

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CR-259-2018

Date of Decision: 8.12.2023

Mohan Singh

....Petitioner

VERSUS

Puran Singh and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Ms. Mehak Bedi, Advocate, for
Mr. Vivek. K. Thakur, Advocate,
for the petitioner.

None for the respondents.

KARAMJIT SINGH, J.

This revision petition has been filed by the petitioner/plaintiff for setting aside order dated 4.12.2017 (Annexure P-4) passed by the Court of Civil Judge, Junior Division, Kapurthala whereby an application filed by the respondents under Order 7 Rule 11 CPC seeking rejection of the plaint was allowed with the condition that the petitioner has to pay the *ad-valorem* Court fee within a period of one month in the civil suit titled Mohan Singh v. Puran Singh and others.

2. Counsel for the petitioner, while assailing the impugned order, *inter alia* submits that the petitioner was not executant of the impugned sale deeds and is in possession of the suit property and as such, is not required to pay *ad-valorem* Court fee as has been directed by the learned trial Court vide impugned order (Annexure P-4). So, prayer is made that the impugned order be set aside.

3. I have considered the submissions made by the counsel for the

petitioner.

4. It is settled position of law that for the purpose of application filed under Order 7 Rule 11 CPC, only averments made in the plaint are to be taken into consideration. From the perusal of plaint (Annexure P-1), it could not be made out as to whether the petitioner is in actual physical possession of the suit property. Even the prayer clause is also ambiguous, as per which, it has been prayed that the suit for declaration and possession to the effect that the plaintiff is owner in possession of the suit land which is fully detailed therein and further declaration to the effect that the sale deeds No.47, 48 and 49 dated 6.4.2015 executed by Puran Singh son of Amar Singh in favour of Sulakhan Singh and Makhan Singh sons of Puran Singh along with mutations No.2073, 2074 and 2075 dated 24.4.2015 are illegal, null and void and not binding on the rights of the plaintiff and the suit for permanent injunction restraining the defendants/their attorneys from illegally and wrongfully transferring, alienating, mortgaging and further creating any kind of charge over the suit land.

5. From the perusal of the aforesaid prayer clause of the plaint, it is not clear as to whether the petitioner is in possession of the suit property or as to if he has also sought relief of possession of the said property.

6. Faced with this situation, counsel for the petitioner made prayer that she be allowed to withdraw the present petition with liberty to file an application seeking amendment of the plaint within next 4 weeks.

7. In view of above, without commenting on the merits of the case, the present petition is hereby dismissed as withdrawn with liberty to the petitioner to file an application seeking amendment of the plaint with regard to relief regarding the suit property within four weeks and if any such

application seeking amendment of the pleadings is filed by the petitioner and is allowed by the learned trial Court in accordance with law, in that eventuality, the trial Court should decide afresh the question of Court fees on the basis of the said amended pleadings in the plaint.

(KARAMJIT SINGH)
JUDGE

December 8, 2023
Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No