



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

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CR No.2778 of 2022 (O&M)

Date of Decision :19.05.2025

**Amita Passan through her General Power of Attorney Holder Virender
Kumar Verma**

.....Petitioner

Versus

Neelam Sharma and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE VIKRAM AGGARWAL

Present : Mr. Amit Jain, Sr. Advocate with
Ms. Aeshna Jain, Advocate for the petitioner.

None for the respondents despite service.

VIKRAM AGGARWAL, J. (Oral):

The present revision petition is directed against the order dated 12.04.2022, passed by the Court of Additional Civil Judge (Sr. Divn.), Panchkula, vide which the application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC') for rejection of plaint was dismissed.

The facts, as emanating from the revision petition are that respondent (Neelam Sharma) and others instituted a suit against the present petitioner/defendant No.2 and perform respondents No.9 and 10-defendants No.1 and 3 for declaration and separate possession qua their share in built up house MIG-A, House No.417, Ground Floor, Sector 11, Panchkula. During the pendency of the suit, an application under Order 7 Rule 11 CPC (Annexure P5) was moved seeking rejection of the plaint on the ground of the respondents-plaintiffs not having paid *ad valorem* Court fee. The said



application was opposed by way of reply (Annexure P-6). By way of the impugned order the said application was dismissed leading to the filing of the present revision petition.

I have heard learned counsel for the petitioner.

Learned Senior counsel submits that a bare perusal of the plaint shows that the respondents-plaintiffs were not in possession of the suit property and had, therefore, claimed separate possession of the same to the extent of their share. Learned Senior counsel submits that under the circumstances, the respondents-plaintiffs were required to affix *ad valorem* Court fee as per their share. He submits that the trial Court erred in relying upon the judgment of the Supreme Court in the case of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors, 2010 (2) CCC 510 (SC)**, while rejecting the application. In support of his contention, reliance has been placed upon **Kinny Kapur & Anr. Vs. Gunveer Kapur & Ors., Civil Appeal No.885 of 2012, decided on 12.09.2017**, **Sanjeev Khosla Vs. Rajiv Khosla & Ors., CS(OS) 216/2020, decided on 27.04.2022**, **Kuldeep Kaur Vs. Surjit Kaur and others 2015(1) ICC 564** and **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors, 2010 (2) RRT 986**.

I have considered the submissions made by learned counsel for the petitioner.

It is settled law that for the purpose of decision of an application under Order 7 Rule 11 CPC, only the contents of the plaint or documents attached therewith are to be referred. The heading of the plaint is as under:-

“Suit for a decree for declaration to the effect that the plaintiffs No. 1 to 4, plaintiffs No.5 to 8, defendant No. 1 and defendant No. 2 are co-owners and owners to the extent of 1/4th share of built up MIG-A, House No. 417, Ground Floor, Sector 11,



Panchkula and for further declaration to the effect that the defendant No.1 got the said house transferred by playing fraud with the plaintiffs and Haryana Housing Board, Panchkula and in collusion with the defendant No.2 and by illegal means, the said transfer by presenting wrong and false affidavits and documents and also declaring letter of allotment of ownership of House No.417, Sector 11, Panchkula in the name of defendant No.1 is illegal, null and void and is liable to be set aside/ cancelled and further declaring that all letters, orders conveyance deed etc. issued by Haryana Housing Board are illegal, null and void.

AND

A decree for separate possession to the extent of 1/4th share each to the plaintiff No.1 to 4, then plaintiff No.5 to 8 (1/4th share) defendant No. 1(1/4th share) defendant No. 1 (1/4th share) and defendant No. 1 (1/4th share) by way of partition of the suit property by metes and bounds of House No 417, Sector 11, Panchkula and all movable property like money, F.D., jewellery, gold and bank accounts etc. with the consequential relief of permanent injunction restraining the defendants themselves or through their agents, servants or assignees from alienating, transferring and mortgaging the house in question by way of sale and transfer i.e. suit property illegally and forcibly in any manner whatsoever till the same is partitioned by metes and bounds and further restraining the defendant No.3 from auctioning the built up MIG-A House No. 417, Ground Floor, Sector 11, Panchkula in any manner whatsoever.”

