

CR No.7246 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7246 of 2016 (O&M)
Date of decision: 30.05.2018

Gurdev Singh Bajwa

...Petitioner

Versus

Gian Singh Bajwa

....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms.Veenu Garg, Advocate for
Ms. Armaan Sagar, Advocate for the petitioner.

Mr. H.S. Sandhu, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-petitioner is in the revision petition against the order passed by learned trial Court directing the plaintiff to affix ad valorem court fee on the plaint with respect to the relief of possession.

Plaintiff had filed a suit claiming declaration that the plaintiff and the defendant are joint owners in possession of the property in dispute. Prayer for partition of the property was also made. Learned trial Court after observing that the plaintiff is not in possession, held that the ad valorem court fee is payable. However, learned court overlooked the fact that the plaintiff claims to be co-owner in the property in dispute. Every co-owner is deemed to be in constructive possession of the joint property.

This issue has been examined in detail by this Court in the case

Rajiv Kumar and others Vs. Rakesh Kumar and others 2015 (8) RCR (Civil)

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588. This Court has interpreted that the word “constructive” means legal fiction and that legal fiction is to the effect that every co-owner is deemed to be in possession of the property.

Respectfully following the aforesaid judgment, the present revision petition is allowed and the order under challenge is set aside.

Learned trial Court is requested to proceed with the trial and decide the matter expeditiously.

(ANIL KSHETARPAL)
JUDGE

May 30, 2018
Ishwar

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No