

(2012) 10 P&H CK 0161

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 5830 of 2012

Harish Chand

APPELLANT

Vs

Som Nath and Others

RESPONDENT

Date of Decision: Oct. 3, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Constitution of India, 1950 - Article 227

Citation: (2013) 1 RCR(Civil) 367

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: Harsh Garg, for the Appellant;

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

By filing this revision petition under Article 227 of the Constitution of India, defendant No. 2 Harish Chand has assailed order dated 24.08.2012 (Annexure P-1) passed by learned trial court, thereby dismissing application (Annexure P-4) moved by defendants No. 1 and 2 (petitioner and proforma respondent No. 2) under Order 7 Rule 11 of the CPC (in short - CPC) for rejection of plaint due to non-payment of ad valorem court fee. Respondent No. 1 ♦ plaintiff has filed suit vide plaint (Annexure P-2) for possession of the disputed property by mandatory injunction alleging that defendants were licensees under the plaintiff and their license stood terminated. The plaintiff also sought mesne profits from the date of filing of suit onwards.

2. Defendants No. 1 and 2, in their application (Annexure P-4), alleged that since the plaintiff is claiming possession of the suit property and mesne profits, the plaintiff is liable to pay ad valorem court fee on market value of the suit property.

3. The aforesaid application was resisted by the plaintiff by filing reply (Annexure P-5) alleging that suit for mandatory injunction is maintainable against the licensee, and therefore, plaintiff is not liable to pay ad valorem court fee.
4. Learned trial court, vide impugned order (Annexure P-1), has dismissed the application (Annexure P-4) moved by defendants No. 1 and 2. Feeling aggrieved, defendant No. 2 has filed this revision petition to assail order (Annexure P-1).
5. I have heard counsel for the petitioner and perused the case file.
6. Counsel for the petitioner contended that the plaintiff, under the garb of mandatory injunction, has sought the relief of possession of the suit property and is, therefore, liable to pay ad valorem court fee on market value of the suit property. It was also contended that the plaintiff has also claimed mesne profits, for which also he is liable to pay ad valorem court fee.
7. I have carefully considered the aforesaid contentions, which are devoid of merit.
8. Plaintiffs version is that defendants were licensees in the suit property under the plaintiff and their license stands terminated. Consequently, the plaintiff is entitled to seek relief of mandatory injunction against the defendants and is, therefore, not required to pay ad valorem court fee on market value of the suit property, which is payable in a simple suit for possession of the suit property. As regards mesne profits, the plaintiff has not claimed any amount of mesne profits for the period prior to filing of the suit. The plaintiff has claimed mesne profits since the date of filing of suit, for which separate court fee is not payable. For the reasons aforesaid, I find that the application moved by defendants No. 1 and 2 has been rightly dismissed by the trial court. There is no infirmity, much less perversity, illegality or jurisdictional error in the impugned order of the trial court so as to warrant interference in exercise of revisional jurisdiction under Article 227 of the Constitution of India. The revision petition is bereft of any merit and is accordingly dismissed in limine.