



2025:DHC:4977



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 14.05.2025+ C.R.P. 93/2025 & CM APPL. 18640/2025

SAKSHI DHALL

.....Petitioner

Through: Mr. Jai Wadhwa and Mr. Ronak
Karanpuria, Advocates with
Petitioner in person.

versus

SMT. INDIRA DHALL & ORS.

.....Respondents

Through: Dr. Amit George and Mr. Dushyant
Kishan Kaul, Advocates for R-1 with
R-1 in person.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed on behalf of the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 18.01.2025 passed by learned District Judge-07, West District, Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11 of the CPC has been dismissed by the learned Trial Court.
2. At the outset, learned Counsel for the Petitioner submits that the challenge in the present Petition is limited to two grounds:
 - (i) that a simpliciter suit for partition is not maintainable; and
 - (ii) that since ouster is pleaded, *ad volorem* court fee on the market value has to be paid, however the Impugned Order dated 18.01.2025 does not direct the same.
3. Learned Counsel for the Petitioner submits that he does not wish to press the ground of the Suit being barred by limitation and the ground that the Plaint does not disclose any cause of action before this Court.



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4. Briefly, the facts are that the Respondent No.1 (Plaintiff before the learned Trial Court) filed a suit for partition and permanent injunction in respect of property bearing no. ED-48, Tagore Garden, New Delhi [hereinafter referred to as “suit property”]. It is the case of the Respondent No.1 that the suit property was originally allotted to the husband of the Respondent No. 1, late Sh. Dharam Pal Dhall. The disputes arose between the predecessor-in-interest of the parties and these culminated in a judgment passed by the Supreme Court on 16.04.2018¹ in the case of **Vinod Kumar Dhall v. Dharampal Dhall (Deceased) through his LRS & Ors** [hereinafter referred to as “SC Judgment”]. By the said judgment, the Supreme Court has held that the suit property is a family property and not the exclusive property of the Plaintiff therein and that the suit property was purchased with the amounts paid by the joint family and not just late Sh. Dharam Pal Dhall.

4.1 Pursuant thereto, the Respondent No.1/Plaintiff filed a suit for partition and permanent injunction seeking partition of the suit property. It was stated therein by the Respondent No.1/Plaintiff that the Defendants have refused to partition the suit property and have instead threatened to sell the suit property in the absence of the Respondent No.1/Plaintiff, thus the present suit was filed. The plaint was valued for the purposes of Court fee and jurisdiction at Rs. 1.33 crore being the market value of the suit property and the fixed Court fee was paid for the relief of partition and permanent injunction.

5. The suit was being contested by some of the Defendants. The Petitioner before this Court, who is Defendant No. 5(C) before the learned Trial Court, filed an Application under Order VII Rule 11 of the CPC raising

¹ Order dated 16.04.2018 passed in Civil Appeal Nos. 4534-4535 of 2018



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several defences including; (i) the suit is barred by limitation being filed 12 years after the legal notice dated 30.06.1996; (ii) that there is no cause of action in favour of the Respondent No.1/Plaintiff to seek relief of partition; (iii) since the Respondent No.1/Plaintiff claims title from late Sh. Dharam Pal Dhall who has admitted ouster, a simpliciter suit for partition is not maintainable and the relief of possession need also be sought; (iv) As the Respondent No.1/Plaintiff is not in possession of the suit property, she is liable to pay *ad volorem* court fee on the market value of the suit property; and (v) the market value of the suit property is Rs. 6 crores and has been undervalued by the Respondent No.1/Plaintiff. Several other grounds were also raised in the Application under Order VII Rule 11, including that the suit property is not a leasehold property and is not capable of being partitioned by metes and bounds.

6. The learned Trial Court has examined the Application under Order VII Rule 11 of the CPC filed by the Petitioner and gave a finding that the plaint discloses a cause of action as Respondent No.1/Plaintiff has taken a plea that she has 1/18th share in the suit property. It was further held that since the cause of action as per the plaint arose on 05.06.2022, the plaint cannot be said to be barred by limitation especially in view of the fact that the cause of action in a suit for partition is a recurring cause of action. On the ground of ouster and under valuation of the plaint, the learned Trial Court has also found in favour of the Respondent No. 1/Plaintiff.