The prayer made in the plaint is as under:-

“It is, therefore, respectfully prayed that the suit of the plaintiff may kindly be decreed and a decree for Declaration to the effect that the plaintiffs No. 1 to 4, plaintiffs No.5 to 8, defendant No.1 and defendant No.2 are co-owners and owners to the extent of 1/4th each of built up MIG-A, House No. 417. Ground Floor, Sector 11, Panchkula and for further declaration to the effect that the defendant No.1 got the said house transferred by playing fraud with the plaintiffs and Haryana Housing Board, Panchkula, and in collusion with the defendant No.2 and by illegal means, the said transfer by presenting wrong and false affidavits and documents and also declaring letter of allotment of ownership of House No.417, Sector 11, Panchkula in the name of the defendant No.1 is illegal, null and void



and is liable to be set aside/cancelled; and further declaring that all letters, orders conveyance deed etc. issued by Haryana Housing Board are illegal, null and void and a decree for Separate Possession to the extent of 1/4th share each to the plaintiff No. 1 to 4, then plaintiff No.5 to 8, (1/4th share) defendant No.1 (1/4 share) and defendant No 2, 1/4th share) by way of partition of the suit property by metes and bounds of House No. 417, Sector 11, Panchkula and all movable property like money, F.D. jewellery, gold and Bank accounts etc. with the consequential relief of Permanent injunction restraining the defendants themselves or through their agents, servants or assignees from alienating, transferring and mortgaging the house in question by way of sale and transfer i.e. suit property illegally and forcibly in any manner whatsoever till the same is partitioned by metes and bounds and further the defendant No.3 may kindly be restrained from auctioning the built up MIG-A, House No. 417, Ground Floor, Sector 11, Panchkula in any manner whatsoever, may kindly be passed in favour of the plaintiff and against the defendants alongwith costs of the suit.

Any other relief to which the plaintiff is deemed entitled to in the facts and circumstances of this case may also be granted in favour of the plaintiffs.”

Paragraphs 4 to 6 of the plaint read as under:-

“4. That after the purchase of the said house, the plaintiffs and defendants started residing in the MIG-A, House No. 417, Sector 11, Panchkula (i.e. suit property) as the said property was the joint properties of the plaintiffs and defendants. That it is pertinent to mention here that the plaintiffs and defendants invested the amount in the said house in the repair and extension of the house from time to time.

5. That after some years Sh. Nishikant Sharma i.e. husband of the plaintiff No.1 and father of plaintiff No.2 to 4 alongwith his family shifted to Chandigarh and started the tuition work there and the plaintiff No.5 to 8 also shifted to Ludhiana after some years.

6. That the defendant No.1 alongwith his family remained in the said house with late Smt. Pushpa Sharma. That Smt. Pushpa Sharma died on 01.09.2007 who was the owner of suit property.”



A perusal of the heading of the plaint, the prayer made therein and the averments made in the plaint show that it was the pleaded case of the respondents-plaintiffs that they were not in possession of the suit property and, therefore, they had prayed for separate possession as per their share. The Trial Court, in the considered opinion of this Court, erred in coming to the conclusion that no prayer for possession had been made.

Once the possession had been prayed for, the respondents-plaintiffs were liable to affix *ad valorem* Court fee as per their share, in accordance with the provisions of the Court Fees Act, 1870.

In view of the above, the revision petition is allowed. The impugned order dated 12.04.2022 is set aside. The application under Order 7 Rule 11 CPC is allowed and is directed that the requisite Court Fees be deposited within a period of two weeks failing which, the plaint shall stand rejected.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

19.05.2025

Manoj Bhutani

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable | Yes/No |