

---

**(2010) 03 P&H CK 0098**  
**In the Punjab And Haryana At Chandigarh**

|                                                       |    |            |
|-------------------------------------------------------|----|------------|
| Dilawar Singh and Another                             | Vs | APPELLANT  |
| Gurmeet Kaur and Others <BR> Dilawar Singh and Others |    | RESPONDENT |

---

**Date of Decision :** 12-03-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

**Citation :** (2010) 03 P&H CK 0098

**Hon'ble Judges :** K.C. Puri, J

**Bench :** Single Bench

---

## Judgement

K.C. Puri, J.—By this common order I intend to dispose of Civil Revisions one bearing No. 4661 of 2009 preferred by Dilawar Singh and another against the order dated 27.7.2009 (Annexure P-1) passed by Civil Judge (Junior Division) vide which they have been ordered to affix ad-valorem court fee and another revision petition No. 6475 of 2009 preferred by Smt. Kamla alias Guddi against the same order dated 27.7.2009 with the prayer for dismissing the suit in as much as the mandatory provisions of order 7 Rule 11 of the CPC ( in short - CPC) as amended to State of Haryana vide new clause `J' to the effect that plaintiff has not mentioned in the suit that no previous petition instituted or filed before Court of competent jurisdiction.

2. The brief facts of the case are that Dilawar Singh plaintiff filed a suit for declaration to the effect that plaintiff along with proforma respondent Parkash Kaur are joint owners to the extent of 1/2 share of property described in the head note of the plaint by ignoring sale deed No. 5638 dated 4.11.2008 and No. 5643 dated 4.11.2008. The defendant filed an application before the trial Court under Order 7 Rule 11 CPC. One of the ground was taken in that application is that since ad-valorem court fee has not been filed and as such the plaint be rejected. The other relief claimed by the defendant was rejecting the plaint on the ground that details of previous litigation has not been mentioned. The learned trial court after hearing both the sides directed the plaintiff to pay ad-

valorem court fee whereas the other ground for rejecting the plaint was declined.

3. Feeling dis-satisfied with the above said order, the plaintiff- petitioner has preferred the present revision for setting aside the impugned order vide which they have been called upon to affix the ad-valorem court fee whereas the other ground for rejecting the plaint was declined.

4. The defendants have also preferred the revision petition for rejecting the plaint on the ground that details of previous litigation has not been given and on that account the plaint should be rejected.

5. I have heard both the sides and have gone through the records of the case.

6. The plaintiff has filed suit for declaration. No consequential relief of possession has been claimed by the plaintiffs. This Court in authority *Teja Singh v. Smt. Amar Kaur* reported in 2008(1) Civil Court Cases 531 (P&H) came to the conclusion that where the consequential relief of possession is not claimed in that eventuality ad-valorem court fee cannot be ordered to be affixed. The order of the trial court directing the plaintiff to pay ad-valorem court fee was set aside by accepting the revision petition. No contrary authority has been preferred by the defendant in this regard. The relevant finding of this Court has been mentioned in para No. 6 which is reproduced as under:

6. Having heard learned Counsel for the parties at some length, I am of the opinion that the order passed by the learned trial Court suffers from patent illegality and irregularity. The plaintiff has not claimed possession as consequential or substantive relief. Article 1, Schedule 1 of the Courts Fees Act is applicable only if the possession is claimed either directly or indirectly as consequential relief, as is held by the Full Bench of this Court in a judgment reported as "1981 P.L.J.-423, *Niranjan Kaur v. Nirbigan Kaur*". Since the plaintiff has not claimed possession as consequential relief, the finding recorded by the learned trial Court that the ad valorem Court fee is required to be affixed, is wholly unsustainable. For the purpose of determination whether the ad valorem Court fee has to be affixed, one has to go through the averments made in the plaint and the averments made in the written statement are not required to be examined. On the reading of the averments made in the plaint, it is apparent that the plaintiff has not claimed possession and, therefore, it is simpliciter a suit for declaration on which the appropriate Court fee has been affixed. The question whether such suit is maintainable or not, is not required to be examined at this stage of affixation of the proper Court fees. Consequently, the present revision petition is allowed.

7. The order dated 6.11.2006 passed by the learned trial Court is set-aside as the same is suffering from patent illegality and irregularity causing substantial injustice to the plaintiff.

8. So, in view of the said authority, the Civil Revision No. 466 1 of 2009 preferred by the plaintiff stands accepted and the impugned order Annexure P-1 calling for

the payment of ad-valorem court fee stands set aside.

9. However, issue regarding court fee be framed and ultimately if the Court comes to the conclusion that ad-valorem court fee is required to be affixed or that the plaintiff later on seeking consequential relief of possession, in that case, trial court may call upon the plaintiff to deposit the ad-valorem court fee.

10. So, the revision petition stands disposed of with the above observations.

11. Now reverting to the revision petition No. 6475 of 2009 filed by defendant/ revisionist vide which the prayer has been made for rejecting the plaint on the ground that previous litigation has not been mentioned.

12. The learned Counsel for the petitioners during the course of arguments could not point out that any previous litigation was pending or decided between the parties. This Court in authority *Gurdial Singh v. Joginder Singh and Anr.* 1996(2) CCC 577 (P&H) held that non-compliance of Order 7 Rule 1-J CPC held that where there is no previous litigation between the parties and that is not mentioned in the plaint, the plaintiff should be afforded an opportunity to amend the plaint or make upon the lacuna and the plaintiff cannot be non-suited on that ground.

13. So, in these circumstances, the revision petition No. 6475 of 2009 preferred by Smt. Kamla alias Guddi, is without any merit and the same stands dismissed.

14. A copy of this judgment be sent to the trial Court for strict compliance.