

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 120

Civil Revision No.4822 of 2022

Date of Decision: October 29, 2022

M/s Virkon Developments & others

..... PETITIONER(S)

VERSUS

Sukhminder Singh @ Col. Lal Singh

..... RESPONDENT(S)

...

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

...

PRESENT: - Mr. Aakash Singla, Advocate, for the petitioners.

. . .

Tribhuvan Dahiya, J (Oral)

This petition has been filed under Article 227 of the Constitution of India for setting aside order dated 23.08.2022, whereby the petitioners-defendants' application under Order VII Rule 11 CPC for rejection of the plaint on ground of non-payment of proper court fee has been dismissed.

A perusal of the plaint (Annexure P-1) shows that plaintiff has filed a suit for declaration that the sale deed in question, dated 21.06.2017, is a nullity and sham transaction. In the alternative, relief of "recovery of amount to be determined by this Hon'ble Court more than the amount mentioned by the defendants in the agreement duly executed on 22 June, 2017", has been sought. It is, therefore, apparent that the suit has been filed seeking relief of declaration with respect to the sale deed in question. The relief of recovery has been sought only in the alternative, that too, of an amount to be determined by the Court after trial. Therefore, it is pre-mature

for the plaintiff to be asked to pay court fee for the alternative relief. In case the alternative relief is to be granted to the respondent-plaintiff at a later stage, it will be subject to payment of the admissible court fee. Therefore, there is no infirmity or illegality in the impugned order passed by the trial Court.

Learned counsel for the petitioners, by referring to the judgment of this Court dated 15.06.1954 passed in Regular First Appeal No.195 of 1951, titled *Mst. Santi v. Sudh Ram & others*, has contended that the plaintiff should be made liable to affix court fee on the alternative relief claimed by him as well. The judgment cited is not applicable to the facts and circumstances of the case, since it *inter alia* deals with the issue of deficient court fee in a decided suit, wherein, this Court, while dismissing the appeal on all other aspects, allowed amendment of the decree under appeal so far as payment of deficient court fee on the plaint was concerned. The suit was not dismissed on account of the deficiency. Besides, it was not a case deciding application to reject the plaint under Order VII Rule 11 CPC at the initial stage.

Therefore, there is no ground to interfere with the impugned order passed by the trial Court.

Dismissed.

(Tribhuvan Dahiya)
Judge

October 29, 2022
avin

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No