



2025:DHC:4933



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment delivered on: 09.06.2025*+ **CS(OS) 240/2021****BHARAT KUMAR AHLUWALIA**PlaintiffThrough:. Mr. Sanjiv Kakra, Senior Advocate
with Mr. Akash Madan and Mr.
Abhishek Batra, Advocates.

versus

ACHLA CHAUDHARY & ANR.DefendantsThrough: Mr. Ashok Kumar Chhabra, Advocate
for Defendant No.1.
Mr. Vinayak Mehrotra, Advocate for
Defendant No.2.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.****I.A.No.37932/2024 (by the defendant no.2 under Order VII Rule 11(c) of CPC)**

1. The present application has been filed by the defendant no.2/applicant seeking rejection of plaint on the ground that the Court Fee affixed is deficient.
2. The present suit has been filed by the plaintiff seeking a decree for partition, separate possession, rendition of accounts and permanent injunction with regard to the estate of his deceased brother, late Dr. Ashok



Kumar Walia. Parties to the suit are siblings of the deceased, Bharat Kumar Ahluwalia (Plaintiff) and Achla Chaudhary (Defendant no.1). Piyush Chaudhary (Defendant no.2/Applicant) is the son of defendant no.1.

3. It is the case of plaintiff that late Dr. Ashok Kumar Walia did not marry during his lifetime and died issueless on 22.04.2021. It is further his case that the late Dr. Ashok Kumar Walia died intestate and that he has no Class-I legal heirs. Plaintiff and defendant no.1 are the sole Class-II legal heirs. Accordingly, he seeks half share in the assets/estate of his late brother.

4. The plaintiff has alleged that shortly after the death of late Dr. Ashok Kumar Walia, defendant no.2 entered the residence of the deceased and removed certain amount of cash, property papers, passbooks, cheque books and many other documents on the strength of a purported Will in favour of the defendants, behind the back of the plaintiff.

5. Mr. Vinayak Mehrotra, the learned counsel appearing for defendant no.2/applicant invites attention of the Court to para 05 of the plaint to submit that the plaintiff has set out details of five (05) immovable properties of the deceased and has sought 50 % share in them. Out of the said five properties, one (01) is admittedly rented out while rest are not. Referring to para 22 of the plaint, he contends that as per plaintiff's own claim, the remaining four properties for the purpose of jurisdiction have been valued by the plaintiff at Rs. 42 crores. He, therefore, submits that the plaintiff is liable to, at the least, pay *ad valorem* court fees with regard to the said four properties and that Article 17(vi) of the Schedule II of the Court Fee Act, 1870 (hereinafter referred to as the 'Act') would not be applicable.

6. Elaborating on his submission, he further invites attention of the Court to para 21 of the plaint to contend that plaintiff has made a bald



avertment to the effect that he is in joint and constructive possession of the suit property whereas it has not been spelled out in what manner the plaintiff claims himself to be in such constructive possession of the suit properties.

7. He further contends that in para 23, the plaintiff has again stated that the plaintiff enjoys joint possession as co-owner over the subject properties, whereas, it is the case of the defendants that they are in actual peaceful possession of the estate of late Dr. Ashok Kumar Walia. He further submits that the said assertion of the defendants is evident from the fact that plaintiff himself filed three separate applications seeking appointment of receiver to take over possession of the immovable properties.

8. He submits that in view of the aforesaid facts and circumstances, the plaintiff ought to have substantiated his claim of being in joint and constructive possession, however, the plaint is completely silent on this aspect. Therefore, the plaintiff may be directed to pay the correct court fee, i.e. *ad valorem* as per Section 7(iv)(b) of the Act. To buttress his contention, Mr. Mehrotra has placed reliance on the decision of the Division Bench of this Court in ***Ramesh Kumar Bhagchandka vs. Pankaj Gupta and Ms. B.S. Bagga, 2014 SCC OnLine Del 1324***, as well as, pronouncement by a Co-ordinate Bench in ***Om Prakash Arora vs. Meenakshi Sardana & Ors., 2022 SCC OnLine Del 2234***.

9. Mr. Ashok Kumar Chhabra, learned counsel appearing on behalf of the defendant no.1, supports the case of the defendant no.2/applicant. Additionally, he draws attention of the Court to the memo of parties filed by the plaintiff to show that the residential address of the plaintiff is also not one of the suit properties.

