

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

C.R. No.3809 of 2018

Date of Decision.31.05.2018

Narinder Kumar Mehta

.....Petitioner

Vs

Gobind Raj Mehta @ Gobind Ram Mehta and others

.....Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Chirag Wadhwa, Advocate  
for the petitioner.

-.-

**AMIT RAWAL J.(ORAL)**

The present revision petition is directed against the order dated 9.11.2017 whereby petitioner/defendant-counter claimant has been called upon to pay the court fee till 11.12.2017 on an application filed by the respondents-plaintiffs.

Mr. Chirag Wadhwa, learned counsel appearing on behalf of the petitioners submitted that the respondents-plaintiff filed the suit claiming following relief:-

*“It is, therefore, prayed that a decree for possession by way of partition after measurement of area of residential and commercial ground floor and first floor constructed building bearing Municipal House Tax Units No.4/14/1, 4/14/2, 4/14/3, 4/14/4, 4/14/5 as per municipal house-tax assessment register/record for the year 2001-02, bounded as on East:Road, West Property of Pharia brothers (Harish & Subhash), North:Shop of Gopi Chand Kamboj South:Frontal portion of property*

*earlier owned and possessed by Diwan Chand, entered and recorded in the name of plaintiffs and defendant, situated in the area of Rori Bazar/Rori Gate, Sirsa being part and known as area of Gali Chopra Wali, Sirsa Distt as well, within the Municipal Limits of Sirsa; and for delivering the possession of share of respective co-owners/co-sharer of this property owned and possessed by plaintiffs and defendant jointly during the life time of their parents and afterwards received by them as such in same nature by way of inheritance of Gurdayal Mehta @ Gurdayal Singh son of Shri Chetan Dass and Narayan Devi wife of Shri Gurdayal Mehta @ Gurdayal Singh, with a relief of permanent injunction restraining the defendant to alienate, transfer, mortgage, rent out, lease out, demolish, change the structure design, change the fixture fittings in shape of doors, windows etc. and creating any charge over the suit property, may kindly be passed in favour of plaintiffs and against the defendant with costs.”*

The defendants in pursuance of notice of the aforementioned suit, filed the written statement and set up a counter-claim wherein following prayer was made:-

*“Hence, prayed that a decree for partition of house No.761, Sector 21C, Faridabad measuring 350 sq. yards and H.No.24, Urban Estate-II, near Jindal Chowk, Hisar measuring 500 sq. yards being Hindu*

*Undivided Family Property recorded in the name of plaintiffs No.1 and 2 respectively and as a consequential relief of delivery of possession of the share to the counter claimant/defendant, may kindly be passed in favour of the defendant/counter claimant, in the interest of justice.”*

The respondents-plaintiffs had also not paid the appropriate court fee and an application filed by the petitioner-defendant has been allowed by the trial Court against which a revision petition bearing No.975 of 2018 has been preferred wherein notice of motion is issued for 22.05.2018.

In support of his contention, he relied upon the judgment of Full Bench of Lahore High Court rendered in **Asa Ram and others Vs. Jagan Nath and others AIR 1934 (Lah) 563** wherein it was held that in suit for possession by way of partition, a co-sharer cannot be called upon to pay the court fee *vis-a-vis* possession, in essence, fixed court fee has to be paid by a person seeking partition and possession in a joint property, even if he is not in possession of any property. Reliance was laid to para 24 of the full Bench judgment, which reads as under:-

*“24. The above case law on the subject shows that the consensus of opinion now that in a suit for partition of joint property, where the plaintiff alleges joint possession, a court fee stamp of Rs.10/- is leviable under Article 17(6) of the Schedule 2 of the Indian Court Fees Act and that Section 7(4)(b) does not apply*

*to such a suit; the ratio decidendi is that the plaintiff is not (enforcing any right to share in joint family property but according to his own allegations, he is already in the enjoyment of his share and merely seeks to change the mode of his enjoyment of the joint property and that the relief, therefore, in such a case is not capable of being valued in money. Section 7(4)(b) applies only to cases relating to joint family property where the plaintiff has been ousted from its enjoyment and seeks to be restored to joint enjoyment. If however, he has been excluded from joint enjoyment or where he has ever been in enjoyment or possession, actual or constructive, of the joint property and desires to separate his share from the other co-sharers, he must sue for possession and partition and in such a case he must pay ad valorem court-fee on his share. To sum up, my view is that in a suit to enforce the right to share in joint family property i.e. a suit to be restored to joint possession or enjoyment of joint family property, court fee would be payable under Article 7(4) (b), ad valorem on the value of the relief as fixed by the plaintiff, and in a suit for partition of joint property, whether owned by a joint family or otherwise, where the plaintiff alleged that he is in actual or constructive possession thereof, court fee payable would be Rs.10/- under Article 17(6) of the Schedule II of the Court Fees Act.”*

Thus, urges this Court for setting aside the order under challenge.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Chirag Wadhwa. Section 7(iv) of the Court Fees Act, 1870 deals with payment of court fee in respect of the property described therein i.e. possession of land. Section 7 (v) (c) of the 1870 Act deals with court fee where land is subject to any land revenue and in that eventuality, parties are to pay 15 times of such net profit but in the absence thereof, valuation has to be on the basis of market value of similar land, houses and garden in the neighbourhood. For the sake of brevity Section 7 (iv) (c), (v) (c) & (e) are reproduced as under:-