6.1 The learned Trial Court has examined each contention raised in the Application under Order VII Rule 11 and relying on the settled law has held that there was no valid ground to reject the plaint and thus dismissed the Application under Order VII Rule 11 of the CPC.



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7. As stated above, after some arguments, the learned Counsel for the Petitioner restricted his challenge in the present Petition to two grounds. Firstly, he submits that the Respondent No.1/Plaintiff is required to seek recovery of possession as a simpliciter suit for partition is not maintainable. Secondly, that the *ad volorem* court fee on the market value of the suit property has to be paid in view of the plea of ouster.

7.1 Learned Counsel for the Petitioner has submitted that the simpliciter suit for partition is not maintainable in view of the admitted fact that the Respondent No.1/Plaintiff is not in possession of the suit property. Relying on the SC judgment, it was held that there is an admission by the husband of the Respondent No.1/Plaintiff that he never resided in the suit property and thus, the Respondent No.1/Plaintiff was required to file a suit for possession along with partition as well. Reliance is placed on paragraph 16 of the SC judgment in this behalf which is extracted below:

“16. It is apparent that the entire family was residing in the house in question right from the beginning and the marriages of the plaintiff as well as the defendants and all other sisters were solemnized in the house in question. It is apparent that Defendant No.2 was also residing in the house continuously right from the beginning and also the mother and she had also died in the house in question, as per the case set up by the plaintiff in the year 1990. Thereafter, the house remained in occupation of the family members, is also apparent. On the contrary, there is admission made by the plaintiff that he never resided in the house. The following is the relevant portion of the deposition of the plaintiff set out hereunder:

“It is correct that I never remained in the house in dispute since its construction. It is incorrect to say that after completion of the house, my parents and all the four sisters including defendant No.2 and brother defendant No.1 not started living with me at the house in dispute.”

[Emphasis supplied]

8. Learned Counsel for the Petitioner submits that in terms of the judgment of the Supreme Court in *Anathula Sudhakar vs. P. Buchi Reddy*



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(Dead) by LRs and Others², the Supreme Court has held that a person out of possession cannot seek the relief of injunction simpliciter, without claiming the relief of possession in this behalf.

8.1 In addition, learned Counsel for the Petitioner has stated that since the Respondent No.1/Plaintiff is not in possession of the suit property, she is liable to pay *ad valorem* court fee on the market value of the suit property. He further submits that the learned Trial Court has given a finding that there is a presumption of joint possession, unless the Respondent No.1/Plaintiff herself has pleaded that she has been ousted and excluded from the possession of the suit property, which finding, it is submitted, is not correct. It is further stated that there is no averment in the plaint that Respondent No.1/Plaintiff is in joint/constructive possession of the suit property and thus, *ad valorem* Court fee has to be paid. Reliance in this behalf is placed on the judgment dated 23.01.2014 of the Coordinate Bench of this Court in **Neelam Batra v. Rakesh Bhatla³** in this behalf.

9. Learned Counsel for the Respondent No.1/Plaintiff, on the other hand, has contended that the jurisdiction as is exercised by this Court in a revision under Section 115 of the CPC is limited and that the power of revision is circumscribed and does not permit entering questions of fact or evidence.

9.1 Learned Counsel for the Respondent No.1/Plaintiff further submits that it is settled law that for deciding an Application under Order VII Rule 11 of the CPC, only the averments in the plaint are to be looked into however, the challenge that has been raised by the Petitioner forms part of his Written Statement.

² (2008) 4 SCC 594

³ 2014 SCC OnLine Del 332



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9.2 Learned Counsel for the Petitioner submits that the contention of the Respondent No.1/Plaintiff that a simpliciter suit for partition is not maintainable is without any merit.

9.3 Learned Counsel for the Respondent No.1/Plaintiff submits that it is the case of the Respondent No. 1/Plaintiff that the husband of the Respondent No.1/Plaintiff was the sole owner of the suit property and pursuant to the *inter se* litigation between her husband and other family members which culminated in the decision of the SC judgment, the Supreme Court has held that the suit property was a family property and not the exclusive property of late Sh. Dharam Pal Dhall and thus clearly, his wife is entitled to a share in the suit property, after the death of Sh. Dharam Pal Dhall.

