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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 1st April, 2024**

+ **C.R.P. 100/2024 & CM APPL. 15276/2024**

RADHA GOYAL Petitioner

Through: **Mr. K.K. Bhati, Adv.**

versus

GAURAV GOYAL & ANR. Respondents

Through: **Mr. Darpan Wadhwa, Sr. Adv.
with Ms. Neelakshi Bhadauria
and Mr. Sasrthak Karol, Adv.
for R-1**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CAV 122/2024

1. Since learned counsels for the caveator/respondents have entered appearance, the caveat stands discharged.

C.R.P. 100/2024

2. The petitioner, who is the plaintiff and has instituted a Suit bearing No. 53/2017 for partition, possession and rendition of accounts besides grant of permanent injunction against the respondents before the Trial Court, assails the impugned order dated 15.01.2024, whereby her third application under Order VI Rule 17 of



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the Code of Civil Procedure, 1908¹ for amendment of the plaint has been dismissed by the learned Additional District Judge-07, South East District, Saket Courts, Delhi².

3. Having heard the learned counsels for the parties and on perusal of the record, I find that the present revision petition is bereft of any merits and it is plainly an abuse of process of law. Suffice to state that the petitioner/plaintiff is contesting against her own brother and sister, arraigned as respondents No. 1 and 2 respectively and seeking certain reliefs in respect of properties left behind by her deceased parents.

4. The suit was instituted on 31.07.2014 and the trial has got prolonged on one ground or the other. It appears that *vide* order dated 21.08.2021, the then learned Trial Court directed the petitioner/plaintiff to mention separate valuations of the properties in the plaint, which was reiterated *vide* order dated 24.09.2021 as well. Purportedly in compliance thereof, the petitioner/plaintiff filed an application under Order VI Rule 17 of the CPC but without deciding the same, suit of the petitioner/plaintiff was rejected *vide* order dated 16.02.2023. The petitioner/plaintiff filed First Regular Appeal bearing RFA No. 470/2023, which was eventually disposed of *vide* order dated 19.09.2023 by this Court directing the learned Trial Court for a fresh consideration of the application under Order VI Rule 17 of the CPC filed by the petitioner/plaintiff on 10.02.2023.

5. The said application came to be dismissed by the learned trial Court *vide* order dated 22.11.2023. Unrelenting, the petitioner/

¹ CPC

² Trial Court



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plaintiff filed a third application under Order VI Rule 17 of the CPC on 15.12.2023, which has been dismissed by the learned Trial Court *vide* impugned order dated 15.01.2023. Evidently, the learned Trial Court *vide* order dated 14.09.2021 found that the valuation of the suit had not been done by the petitioner/plaintiff in accordance with law for the purposes of jurisdiction and payment of Court fee. On being foretold about such defects, first application under Order VI Rule 17 of the CPC was moved on 19.11.2021 and after advancing arguments second application was moved under Order VI Rule 17 of the CPC on 10.02.2023, which was dismissed *vide* order dated 22.11.2023 assigning the following reasons:

"35. In present case, though plaintiff has claimed that she is in joint possession in respect of immovable suit properties but has simultaneously mentioned that she was married in 2008 and due to some reason, she was separated by way of divorce and she re-married on 20.03.2010. She has further stated that from first marriage, she received Rs. 11 lacs as alimony out of which she purchased flat bearing No. 1682/2, LGF Kalkaji which is address of plaintiff as mentioned in memo of parties filed with the present application as well as filed earlier when the present suit was filed by plaintiff meaning thereby that plaintiff is not in possession of any of suit properties and in these circumstances, plaintiff cannot avoid payment of *advalourm* court fee under Section 7(iv)(b) of the Court fees Act.

36. In view of my above-made discussion, I am of the view that plaintiff has failed to amend plaint filed by her in terms of order dated 21.08.2021 and 24.09.2021 and amendment sought by way of present application is not in accordance with law which cannot be permitted and hence, present application to my mind deserves to be dismissed."