***“7. Computation of fees payable in certain suits.-The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :-***

xxxx

xxxx

xxxx

(iv) In suits:-

*( c ) for a declaratory decree and consequential relief.-  
to obtain a declaratory decree or order, where  
consequential relief is prayed, according to the amount  
at which the relief sought is valued in the plaint or  
memorandum of appeal.*

*In all such suits the plaintiff shall state the amount at  
which he values the relief sought:*

xxxx

xxxx

xxxx

***(v) for possession of land, houses and gardens.- In suits***

*for the possession of land, houses and gardens- according to the value of the subject-matter; and such value shall be deemed to be where the subject-matter is land, and-*

xxxx

xxxx

xxxx

*(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the year next before the date of presenting the plaint fifteen times such net profits; but where no such net profits have arisen there from-the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood;*

xxxx

xxxx

xxxx

*(e) for houses and gardens.- where the subject-matter is a house or garden-according to the market-value of the house or garden”*

The dispute with regard to payment of court fee came to be debated upon before the Full Bench of this Court in **Niranjan Kaur Vs. Nirbigan Kaur 1981 PLJ 423** wherein it has been held that where challenge for cancellation of document relating to land or declaration of the document voidable by a party to document is laid, it would be governed by Article 1 Schedule I and not by Section 7(iv) (c). In other words, it is the duty of the Court to look into the allegation made in the plaint to find out substantive relief asked for

and after discussion upon entire case law on the point, held as under:-

*“8. It is the common case of the parties that in case the main relief in the suit is held to be that of cancellation of the sale deed, then the case is not covered by [Section 7 \(iv\)\(c\)](#) and the only provision applicable is [Article 1, Schedule 1](#) of the Act. In order to bring the case under [Section 7\(iv\)\(c\)](#) of the Act, the main and substantive relief should be that of declaration and the consequential relief should be ancillary thereto. Moreover, if no consequential relief is claimed or could be claimed in the suit then [Section 7\(iv\)\(c\)](#) will not be attracted. Section 7(iv)(c) clearly contemplated suits to obtain the declaratory decree or order where consequential relief is prayed. It further provides that in all such suits, the plaintiff shall state the amount at which he values the relief sought. A further proviso has been added thereto by the [Punjab Act No. 31 of 1953](#), which reads as follows:*

*"Provided further that in suits coming under sub-clause (c) in cases where the relief sought is with reference to any property such valuation shall not be less than the value of the property calculated in the manner provided for by Clause (v) of this Section."*

*9. In a Suit to obtain declaratory decree where no consequential relief is prayed, sub-clause (iii) of [Article 17](#) of Schedule II of the Act, will be applicable but the suit filed by the plaintiff-petitioner was virtually to all intents and purposes, for the cancellation of the sale deed, executed by her, in favour of the defendant-respondent. She cannot claim possession unless the said deed is cancelled by a decree of the Court. To say in the plaint, that it be declared that the sale deed, got executed from her as a result of the fraud, was void and*

*not binding on her, does not convert the suit into one for a declaration with the consequential relief of possession so as to fall within the provision of [section 7\(iv\)\(c\)](#) of the Act. To such a suit, the only article applicable is [Article 1](#), Schedule 1 of the Act, and for that proposition, further support can be had from a Full Bench decision of the Allahabad High Court in Kalu Ram's case (AIR 1932 All 485)(supra) also wherein as regards the valuation of the relief as to the cancellation of the alienation it has been held that such a relief falls neither under [Section 7\(iv\)\(c\)](#) nor under Schedule II [Article 17\(iii\)](#), but under the residuary [Article 1](#), Schedule 1 of the Act.*

*15. As regards the present case, the plaintiff-petitioner claimed possession of the suit land after getting a declaration that the sale deed was null and void because of the alleged fraud etc. It is significant to note that the plaintiff-petitioner herself being a party to the sale deed could not sue for a mere declaration that the sale deed was fraudulent and the vendees had not acquired any title thereunder. The sale deed had to be cancelled, otherwise, title in the land had already passed to the vendee under the deed. In the present case, the plaintiff-petitioner had to get the sale deed, to which she was a party, cancelled, before she could seek possession of the land. Thus, the substantive relief being the cancellation of the sale deed, it is [Article 1](#), Schedule I of the Act, which was applicable to the suit of the plaintiff-petitioner.”*

On conjoint reading of the reliefs sought in the suit by the plaintiff and in the counter-claim set up by defendants in respect of their respective shares, the defendant is required to pay court fee as per Section 7 (v) (e) for the defendant is seeking possession of the

house whereas the plaintiffs had sought payment of court fee with regard to some other land, therefore, cannot be permitted to pay fix court fee as sought to be paid by Mr. Chirag Wadhwa.

As an upshot of my finding, I do not find any reason to interfere with the order under challenge and the same cannot be said to be passed without jurisdiction. The order under challenge is upheld and the revision petition is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**May 31, 2018**  
Pankaj\*

Whether reasoned/speaking      Yes

Whether reportable      No