9.4 Learned Counsel for the Respondent No.1/Plaintiff seeks to rely upon the plaint to submit that the plaint has set out in detail that the Respondent No.1/Plaintiff is the co-owner of the suit property. He seeks to rely upon paragraph nos. 3, 4 and 7 of the plaint in this behalf.

9.5 Learned Counsel for the Respondent No.1/Plaintiff further submits that so far as concerns the joint possession, it is settled law that in the case of joint property, the joint possession is presumed in law unless exclusion is established by clear and specific averments in the plaint. Relying on the judgment of the Supreme Court in *Neelavathi & Ors. v. N. Natrajan & Ors.*⁴, learned Counsel for the Respondent No.1/Plaintiff submits that in the case of co-owners, the possession of one is, in law the possession of all. It is further submitted that there should be a clear and specific averments in the

⁴ AIR 1980 SC 691



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plaint that they have been excluded from the joint possession.

9.6 On the aspect of payment of *ad valorem* Court fee, learned Counsel for the Respondent No.1/Plaintiff has submitted that the Court fee has been calculated and correctly paid by the Respondent No.1/Plaintiff. He seeks to rely upon the judgment of a Coordinate Bench of this Court in the case of ***Tara Chand Gaur v. Satish Chand Sharma & Anr.***⁵ and ***Hem Madan v. Pawan Chowdhri and Another***⁶ in this behalf.

10. The grounds of challenge as raised in the present Petition are two fold, firstly, that the Respondent No.1/Plaintiff is required to seek recovery of possession as a simpliciter suit for partition is not maintainable and secondly, that the *ad valorem* court fee on the market value of the suit property has to be paid in view of the plea of ouster.

11. So far as concerns the first ground raised by the Petitioner, reliance has been placed by the Petitioner on the ***Anathula Sudhakar*** case to submit that a person out of possession cannot seek the relief of injunction simpliciter, without claiming the relief of possession in this behalf. Reliance has been placed on paragraph 13.2 of the ***Anathula Sudhakar*** case which is below:

“13.2 Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.”

11.1 The Supreme Court in ***Anathula Sudhakar*** case has, while discussing as to when a simpliciter suit for permanent injunction would lie, and as to when it would be necessary to file a suit for declaration and/or possession

⁵ 2018 SCC OnLine Del 12923

⁶ 2024 SCC OnLine Del 315



with injunction as a consequential relief, held that where plaintiff's title is not in dispute but he is not in possession, the proper legal remedy is to file a suit for possession and, if necessary, an injunction in addition. The relevant extract of **Anathula Sudhakar** case is reproduced herein below:

"13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction."

[Emphasis supplied]

11.2 The judgment in the **Anathula Sudhakar** case was based on the consideration of the following issues:

"12. On the contentions urged, the following questions arise for our consideration in this appeal:

(i) What is the scope of a suit for prohibitory injunction relating to immovable property?

(ii) Whether on the facts, the plaintiffs ought to have filed a suit for declaration of title and injunction?

(iii) Whether the High Court, in a second appeal under Section 100 CPC, could examine the factual question of title which was not the subject-matter of any issue and based on a finding thereon, reverse the decision of the first



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appellate court?

(iv) *What is the appropriate decision?"*

11.3 The Supreme Court in the **Anathula Sudhakar** case was adjudicating upon the scope of a suit for a prohibitory injunction relating to immovable property, and not upon the scope of a suit for partition of an immovable property. Thus, the reliance placed by the Petitioner on the **Anathula Sudhakar** judgment is misplaced.

