

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.7736 of 2013.

Decided on:-February 13, 2015.

Jagdish.

.....Petitioner.

Versus

Raj Kumar.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Jaswinder Singh, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

Dismissal of application of defendant Jagdish, petitioner herein, filed under Order VII Rule 11 CPC for rejection of the plaint on the ground that appropriate court fee has not been affixed by the plaintiff, respondent herein, forms genesis of this revision petition.

2. A suit for partition of the property while seeking possession of his share by the respondent-plaintiff is pending adjudication before Civil Judge (Junior Division), Karnal. It is a conceded fact that the property in dispute was purchased by Sohan Lal, father of the parties. He died on 30.9.2000 leaving behind the parties to the litigation as also Smt. Shakuntala Devi, his widow. Unfortunately, Smt. Shakuntala Devi also died on 14.2.2013. There is no other legal heir of owner Sohan Lal except the parties

to the litigation. No one else has laid claim to right, title or interest in the property.

3. When it is a conceded fact that except for the two brothers, there is no other claimant and the property in litigation is to be partitioned only between the two brothers who apparently hold equal share therein, court fee would be leviable by the respondent-plaintiff on the valuation of his share. Valuation of the property has yet not been determined.

4. Claim of the defendant, petitioner herein, that ad-valorem court fee is payable on the value of the property which is stated to be Rs.35 lacs, is a plea of no merit. For the purpose of determination of liability of payment of court fee, only averments in the plaint are to be looked at and pleas of the defendant are not to be taken into consideration. It is a case of neither wilful avoidance of payment of court fee nor of fraud or forgery.

5. When the facts pleaded in the plaint are taken into consideration, it comes out that the plaintiff is liable to pay court fee only with regard to value of his share at the time of passing the final decree.

6. Since separate possession is claimed by the respondent-plaintiff, question of payment of ad-valorem court fee has become relevant otherwise seeking of joint possession of the property held by their father, was not to attract payment of ad-valorem court fee.

7. Consequently, impugned order is modified to the extent that ad-valorem court fee would be payable by the plaintiff, respondent herein, on his share of property to be determined at the time of passing of the final decree but valuation of such share to which he is held entitled would be taken as it prevailed on the date of filing of the suit.

8. Sequelly, with the aforementioned modification in the impugned order, this revision petition is dismissed.

February 13, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes