

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

125

CR No. 4431 of 2022 (O & M)
Date of decision : 14.10.2022

Mohinder Singh**.....Petitioner****Vs.****Ajaib Singh****.....Respondent****CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present: Mr. Jagdeep S. Chahal, Advocate, for the petitioner

TRIBHUVAN DAHIYA, J. (Oral)

1. This revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 31.8.2022 (Annexure P-4) passed by the trial Court, dismissing the petitioner/defendant's application under Order VII Rule 11 CPC.

2. The facts of the case in brief are, the respondent/plaintiff has filed a suit for declaration that the agreement to sell dated 25.11.2005 entered into between the parties with respect to 35 *bighas* 11 *biswas* of land stands frustrated and cannot be executed by the defendant; the consequential relief of refund of the consideration amount of Rs.1,55,70,000/- received by the petitioner/defendant has further been sought.

3. Learned counsel for the petitioner has stated that this is, in fact, a suit for recovery and has been cleverly drafted as a suit for declaration for cancellation of the agreement to sell. Therefore, the plaintiff is liable to pay *ad valorem* court fee on the suit.

4. It is not in dispute that as per pleadings the suit has been filed for cancellation of the agreement to sell which has become inexecutable.

The relief of refund of the consideration amount has been sought as a consequence of cancellation/frustration of the agreement to sell only. It is also not in dispute that the respondent/plaintiff is not the executant of the agreement to sell. Therefore, the *ad valoram* Court fee is not required to be affixed on the suit by the respondent/plaintiff.

5. The learned trial Court has not committed any illegality or infirmity in dismissing the petitioner's application for rejection of the plaint under Order VII Rule 11 CPC.

6. Dismissed.

(TRIBHUVAN DAHIYA)

JUDGE

14.10.2022

Ashwani

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No