

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8759 of 2016

Date of Decision: 06.12.2018

Nishi Bhargava and others

...Petitioners

vs.

Gyaneshwar Bhargava and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vivek Khatri, Advocate,
for the petitioners.

Mr. Vineet Chaudhary, Advocate,
for the respondents.

Amol Rattan Singh, J.

By this petition, the petitioners challenge the order of the learned trial Court (Civil Judge (Junior Division), Hisar), dated 25.11.2016, by which their application under Order 7 Rule 11 of the Civil Procedure Code (hereinafter to be referred to be as the Code), seeking rejection of the plaint in the suit filed by the first respondent herein, has been dismissed.

The suit filed by the respondent is one seeking a declaration to the effect that he as also the defendants, including the proforma defendant (also a proforma respondent in the present petition), are all joint owners in possession of their respective shares of the suit property as has been described in the plaint, they all being immediate descendents of Shri Ishwar Chand Bhargava, (the first petitioner being the wife of the immediate descendent of Ishwar Chand), with the suit property having therefore devolved equally upon them.

The 'ancillary relief' claimed is that the respondent-plaintiff and the proforma defendant are entitled to possession of specific portions of the suit property, after its partition by metes and bounds.

Lastly, a relief of prohibitory injunction is sought against the contesting defendants, restraining them from alienating the suit property in any manner and from demolishing it or causing any damage to the structure thereof, as it exists presently.

2. The contention of the petitioners-defendants, in their application under Order 7 Rule 11 of the Code, was that since the plaintiff was also seeking possession of the suit property, he was bound to affix court fee, *ad valorem*, upon it as per the value of the property.

3. In his reply to the application, the respondent-plaintiff has stated that the suit essentially being one seeking a declaration of joint ownership, and possession thereof being claimed only by way of a partition of the property, court fee was not required to be paid *ad valorem*.

4. After considering the matter, the learned trial Court held that since the contention of the respondent-plaintiff was that in fact a family settlement had been entered into on 23.11.1997, with a deed executed to that effect, and that settlement had become final, with the matter thereafter referred to Arbitration, and the Arbitration Award had also been upheld upto this Court in a civil revision filed, (the order of this Court stated to be dated 23.02.2016), the parties to the suit were obviously co-sharers, with therefore each person deemed to be in possession of every square inch of the suit property.

Hence, simply because the contention of the defendants (present petitioners), was that the respondent-plaintiff was residing at Holland, did not

take away his status of being a co-sharer in the suit land and consequently, that being so, he was not required to affix fee *ad valorem*, as per the market value.

5-A. A contention of the defendants was also noticed by the trial Court that one of the signatories to the family settlement, i.e. Smt. Krishna Bhargava, had executed a will dated 29.11.2002 during her life time, mentioning therein that the plaintiff was a citizen of Holland.

Thereafter, the trial Court went on to observe that the previous litigation starting with Arbitrators' Award having become final, the respondent-plaintiff and all the defendants, including the present petitioners, were co-sharers on every inch of the suit property.

6. On the aforesaid grounds the application was dismissed. Before this Court, Mr. Vivek Khatri, learned counsel for the petitioners, submitted that the respondent-plaintiff also having claimed possession of the suit property, court fee was required to be paid *ad valorem* as has been held by co-ordinate Benches of this Court in **Balbir Singh Mehta v. Shyam Singh and others** 2009 (4) Law Herald 3046 and **Kailash Devi v. D.A.V. Senior Secondary School** 2013 (4) PLR 299.

He also referred to the judgments of the Supreme Court in **Suhrid Singh @ Sardool Singh v. Randhir Singh and others** (2012) 12 SCC 112 and **Jagannath Amin v. Seetharama (dead) by LRs and others** (2007) 1 SCC 694, in support of his contention.

He further cited a judgment of a Division Bench of this Court in **Tarsem Singh and others v. Vinod Kumar and others** 2011 (31) RCR (Civil) 709, to contend that court fee *ad valorem* is payable by the respondent-plaintiff.

7. *Per contra*, Mr. Vineet Chaudhary, learned counsel appearing for both the respondents, i.e. the plaintiff and the proforma respondent, reiterated the reasoning given by the trial Court in the impugned order, further relying upon two judgments, also of co-ordinate Benches of this Court, in **Lt. Col. Hargobind Singh (Retd.) v. Mr. Hargursharan Singh** 2011 (1) RCR (Civil) 645 and **Raghubir Singh v. Sukhwinder Singh and others** 2017 (4) PLR 735, to submit that actually court fee *ad valorem*, where the parties are co-sharers, is not required to be paid by the plaintiff.

8. Having considered the matter, first of course it is to be noticed that the parties are immediate family to each other, respondent no.1-plaintiff being the son of Shri Ishwar Chand Bhargava, with the proforma respondent-proforma defendant Riteshwar Bhargava also being the son of the same father, i.e. they are brothers.

Petitioner no.1-defendant no.1 is seen to be the widow of the late Shri Diveshwar Bhargava son of Shri Ishwar Chand Bhargava, with petitioners no.2 and 3 being her minor daughters, i.e. the daughters of the late Shri Diveshwar Bhargava. Thus the petitioners are the sister-in-law and nieces of the respondents herein.

9. It has not been disputed before this Court that the Award of the Arbitrator, based on the family settlement dated 23.11.1997, has become final, thereby directing partition of the suit land, with the will relied upon by the respondents obviously therefore not accepted.

Though no detailed arguments have been made on that issue before this Court, however even presuming that the will of Smt. Krishna Bhargava bequeathed her share in the suit property to any of the parties specifically, what was not denied was that the respondent-plaintiff is only

seeking partition of the suit property in terms of the Award and as such is only claiming his own share in the unpartitioned property.

10. In the aforesaid background, the judgments cited on both sides would need to be looked at.

The judgment of a co-ordinate Bench in *Balbir Singh Mehtas'* case (supra) pertains to a case where the plaintiff had sought a declaration that he alongwith another person was in joint possession of the property inherited by him from his father along with other legal heirs, and as such he was not required to affix court fee *ad valorem*.

This Court (co-ordinate Bench) on the basis of judgements cited on both sides before it, held that while deciding a question on court fee, the Court should look into the allegations made in the plaint, to determine the substantive relief sought therein, and if the main relief sought was for cancellation of a deed, with the declaration sought only being a 'surplusage', the case would not be covered under Section 7 (iv)(c) of the Court Fees Act, 1870, because the main relief was that of a declaration and the consequential relief just ancillary. However, if the main relief sought was not a mere declaration but the plaintiff also sought possession, or a cancellation of a sale deed, then court fee had to be paid accordingly.

11. In *Kailash Devis'* case (supra), the trial Court had directed the plaintiff to approach the revenue authorities to get the market value of the suit property assessed and thereafter to affix court fee, *ad valorem*. That order having been challenged, this Court found that the suit was one seeking partition of the suit property with the plaintiff claiming to be a co-sharer to the extent of a 59/88th share thereof.

It was held that since the plaintiff was also seeking a relief of

possession of her share in the suit property by partition thereof, she had to pay court fee, *ad valorem*, as per the market rate of the property.

In *Jagannath Amins'* case (*supra*), also cited by learned counsel for the petitioner-defendants, the Supreme Court upon considering the provisions of the Karnataka Court Fees and Suits Valuation Act, 1958, found that the issue in question actually was whether court fee should be paid taking the suit property to be agricultural land or not agricultural property (but a house) with the trial Court having held that court fee as applicable to agricultural property was to be paid, and the Karnataka High Court having upheld that decision.

The Supreme Court while referring to an earlier judgment in **Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar** 1958 SCR 1024, quoted therefrom as follows:-

“Take for instance the claim for partition where the plaintiff seeks to enforce his right to share in any property on the ground that it is joint family property. The basis of the claim is that the property in respect of which a share is claimed is joint family property. In other words, it is property in which the plaintiff has an undivided share. What the plaintiff purports to do by making a claim for partition is to ask the court to give him certain specified properties separately and absolutely on his own account for his share in lieu of his undivided share in the whole property. Now it would be clear that the conversion of the plaintiffs' alleged undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. That is why legislature has left it to the option of the plaintiff to value his claim for the payment of court-fees. It really means that in suits falling under Section 7(iv)(b) the amount stated by the plaintiff as the value of his claim for partition has ordinarily to be accepted by the court in computing

the court-fees payable in respect of the said relief. In the circumstances of this case it is unnecessary to consider whether, under the provisions of this section, the plaintiff has been given an absolute right or option to place any valuation whatever on his relief.”

(Emphasis applied by this Court only)

Having quoted from the above citation, their Lordships held in *Jagannath Amins'* case that it would be difficult for the Court to exercise its power under Order 7, Rule 11 (b) of the Code of Civil Procedure, if it was unable to determine the correct value of the relief claimed, and therefore it would not be able to direct the plaintiff to correct the valuation. Thereafter while referring to Section 37(1) of the Tamil Nadu Court Fees Act, it was held as follows:-

“So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court fee under Section 37 (1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been “excluded” from joint possession to which they are entitled to in law. The averments in the plaint that the plaintiff could not remain in joint possession as he was not given any income from the joint family property would not amount to his exclusion from possession. We are unable to read into the plaint a clear and specific admission that the plaintiff had been excluded from possession.”

(Emphasis applied by this Court only)

12. Coming to the judgments cited by learned counsel for the respondent-plaintiff in the present case, in *Raghubir Singhs'* case (supra), while

referring to a judgment of the Lahore High Court in Asa Ram v. Jagan Nath AIR 1934 Lahore 563, as also a more recent judgment in Rajiv Kumar v. Rakesh Kumar 2015 (4) PLR 191, a co-ordinate Bench held that where it is a suit for partition, with the plaintiff claiming to be in possession, no court fee, *ad valorem*, was required to be affixed.

