

In the High Court of Punjab and Haryana at Chandigarh

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**CR No. 3132 of 2016 (O&M)
Date of decision: 27.7.2017**

Raj Rani Batish

.....petitioner

Versus

Amarjit Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Deepak Aggarwal, Advocate, for the petitioner.

Mr.S.P.Arora, Advocate
for respondent Nos. 1 and 2.

Raj Mohan Singh, J.(oral)

Petitioner has filed this revision petition against the order dated 5.4.2016 passed by Civil Judge (Jr.Divn.) Nabha, whereby application under Order 7 Rule 11 CPC filed by defendant No.1 was accepted and the plaintiff was directed to pay ad valorem court fee on the market value of her share arising out of the joint property.

In the suit for possession by way of partition, trial Court, while allowing the application under Order 7 Rule 11 CPC, has observed that the plaintiff is not in constructive possession of any part of the suit property and she is out of possession of the suit property. Therefore, a person, who is out of possession, seeks possession of the joint property, is liable to pay ad valorem court fee.

I have considered the submissions made by learned

counsel for the parties.

The concepts of co-sharership prescribes that, even if, a co-sharer of a joint property is not in actual physical possession of his or her share, he or she would be deemed to be in joint possession of property subject to partition of land. Reference can be made to ***Bharthu Ram Vs. Ram Sarup, 1981, P.L.J. 204.***

Learned counsel for the petitioner also relied upon **Rajiv Kumar and others vs. Rakesh Kumar and others 2015**

(4) Civil Court Cases 498 and contended that in a suit for partition of joint property, fixed court fee is required to be paid by a person who is seeking partition and possession in a joint property, even if he is not in possession of any part of joint land.

In my considered opinion, a co-sharer, who is out of possession would be deemed to be in joint possession with others till the land is partitioned by metes and bounds.

In view of above, this revision petition is allowed. Impugned order dated 5.4.2016 is set aside. The trial Court shall proceed with the suit without insisting upon affixation of court fee by the plaintiff-petitioner.

(RAJ MOHAN SINGH)
JUDGE

July 27, 2017
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Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No