6. The said order was never challenged and attained finality. Arguments were then addressed on the application of the respondents/defendants under Order VII Rule 11 of the CPC. When



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the third application was moved and apparently in order to avoid *ad valorem* court fee, the petitioner/plaintiff sought to introduce averments in the nature of claiming constructive/joint possession of the properties in question along with the respondents thereby blowing hot and cold in same breath inasmuch as perusal of the pleadings would show that she has claimed complete ouster and exclusion from the possession of the properties by the respondents. Learned Trial Court noticed the following defects in the proposed amendment that were sought to be carried out in paragraph (11):

“a) Plaintiff has not separately stated value of each relief for the purpose of jurisdiction and court fees.

b) Plaintiff has created dichotomy by taking inconsistent pleas regarding court fee payable by plaintiff qua relief of partition and possession of immovable properties. At one place, plaintiff has pleaded that court fee payable by her is fixed court fee of Rs. 20/- because she is in joint constructive possession of immovable properties for which plaintiff has sought partition and at another place, plaintiff has undertaken to pay court fees as per her 1/3rd share in the suit properties at the time of drawing up of decree in present suit and also filed an application U/sec 149 CPC in this regard.

c) Plaintiff has not specified value of relief of rendition of accounts for the purpose of jurisdiction and court fees and what amount of court fees is being paid by plaintiff qua relief of rendition of accounts in accordance with Section 7 (iv) (f) of Court Fees Act.

d) Plaintiff has deliberately under valued estimate of relief in para No. 11 (8) (i) and 11 (8) (ii) in the present application after estimating it at much higher value in first application as well as in second application without any reason. In the first and second applications, estimation of income from business of "Gopal Ice Cream" has been valued @ Rs. 60 lacs since 2010, however, in order to avoid payment of ad-valorem court fees on the same, plaintiff has strategically and with malafide intent reduced estimate of the said relief to Rs. 1,000/only. Similarly, plaintiff has reduced estimation of gold ornaments and cash amount from Rs. 25 lacs and Rs. 50 lacs respectively to Rs. 2500/- together. This shows malafide intent of plaintiff to deliberately under value relief in



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order to avoid paying higher court fees as per Section 7 of Court Fees Act. Order 6 Rule 17 CPC clearly avoids amendments made with malafide intent or dishonestly.

e) In original plaint, plaintiff has not averred that she is in alleged joint possession of movable goods as stated in paragraph No. 11 of proposed amendment. The movable properties which include gold ornaments which were previously valued at Rs. 25 lacs and cash amount of Rs. 50 lacs for the purpose of jurisdiction are not stated to be part of joint Hindu Family. Without clarity regarding relief being sought and no averment qua joint possession, relief with respect to movable properties remain relief of possession only on which plaintiff is liable to pay advalorem court fees on market value of movable assets at the time of presenting plaint. Plaintiff cannot give arbitrary valuation to said movable assets aggregating to Rs. 2500/- only.

f) Plaintiff has not specified what is the value of relief of injunction for the purpose of court fees and what amount of court fees is being paid by plaintiff qua relief of permanent injunction.

g) Plaintiff has amended prayers of the plaint and even deleted prayer of permanent injunction which was being sought while valuing relief of permanent injunction in paragraph No. 11 which fact clearly shows that plaintiff is filing amendment applications simply to delay present proceedings.”

7. It would be relevant to reproduce the reasons given by the learned trial Court in dismissing the application, which go as under:-

“26. It is stated that it is well settled that amendment to plaint is retrospective in nature and such amendment shall be applicable from the date, plaint was instituted. It is apparent that this court did not have pecuniary jurisdiction to hear the case, when the same was filed. Defendant No. 1 has taken the objection in his written statement and also moved an application that this court did not have pecuniary jurisdiction to try the suit and suit was not properly valued for the purpose of jurisdiction and court fees, however, plaintiff instead of moving appropriate application at that stage had opposed application filed by defendant No. 1 and thus, wasted almost 09 years of the court -as well as of defendant No. 1. After period of 09 years, clock is trying to be moved anti clockwise and parties are again relegated to the position in which they were 07 years ago. Application has been filed by plaintiff with malafide intention to delay proceedings and hence, deserve to be dismissed.

