



2024:DHC:10188



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 19th December, 2024**+ **C.R.P. 279/2023 & CM APPLs. 51429/2023, 4302-03/2024****MANOJ BHATI**R/o G-20, East of Kailash,
New Delhi- 110065

.....Petitioner

Through: Mr. Yashwardhan, Ms. Kritika
Nagpal, Mr. Gyanendra Shukla &
Mr. Parnav Das, Advocates

Versus

1. VANDANA SINGHW/o Chhatar Pal Singh
R/o Plot No. 27, Flat no. 401,
The Mart Society, Sector- 2,
Faridabad- 121004**2. SH. HIMANSHU**S/o Lalita D/o Late P.S Bhati
R/o- G- 606, Sun City Avenue
Sector-1 02. Gurugram.
Haryana- 122001**3. MS. JYOTI BHATI**D/o Late. Lalita D/o Late P.S. Bhati
Resident of 18, LGF,
Kailash Hills, New Delhi- 110065

.....Respondents

Through: Mr. Harish Prashar &
Mr.C.P.Singh, Advocates for
Respondent No.1**CORAM:**

Signature Not Verified C.R.P. 279/2023

Page 1 of 7



2024:DHC:10188



HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (Oral)

1. Present Revision Petition under Section 115 of the Civil Procedure Code, 1908 ('CPC') read with Section 151 CPC, has been filed to challenge the Order dated 10.08.2023 *vide* which Application under *Order VII Rule 11 CPC* filed on behalf of the Revisionist / Defendant, has been rejected.
2. The Revisionist/ Defendant No.1 had filed Application under *Order VII Ruel 11 CPC* seeking rejection of the Suit on the ground that *Suit for Partition* had not been properly valued for the purpose of Court Fees. It is submitted that the Plaintriff is not in possession of the *suit properties* and was liable to pay *ad volerum* Court Fees and since the Plaintiff has paid only the fixed Court Fees, the Suit is liable to be rejected.
3. The Application was contested by the *Respondent/Plaintiff*, who has asserted that she has been in legal and constructive possession of the suit property through her parents and had been residing on the ground and second floor of the property in question; therefore, the Suit has been rightly valued and the Court Fee has been duely paid.
4. ***Learned Counsel on behalf of the Revisionist/Defendant*** has contended that Father of the parties/Shri. P. S. Bhati passed away on 10.02.2021 and thereafter, it is he who has been the exclusive owner of the suit property by virtue of Registered Will executed in his favour in the year 1995. The Plaintiff/Respondent had earlier filed a *Suit for Permannel and Mandatory Injuction*, which was rejected as from the



2024:DHC:10188



averments and pleading of the Suit it was evident that she is not in possession of the suit properties. Since the Plaintiff was never in possession of the suit properties, she is liable to pay *ad volerum* Court Fee in the present Suit for Partition.

5. ***Ld. Counsel on behalf of the respondent/Plaintiff*** has countered the arguments and submitted that the present *Suit for Partition* was filed by her against her brother and mother, after demise of the father on 10.02.2021. During the pendency of the Suit, the mother has died on 15.11.2021. Hence, the Plaintiff is in constructive/legal possession of the suit property along with her brother/Revisionist. There is no complete ouster of the Respondent nor is there any complete denial of the title of the plaintiff, which is a matter of trial. Thus, the Application has been rightly rejected by the Trial Court *vide* the Impugned Order dated 10.08.2023.

6. Submissions heard and record perused.

7. Respondent No.1/Plaintiff, Vandana Singh had filed *Suit for Declaration, Partition and Permanent Injunction* against the Revisionist / Defendant – Mr. Manoj Bhati and her mother- Smt. Krishna Bhati in respect of properties being G-20, East of Kailash, New Delhi and Flat No. 14911, Block D, Flatted Factory Complex, New Delhi-20 (*hereinafter referred to as “Suit property”*).

8. The suit property being Flat No. 14911, Block D, Flatted Factory Complex, New Delhi-20 was self acquired property of their father late Sh. P.S. Bhati, who died on 10.02.2021. The Plaintiff/ Respondent herein had explained in her Complaint that the Ground Floor and Second



2024:DHC:10188



Floor of the property in question were in possession of their mother- Smt. Krishna Bhati. On the second floor, necessary items like Refrigerator, Utensils, etc. belonging to her mother were lying and she used to go on the second floor for keeping milk, etc. The Defendant/ Revisionist was residing on the first floor of the property.

