

107 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1414-2020
Decided on : 28.09.2022

Kavita Rani

..... Petitioner

Versus

Ashutosh Garg

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rajan Bansal, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed under Article 227 of the Constitution of India against the order dated 21.01.2020 (Annexure P-4) passed by Civil Judge (Jr. Divn.) Barnala whereby an application under Order 7 Rule 11 CPC filed by the petitioner was dismissed.

Learned counsel appearing for the petitioner-defendant submits that the impugned order is patently perverse being a result of arbitrary exercise of judicial discretion and as such it deserves to be set aside. He further submits that the trial Court failed to appreciate that the respondent-plaintiff was seeking possession by of partition to the extent of half share in the suit property. Since the suit property had been valued at Rs.1,20,00,000/- as per the transfer deed dated 13.03.2019, the trial Court thus, fell into error by holding that the market value of the property could be assessed only after evidence had been adduced by the parties. Learned counsel has vehemently asserted that the respondent-plaintiff was liable to

affix ad valorem court fee of Rs.60 lakhs, being owner to the extent of half share in the suit property. In support, learned counsel has placed reliance on the judgments of the Apex Court in ***Kinny Kapur and another vs. Gunveer Kapur and others (Civil Appeal No.885 of 2012 decided on 12.09.2017)***, Division Bench of this Court in ***Tarsem Singh and others vs. Vinod Kumar and others, 2011(31) RCR (Civil) 709*** and the Coordinate Benches of this Court in ***Nishi Bhargava and others vs. Gyaneshwar Bhargava and another, 2019(4) RCR (Civil) 569*** and ***Kailash Devi vs. DAV Sr. Sec. School, 2013(40) RCR (Civil) 305***.

Heard learned counsel and perused the relevant material available on record.

A perusal of the averments made in the plaint reveal that the respondent-plaintiff has claimed himself to be co-owner in possession of the suit property. Therefore, it cannot be said that he is claiming possession rather from the averments it is discernible that he is just claiming separate possession by way of partition, which in the circumstances, would amount to change of the nature of the possession. The respondent-plaintiff is already in joint possession of the suit property and by way of instant suit, he is thus, merely seeking to change the mode of his enjoyment of the joint property. The position, no doubt, would have been different had the respondent-plaintiff not been in joint possession, actual or constructive of the suit property. In that eventuality, his nature of relief would have been different and accordingly, he would have then be liable to affix ad valorem court fee as per his share in the suit property. In this regard, it would be relevant to place reliance upon Full Bench of Hon'ble Lahore High Court in

Asa Ram and others v. Jagan Nath and others, AIR 1934 Lah. 563

wherein it was held as under:

“The above case law on the subject shows that the consensus of opinion now is 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 never 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.”

The case laws relied upon by the learned counsel for the petitioner would not come to his rescue in the facts and circumstances of the instant case. In the case of *Kinny Kapur and another (supra)*, the plaintiff was seeking to enforce his right to share in joint family property whereas in the case in hand, the respondent-plaintiff is merely seeking to change the mode of his enjoyment of the joint property. Further in the case of *Tarsem*

Singh and others (supra) sale deed was under challenge, which admittedly is not so in the instant case.

This Court does not find any merit in the submissions of the learned counsel for the petitioner and is thus, not inclined to invoke its revisional jurisdiction. Accordingly, the instant petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

28.09.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No