27. On reply on merits, contentions of plaintiff have been denied. It is denied that unless there is dismissal of partition suit on merits,



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right to partition does not extinguish. It is stated that multiple opportunities have been granted to plaintiff to amend the plaint to comply with law of valuation but plaintiff has failed to do so and has filed present application with malafide intention to avoid payment of ad valorem court fees despite finding of this court in order dated 22.11.2023 that plaintiff is not in possession of suit properties and is liable to pay ad valorem court fees.

28. Plaintiff has failed to meet onus under proviso to Order 6 Rule 17 CPC that despite due diligence, party could not have raised the matter before commencement of trial. Documents for circle rate filed with the application are denied. It is stated that valuation is not clear as to which property is being valued. Plaintiff is attempting to add word "constructive" joint possession in para numbers 3 and 7 of the plaint simply to avoid payment of ad valorem court fees as directed

vide . order dated 22.11.2023. Plaintiff has deleted relief of permanent injunction even after valuing the same while attempting to amend para No. 11 of the plaint.

29. It is prayed to dismiss present application with costs and to pass any other order or direction as this court may deem fit.

30. I have heard arguments addressed by respective counsels and perused record including judgments filed by both the parties.

31. Present amendment application is stated to have been filed by plaintiff in terms of observations of the Court in order dated 24.09.2021.

32. Perusal of record shows that on 21.08.2021 and 24.09.2021, Ld. Predecessor of this Court observed that aforesaid valuation of this suit is not in accordance with the law regarding valuation of a suit, for the purpose of jurisdiction and court-fees, provided in '**Rampur Distillery & Chemicals Co. Ltd. Vs. Union of India, 1995 (32) DRJ 733, Anu Vs. Suresh Verma and Ors. CS(OS) No. 2546/2010 decided by Hon'ble High Court of Delhi on 12.07.2011, Jagdish Pershad Vs. Joti Pershad 1975 ILR (DEL) 841 and Rule 8, Part C, Chapter III. of Instructions to Civil Courts in Delhi, Volume I, High Court Rules & Orders**'. After observing this, Ld. Predecessor of this Court granted an opportunity to plaintiff to amend paragraph No. 11 of the plaint of the suit and properly/separately value all the reliefs sought by way of this suit, for the purpose of jurisdiction and court-fees and further clarified/foretold plaintiff that if plaintiff does not do so, plaint of the suit shall be rejected as per Order VII Rule 11 (b) CPC.

33. Present application is the third application filed by plaintiff after orders dated 21.08.2021 and 24.09.2021. Last application of plaintiff was dismissed vide order dated 22.11.2023.



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34. Plaintiff was asked to amend paragraph No. 11 of the plaint but by way of present application, plaintiff has sought number of amendments in various paragraphs as detailed in the application which goes much beyond orders of the Court dated 21.08.2021 and 24.09.2021. It is pertinent to mention here that amendment in present case cannot be allowed as a matter of right as issues in the matter have been framed and trial of the matter has begun and present application does not in any way shows that inspite of due diligence, plaintiff could not have raised the matter before commencement of trial in terms of proviso to Order VI Rule 17 CPC.

35. In order dated 22.11.2023, it was observed by this Court in paragraph No. 35 that plaintiff is not in possession of any of suit properties and in these circumstances, plaintiff cannot avoid payment of ad-valorem court-fees under Section 7(iv)(b) of the Court-Fees Act. Plaintiff instead of filing application in order to comply with this observation of the Court as has come in order dated 22.11.2023 has tried to mould amendments in a way that plaintiff may not have to pay requisite court-fees on reliefs sought by plaintiff which cannot be permitted and prima-facie amounts to abuse of process of law on part of plaintiff.