12. Undisputably, the present case arises out of an earlier proceedings, which as stated above, culminated in a decision of the Supreme Court wherein it was held that the suit property is a joint property of the family of the predecessors-in-interest of the parties and not the self acquired property of late Sh. Dharam Pal Dhall, the husband of the Respondent No. 1/Plaintiff. It is apposite to set out these findings of the SC Judgment which are extracted below:

*"17. Apart from that, when we come to the source of money for the purpose of purchase of plot, admittedly, the plaintiff was a student and he was admitted in the year 1961 at IIT, Kharagpur. At the time when the land was allotted in the name of Kumari Sneh Lata, he was still a student and he had no source of income at the relevant time in 1963 or in January 1966, when the allotment was changed in his name owing to the marriage of Kumari Sneh Lata. Thus, obviously, it was Kashmiri Lal who had spent the money in getting the land allotted and also had raised the construction in the year 1965-66. Though the plaintiff has stated that the construction was made sometime in the year 1966, his version cannot be said to be reliable. The plaintiff was silent in the plaint when the construction was raised. The defendant has come up with a specific case that the construction was raised in the year 1965-66 and that is reliable. Apart from that even if construction was made in 1966 the plaintiff had admitted that he obtained employment only in April 1966 and when the house was constructed in 1966, **the plaintiff was not having enough earning so as to invest in the house or to purchase the plot in 1963.** He was not even in a position to say his salary was Rs.400 or not. It was obviously owing to the marriage of Kumari Sneh Lata that the plot was transferred in the name of Dharampal, who happens to be the elder son of Kashmiri Lal. **Thus, apparently no money was paid by Dharampal for allotment of the land***



to the DDA and obviously, it was paid in 1963 by Kashmiri Lal. The money was also spent in construction by the father Kashmiri Lal. Occupation and enjoyment of the house were with the entire family right from the beginning and till today the family is residing in the house. Apart from that, the plaintiff has admitted that when he came to Delhi on posting at All India Institute of Medical Sciences, he started living in the rented accommodation, as there was a paucity of accommodation for his stay in the house in question. Thus, all the facts and circumstances indicate that it was a family property and not the exclusive property of the plaintiff – Dharampal. Thus, the Courts below have acted not only perversely but in a most arbitrary and illegal manner, while accepting the ipse dixit of the plaintiff and in decreeing the suit. Such finding of facts which are impermissible and perverse cannot be said to be binding. The legal inferences from admitted facts have not been correctly drawn.

18. Merely the fact that house tax receipt, electricity and water bills and other documents are in the name of Dharampal would carry the case no further, as it was the father who got the name changed of Kumari Snehlata in question in the name of Dharampal. The receipts were only to be issued in the name of the recorded owner, but Dharampal never resided in the house as he was in service out of Delhi, obviously, the amount was paid by family, not by Late Dharampal. Thus, we find that no benefit could have been derived from the aforesaid documents."

[Emphasis Supplied]

12.1 The SC Judgment thus held that the suit property was bought from the funds of the family of Sh. Dharam Pal Dhall and not his personal funds. Clearly, however, Sh. Dharam Pal Dhall did own a share in the suit property.

13. It is no longer *res integra* that in the case of co-owners of an immovable property, if the right to a share and the nature of the property being a joint property is not disputed, the law presumes that the co-owners are in joint possession. The possession of one is in law the possession of all, unless ouster or exclusion is proved.

13.1 The Supreme Court in the *Neelavathi* case has held that it is the general principle of law that in the case of co-owners of an immovable property, the possession of one is synonymous with the possession of all, unless ouster or exclusion is proved. To be in joint possession of the



immovable property, in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. So, as long as the right to a share and the nature of the property as joint is not disputed, the law presumes that the co-owner is in joint possession unless the co-owner is excluded from such possession. The relevant extract of the *Neelavathi* case is set out below:

“8...

It will be seen that the court fee is payable under Section 37(1) if the plaintiff is “excluded” from possession of the property. The plaintiffs who are sisters of the defendants, claimed to be members of the joint family, and prayed for partition alleging that they are in joint possession. Under the proviso to Section 6 of the Hindu Succession Act, 1956 (Act 30 of 1956) the plaintiffs being the daughters of the male Hindu who died after the commencement of the Act, having at the time of the death an interest in the Mitakshara coparcenary property, acquired an interest by devolution under the Act. It is not in dispute that the plaintiffs are entitled to a share. The property to which the plaintiffs are entitled is undivided “joint family property” though not in the strict sense of the term. The general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession...”

[Emphasis Supplied]

13.2 In the present case the Respondent No.1/Plaintiff has derived her rights in the suit property through her husband. The SC Judgment has declared the suit property to be family property of all members of Shri Kashmeri Lal Dhall, who was her father-in-law. Thus, the Respondent No.1/Plaintiff has a share in the suit property.

