

\$~A-13

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 1370/2016 & CM No.47780/2016 (stay)

SONU YADAV & ORS

..... Petitioner

Through Mr.R.K.Sharma and Mr.Abhishek
Mudgil, Advs.

versus

MASTER LAKSHAY YADAV & ANR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

02.01.2017

%

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 2.12.2016 by which the petitioner was directed to pay the court fees as per the jurisdiction valuation valued at Rs.24 lacs. The petitioner has filed a suit seeking relief of declaration and partition of the suit property. A declaration is sought stating that the will dated 4.3.2008 allegedly propounded by the defendants of late Shri Jai Kishan the father is null and void and be cancelled. Thereafter partition is sought of the said properties.

2. By the impugned order the trial court relied upon section 7(IV)(c) of the Court Fees Act, 1870 which provides that where a declaratory decree is sought and where a consequential relief is also prayed the court fee is to be computed according to the amount at which the relief sought is valued in the

plaint. As a declaration is sought to declare a will null and void and relief of partition is also sought, the trial court concluded that the present suit falls within the aforesaid provisions of section 7(IV)(c) of the Act being a case of declaration with consequential relief.

3. I have heard learned counsel for the petitioner. Learned counsel appearing for the petitioner submits that the relief of partition is not a consequential relief to the declaration sought of the will being null and void. He submits that he could also have filed a suit for partition without seeking a declaration that the will is void as it is not a consequential relief. He further points out to the provisions in the plaint where he submits it is specifically averred that the suit property is a joint family property and the testator could not bequeath the joint family property. He submits that hence even otherwise even assuming that the impugned order is correct, the petitioners shall not be liable to pay the court fees on the valuation of the suit property.

4. A perusal of the plaint shows that it is claimed that the suit property that it is HUF property and the late father could not Will the same. It is also claimed that the Will allegedly executed by the father is null and void. Hence, the relief of partition cannot be said to be consequential to the decree of declaration of the Will as void. The stand is that the property is ancestral/HUF even on the date of the enactment of the Hindu Succession Act and retains that character. Hence, relief of partition cannot in the facts of this case as given in the plaint be said to be consequential to the relief of partition. The petitioner claims to be in possession of the property and does not seek relief of possession.

5. Reference may be had to the judgment of this court in *Sushma Tehlan Dalal v. Shivraj Singh Tehlan & Ors., 2011 (123) DRJ 91* where

this court held as follows:

“6. It would thus be seen that in view of the rules framed by Punjab High Court under Section 9 of Suits Valuation Act, which admittedly are applicable to Delhi, there can be separate valuations for the purpose of Court fee and jurisdiction. The valuation for the purpose of jurisdiction has to be the value of the whole of the properties subject matter of partition, whereas valuation for the purpose of Court fee would be such as is provided by the Court-fees Act.

XXXXXXXXXXXXXXXXXXXX

11. The following legal proposition of law emerges from the above-referred decisions:

- (i) In order to ascertain whether the suit has been property valued for the purpose of Court fee or not, only the averments made in the plaint have to be seen, without reference to the plea taken by the Defendants;
- (ii) If the plaintiff claims to be in joint possession of the suit property, he has to pay a fixed Court fee in terms of Article 17(vi) of Court-fees Act.
- (iii) If the averments made in the plaint show that the plaintiff has been completely ousted from possession and is not in possession of any part of the suit property, he is required to claim possession and also pay ad valorem Court fee on the market value of his share in the suit property.”

6. Hence the suit is correctly valued as per the plaint.

JAYANT NATH, J

JANUARY 02, 2017/n