36. In the plaint initially filed by plaintiff, plaintiff has assessed value of suit for the purpose of jurisdiction @ Rs.1.5 crores for relief of partition, possession and rendition of accounts and undertook to pay requisite court-fees after determination of the same by Court. Later on, by way of amendment application, plaintiff tended to bifurcate income from business Gopal Ice-cream to the tune of Rs.60,00,000/- since year 2010 and gold ornaments, cash amount and rental income to the tune of Rs.25,00,000/-, Rs.50,00,000/- and Rs.60,00,000/ respectively. By way of present application, plaintiff assessed income from business Gopal Ice-cream since year 2010 to be arbitrarily Rs.1,000/-, gold ornaments, cash amount and rental income since year 2010 to be collectively Rs.2,500/-. Plaintiff has not disclosed any reason for change of this valuation from total Rs.1,95,00,000/- to Rs.3,500/- in aggregate of movable properties and prima-facie motive of plaintiff in arbitrarily valuing these reliefs to the tune of Rs.3,500/- in aggregate appears to be a mechanism to escape from payment of ad-valorem court-fees on the said reliefs which cannot be permitted.

37. Plaintiff in initial plaint filed prayed for grant of relief of permanent injunction which plaintiff has omitted by way of present application as plaintiff has sought to modify prayers in the plaint though plaintiff has valued relief of permanent injunction in proposed paragraph No. 11 of the plaint. This shows gross



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negligence on part of plaintiff which cannot be allowed to take effect.

38. Defendant No. 1 has filed number of judgments to substantiate arguments that in case of ouster of plaintiff from suit properties, plaintiff should be liable to pay ad-valorem court-fees. I am not referring to those judgments as law in this regard is otherwise well settled and mentioning of the same will further prolong the order without any rhyme and reason as I have already observed in order dated 22.11.2023 that plaintiff is not in possession of any of the suit properties and in these circumstances, plaintiff cannot avoid payment of ad-valorem court-fees under Section 7(iv)(b) of Court-Fees Act which finding has not been challenged by plaintiff till date.

39. Plaintiff by way of present application has still not complied with orders of the Court dated 21.08.2021 and 24.09.2021 and present application in these circumstances appears to be nothing but abuse of process of law which cannot be permitted. Application filed by plaintiff in these circumstances deserves to be dismissed and is accordingly dismissed.”

8. Unhesitatingly, the aforesaid observations clearly bring out the conduct of the petitioner/plaintiff in the open. It clearly appears that in order to avoid payment of *ad valorem* court fee, the petitioner/plaintiff is making all sorts of attempts to hoodwink the process of law by avoiding putting a fair and just value to the reliefs claimed by her.

9. Suffice to state that although the petitioner/plaintiff by way of the proposed amendments has apparently valued each relief with regard to share in the properties putting a different value and though the overall relief is above Rs.5,94,00,000/-, she has again elected to pay fixed court fee of Rs.20/- and valuing the suit for permanent injunction at Rs.130/-. There is a clear attempt to evade payment of *ad valorem* court fee under Article 17(vi) of the Court Fees Act, 1870 and the proposed amendment being not warranted by law, cannot be allowed.



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10. In view of the aforesaid discussion, this Court finds that the learned Trial Court neither committed any illegality nor adopted any incorrect approach so as to commit any jurisdictional error in dismissing the application in question. Hence, the present revision petition is dismissed.

11. Nothing contained herein shall tantamount to an expression of opinion on the merits of the matter.

12. The interim order passed by this Court restraining the learned trial Court from not pronouncing orders on the application under Order VII Rule 11 of the CPC is hereby vacated.

13. The pending applications also stand dismissed.

DHARMESH SHARMA, J.

APRIL 01, 2024

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