

Hardeep Singh Vs. Baldev Singh and Ors.

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Court : Delhi

Decided On : Dec-01-2014

Judge : Najmi Waziri

Appellant : Hardeep Singh

Respondent : Baldev Singh and Ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

04. 02.2014 Date of Decision:

01. 12.2014 + CM (M) No.476 of 2013 And CM Nos.7181 of 2013 & 7182 of 2013 HARDEEP SINGH Petitioner Through: Mr. K.R. Pamei, Adv. versus BALDEV SINGH & ORS. Respondents Through: Mr. Mahesh Kumar Gautam, Adv. CORAM: HONBLE MR. JUSTICE NAJMI WAZIRI NAJMI WAZIRI, J.

1. This petition impugns an order dated 21.12.2012 of the learned ADJ, Tis Hazari Courts in Suit No.434/2012 whereby the plaint was returned to the plaintiff/petitioner under Order VII, Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) to be filed before the Court of appropriate jurisdiction. The Court was of the view that the valuation report of the suit property as on 10.9.2012 showed it to be of the value of Rs.40,73,500/-, which was more than its pecuniary jurisdiction where the suit was filed. In these circumstances, the plaint was returned.

2. The petitioner has challenged the impugned order on the ground that he was seeking only 1/4th of the share in the suit property bearing

No.221/71A, S-Block, Vishnu Garden, New Delhi. The suit property is said to be an area of 100 sq.yds. The petitioner claims an equal share of 25 per cent in the suit property along with the respondents which is claimed to have been acquired by his deceased mother from her own savings and resources. He contends that his request for division of the property for his portion was unheeded, hence, a legal notice was served, which too went unanswered. The petitioner had assessed the value of his share, i.e. 25 per cent on Rs.19,45,000/- for which ad valorem court fee, had been paid. However, the valuation report showed the properties valued at Rs.40,73,500/-, according to which the petitioners share came to be Rs.10,18,375/- and the court fee payable thereon would be Rs.12,299/-, which is far less than what had already been paid. The learned counsel for the petitioner has argued that the Trial Court erred in taking the value of the entire property into consideration for the purpose of jurisdiction instead of the share claimed by the petitioner/plaintiff. He submits that the Court is required to take into consideration the value of the share claimed and not of the entire property. In support of his contentions he relied upon the following judgments: i. Prakash Wati v. Dayawanti & Anr. AIR1991 Delhi 48.

ii. iii.

3. Rani Devi v. Ashok Kumar Nagi & Anr. AIR1999 Delhi 109. Nisheet Bhalla & Ors. v. Malini Raj Bhalla & Ors. AIR2007 Delhi 60. In Prakash Wati (supra), this Court held as under:

2. It is settled law that in order to decide as to what relief has been claimed by the plaintiff, in fact, the whole of the plaint has to be read. It is clear that in case from the perusal of the plaint it is to be inferred that the plaintiff and defendants are in joint possession of the property in question, then the court fee paid initially on the relief regarding partition is correct but if the court is to come to the conclusion that the plaintiff is not in possession of any portion of the property in question then the plaintiff has to pay the court fee on the value of her share.....

3.In view of these pleadings it cannot be inferred that the plaintiff is in joint possession of any portion of the property in question. Hence, the plaintiff has to, in my opinion, pay the court fee on the value of her share for seeking the relief of partition and for possession of her separated share. In re Nanda Lal Makherjee . it has been held that if a person who is entitled to claim partition of the property is out of possession of his share he has to pay the court fee on the value of his share for seeking relief of possession of his share by partition...

4. Counsel for the plaintiff has made reference to Jagdish Pershad v. Joti Pershad 1975 Rajdhani Law Reporter 203, wherein it has been laid down that keeping in view the peculiar facts of the case that where the plaintiff claims to be in joint possession of the property of which partition is sought, the plaintiff is to pay only fixed court fee as per Article 17(vi) in Schedule II. There is no dispute about this proposition of law. Counsel for the plaintiff has then placed reliance on Neelavathi & others v. N. Natarajan & others, wherein the Supreme Court has laid down that it is settled law that the question of court fee must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. It was held that the general

principle of law is that in the case of co-owners the possession of one is in law the possession of all unless ouster or exclusion is proved. I think these observations of the Supreme Court go against the case of the plaintiff because in the present case reading of the whole of the plaint makes it clear that the plaintiff is alleging ouster from possession and thus, the plaintiff has to pay ad valorem court fee on the value of her share. I order accordingly. The deficiency in the court fee be made up within ten days and the suit be listed for further proceedings on August 21, 1990, in Short Matters.

4. In Nisheet Bhalla (supra), this Court while referring to Prakash Wati (supra), which had discussed the Supreme Court's dicta¹ held as under:

12. From a reading of all these three judgments, it is clear that normally if joint possession is pleaded by the plaintiff on the basis that he is the co-owner of the

property, the Court-fee to be paid would be fixed Court-fee presuming the joint possession and even if the person is not in actual possession. However, if from the reading of the pleadings it becomes clear that the plaintiff was excluded from such possession, then he is unable to pay the ad valorem court-fee on the market value of his share. That is held by the Supreme Court also where it is stated that 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.

5. In reply, the respondents have denied that the property was acquired by the deceased mother from her own savings and resources but she only lived in it till her demise; that the petitioner was fully well aware of this and had filed the suit with mala fide intentions; that the

pecuniary jurisdiction of a Court is assessed on the total value of the property and not on the share claimed by the plaintiff. The learned counsel for the respondents has relied upon the judgement of this Court in CS (OS) No.2546/2010 titled Anu v. Suresh Verma & Ors. decided on 12.7.2011, which held inter alia as under:

5.It would thus be seen that in view of the rules framed by Punjab High Court under Section 9 of Suits Valuation Act, which admittedly are applicable to Delhi, there can be separate valuations for the purpose of Court fee and jurisdiction. The valuation for the purpose of jurisdiction has to be the value of the whole of the properties subject matter of partition, whereas valuation for the purpose of Court fee would be such as is provided by the Court-fees Act. Section 7(iv)(b) of Court Fees Act, provides that in a suit to enforce the right to share in any property on the ground that it is a joint family property, the amount of fee payable under Court-fee Act, shall be computed according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. It further provides that in all such suits the plaintiff shall state the amount at which he values the relief sought by him. Article 17(vi) of Schedule II of Court-fees Act provides for payment of a fixed Court fee in a suit where it is not possible to estimate at a money value the subject matter in dispute, and which is not otherwise provided for by this Act.

6. The plaintiff had claimed that the suit property was acquired by his mother, Smt.Narender Kaur from her own savings and resources and he being a Class-I Legal Heir, was entitled to 1/4th of its share. Although, he admits that he is out of possession, but insofar as he 1 Neelavathi v. N. Natarajan AIR 1980 SC691

claims joint possession as a successor and seeking and partition of the said property, he would be required to pay the court fee on the value of his share as held in Prakash Wati (supra). However, for the purpose of jurisdiction, the valuation of the entire property will have to be seen as prescribed under Rule 8 of the Rules made by the Punjab High Court under section 9 of the Suits Valuation Act which are applicable to Delhi. The dicta of this Court in Suresh Verma (supra) would be clearly applicable to the present case which held that The valuation for the purpose of jurisdiction has to be the value of the whole of the properties subject matter of partition, whereas valuation for the purpose of Court fee would be such as is provided by the Court-fees Act.

Insofar as the plaint was returned on the ground that the value of the property was more than the pecuniary jurisdiction of the Court, the decision of the Trial Court cannot be faulted.

7. This Court finds no reason to interfere with the impugned order. It does not suffer from material irregularity. This petition is without merit and is accordingly dismissed. DECEMBER01 2014 bnesh NAJMI WAZIRI, J.