9. According to the Plaintiff, she was regularly staying and visiting her mother to take care of her, who was residing on the ground floor and was also in possession of the second floor; though the Defendant/ Revisionist had started creating hinderances and interfering in the movement of the Plaintiff on the ground and second floor.

10. She also claimed that prior to the lockdown, the second floor and ground floor were in exclusive possession of the father and mother of the Plaintiff and Defendant No.1. However, after demise of their father and mother being in ICU, the Defendant/ Revisionist became greedy and with an intent to grab the property, tried to dispossess the Plaintiff from the Ground and Second floor. He even threatened to throw her out of the house and therefore, the first Suit for *Permanent and Mandatory Injunction* was filed by her.

11. *There is no denial that the property was originally owned by the father of the parties.* It is also specific averment of the Plaintiff that father and mother were in possession of the ground and second floor of the property in question, while the first floor was with the Revisionist/ Defendant. The claim of the Plaintiff is that after demise of the father, she became entitled to 1/4th share in the suit property and thus, filed the Suit for Partition. ***From the averment, it is evident that the Plaintiff /***



2024:DHC:10188



Respondent has claimed legal possession/ ownership in the suit property along with her brother and other legal heirs.

12. According to *Section 7 (iv) (b) of the Court Fees Act, 1870*, ad-volarem Court Fee under Section 7(iv) (b) of the Court Fees Act, 1870 is payable only when the *plaintiff has been ousted* from its enjoyment of the suit property and seeks restoration of the joint possession by way of a Suit, as was held in *Asa Ram Vs. Jagan Nath and others*, AIR 1934 Lahore 563.

13. Article 17(vi) Schedule II of the Court Fees Act, 1872 provides for the payment of fixed Court Fee in cases where it is not possible to estimate a monetary value of the subject matter in dispute. In such cases, the averments made in the plaint are to be considered to determine whether the plaintiff was in the possession of the suit property of which partition is sought or was there a complete ouster.

14. In *Jagdish Pershad & ors vs Jyoti Pershad & ors*, ILR 1975 Delhi 841, this Court held that when a joint owner seeks partition of the property, they merely seek a change in the mode of enjoyment of the said property, where a mere denial of right or title by the other co-sharers does not amount to an ouster of the plaintiff.

15. Similarly, relying on the judgement in *Jagdish Pershad(Supra)*, the Coordinate Bench of this Court in *Prakash Wati vs Dayawanti*, (1990) 42 DLT 421, re-iterated that when the plaintiff asserts ***shared possession*** of the property for which partition is requested, whether actual or constructive, the plaintiff is only required to pay a fixed court charge in accordance with *Article 17(vi) Schedule II of the Court*



2024:DHC:10188



Fees Act, 1870.

16. In the case of Neelavathi and Ors. Vs. Natarajan and Ors. 1980 AIR 691 the Apex Court has observed that question of Court Fee must be considered in the light of the averments made in the Plaint and its decision cannot be influenced either by the defence taken in the Written Statement or by final decision of the Suit on merits. It was also observed that it is the general principle of law that in the case of co-owners, ***the possession of one, is in law possession of all; unless ouster or exclusion is proved.***

17. In the present case, the Defendant/ Revisionist has asserted that the house had been bequeathed to him by his late father Sh. P.S. Bhati *vide* Registered Will executed in the year 1995, and thus, claimed exclusive ownership of the suit properties.

18. However, at this stage only the averments made in the Plaint are to be considered. The plaintiff had made specific averments that ***she has been in possession of the Suit Property*** through her parents and that there has ***never been her complete ouster*** from the suit property.

19. The Revisionist/ Defendant i.e. her brother may claim to have acquired ownership rights by virtue of Will executed by their late father, but that is a defence raised, which is the subject matter of trial.

20. Therefore, the learned ADJ has rightly observed that since the Plaintiff claims to be in joint possession of one property and in constructive possession of the other, the Suit has been rightly valued as per *Article 17(vi) of Schedule 11 of the Court Fees Act. The Application under Order VII Rule II CPC, seeking rejection of the*



2024:DHC:10188



Suit on account of payment of deficient Court Fees, has been rightly dismissed.

21. However, the observations made herein, are for the purpose of the present Application and not an expression on merits about the adequacy of Court Fees, which may be considered after evidence is led by both the parties.

22. There is no merit in the present Revision Petition and it is hereby, dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 19, 2024

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