

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

CR No.4308 of 2022

Date of decision: 17th October, 2022

Sudhir Jain

... Petitioner

Versus

Rajneesh Jain

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Mona Goyal, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

Petitioner is challenging the order dated 07.07.2022 (Annexure P-1) passed by learned Addl. Civil Judge (Senior Division), Bathinda in CS No.1489 of 2021, whereby his application under Order VII Rule 11 CPC for rejection of the plaint was dismissed.

Learned counsel for the petitioner submits that the impugned order suffers from patent illegality as it was not in consonance with the settled principles of law.

Learned counsel submits that the trial Court failed to appreciate that the respondent/plaintiff had earlier also instituted a suit for permanent injunction against the petitioner which was subsequently withdrawn. However, the respondent/plaintiff while instituting the suit in question, had cleverly concealed the factum of institution of the earlier suit which was violative of Order VII Rule 1(J) CPC.

She further submits that since the respondent has prayed for separate possession of the suit property, he was liable to affix ad-valorem Court fee. However, since the plaint was inadequately stamped, it could not have been entertained. The Court while passing the impugned order, ignored this fact and thus, erred in dismissing the application under Order VII Rule 11 CPC of the petitioner.

I have heard the learned counsel and perused the relevant material on record.

The submission made by learned counsel for the petitioner that the respondent had intentionally concealed the factum of the previous suit instituted by him and in fact had withdrawn the previous suit for permanent injunction against the petitioner, is devoid of merit and deserves to be rejected. It would be, thus pertinent to reproduce the relevant excerpts of the plaint where the respondent has categorically stated about the institution and withdrawal of the previous suit:

“15. That earlier the plaintiff had filed suit for permanent injunction against defendant with respect to the suit property in question but the said suit was dismissed as withdrawn at that stage without prejudice to legal rights of plaintiff. Except the above referred suit for permanent injunction, no other suit with respect to the suit property, between the same parties or between the parties under whom they or any of them claim litigation on the same subject matter has been previously instituted or finally decided by any Court of competent jurisdiction.”

Coming to the next submission made by the learned counsel qua the plaint being inadequately stamped, this Court finds no force in the said submission as well. A perusal of the plaint reveals that the respondent/plaintiff has claimed himself to be co-owner in possession of the suit property. Therefore, since he is not claiming possession but is just claiming separate possession by way of partition, it would merely amount to change in the nature of the possession. The respondent/plaintiff is rather in joint possession of the suit property and by way of suit in question, he is thus merely seeking to change the mode of his enjoyment of the joint property. Had the respondent/plaintiff not been in joint possession, actual or constructive, of the suit property, it would have then been a different matter and he would have then been liable to affix the ad-valorem Court fee as per his share in the suit property. A Full Bench of Lahore High Court in '**Asa Ram & others vs. Jagan Nath & others**' AIR 1934 Lah. 563, has 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.”

As a sequel to the above, this Court does not find any merit in the submissions made by the learned counsel for the petitioner on both counts i.e. the suit in question being barred under Order VII Rule 1(j) CPC and qua the plaint having been inadequately stamped.

Dismissed.

(MANJARI NEHRU KAUL)
JUDGE

October 17, 2022

rps

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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