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

% Judgment delivered on: 27<sup>th</sup> April, 2022

+ CS(OS) 216/2020

SANJEEV KHOSLA ..... Plaintiff

versus

RAJIV KHOSLA & ORS. .... Defendants

**Advocates who appeared in this case:**

For the Petitioner: Mr. Rhishabh Jetly, Advocate

For the Respondent: None

**CORAM:-**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J**

**I.A. 5746/2022 (condonation of delay)**

The Supreme Court by its orders 23.03.2020, 27.04.2021 and 10.01.2022 in Suo Motu Writ Petition (Civil) No.3 of 2020 had suspended the period of limitation in view of the ongoing pandemic. Accordingly, the delay in filing is condoned.

Application is disposed of.

**I.A. 5745/2022**

1. By this application, plaintiff seeks a declaration that the Court fee paid on the plaint is not deficient.
2. Plaintiff had filed the subject suit for partition, declaration, permanent and mandatory injunction and rendition of accounts. The Suit has been decreed on 01.10.2020.
3. An issue has been raised by the Registry contending that the Court fee paid on the Plaint is deficient by Rs. 5,87,485/-. The calculation of the Court fee has been placed in the office notings. The registry has calculated the Court fee on the relief of partition at one-third of Rs.18 crores i.e. Rs.6 crores being the share of the plaintiff in the suit properties.
4. Plaintiff had filed the Suit *inter alia* claiming a preliminary decree of partition of the suit properties and declaring the Plaintiff to be an owner of 1/3<sup>rd</sup> share of the suit properties. Plaintiff had further sought a final decree of partition thereby partitioning the properties by metes and bounds according to the shares of the parties and delivering separate possession to the parties.
5. It is observed that the plaintiff in the plaint had categorically pleaded that plaintiff is in possession of a portion of one of the Suit properties and has been in continuous possession thereof since the



year 2008.

6. Reference may be had to the judgments of this Court in *Sudershan Kumar Seth V. Pawan Kumar Seth (2005) SCC Online Del. 932, ILR (2005) 11 Del 662 (2005) 124 DLT 305* wherein this court has held as under:

*“8. It is settled that in order to decide as to what relief has been claimed by the plaintiff, the whole of the plaint has to be read. From the perusal of the plaint if it can be inferred that the plaintiff is in possession of the any of properties to be partitioned, then the court fees shall be payable under Article 17(6) of schedule II of the Court fees Act i.e fixed court fees at the time of institution of the suit but if the conclusion is that the plaintiff is not in possession of any part of the properties then the plaintiff has to pay Court fees under section 7(iv)(b) of the Court fees act i.e. on the value of plaintiffs share. 1977 Rajdhani Law Reporter 54. Jamila Kahtoon v. Saidul Nisa; AIR 1999 DEU-1148. Smt. Prakash Wati v. Smt. Dayawanti; 80 (1999) DLT 357, Ms. Ranjana Arora v. Satish Kumar Arora; 2005 Rajdhani Law Reporter 23, Harjit Kaur v. Jagdeep Singh and 2005 (80) DRJ 120, Rajiv Oberoi v. Santosh Kumar Oberoi can be referred to.”*

*(underlining supplied)*

7. This court, relying on the decision of the Supreme Court in *Neelavathi v. N. Natarajan, AIR 1980 SC 691*, held in *Nisheet Bhalla v. Malini Raj Bhalla, AIR 2007 Del 60* that normally if joint



possession is pleaded by the plaintiff on the basis that he is the co-owner of the property, the Court-fee to be paid would be fixed Court-fee presuming the joint possession and even if the person is not in actual possession. However, if from the reading of the pleadings it becomes clear that the plaintiff was excluded from such possession, then he is liable to pay the ad valorem court-fee on the market value of his share.

8. A Division bench of this court in *Saroj Salkan v. Capt. Sanjeev Singh*, 2008 SCC OnLine Del 1278 : (2008) 155 DLT 300 : (2009) 3 CCC 241 : (2008) 4 Civ LT 542 at page 304 has held as under:

*“13. It is settled law that in a suit for partition, the Court fees to be paid if joint possession is pleaded by the plaintiff on the basis that he is the co-owner of the property sought to be partitioned, fixed Court fees would be payable under Article 17(vi) of Schedule II of the Court Fees Act presuming the joint possession of the plaintiff even if the plaintiff is not in actual possession. It is because of the reason that in the case of co-owners, the possession of one is in law possession of all, unless from the averments in the plaint read as a whole, a clear case of ouster is made and in that situation the plaintiff is liable to pay ad valorem Court fees on the market value of this share as provided under Section 7(iv)(b) of the Court Fees Act notwithstanding the fact that it is also pleaded that the plaintiff was in constructive possession.”*  
(underlining supplied)

9. Plaintiff has clearly pleaded that plaintiff is in possession of a



portion of one of the Suit Properties. In view of the specific averment in the plaint, court fees payable on the relief of partition will not be governed by Section 7 (iv) of the Court Fees Act but would be governed by Article 17(vi) of Schedule –II of the Court Fees Act which requires the plaintiff to pay fixed court fees of Rs. 19.50 and not *ad valorem* on the market value of his share.

10. Since the plaintiff has already paid the said court fees, the directions of the Registry holding that the court fees is deficient and requiring the plaintiff to pay the deficient court fee of Rs. 5,87,485/- cannot be sustained.

11. In view of the above, the application is allowed.

12. The demand raised by the Registry of alleged deficient court fees of Rs. 5,87,485/- is set aside.

**SANJEEV SACHDEVA, J**

**APRIL 27, 2022**  
**‘rs’**