14. The Supreme Court in the *Neelavathi* case has also held that before a plaintiff could be called upon to pay court fee under Section 37(1) of the



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Court Fees Act, 1870 [hereinafter referred to as “Court Fees Act”] on the ground that the plaintiff has been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that the plaintiff has been “excluded” from joint possession to which the plaintiff is entitled in law. As long as a party has a share in the property, the law presumes his possession. The relevant extract is set out below:

“8...

Before the plaintiffs could be called upon to pay court fee under Section 37(1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been “excluded” from joint possession to which they are entitled in law. The averments in the plaint that the plaintiffs could not remain in joint possession as they were not given any income from the joint family property would not amount to their exclusion from possession. We are unable to read into the plaint a clear and specific admission that the plaintiffs had been excluded from possession.”

[Emphasis Supplied]

14.1 A Coordinate Bench of this Court in the ***Tara Chand Gaur*** case has held that a co-owner seeking partition of an immovable property is liable to pay only fixed court-fee under Schedule II, Article 17(vi) of the Court Fees Act, as such co-owner is presumed to be in constructive possession unless ouster is specifically pleaded and proved by the other co-owners. Determination of exclusive possession or ouster is a question of fact and must be established through evidence. The relevant extract of ***Tara Chand Gaur*** case is reproduced below:

“6. So far as the third aspect of the court-fee having not been paid is concerned because the appellant/plaintiff has only affixed a court fee of Rs. 20/-, once again, the trial court has erred in holding that since the appellant/plaintiff had valued the suit at Rs. 1 crore, and he was not in possession of the suit property, therefore, the appellant/plaintiff was liable to pay court-fee on his 1/3rd share. In law, when a partition is sought by



a co-owner, court-fee which is payable is a fixed court-fee in terms of Schedule II, Article 17(vi), of the Court-fees Act, 1870 inasmuch as every co-owner is either in actual physical possession of whole or part of the property or in law has to be taken in deemed possession or constructive possession of the co-owned property. If a defendant is a co-owner who is in actual physical possession of the complete property, even then, the possession of one or more such co-owners who are defendants in possession, the possession is for and on behalf of all co-owners including the plaintiff(s), and whether there exists exclusive possession of the respondents/defendants and the same acts as an ouster of the plaintiff(s) is a question of fact, and only when this question of fact is proved by the respondents/defendants by leading evidence, it can be held that the appellant/plaintiff was not in possession, physical or constructive, of the suit property, so that court fee is payable for the 1/3rd share as claimed by the appellant/plaintiff. In fact, this issue of court-fee is very much inter-linked with the issue of limitation because the appellant/plaintiff is not in possession, and both are factual issues which will have to be proved by the respondents/defendants that the appellant/plaintiff was not in physical possession of the suit property and ouster has been proved against the appellant/plaintiff by respondents/defendants after leading evidence."

[Emphasis Supplied]

14.2 In any event, the suit in the present case is at a preliminary stage and the Application under Order VII Rule 11 of the CPC has been decided by the Impugned Order.

15. A perusal of the plaint reflects that the plaint has clear and specific averments that the Respondent No.1/Plaintiff is the co-owner of the suit property deriving title from the predecessor-in-interest of her husband, Sh. Dharam Pal Dhall. The relevant extract of the plaint is below:

"2. That Late Sh. Dharam Pal Dhall had acquired the lease hold rights in respect of property bearing no. ED-48, Tagore Garden, New Delhi (hereinafter referred to as the "Suit Property") and is shown in red colour in the site plan annexed with plaint.

3. That as per the judgment dated 16.04 .2018 of Hon'ble Supreme Court in the case titled as "Vinod Kumar Dhall V/s. Dharam Pal Dhall", declared as a family property of Late Sh . Kashmeri Lai Dhall (in para No. 17 of the said judgement). The said judgement is annexed with the plaint .

4. That plaintiff and defendants are the successors in interest of Late Sh,



Kashmeri Lai Dhall who was expired in August, 1980 and his legal heirs become the joint owners of the said property.

