

2024:PHHC:120383



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

126

CR-5272-2024 (O&M)

Date of decision: 12.09.2024

Bhagat Singh

...Petitioner

Versus

Savita and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Kanish Jindal, Advocate for the petitioner.

VIKAS SURI, J. (Oral)

1. Challenge in this revision petition under Article 227 of the Constitution of India is to the order dated 06.05.2024 passed by learned Civil Judge (Junior Division), Hodal, whereby the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short, 'CPC') has been allowed and the plaintiff-petitioner has been directed to make good the deficiency of Court fee.

2. The facts in brief, from which the present petition emanates, are that petitioner-plaintiff filed a suit for mandatory injunction directing defendant No.1 (Savita) (respondent No.1 herein) to return the land by way of sale deed in favour of the plaintiff of her share in the suit property. Further a decree for permanent injunction not to interfere in the possession of the plaintiff-petitioner and not to alienate the suit property



was prayed for. Upon notice of the suit, defendant-respondents filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint on the ground that by clever drafting, the plaintiff assails the sale deed dated 27.07.2017 executed in favour of the defendants, insofar as it relates to defendant No.1. The trial Court after considering the rival submissions made on behalf of the respective parties, allowed the application vide order dated 06.05.2024 and directed the plaintiff-petitioner to make good the deficiency of Court fee on or before 02.07.2024. It is submitted that the matter has further been adjourned to 23.08.2024 and thereafter, to 10.10.2024, for affixing the requisite Court fee.

3. Aggrieved by the aforesaid order, the petitioner assails the same by way of the present petition.

4. I have heard learned counsel for the petitioner and perused the record with his able assistance.

5. It is not disputed that the sale deed bearing wasika No.2262 dated 27.07.2017, was executed in favour of the defendants. It is a different aspect that the plaintiff-petitioner alleges the same to be a surety for a loan transaction, based on an oral agreement. The prayer clause of the suit reads thus:-

“It is prayed that the present suit of the plaintiff may kindly be decreed of mandatory injunction directing the defendant no. 1 to return the land by way of sale deed in favour of the plaintiff of her share in mentioned in para no. 1 of the plaint. As the defendant no.1 is received her loan amount in favour of plaintiff. Further a



decree of permanent injunction not to interfere in the possession of the plaintiff and not to alienate the suit property by way of sale mortgage and lease etc. may kindly be passed in favour of the plaintiff and against the defendant alongwith cost of the suit, in the larger interest of justice. Or any other relief which this Hon'ble court deems fit and proper may also be awarded to the plaintiff.”

6. A closer reading of the pleadings reveals that the sole grievance of the petitioner-plaintiff pertains to the sale deed executed in favour of defendant-respondent No.1. Although the suit has been framed as one for mandatory injunction, a closer examination of the plaint indicates that the plaintiff is, in effect, seeking cancellation of the sale deed dated 27.07.2017. The relief has, however, been couched in the form of a suit for mandatory injunction by employing a jugglery of words with the apparent intent of avoiding payment of the requisite Court fee.

7. A perusal of the impugned order would show that the trial Court has, after giving proper consideration in view of the law settled by the Apex Court as well as by this Court, in my considered view, correctly allowed the application under Order 7 Rule 11 CPC and come to the conclusion that the plaintiff-petitioner is liable to pay *ad valorem* Court fee on the plaint. Accordingly, the direction has lawfully been passed to make good the deficiency of Court fee.

8. In view of the above, finding no merit in the challenge to



the impugned order that would warrant interference in exercise of
superintending powers, the present petition is dismissed in *limine*.

September 12, 2024
sumit.k

(VIKAS SURI)
JUDGE

Whether speaking/reasoned :	Yes / No
Whether Reportable :	Yes / No