

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

**Civil Revision No.8895 of 2015**

**Date of decision : 14.01.2016**

**Priyanka**

.....Petitioner

*Versus*

**Raj Dulari**

...Respondent

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

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

Present: Mr. Harkesh Manuja, Advocate for petitioner.

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**DARSHAN SINGH, J.**

The present revision petition has been preferred against the order dated 16.11.2015, passed by learned Civil Judge (Junior Division), Panipat, vide which the application filed by the petitioner-defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 has been dismissed.

2. Respondent-plaintiff Raj Dulari has filed the suit for separate possession by way of partition with consequential relief of permanent injunction on the plea that she had purchased the property in

dispute vide registered sale deed dated 12.05.2006. The defendant is the daughter of the plaintiff. Her husband has already expired on 02.8.2013. She executed a registered sale deed dated 02.08.2013 to the extent of ½ share in favour of the defendant. Since then they are in joint possession of the suit property. Now she has filed the suit for separate possession by way of partition.

3. The petitioner-defendant has filed an application alleging therein that the plaintiff-respondent has assessed the court fees for the purpose of jurisdiction and had affixed the stamp of Rs.25/- only but in para No.6 of the written statement filed in another suit titled as Priyanka Vs. Raj Dulari pending in the Court of the Civil Judge (Junior Division), Panipat, the same property has been valued more than Rs.40 lakhs. The party who is seeking partition will have to pay the court fee as per the market value. It was further pleaded that the plaintiff may be directed to complete the necessary court fees, failing which her suit should be dismissed.

4. The plaintiff-respondent contested the application on the ground that both the parties are co-sharer in joint possession of the suit property. So, the Court fees affixed by her is proper and adequate.

5. The learned trial court dismissed the application of the petitioner/defendant vide impugned order dated 16.11.2015. Hence, this revision petition under Article 227 of the Constitution of India.

6. I have heard Mr. Harkesh Manuja, Advocate for the petitioner and gone through the paper-carefully.

7. Learned counsel for the petitioner contended that as the

plaintiff was claiming the relief of separate possession by way of partition, so she was required to affix the ad valorem court fees as per the market value of the suit property. The application filed by the petitioner directing the plaintiff to make good the deficiency in the court fees has been wrongly dismissed.

8. I have duly considered the aforesaid contentions.

9. It is settled principle of law that for the purpose of determining the question for the valuation of the suit and court fees the averments in the plaint are to be taken into consideration. The copy of the plaint is available on record as Annexure P-1. In para No.2 of the plaint, the plaintiff-respondent has categorically mentioned that she and defendant are in joint possession of the suit property. Thus, the plaintiff has pleaded that both the parties are in joint possession of the suit property to the extent of their shares. Now she has filed this suit for separate possession on the basis of the partition. As per the averments in the plaint, she is not out of possession rather she is pleaded to be in joint possession. So, I do not find any illegality in the impugned order passed by the learned trial court.

10. Consequently, the present revision petition has no merits and the same is hereby dismissed.

**14.01.2016**

*sunil yadav*

**( DARSHAN SINGH )  
JUDGE**