

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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C.R. No.3762 of 2023 (O&M)
Date of Order:19.12.2023

Vijay Kumar Sharma

.Petitioner

Versus

Ashwani Kumar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Manoj Kumar Sood, Advocate, for the petitioner.

Mr. Hunarveer Sharma, Advocate, for respondent no.1.

ANIL KSHETARPAL, J

1. The petitioner has filed a suit for partition and declaration with the consequential relief of permanent injunction.
2. The defendant no.1 filed an application under Order VII Rule 11 CPC to reject the plaint at the very threshold on various grounds mentioned in his application. The trial court has found that it will not be appropriate to reject the plaint at the very threshold, however, the Court directed as under:-

“12. Perusal of the plaint reveals that the plaintiff has undervalued the suit and has paid insufficient court fees. Although, the defendant has not raised any objection with regard to the same yet this court has ample powers to suo moto pass orders with respect to the same. A suit for partition is required to be valued at market value of the suit property and accordingly, pay court fees on the share of the plaintiff. Plaintiff has valued the suit at Rs.200/- which is gross undervaluation.

13. Plaintiff is accordingly directed to value the suit properly and plaintiff is also required to value the suit separately for each relief. This is apparently a case of under valuation. As per Order VII Rule 11(b) CPC, before rejection of plaint, plaintiff is to be given an opportunity to correct the valuation. Accordingly, the

plaintiff is directed to put correct valuation on the plaint with respect to each relief claimed in the light of observations made above on or before the next date of hearing and to pay advalorem court fee on the valuations put by the plaintiff. If these directions are not followed by the next date of hearing i.e. 03.07.2023, then plaint shall be liable to be rejected. The application is disposed of accordingly in above terms.”

3. The learned counsel representing the petitioner contends that the court has passed the order without referring to the relevant provisions of the Court Fee Act, 1870, which makes the plaintiff liable to pay the advalorem court fee on the market value of the suit property. In the alternative, he submits that the plaintiff is already in possession of his share and he has never sought the relief of possession.

4. On the other hand, the learned counsel representing respondent no.1, disputes this fact.

5. After having heard the learned counsel representing the parties, this court is of the considered opinion that the trial court while passing appropriate orders was required to refer and discuss the relevant provisions of the Court Fee Act, 1870 as well as the Suit Valuation Act, 1887.

6. Keeping in view the aforesaid facts, while directing the trial court to decide the matter afresh within a period of one month, from today the extracted portion of the impugned order is set aside.

7. Disposed of accordingly.

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

December 19, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO