffs as well as the defendants assailing the correctness of an
interlocutory order dated 31.08.2021, passed by the trial court, while
deciding an application filed by the defendants under Order VII Rule 11
of the Code of Civil Procedure, 1908. The plaintiff Naresh has filed a

suit for grant of decree of declaration with a further relief of possession.

The prayer clause reads as under:-

“Under the facts and circumstances mentioned above, it is, therefore, prayed that a decree for declaration to the effect that the sale deed no.3500/1 dated 02.01.2003 and agreement dated 13.01.2003 are illegal, null, void and nonest in the eyes of law and not binding upon the rights of the plaintiff and performa defendants no.4 to 12 and further a decree for possession thereby directing the defendants no.1 to 3 to hand over the possession of the suit land alongwith structure existing thereon to the plaintiff and performa defendants, may kindly be passed in favour of the plaintiff and performa defendants and against the defendants nos. 1 to 3 with costs of the suit, in the interest of justice.

Any other relief to which the plaintiff is found entitled may also be granted to him.”

An application to reject the plaint on the ground that proper ad valorem court fee has not been affixed and the suit is barred by limitation was filed by the defendants. The court, while disposing of the application has held that the question of limitation is a mixed question of law and facts, therefore, it shall be decided alongwith the suit. On the question of liability to pay ad valorem court fee, the court ordered the plaintiff to make good the deficiency on the market value of the property.

Heard the learned counsel representing the parties at length and with their able assistance perused the paperbooks.

On the one hand, learned counsel representing the defendants submits that from the reading of the plaint, it is evident that the plaintiff had the knowledge of the sale deed in the year 2009. He submits that a suit for declaration is not maintainable after a period of 7 years.

It may be noted here that the plaintiff is alleging that the defendants have defrauded his deceased father. It is evident that the plaintiff does not assert that he acquired the knowledge of the fraud in the year 2009. In any case, the aforesaid issue can be better decided after permitting the parties to lead evidence. Hence, there is no substance in CR-2425-2021. In CR-371-2022, the plaintiff assails the correctness of the order passed by the trial court directing him to pay ad valorem court fee on the market value of the property. Learned counsel submits that in the absence of the material to prove the market value, he may be permitted to make good the deficiency on the amount of the sale consideration tentatively.

On the other hand, learned counsel representing the defendant submits that qua the relief of possession, the plaintiff is required to pay ad valorem court fee on the market value of the property.

At this stage, in the absence of the material to prove the market value of the property, the trial of the suit should not be kept in abeyance. In such circumstances, let the petitioner (plaintiff), tentatively, pay ad valorem court fee on the amount of the sale consideration while giving an undertaking before the court that he will make good the deficiency as and when the court finally determines the market value of the property. The trial court is requested to frame a distinct issue qua the market value of the property on the date of filing of the suit.

With these observations, the revision petitions are disposed of. However, the observations made while disposing of the revision

petitions shall not be construed as final expression on the merits of the case.

All the pending miscellaneous applications, if any, are also disposed of.

15.11.2022
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE