

IN THE COURT OF SH. SANJAY, HCS, CIVIL JUDGE
(JUNIOR DIVISION), CHANDIGARH.

Case No. :827/2015

Date of Order: 02.12.2019

Pending for: 11.12.2019

Vasudev Singh Versus Inderdev Singh

Application under Section 7 of the Court Fees Act 1870, read with Order 7 Rule 11 C.P.C., for directing the plaintiff to affix court fee stamp, as per the value of the suit property and in case the plaintiff fails to affix the ad volerm court fee, as per the value of the suit property, to return the plaint, for and on behalf of defendant no. 1.

Present: Sh. Pankaj Nain, Counsel for the Plaintiff
Sh. Vaneesh Khanna, Counsel for Defendant no. 1, 3
Ms. Preeti Nigam, Counsel for Defendant no. 2
Defendant no. 4 and 5 exparte
Defendant no. 6 in person
Sh. Ashwani Talwar, Counsel for defendant no. 7
Sh S.C. Mehta, Counsel for Defendant no. 8 and 9
Sh. Vansh Malhotra, Counsel for Defendant no. 10
Sh. Vinod Verma, Counsel for Defendant no. 11

ORDER:-

1. This order of mine shall dispose of application 7 Rule 11 Code of Civil Procedure for return of plaint.

2. In the present application, ld. Counsel for the applicant submitted that the present plaint is liable to be rejected on the ground of non affixation of advolerm court fees. It is submitted that plaintiff is not in possession of the

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property at any point of time. Mainly raising assertion about possession is not sufficient and such assertion cannot avoid payment of court fees in suit for partition. It is further submitted that plaintiff is residing outside India and has not remained in possession of property at any point of time. Therefore, plaintiff is liable to affix advo term court fees on the value of property. But the plaintiff has not affixed the advo term court fees, therefore, the present plaint is liable to be rejected. In support of his argument learned counsel for the applicants placed reliance on *Anita Anand Versus Gargi Kapur & Ors. 2019 9256) DLT 84, Sushma Tehlan Dala Versus Shivraj Singh Tehlan and Others 2011(4) AD (Delhi) 341* held by Hon'ble Delhi High Court.

3. Whereas on the other hand, ld. Counsel for the respondent/plaintiff submitted that the present application is not maintainable as the same is filed at belated stage. The present application is nothing but abuse of process of law. The plaintiff is claiming his right on the ground that he is co-sharer/co-owner in the joint property and entitle for the partition. It is further submitted that being co-owner, the plaintiff is deemed to be in possession of the property. Therefore, it is requested that the present application be dismissed with costs. In support of his argument plaintiff placed reliance on *Bhartu Versus Ram Sarup 1981 PLJ 204, Raj Kumar Singh and Ors. Versus Amar Singh & Ors. 2010 (5) R.C.R. (Civil) 39, Satish Kumar and another Versus Lal Chand 2003(3) R.C.R. (Civil) 582, Dr. Durga Parmar and Ors. Versus V.K. Verma and Ors. 2004 (112) DLT 793, Bipin Bihari Panigrahi Versus Ramnarayan Panigrahi and others 2008 (70) AIC 912, Sushma Tehlan Dala Versus Shivraj Singh Tehlan and others 2011(4) AD (Delhi) 341, Sanjay Lagwal*

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Versus Shri Ram Ditta Lagwal 1993(3) R.C.R. (Civil) 88, Renu Jain & Anr. Versus Ms. Gunjan 2013(1) ICC 729.

4. I have heard learned Counsel for parties and have gone through the case file with his kind assistance.

5. Before giving any finding on the present application, it is pertinent to mention here that the present suit is fixed for defendant evidence. The present application under Order 7 Rule 11 CPC is filed at the stage when defendant evidence is going on. The applicant has not raised any such contention regarding affixation of advo term court fees at the very initial stage. The present suit was filed by the plaintiff on 11.04.2015 and the issues were framed on 20.04.2017. Thereafter, evidence of plaintiff is already concluded and defendant evidence is going on. In the present case plaintiff is claiming relief of separate possession by way of partition in Hindu Undivided Family property.

6. It is settled law that while deciding application under Order 7 Rule 11 CPC, the court has to see the contention of the plaintiff and there is no mandatory requirement to go through the contention of the defendant. That means, the application under Order 7 Rule 11 is required to be filed at the very initial stage. If the applicant is having any contention regarding possession then the present application is required to be filed at the very initial stage. Though the defendant denied possession of the plaintiff on the property. But still application was not filed at the initial stage. Therefore, that means, the present application is filed at the belated stage. The case is already at the stage of defendant evidence and the trial is likely to be concluded very soon.

7. As far as contention regarding possession are concern, this court

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consider that question of possession involved mix question of law and fact. There is two material question before the court whether the possession of plaintiff is constructive possession being co-owner of the property. Secondly, the court has also to determine the actual and physical possession of the property. Moreover, the court is mainly concern with the right of the parties over the alleged joint property, where both plaintiff and defendants are claiming their respective rights. Contention can only be decided at the time of final argument. It will be not appropriated if any conclusive finding is given regarding possession at this stage. Because evidence of defendant is yet to be concluded. Moreover, as per settled law every co-owner is deemed to be in constructive possession of the joint property, even if he is not in actual physical possession of the property. Therefore, at this stage, this court consider that no conclusive finding on the question of possession can be given otherwise that will effect the rights of the parties over property. Hence, in view of the above discussion, this court kept open the question of affixation of court fees on the point of possession and the same will be decided at the time of final argument. Because question of possession involve with legal question and the same can be decided after considering entire evidence of the parties and the legal provision involved therein. Accordingly, the present application stands dismissed.

Pronounced in Open Court
02.12.2019

(Sanjay)
Civil Judge(Jr. Division)
Chandigarh.
UID NO. HR0391

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Vasudev Versus Inderdev Singh

Present: Sh. Pankaj Nain, Counsel for the Plaintiff
Sh. Vaneesh Khanna, Counsel for Defendant no. 1, 3
Ms. Preeti Nigam, Counsel for Defendant no. 2
Defendant no. 4 and 5 ex parte
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Sh. Ashwani Talwar, Counsel for defendant no. 7
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Sh. Vansh Malhotra, Counsel for Defendant no. 10
Sh. Vinod Verma, Counsel for Defendant no. 11

Arguments on application application under under Order 7 Rule 11
of C.P.C. have been heard. The same stands dismissed vide separate order as
stated therein. Now case is adjourned to 11.12.2019 for defendant evidence sub-
ject to last opportunity.

Pronounced in Open Court
02.12.2019

(Sanjay)
Civil Judge(Jr. Division)
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