



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

126

CR-3745-2024

Date of Decision: 08.07.2024

Sarita

....Petitioner

Versus

Jai Parkash and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Manoj Makkar, Advocate for the petitioner.

Vikas Suri, J.(Oral)

1. This revision petition has been filed by petitioner – Sarita under Article 227 of the Constitution of India for setting aside order dated 31.05.2024 passed by learned Civil Judge (Junior Division), Rohtak, whereby the application for a direction to defendant Nos.1, 2 and 4 to 8 to pay *ad valorem* court fee on the value of the suit property of their alleged share therein, if they are keen to get the same partitioned, has been dismissed.

2. The brief facts of the case are that the plaintiffs filed a suit for partition and separate possession, wherein they have claimed 1/5th share in the suit property. In the said suit, defendant Nos.3, 5 and 9 had moved an application under Order 7 Rule 11 CPC for rejection of plaint on account of *ad valorem* court fee having not been affixed. The said application, after contest was accepted, vide order dated 29.04.2019. The plaintiffs were

directed to pay *ad valorem* court fee failing which, the plaint was deemed to be rejected. Accepting the aforesaid order, the plaintiffs have affixed the *ad valorem* court fee and thereafter, petitioner/defendant No.9 – Sarita filed an application praying for a direction to defendant Nos.1, 2 and 4 to 8 to pay *ad valorem* court fee on the value of their alleged share in the suit property.

3. Upon notice, the said application was contested and after hearing the parties, the same was dismissed, vide order dated 31.05.2024.

4. Aggrieved by the impugned order, petitioner has invoked jurisdiction of this Court by way of present revision petition.

5. Heard the learned counsel for the petitioner and perused the record with his able assistance.

6. Admittedly, on an application moved by the petitioner along with two other defendants, under Order 7 Rule 11 CPC the prayer was accepted vide order dated 29.04.2019. The operative part of the said order reads as under:-

“7. Thus, from the documents which are not at dispute and has been admitted by both the parties, it is clear that the plaintiffs have never remained in the physical possession of any portion of the property in question and therefore, the plaintiffs are required to pay the court-fee on the value of their respective share for seeking relief of partition and consequent possession. Thus, the present application stands allowed. The plaintiffs are directed to pay *ad valorem* court fee on or before 29.05.2019, failing which present plaint shall be deemed as rejected.”

7. It is not disputed that in compliance to the aforesaid order, the plaintiffs have affixed the *ad valorem* court fee. A perusal of the impugned

order shows that the following observation was recorded while dismissing the application of the petitioner seeking direction to defendant Nos.1, 2 and 4 to 8 to affix the *ad valorem* court fee on the value of the suit property of their alleged share in the same:-

“5. After going through the case file minutely and hearing the rival contentions, the court is of the considered view that the present application is liable to be dismissed. The law is very clear that it is the person who moved to the court seeking any relief pays the court fee. There is no such provision in the Court Fee Act, 1870 whereby the defendants to a suit in partition are liable to pay the court fee.

6. The contentions raised by the learned counsel that in a partition suit the defendants are plaintiffs, this argument is correct as far as the share distribution in a partition suit is concerned. However, the payment of court fee is *stricto sensu* is to be made by the plaintiff only. The Court finds no merit whatsoever at all in the arguments and the application of the applicant. Whatever relief if any is granted to the defendants in a suit of partition or in any other suit is a consequential relief only. They have not moved to the court to file the present suit. In the light of this discussion, the present application stands dismissed.”

8. The only contention raised by learned counsel for the petitioner before this Court is that in a partition suit, every co-sharer has a right and though the partition has been sought by one of co-sharers or a select few, the benefit of separate possession of the share would go to all the co-sharers, even if they are party defendants in the said proceedings. Thus, the defendants are also liable to affix *ad valorem* court fee with regard to their share.

9. I have considered the contention raised on behalf of the petitioner and am not in agreement with the same.

10. It is settled law that court fee is to be paid by the person who approaches the Court and not by the party who has been arrayed as defendant/respondent. It is conceded at bar that the defendants in their written statement filed in the suit have not raised any counter claim and the contesting defendants are only opposing the suit, as such they have not sought any independent relief in their favour. It is not disputed that defendant No.9/ petitioner herein, is not the *dominus litis* in the partition suit in question. Moreover, it is also noticed from the record that it was at the instance of the petitioner along with two other co-defendants that the plaintiff was directed to affix *ad valorem* court fee vide order dated 29.04.2019 and at that stage, no such plea was raised by the petitioner. It is apparent that the application, which has been dismissed vide impugned order dated 31.05.2024, is an afterthought.

11. In the light of the above discussion and in the circumstances of the present case, I do not find any illegality or perversity in the impugned order that may warrant interference by this Court in exercise of superintendence jurisdiction.

12. Accordingly, the present revision petition being devoid of merits, is dismissed *in limine*.

(VIKAS SURI)
JUDGE

July 08, 2024

Varinder Prashad

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