Similarly, in Surinder Singh v. Harvinder Singh and others 2018 (1) Law Herald 47, it was held that in a case of co-sharers, every co-sharer would be deemed to be in possession of every inch of the land till the same is partitioned by metes and bounds and therefore, even while referring to *Suhrid Singhs'* case (supra) (of the Supreme Court), it was held that court fee of only Rs.19.50 is required to be paid in terms of Article 17(iii) of the 2nd Schedule to the Court Fees Act, 1870.

13. Before going on to decide the matter, it is seen that other than the judgment in *Sathappa Chettiars'* case (supra), referred to by the Supreme Court in *Jagannath Amins'* case, none of the other judgments cited before this Court in the present case, actually refer to Section 7 (iv) (b) of the Court Fees Act, 1870.

In the opinion of this Court, it would be a basic pre-requisite to look that provision before going on to adjudicate upon an issue where partition and specific possession of family property is sought.

Consequently, sub-clauses (a), (b) & (c) of clause (iv) of Section 7 of that Act is reproduced hereinbelow:-

“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:-”

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(iv) **In suits-**

(a) For moveable property of no market-value.- for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

(b) to enforce a right to share in joint family property.- to enforce the right to share in any property on the ground that it is joint family property,

(c) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed,

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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;”

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14. In terms of the aforesaid provision, in the opinion of this Court, the contention of the petitioners that the respondent-plaintiff seeks not only a declaratory decree but also a consequential relief of exclusive possession and therefore it would be sub-clause (c) of clause (iv) of Section 7 that would be applicable, is not a contention that can be accepted because the plaintiff is actually seeking a right to a share in joint family property, the said property having devolved upon him and his siblings from their father, and consequently it would be sub-clause (v) of clause (iv) of Section 7 that would apply.

Either which way, the suit property has of course to be properly valued to determine the court fee payable by the plaintiff.

Undoubtedly, the last part of clause (iv) of Section 7 states that in all such suits the plaintiff would state the amount at which he values the relief sought; however, read with what has been held in *Jagannath Amins'* case

(supra), (though while dealing with a provision of the Tamil Nadu Court Fees Act), to the effect that proper valuation must be conducted for the court to exercise its jurisdiction under Order 7 Rule 11 (b) of the Code of Civil Procedure, in the present case also a proper valuation of the suit property has to be got conducted, to determine the fee to be paid by the plaintiff in terms of Section 7 (iv)(b) of the Act of 1870.

This is especially so in view of what has been held by the Supreme Court in **Kinny Kapur and another v. Gunveer Kapur and others** Law Finder Doc ID # 902650, wherein, while dealing with partition of joint family property, it was held by their Lordships (in terms of the Act of 1870) that even for partition of joint family property, court fee *ad valorem* needs to be paid, but only to the extent (proportion) of the plaintiffs' share in the said property and not on the value of the entire property (reference paragraph 6 of the aforesaid judgment). The relevant passage of the said judgment is cited as follows:-

“The plaintiffs have to pay *ad valorem* court fee leviable according to their share in the property in question. The High Court has erred in law in asking the payment of court fee on the valuation of entire suit property, the plaintiffs are not claiming interest in the remaining 7/9th portion. As such they were not required to make the payment of court fee with respect to remaining 7/9th portion.”

15. Thus, though, on principle I respectfully agree with the judgments of co-ordinate Benches in *Raghubir Singhs'* and *Surinder Singhs'* cases (supra), to the extent that when a person is a co-sharer in a jointly held property, he is deemed to be in possession of every square inch thereof, (alongwith all other co-sharers), however, with Section 7(iv)(b) specifically dealing with joint family property, stipulating therein that for enforcing a right

to a share in such property, the property has to be valued by the plaintiff, and with *Jagannath Amins'* case, as already discussed, having held that the true value must be got evaluated, in my opinion, the impugned order cannot be sustained, though the reasoning contained therein would be very much in consonance with the judgments in *Raghubir Singhs'* and *Surinder Singhs'* cases (supra).

Yet, with the statutory provision being as it is in sub-clause (b) of clause (iv) of Section 7, with the interpretation given thereto even in *Kapurs'* case (supra), respondent no.1 (plaintiff) would be required to pay the court fee to the extent of the share claimed by him in the jointly held property, after valuation thereof.

16. Consequently, the impugned order is set aside, with the trial Court directed to proceed with the matter in terms of what has been held hereinabove, the plaintiff being bound to pay court fee *ad valorem*, as per the market value of the property, but only to the extent of the area claimed as his own share therein.

December 06, 2018

dinesh

**(AMOL RATTAN SINGH)
JUDGE**

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes