

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

CR-2592-2022 (O&M)
Date of Decision: July 11, 2022

Mahinder Kumar

...Petitioner

VERSUS

Rajni and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.K.B.Raheja, Advocate
for the petitioner.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated **12.05.2022 (Annexure P-1)** passed by learned Civil Judge (Jr. Divn.) Ferozepur, whereby an application filed by the petitioner/defendant, for rejection of plaint, has been dismissed.

It is now submitted by learned counsel for the petitioner that respondent/plaintiff had filed a suit claiming possession and therefore, she was required to pay the *ad valorem* Court fee, as per the market value of the property. Learned Court below has wrongly reached the conclusion about the respondent/plaintiff, to be co-sharer and as such, deemed to be in possession of the suit property. As such, it is submitted that the application has been wrongly dismissed.

Copy of the plaint has been placed on record as Annexure P-2.

Perusal of the same reveals that respondent/plaintiff had filed suit for decree

of separate possession through partition by metes and bounds. Therein, it is also stated that the plaintiff is in actual physical possession of the portion shown in red colour, on the ground floor, in the site plan.

For the determination of liability of payment of Court fee, only averments in the plaint are to be looked into and the plea of defendant is not be take into consideration.

When the facts pleaded in the plaint are taken into consideration, it comes out that the respondent/plaintiff is seeking partition of the property, of which, she is also in actual possession of part of the same. When separate possession is claimed through partition by metes and bounds to the extent of her share, it comes out that respondent/plaintiff is liable to pay the Court fee, only with regard to value of her share, at the time of passing of final decree.

Consequently, the impugned order is modified to the extent that *ad valorem* Court fee would be payable by the respondent/plaintiff, as per the value of her share, to be determined, at the time of passing of the final decree.

In the aforesaid terms, the revision petition stands dismissed with the above-said modification.

July 11, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No