5. That **Late Sh. Kashmeri Lal Dhall survived by his wife Radha Pyari Dhall and all the properties** i.e. (i) ED-48, Tagore Garden, New Delhi 150 Sq. Yds. Suit Property. (ii) Plot No. 1616 Sec. 7 Faridabad 250 Sq. Yds. annexed and sold by Late Vinod Kumar Dhall as per information of the plaintiff. (iii) A plot in layout plan in the ministry of commerce and industries co-operative housing society after death of Late Sh. Kashmeri Lal Dhall was allotted in the name of Late Radha Pyari Dhall 278.97 Sq. Mir. Plot No. 101 Block-B, Pushpanjali Enclave in the year 1991 sold by Late Vinod Kumar Dhall and Late Brij Lata Dhall on 22/12/1994 to Mrs. Sushil Kumari W/o Sh. K. L. Kochchar) were in the care and control of late Radha Pyari Dhall who was expired in 1990. **After the death of Late Radha Pyari Dhall the following legal heirs are survived** as per the information of the plaintiff.

(a) Sneh Lata (deceased) represented through defendant No. 2 A & B.

(b) Brij Lata (deceased) represented through defendant no.3. A.

(c) **Dharam Pal Dhall (deceased) represented through plaintiff and defendant No. 6 A&B.**

(d) Usha Arora (deceased) represented through defendant no. 4 A, B & C.

(e) Shashi Makan defendant no. 1.

(f) Vinod Kumar Dhall (deceased) represented through defendant no. 5 A, B & C.

6. That the plaintiff is legally entitled for her share in the suit property.

7. That the property has not been partitioned so far. **The plaintiff and defendants is the co-owner of the suit property.**

...

10. That in the facts and circumstances of the case the plaintiff do not want to keep their share joined with defendants and as such the suit property is liable to be partitioned among the plaintiff defendants and on the partition of the suit property: the separate specified and demarcated shares are liable to be allocated to the plaintiff as well as defendants.

11. That as the defendants have refused to partition the suit property the plaintiff has no other option but to approach this Hon'ble Court to partitioned the property.

...

13. **That the defendants have refused to partition the suit property the plaintiff has no other option but to approach this Hon'ble Court to partitioned the property, hence the present suit.**



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...

16. That the value of the suit for the purpose of court fee and jurisdiction at Rs. 1.33 Crore (approx) which is market value of the property and the plaintiff is making the payment of court fee for the relief of partition of Rs.200/- and for the relief of permanent injunction is Rs. 130/- which requisite court fee has been paid on the plaint. The plaintiff undertakes to pay the deficient court fee, if any as and when the Hon'ble Court will direct to do so."

[Emphasis supplied]

15.1 Thus, the Respondent No.1/Plaintiff has averred that she is a co-owner of the suit property and has relied on the SC judgment as well. As per the SC judgment, the suit property is a joint property and 'ouster' or exclusion of possession from the suit property has not been specifically pleaded by Respondent No.1/Plaintiff in the plaint. Thus, and at the preliminary stage at which the proceedings before the learned Trial Court are at, the law would presume the Respondent No.1/Plaintiff to be in possession unless it is proved to the contrary.

15.2 Since Respondent No.1/Plaintiff would be considered to be in possession of the suit property, Respondent No.1/Plaintiff would only be liable to pay fixed court fee as per the Article 17(vi), Schedule II of the Court Fees Act and not ad valorem Court fees on the market value of the suit property.

15.3 In any event, the plaint contains an averment that in the event, the Court finds the Court fee to be deficient, the Plaintiff has undertaken to make good such deficiency in the Court fee and given the law as settled in this behalf, the plaint could not be rejected on this basis.

15.4 Thus, the contention of the Petitioner that *ad valorem* court fee on the market value of the suit property has to be paid in view of the plea of ouster is without any merit.



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16. In view of the foregoing discussions, this Court finds no infirmity with the Impugned Order which would merit interference by this Court.

17. The Petition is accordingly dismissed. All pending Applications stand closed.

18. It is, however, made clear that the order passed today will not preclude the Petitioner from raising all contentions before the learned Trial Court. The rights and contentions of both the parties are left open in this behalf.

19. The parties shall act based on the digitally signed copy of the order.

MAY 14, 2025/r/ha

TARA VITASTA GANJU, J

Click here to check corrigendum, if any