



2024:DHC:6734-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO(OS) 119/2024 & C.M.Nos.50430-50431/2024****BAKSHISH SINGH CHANDHOK AND ORS**Appellants

Through: Mr.Kuljeet Rawal, Advocate.

versus

BHAVJOT SINGH CHANDHOKRespondent

Through: Dr.S.S.Hooda, Advocate.

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Date of Decision: 02nd September, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****MANMOHAN, ACJ : (ORAL)**

1. Present appeal has been filed challenging the order dated 8th July, 2024 passed in CS (OS) 2173/2015, whereby the learned Single Judge has directed the Appellants to deposit the entire balance court fee on *ad-valorem* basis in accordance with Section 7(iv)(b) of the Court Fees Act, 1970 (hereinafter referred to as the 'Act') on the premise that Appellants/ Plaintiffs have been ousted from the possession of the suit property by the Respondent/Defendant.

2. Learned counsel for the Appellants states that the subject suit has been filed by Appellant-Plaintiff No.1 and his now deceased mother Smt. Rabinder Kaur (Plaintiff No.2) against the sole Defendant seeking decree of partition i.e. 50% share in favour of Appellant-Plaintiff No.1; 25% share in favour of Plaintiff No.2 (i.e. now deceased mother) and rest 25%



share in favour of Respondent/Defendant.

3. He states that the suit has been contested by the Respondent vide his written statement dated 15th October, 2015. He states that on 12th January, 2024, an objection was raised by the Respondent that without the payment of court fee and without seeking relief of possession, the subject suit would not be maintainable.

4. He states that on 8th July, 2024, attention of the Court was drawn to para 4 of the plaint wherein the Appellants have categorically asserted that the Appellants have been in possession of the property as they have been visiting and using the suit property. He further states that Appellants and Respondent are co-owners of the suit property though Respondent controls the property.

5. He states that the possession of one co-heir is considered, in law, as possession of all the co-heirs. He submits that the co-owner in possession, cannot render his possession adverse to the other co-owner not in possession, merely by any secret hostile animus on his own part, in derogation of the other co-owner/title holder. In support of his submission, he relies upon the judgment of this Court in ***Geeta Tandon vs. Sunil Gomber & Ors.*** 2023 SCC OnLine Del 2067, wherein it has been held as under:-

“47. To appreciate implication of denial of title in a suit property and the necessary ingredients of ouster, a reference may be made to the judgement of the Apex court in Nagabhushanammal (Dead) vs C. Chandikeswaralingam, (2016) SCC 434 Devi vs Prem Prakash, (1995) 4 SCC 496 wherein the meaning and connotation of the term 'ouster' was expounded as follows:

“28. 'Ouster' does not mean actual driving out of the co-sharer from the property. It will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession. Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co-owner. They are (i) declaration of hostile animus; (ii) long and uninterrupted possession of the person pleading ouster; and



(iii) exercise of right of exclusive ownership openly and to the knowledge of the other co-owner. Thus, a co-owner, can under law, claim title by adverse possession against another co-owner who can, of course, file appropriate suit including suit for joint possession within time prescribed by law. "

6. The principle on which court fees in a suit for partition is calculated is well settled. In ***Sushma Tehlan Dalal vs. Shivraj Singh Tehlan & Ors.*** (2011) IV AD (Delhi) 341 it has been held as under:-

"11. The following legal proposition of law emerges from the above-referred decisions:

(i) In order to ascertain whether the suit has been properly valued for the purpose of Court fee or not, only the averments made in the plaint have to be seen, without reference to the plea taken by the Defendants;

(ii) If the plaintiff claims to be in joint possession of the suit property, he has to pay a fixed Court fee in terms of Article 17(vi) of Court-fees Act.

(iii) If the averments made in the plaint show that the plaintiff has been completely ousted from the possession and is not in possession of any part of the suit property, he is required to claim possession and also pay ad valorem Court fee on the market value of his share in the suit property."

7. In the present case, the Appellants-Plaintiffs admit to their ouster from the possession of the suit property. They further admit that the Respondent-Defendant has not only changed the locks at the entrance of the suit property but is also forcing the Appellants-Plaintiffs to stay at a hotel whenever they visit Delhi, and therefore on their own assertions, are not in constructive or actual possession of the suit property. In this context, paragraphs 4 and 10 of the plaint are relevant and are reproduced hereinbelow:-

"4. That at present Defendant is in possession of the suit property. The Defendant has been in possession of the entire suit property ever since the consent terms were filed in the Hon'ble High Court of Bombay. The plaintiffs also used to visit and use the suit property but for the last couple of years the Defendant has taken control over the entire property and is not letting the Plaintiffs enter into the suit property. There is no dispute qua the ownership and the respective share of the plaintiffs and Defendant in the suit property. The plaintiffs and Defendant are all co-owners of the suit property.



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10. That the defendant is not letting the plaintiffs enter into the suit property and has also changed the locks to the entrance to the suit property, to which the plaintiffs always had duplicate keys. As a result whenever the plaintiffs and their family members visit Delhi, they are forced to stay at a hotel rather than staying at their own house of which they are the majority co-owners. The conduct of the defendant is causing great injustice to the plaintiffs and their family members.”

8. From the aforesaid averments, it is apparent that there is declaration of hostile animus by the Respondent-Defendant, who is in long and uninterrupted possession of the suit property and who also claims to exercise the right of exclusive ownership openly and to the knowledge of other co-owners i.e. Appellants-Plaintiffs. Consequently, the triple test relied upon by learned counsel for the Appellants is satisfied in the present case.

9. As the Appellants-Plaintiffs themselves admit to their ouster from the possession of the suit property, the court fee payable shall be *ad valorem* in accordance with Section 7(iv)(b) of the Act and not Article 17(vi) of the Schedule II of the Act.

10. Accordingly, the present appeal being bereft of merit is dismissed along with the applications.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 02, 2024
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