

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

118

CR No. 975 of 2018

Date of Decision: 29.05.2024

Gobind Raj Mehta @ Gobind Ram Mehta and othersPetitioners

Versus

Narender Kumar Mehta

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Punchhi, Advocate
for the petitioners.Mr. Chirag Wadhwa, Advocate
for the respondent.

ANIL KSHETARPAL, J.(ORAL)

1. In this revision petition, the plaintiffs assail the correctness of the trial court's order directing them to pay ad valorem court fee in a suit for possession by way of partition of the joint property. An application filed by the defendant-respondent under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') has been allowed by the trial court on 09.11.2017. The correctness of such order is challenged before this Court.

2. Learned counsel representing the petitioners submits that ad valorem court fee is not payable as each and every co-owner is deemed to have interest in the entire property and by legal fiction, he is presumed to be in possession thereof. He relies upon the judgment passed in ***Rajiv Kumar and others versus Rakesh Kumar and others, 2015(4) PLR 191.***

3. Per contra, the learned counsel representing the respondent relies upon an order passed by the Supreme Court in ***Kinny Kapur and***



another versus Gunveer Kapur and others CA No. 885 of 2012 decided on 12.09.2017.

4. This Court has considered the submissions made by learned counsel representing the parties.

5. In fact, the judgment passed in ***Rajiv Kumar's case (supra)*** is based upon a conclusive Full Bench judgment of the Lahore High Court in ***Asa Ram versus Jagan Nath AIR 1934 Lahore 563.***

6. On the other hand in ***Kinny Kapur's case (supra)***, a short order was passed by the Supreme Court where the only issue which requires consideration was as to the value of 2/9th share of the joint property. In fact, the issue of liability of the plaintiff to pay ad valorem court fee in a suit for possession by way of partition of the joint property was neither debated nor considered by the Court. Hence, while respectfully agreeing with the view taken in ***Rajiv Kumar's case (supra)*** as well as Full Bench Judgment in ***Asa Ram's case (supra)***, the revision petition is allowed. The impugned order is set aside, however, the respondent shall have liberty to pray to the trial court for framing a distinct and separate issue on the question of liability to pay ad valorem court fee, which shall be decided by the Court uninfluenced by the observations made by this Court.

7. All the pending miscellaneous applications, if any, are also disposed of.

29.05.2024

Rajeev (rvs)

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes
No