

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

CR No. 8002 of 2016(O&M)

Date of decision: 12.12.2016

Subhash Chander Rampal (Now deceased) through his LR
....Petitioner

VERSUS

Satish Chander Rampal and others
.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.M. Wadehra, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 14.09.2016 (Annexure P-5) passed by the Civil Judge (Junior Division), Chandigarh whereby application filed under Order 14 Rule 2 (2) read with Section 151 of the Code of Civil Procedure, 1908 (in short 'CPC') for treating the additional issue regarding non-affixing of proper Court fee on market value of the suit property has been dismissed.

Satish Chander Rampal son of late Sh. Durga Dass Rampal has filed a suit for partition of house No.1583, Sector 7-C, Chandigarh staking his claim to 1/7th share in the suit property being one of the class-I heirs of deceased Durga Dass Rampal and Shakuntla Devi Rampal. The suit was instituted in the year 2010 and the respondent/plaintiff appears to have concluded his evidence. An application was filed by the petitioner under Order 7 Rule 11 CPC for rejection of plaint for want of affixing proper Court fee and the same was disposed of by the trial Court vide order dated 27.05.2016 and an additional issue 6(i) to the following effect was

framed:-

“6(i) Whether the plaintiff has not affixed proper court fee in the plaint? OPD”

Subsequent thereto, present application was filed for treating additional issue regarding Court fee to be a preliminary issue that came to be dismissed by the trial Court vide order impugned and the case has been fixed for evidence of the defendants.

Counsel for the petitioner has submitted that the respondent/plaintiff, in para 5 of the plaint, has admitted that in the year 1987, he shifted to house No.202, Sector 44-A, Chandigarh after the said dwelling unit was allotted to him by the Chandigarh Housing Board on 28.05.1987, meaning thereby that he is not in possession of any part of house No.1583, Sector 7-C, Chandigarh. In para 7 of the plaint, it has been averred that value of the house is more than Rs.5 crores and plaintiff having 7th share in the house and its value is Rs.70 lakhs approximately. It has been argued with vehemence that in view of averments raised in the plaint, no evidence is required to be adduced to decide the question of liability of the respondent/plaintiff with regard to payment of Court fee on market value of the house in question to the extent of share claimed by the respondent/plaintiff. It is further submitted that as the additional issue framed by the trial Court does not admit of adducing any evidence for its decision on merits, the same is required to be treated as a preliminary issue for its decision before adjudication of other issues framed by the trial Court. In support of his contention, he has referred to judgment of this Court **Sursati vs. Bachan Singh and others, 1987 PLJ 329**. Reference has also been made to judgment of this Court **Kailash Devi vs. D.A.V. Senior Secondary School, 2013(4) Civil Court Cases 636**, wherein the question of payment of Court fee in a suit for partition has been decided.

I have heard counsel for the petitioner, perused the paper-book and the various annexures including the order impugned.

As has been noticed hereinbefore, the respondent/plaintiff filed a suit for partition as back as in the year 2010. Counsel for the petitioner has not disputed that the respondent/plaintiff has already adduced his evidence and the case is pending for evidence of the defendants. Copy of the written statement filed by the defendants has not been placed on record, therefore, it is not clear if an issue with regard to Court fee was raised as a plea in defence. However, it remains a fact that after 4-5 years of filing of the suit, application for rejection of plaint for want of payment of requisite Court fee was filed and the same was disposed of vide order dated 27.05.2016 and additional issue, reproduced hereinbefore, was framed and the case was adjourned to 07.07.2016 for producing entire evidence by the defendants. The order dated 27.05.2016 makes reference that case has been fixed for defendants' evidence whereas the plaintiff has concluded his evidence. At the time of framing of additional issue, there appears to be no prayer made by counsel for the petitioner for treating the issue qua Court fee to be a preliminary issue. Later, the instant application was filed for treating the said issue to be a preliminary issue. The Court decided the application with the observations, read thus:-

“As to the mind of this court, the present case has been fixed for defendant evidence and defendant is having full opportunity to thrash the stand of plaintiff by anyway. Thus, it would be seen at the time of final arguments and after giving opportunity of being heard to both the parties, if the court fee has been attached with the plaint as per the value of the suit or not. Therefore, it appears to the Court that present application has been filed with ulterior motive to delay the proceedings of the case and the same is dismissed accordingly.”

Counsel for the petitioner has referred to judgment of this Court in **Sursati's case** (supra) wherein the Court dealt with the provisions of Order 14 Rule 2 CPC. It has been held that there are two requirements for question of law to be treated as a preliminary issue namely (i) an issue of law does not require any evidence to prove it, and (ii) suit can be disposed of on its decision. In the case at hand, the petitioner is seeking rejection of plaint only for want of payment of requisite Court fee. Indisputably, the suit cannot be disposed of even if the issue qua Court fee is answered in favour of the petitioner and against the respondent/plaintiff because in that eventuality, the respondent/plaintiff would be provided with an opportunity to pay the requisite Court fee. This apart, the respondent/plaintiff has given valuation of the suit property by way of approximation and the same is yet to be determined by the trial Court on the basis of evidence to be adduced by the parties in order to ascertain market value of share claimed by the plaintiff even if the respondent/plaintiff is ultimately held liable to pay Court fee by relying upon judgment of this Court in **Kailash Devi's case** (supra). In this view of the matter, no error much less illegality can be noticed in the discretion exercised by the trial Court that the question qua payment of Court fee shall be decided after adducing evidence by the parties.

The very fact that the petitioner/defendant is filing successive applications in place of adducing evidence for bringing the proceedings to a stage of final adjudication substantiates observations of the trial Court that the petitioner is interested in prolonging decision of the suit obviously for the reason that the respondent/plaintiff is out of possession of the suit house, stated to be jointly owned by the plaintiff and defendants. This apart, payment of court fee is a question between the Court and the

plaintiff because the defendant would not be a beneficiary even if the plaintiff is called upon to pay the requisite Court fee. Analyzed from any angle, I do not find any reason to interfere in the discretion exercised by the trial Court.

Dismissed.

DECEMBER 12, 2016		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no