

CR-607-2021(O&M)

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2024:PHHC:031326

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

CR-607-2021(O&M)

Reserved on: 29.01.2024

Date of decision: 05.03.2024

Ravinder Malhotra and another

....Petitioners

Versus

Ravi Kumar Malhotra and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kunal Dawar, Advocate for the petitioners

Mr. V.K.Sachdeva, Advocate for the respondents

ANIL KSHETARPAL, J

1. Refusal on the part of the trial court to reject the plaint while dismissing the petitioners' (defendants before the trial court) application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') on the payment of the alleged deficiency of ad valorem court fee has prompted the defendants to file this revision petition.

2. In order to comprehend the issue involved in the present case, some relevant facts, in brief, are required to be noticed.

3. The respondents (plaintiffs) filed a suit for partition of accounts and injunction with respect to residential house no.46-A, Sector 40, measuring 220 square yards located in Gurugram, Haryana. It was claimed that the plaintiffs and defendants are co-sharers in equals. It

was claimed that the plaintiffs are residents of United States of America but they are in actual physical possession of the second floor of the premises. For the purposes of jurisdiction, the present suit was valued at Rs.2 crores and for the purpose of account, it was valued at Rs.360. Fixed court fee was paid on the relief of partition of account and injunction. The defendants filed an application under Order VII Rule 11 CPC to reject the plaint. The learned trial court by passing a speaking order has dismissed the application.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook, alongwith the requisitioned record.

5. Learned counsel representing the petitioners contends that it is the case of the plaintiffs in the plaint that they are residing in United States of America. Although the plaintiffs are claiming that they are in actual physical possession of the second floor of the premises, however, they cannot be in actual possession. He further submits that the plaintiffs are required to pay ad valorem court fee on the market value of their share in the property. He relies upon the following judgments:-

i) **S.Rm.Ar.S.Sp. Sathappa Chettiar vs. S.Rm.Ar.Rm. Ramanathan Chettiar** 1958 AIR (SC) 245

ii) **Neelavathi and others vs. N.Natarajan and others** 1980 AIR (SC) 691

iii) **Kinny Kapur & another vs. Gunveer Kapur & ors** C.A.885 of 2012 decided on 12.09.2017

6. On the other hand, the learned counsel representing the respondents submits that the respondents are co-owners of the property and the possession of one co-owner is the possession of all in law, unless ouster or exclusion is proved. He submits that ad volrem court fee is not payable in view of the judgment passed by the Full Bench in **Asa Ram and others vs. Jagan Nath and others 1934 AIR (Lahore) 563**, **Diwan Chand vs. Dhani Ram and others 1941 AIR (Lahore)123**, **Rajiv Kumar and others vs. Rakesh Kumar and others 2015 (4) PLR 191** and **Raghbir Singh vs. Sukhwinder Singh and others 2017 (4) PLR 735**.

7. Before this Court proceeds to examine the contentions of the learned counsel representing the parties, it is important to note that the revision petition filed by the defendants is not maintainable. The objection of the defendants for direction to the plaintiff to pay ad valorem court fee has been rejected. Reliance in this regard can be placed on **Ratnavermaraju vs. Smt. Vimla AIR 1961 SC 1299**. Subsequently, the Kerala High Court once again held that an appeal or revision petition shall not be maintainable by the defendants unless it affects the jurisdiction of the Court. This view was approved by the Supreme Court in **Shamsher Singh vs. Rajinder Prashad (1973) 2 SCC 523**. On the basis of the aforesaid judgment of the Supreme Court, a Full bench in **Arjun Motors Malout Partnership Firm vs. Girdhara Singh 1978 PLJ 36** followed the same view. Thus, it is evident that the revision petition by the petitioners, who are defendants before the trial

court, is not maintainable because in this case, the jurisdiction of the court is not dependent on the amount of court fee.

8. In any case, this Court has carefully read the judgments relied upon by the learned counsel representing the petitioners. In **Sathappa Chettiar's case (supra)** the appellant had offered to file an application for formal amendment of his plaint by substituting Rs.50,000/- in place of Rs.15 lacs for jurisdictional value of his relief. The application was rejected by the court. The Supreme Court held that such view was not correct. In para 13 of the report, the Court held that the decision reached by the Division Bench under Section 5 of the Act must be held to be final and the Supreme Court has not allowed the merits of this order to be questioned in the appeal. Hence, the aforesaid judgment is in the peculiar facts of the case. The next judgment relied upon by the learned counsel in Leelawati's case (supra) is in the context of expression '*excluded from possession*' in the context of court fee. The Supreme Court held that even if the plaintiffs could not remain in joint possession as he was not given any income from the joint family property, still it would not amount to his exclusion from possession.

9. The **Kinny Kapur's case (supra)** is an order passed by the Supreme Court. In the aforesaid case, the Supreme Court only examined the aspect of the plaintiff's liability to pay the ad volorem court fee according to his share in the property. The court held that the High Court erred in law in asking the payment of court fee on the valuation of the entire suit property. With greatest respect, in the aforesaid case, the Supreme Court had occasion to consider the liability to pay the ad

valorem court fee in a partition suit where a co-sharer is presumed to be in constructive possession of the property.

10. Keeping in view the aforesaid discussion, this Court does not find it appropriate to interfere with the order passed by the trial court. However, the question of liability to pay ad valorem court fee is kept open and the defendants shall have liberty to pray to the trial court for framing a distinct issue on this aspect of the matter. Needless to observe that observations made by the trial court in the impugned order or by this Court shall not be construed as final expression on the merits of the case and the trial court while deciding the case shall independently decide the matter. Disposed of.

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

05.03.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE