

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

CR No. 3399 of 2014

Date of Decision: 07.07.2015

Maninder Singh

.....Petitioner

Vs.

Satinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Aayush Gupta, Advocate,
for the petitioner.

Mr. Vivek Chauhan, Advocate,
for the respondent.

SABINA, J.

Petitioner has filed this petition challenging the order dated 11.04.2014.

Learned counsel for the petitioner has submitted that the house in question was initially owned by the grand-father of the parties. The Parties were owners of the house in question to the extent of half share. Hence, the possession of the respondent of the house in question was on behalf of the petitioner also as every co-owner has an interest in the whole property and every part of it. Petitioner was thus, not required to affix *ad valorem* Court fee.

In support of his arguments, learned counsel has placed reliance on a decision of this Court in **Lt. Col. Hargobind Singh**

(Retd.) vs. Hargursharan Singh 2011 (1) CCC 155, wherein it was held as under:-

“Now adverting to the next contention of the learned counsel for the defendant that the plaintiff is not in possession of the house in dispute, so, he was required to affix ad valorem court fee on its existing market value, but since he did not pay the requisite fees, so, his plaint is required to be rejected, is not only devoid of merits but misplaced and speculative as well. Again, it is not a matter of dispute that the plaintiff has filed the simple suit for a decree of declaration to the effect that he is joint owner to the extent of 50% of the house in dispute since its allotment/purchase. Assuming for the sake of argument (though not admitted), if the defendant is in possession as co-owner, then, legally his possession as co-owner would be deemed to be the possession of all the co-sharers. A co-owner has an interest in the whole property and also in every part of it. The possession of property by one co-owner is in the eye of law, possession of all the joint owners even if one co-owner is in joint possession of the same. A mere occupation of larger portion or even of entire joint property by one co-owner does not necessarily amount to ouster as possession of one co-sharer would be deemed to be on behalf of all the co-sharers. Passage of time does not extinguish the right of the owner, who is out of possession of the joint property except in the event of complete ouster or abandonment. Therefore, the plaintiff is neither required to pay ad valorem Court fee on the existing market price of the property in dispute nor his suit can be termed to be time barred at this stage, as urged on behalf of the defendant. Therefore, the observations of Delhi High Court in Sudershan Kumar Seth's case (supra) are not applicable to the facts of the present case at this stage.”

Learned counsel for the respondent, on the other hand, has opposed the petition and has submitted initially Balwant Singh, grand-father of the parties was owner of the house in question but the same was later transferred in the name of Kaushalya Devi, mother of the parties. Learned counsel for the respondent has further submitted that Kaushalya Devi mother of the respondent had executed Will dated 09.06.1989 in favour of the respondent qua the house, in question. The mother of the respondent had died on 27.01.1993. As per Municipal record, house in question was transferred in the name of the respondent. Thus, the respondent was exclusive owner in possession of the house in question.

In the present case, petitioner has filed suit for declaration that he was entitled to half share in the house in question. Although, the case of the petitioner is that the house in question was jointly owned by the parties but the case of the respondent, on the other hand, is that he is exclusive owner in possession of the house in question on the basis of Will dated 04.06.1989 registered on 09.06.1989, executed by his mother in his favour. Balwant Singh, who was the owner of the house in question had executed registered Will dated 12.02.1968 in favour of Kaushalya Devi, mother of the petitioner and the respondent. As per the said Will, in case Kaushalya Devi, had pre-deceased Balwant Singh then respondent was to inherit the house in question.

Respondent moved an application under Order 7 Rule 11, of the Code of Civil Procedure, 1908 (for short 'CPC') seeking rejection of the plaint on the ground that petitioner was required to

affix *ad valorem* Court fee as he had claimed the relief of possession.

The learned trial Court in the facts and circumstances of the present case, rightly allowed the application moved by the respondent under Order 7 Rule 11, CPC as the petitioner is seeking the relief of possession, therefore, he is required to affix *ad valorem* Court fee.

I have gone through the judgment relied upon by learned counsel for the petitioner but the same fails to advance the case of the petitioner as it is based on different facts.

Hence, no ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

July 07, 2015
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