



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

CR-7775-2019 (O&M)

Date of decision : 07.05.2025

Romesh Chand Arora

...Petitioner

Vs.

Himmat Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep K. Sharma, Advocate
Mr. Utsav Sharma, Advocate
for the petitioner.

Mr. Gursher Singh Dhillon, Advocate
for respondent No.1.

Mr. Saurabh Kaushik, Advocate
for respondents No. 27 to 44.

ANIL KSHETARPAL, J. (Oral)

1. The petitioner herein is a defendant in a pending suit for grant of decree of declaration. He filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 to reject the plaint. The caption of the suit reads as under:-

"Suit for declaration to the effect that plaintiff is a co-owner/co-sharer to the extent of 1/3rd share out of land measuring 83 K 0-3 Marlas comprised in Khewat No. 2/2, Khatauni No. 13 Khasra No. 50 (12-12), 51 (11-11), 52 (67-9), 53 (0-12), 58 (13-12) total measuring 95 Kanal 16 Marlas situated at Village Bir Mehas Tehsil Nabha Distt. Patiala as per Jamabandi for the year 1995-1996 being son and class I Legal heirs of Late Smt. Urmlia Devi and for declaration to the effect that the mutation No. 7 dated 23.01.1999 sanctioned on the basis of forged, fabricated and factious Will dated 28.09.1995 is invalid, illegal, wrong, null and void and ineffective qua the rights of the plaintiff and further declaration to the effect that the sale deeds executed by defendant No. 1 in excess to his share vide Vasika No. 527 dated 11.05.1999, 575 dated 11.05.1999, 1778 dated



03.08.1999, 1798 dated 04.08.1999, 2196 dated 04.08.2000, 1399 dated 08.01.2001 on the basis of above said mutation is illegal, null and void and ineffective qua the rights of the plaintiff and any other sale deed if executed by defendant No. 1 or subsequent sale deeds executed by defendant No. 4 to 26 is also illegal, null and void and ineffective qua the rights of the plaintiff and is liable to be ignored, with the consequential relief of separate possession by way partition. of

AND

Suit for permanent injunction restraining the defendant No. 1 and 3 their servants, agents, attorneys, partymen, representatives or anybody else acting on their behalf from further alienating by way of sale, gift, mortgage or in any manner any portion of the suit land to anybody and also restraining defendant No. 4 to 26 from further alienating the suit land by way of sale, gift, mortgage or in any other manner to anybody else and also restraining all the defendants from raising any type of construction in the suit land and from changing the nature of the land."

2. The defendant filed an application claiming that the plaintiff is the executant of the sale deeds hence, liable to pay *ad valorem* Court fee. The trial Court dismissed the aforesaid application. From reading of the plaint, it is evident that defendant No. 3 is an executant and not the plaintiff.

3. Learned counsel representing the petitioner further submitted that the plaintiff has sought separate possession by way of partition, hence, he is liable to pay Court fee. In fact, this issue is debatable and is required to be decided after the parties are granted opportunity to lead evidence.

4. There are judgments interpreting the concept of deemed possession in the context of co-sharer who shall be deemed to be in possession of every part of the property. Reference in this regard can be made to judgment passed in **'Rajiv Kumar and another Vs. Rakesh Kumar and another', 2015(4) PLR 191.**

5. Learned counsel representing the petitioner relies upon various other judgments including a Division Bench of Delhi High Court. In the considered opinion of this Court, the defendant can request the trial Court to



frame a distinct and separate issue with regard to liability of the plaintiff to pay Court fee on the relief of separate possession, which shall be decided by the Court alongwith the main suit. At this stage, it will not be appropriate to express any final opinion.

- 6. With these observations, the revision petition is disposed of.
- 7. All the pending miscellaneous applications, if any, are also disposed of.

07.05.2025	(ANIL KSHETARPAL)	
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No