

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No. 678 of 2020 (O&M)

Date of Decision: 30.1.2020

Krishana Devi.

...Petitioner

Versus

Jasvir Singh & Ors.

...Respondents.

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. T.S. Salana, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J.

1. The issue involved in this petition is as to whether a fixed court fee or ad valorem court fee is to be affixed on the plaint in a suit for partition filed by the plaintiffs.

2. Respondent No.1-plaintiff filed a suit for partition of land measuring 01 Bigha situated in village Kakkar Majra, Tehsil Amloh, District Fatehgarh Sahib, Punjab. The case of the plaintiff is that he purchased the property on 15.10.1980 along with the petitioner-defendant no.1 and one Shanti Devi. The land in question is in joint ownership of the parties to the dispute. Plaintiff claimed 1/4th share of entire property along with construction thereon. The defendant/ petitioner herein moved an application for rejection of the plaint under Order 7 Rule 11 of the CPC on the ground that the plaintiff did not pay the ad valorem court fee to maintain the suit contending that since possession is claimed, plaintiff is liable to affix the ad valorem court fee on the plaint. Reply to the application was filed by the plaintiff

contesting the plea urging that in a suit for partition, possession is inbuilt as every co-sharer is deemed to be in possession of every inch and part of the land. The application has been rejected by the learned trial court by the impugned order dated 7.11.2019 (P-4), which is assailed in the present petition by the unsuccessful defendant no.1 (petitioner herein).

3. Learned counsel for the petitioner argues that the suit is for possession and as such the plaintiff is liable to pay ad valorem court fee. Counsel for the petitioner relies on the judgment in **Kailash Devi Vs. DAV Senior Secondary School**, 2013(4) PLR 299.

4. Heard learned counsel for the petitioner and the Court appointed amicus curiae Mr. Sanjiv Gupta, Advocate for his knowledgeable assistance with the case law on the subject matter.

5. The issue which arises for consideration is as to whether the plaintiff is liable to pay the ad valorem court fee in the given facts and circumstances within the frame of the suit for partition and division of suit property. Before I proceed to answer the question posed, this Court has considered the matter in detail and is of opinion that defendant cannot raise the plea of court fee. The court fee is a matter between the plaintiff and the Court [but with a feeble right in defendant to object] and as such even the petition is not maintainable on the point of court fee. This Court finds support for the proposition from a Full Bench decision of this Court in '**Arjan Motors vs. Girdhara Singh and others**' 1979 PLJ 36.

6. Apart from this the suit in the present case is for joint possession of property. In essence the real relief is for partition and possession is already with each of the co-sharers i.e. constructive possession even if one co-sharer may not be in actual possession. In this respect reference can be made of a Full Bench judgment of the Lahore High Court in '**Asa Ram and others vs. Jagan Nath and**

others' AIR 1934 Lahore 563 where Justice Jai Lal, J speaking for the Bench has held as under:-

“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 section 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 alleges 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.”

7. This view was reiterated by the Lahore High Court in **‘Diwan Chand and others vs. Dhani Ram and others’** 1941 PLR 153, where Justice Tek Chand, J speaking for the Bench has observed as under:-

“My answer to the reference, therefore, is that in an appeal arising from a suit for partition of alleged joint properties, of which the plaintiff claimed to be in actual or constructive possession, a court fee of Rs.10/- is payable on the memorandum of appeal, even though the trial court had found the plaintiff not to be in possession of some or all such properties.”

8. The issue with respect to rights of every co-sharer is deemed to be in possession of every inch of the suit land finds support from the case of **‘Bhartu vs. Ram Sawrup’** 1981 PLJ 304 and further support can be drawn from various judgments rendered by this Court in cases **‘Hari Nath Mittal vs. Satish Kumar and others’** 1985 (1) PLR 707, **‘Raghubir Krishan Dass vs. Narain Dass and others’** 1992(1) RRR 146, **‘Surjit Kaur vs. Leelawati’** 2015(1) PLR 523, **‘Rajiv Kumar vs. Rakesh Kumar’** 2015(4) PLR 191 and **‘Surender Singh vs. Harvinder Singh and others’** 2018(1) Law Herald 47 and of the Supreme Court in **‘Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others’** (2010) 12 SCC 112

wherein it has been authoritatively held that the court fee is payable in accordance with Section 7(iv)(c) read with Section 7(v) of the Court Fees Act, 1870.

9. In view of the above pronouncements, the judgment relied upon by Mr. Salana in **Kailash Devi** (supra) is not applicable to the facts and circumstances of the present case because it is for the plaintiff to tentatively affix the value and if after adjudication still the court finds that there is deficiency in court fee, the same can always be made good at any stage. Further in the matter of court fee the defendant cannot dictate his terms and cannot seek dismissal of the suit filed by the plaintiff more especially when the plaintiff has a right in the property for which he asserts separate possession.

10. In the wake of aforesaid discussion there is no merit in the present petition and the same is accordingly dismissed in *limine*. The impugned order is upheld. Court records its thanks to the valuable assistance rendered by the learned amicus. Suit to proceed.

(RAJIV NARAIN RAINA)
JUDGE

30.1.2020

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Whether speaking/reasoned : *Yes*
Whether reportable : *Yes*