

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 6897 of 2019

Date of Decision: 22.11.2022

Raminder Kaur

... Petitioner(s)

Versus

Manveen Sabharwal and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Saransh Saabharwal, Advocate
for the petitioner(s).

Mr. Gopal Sharma, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. Defendant No.1 in a suit for grant of decree of declaration to the effect that the plaintiff is a co-owner to the extent of 1/4th share in House No. 33, Sector 17, Panchkula, along with the other co-sharers and for passing a decree for possession by way of partition of the property, is the petitioner herein. Her application under Order VII Rule 11 CPC complaining failure of the plaintiff to pay the *ad valorem* court fee on her share of the property has been dismissed. Challenging the correctness of the aforesaid order, the present revision petition has been filed.

2. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

3. On the one hand, the learned counsel representing the petitioner contends that the plaintiff is not in possession of the property, consequently the defendant (the petitioner herein) is seeking possession and hence, the *ad valorem* court fee is payable.

4. It is a well settled law that every co-owner/co-sharer is presumed to be in possession of every part of the property. In ***Asa Ram and Others v. Jagan Nath and Others AIR 1934 Lahore 563***, a three Judge Bench has held that the *ad valorem* court fee of a suit for decree for partition by way of possession is not payable by the co-sharer. This judgment was

followed in *Rajiv Kumar and Others v. Rakesh Kumar and Others 2015(4) Law Herald 2970*.

5. The learned counsel representing the petitioner relies upon the judgment passed in *Onkari through her L.Rs Des Raj Sharma and Others v. Suresh and Others (Civil Revision No. 6446 of 2015, decided on 06.05.2016)*. It is evident that the judgment of the three Judge Bench in *Asa Ram's case (supra)* case was not brought to the notice of the Bench.

6. Moreover, the petitioner here is the defendant No.1 in the suit. She, after having failed to convince the trial Court with regard to the deficiency of the court fee, is not entitled to maintain a revision petition in view of the judgment passed by the Supreme Court in *Sri Rathnavarmaraja v. Smt.Vimla 1961 AIR (Supreme Court) 1299*. In any case, the petitioner shall have the liberty to pray for framing of a distinct issue on the question of rejection or dismissal of the suit on account of the payment of insufficient court fee which shall be decided by the trial Court along with the suit. The observations made by this Court or the trial Court while deciding the application shall not be construed as the final expression of opinion on merits of the case.

7. With the observations made above, the present revision petition is disposed of.

(Anil Kshetarpal)
Judge

November 22, 2022

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No