



2024:DHC:8831-DB



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

+ **FAO(OS) 161/2024 & C.M.Nos.66196-66197 /2024**

SANDEEP SINGH DUGGAL

.....Appellant

Through: Appellant in person.

versus

SH BIKRAMJEET SINGH DUGGAL AND OTHERS

.....Respondents

Through: Mr.Aditya Wadhwa with
Mr.Shivansh Agarwal and Mr.Arnab
Sarma, Advocates for R-1.

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Date of Decision: 13th November, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present appeal has been filed challenging the order dated 01st October, 2024 passed by the learned Single Judge in I.A. No.20124/2022 (Application filed by Respondent no. 1 under Order VII Rule 11 CPC) in CS (OS) No. 390/2022, whereby the learned Single Judge directed the Appellant/Plaintiff to deposit the *ad valorem* court fee of Rs.80,000/- in terms of Section 7(iv)(c) of Court Fees Act, 1870 within four weeks.

2. The Appellant, who appears in person, states that the learned Single Judge has overlooked the specific averment made by the Appellant/Plaintiff in the plaint whereby he claimed to be in joint possession of the subject



property and in view of the said averment, the Court Fees payable on the relief of partition will not be governed by Section 7(iv)(c) of the Court Fees Act, but by Article 17(vi) of the Schedule II of the Court Fees Act which requires the Plaintiff to pay fixed Court fees of Rs. 19.50 and not ad-valorem fee on the market value of his share.

3. He states that a party claiming partition of property is liable to pay ad-valorem Court Fees only in those circumstances where 'ouster' is established in the plaint. He states that the learned Single Judge failed to appreciate that when a joint owner seeks partition of the property, he merely seeks a change in the mode of enjoyment of the subject property and mere denial of right or title by the other co-sharers does not amount to an ouster of the Appellant/Plaintiff.

4. Having perused the paper book, this Courts finds that the Appellant/Plaintiff has admitted that no rental income has been received by his late father Sh.Raghubir Singh Duggal between 1980 and 2001, and thereafter the Appellant/Plaintiff as well has never received any share in the rental income from 2002 to 2021.

5. In our view, the learned Single Judge has rightly observed that a perusal of the averments in paragraphs '26', '32' and '37' show that late Sh.Bhagwan Singh Duggal did not accede to any request for sharing the rental income between 1980 and 2021. In fact, at prayer clause (c), the Appellant/Plaintiff has sought rendition of account for the rental income from the date of death of late Sh.Sant Singh Duggal (grandfather of Appellant), i.e. from 1980. Therefore, the plea of the Appellant/plaintiff that he is in constructive possession of the subject property through the tenant is without any basis.



6. The learned Single judge has also correctly observed that the title of the subject property is in favour of late Sh.Bhagwan Singh Duggal, the father of Respondent nos.1, 2 and 3 by virtue of the Perpetual Lease Deed. Further, the lease deeds executed by Respondent no.1 and his late father show that the Appellant/Plaintiff is not the legal heir of late Sh. Bhagwan Singh Duggal, and therefore for his plea of co-ownership to take effect, he has to first succeed in his declaration of title and presently there is no presumption of co-ownership in his favour. The Appellant/plaintiff is also aware of this fact and has, therefore, sought a declaration of title as prayer clause (a) of the plaint.
7. The plea of the Appellant/plaintiff that late Sh.Sant Singh Duggal was the *benami* owner of the subject property and he is entitled to a share as a Class-I legal heir, is without any basis.
8. At this stage, the Appellant prays for extension of time to deposit the Court Fees.
9. Let the requisite Court Fees be deposited by the Appellant within six weeks.
10. Consequently, the present appeal along with the applications is disposed of.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 13, 2024
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