10. Mr. Sanjiv Kakra, learned senior counsel appearing on behalf of the



plaintiff submits that the present application is *mala fide* and delayed since counsel for both the defendants have been appearing since 07.05.2021 and the present application came to be filed only in the year 2024 i.e. after a period of more than three years.

11. While referring to various paragraphs of the plaint, he submits that plaintiff has specifically averred that he is in constructive possession of the properties of late Dr. Ashok Kumar Walia and that the plaintiff has nowhere pleaded ouster or exclusion from any part of his estate. That apart, the plaintiff has pleaded that some of the suit properties are tenanted which fact is supported by the order dated 07.05.2021 passed in the present case whereby an interim arrangement had been agreed upon by the parties that tenants in the suit properties shall continue to deposit rent in the bank accounts of the deceased.

12. Mr Kakra has also relied upon order dated 08.09.2021 whereby this Court had given a direction to the Cambridge University Press India Pvt. Ltd., tenant on the 2nd floor, 4843/24, Ansari Road, Daryaganj, New Delhi-110002, to vacate the said property of the deceased and deposit keys of the same with the Registrar General of this Court.

13. He submits that since the plaintiff and defendant no.1 are sole legal heirs of late Ashok Kumar Walia, therefore, the plaintiff is a co-owner and deemed in law to be in joint and constructive possession of the tenanted properties. He places reliance on the decision of this Court in ***Dr. Durga Parmar & Ors vs. V.K. Verma, 2004 (78) DRJ 690.***

14. He further argues that the plaintiff need not plead joint possession in respect to all of the suit properties, rather the plaintiff only needs to claim to be in joint possession of one of the properties either wholly or partly to bring



the case within the ambit of Article 7(iv) of the Court Fees Act. In this regard, he places reliance on the decision of the Co-ordinate Bench of this Court in *Sushma Tehlan Dalal vs. Shivraj Singh Tehlan & Ors., 2011 SCC OnLine Del 1156*.

15. Mr. Kakra further submits that it is settled position of law that in a suit for partition amongst co-owners, possession of one is possession of all in law in cases of co-ownership of a property unless one of the owners is excluded from such possession. Therefore, in order to hold that the plaintiff ought to pay *ad valorem* court fee in a suit where he is claiming a share in the property as co-owner thereof, it must be clearly and specifically averred in the plaint that he has been excluded from joint possession to which he is entitled in law. He submits that there is no such averment in the plaint filed by the plaintiff, rather the plaintiff is in joint possession of the properties till date. He places reliance on a catena of judgments including the decisions of the Hon'ble Supreme Court in *Neelavathi & Ors. vs. N. Natarajan & Ors., (1980) 2 SCC 247; Jagannath Amin vs. Seetharama, (2007) 1 SCC 694*, as well as, decisions of this Court in *Saroj Salkan vs. Capt. Sanjeev Singh & Ors. 2008 SCC OnLine 1278; Dev Raj Chaudhry vs. Raj Kumar and Ors. 2024 SCC OnLine Del 2997; Sanjeev Khosla vs. Rajiv Khosla & Ors. 2022 DHC:1530; Raj Ahuja vs. Maj. General Satish Mediratta (Retd.) & Anr. 2012 SCC OnLine Del 4896; and Tara Chand Gaur vs. Satish Chand Sharma & Anr. 2018 SCC OnLine Del 12923*.

16. Mr. Kakra further contends that reliance placed by the defendant no.2/applicant on the judgment of *Om Prakash Arora* (supra) is misplaced since the same has been distinguished by a Co-ordinate Bench of this Court in *Hem Madan vs. Pawan Chowdhri & Anr., 2024 SCC OnLine Del 315*,



after having discussed various judgments on the issue at hand.

17. With regard to the decision of the Division Bench of this Court in ***Ramesh Kumar Bhagchandka*** (supra), he submits that the said case is also distinguishable since the pleadings therein were absolutely silent with regard to possession of the plaintiff and on the contrary, the plaintiff had pleaded ouster from the suit property.

18. I have heard Mr. Vinayak Mehrotra, learned counsel appearing on behalf of the defendant no. 2/applicant, Mr. Sanjiv Kakra, learned senior counsel for the plaintiff/non-applicant, as well as, Mr. Ashok Kumar Chhabra, learned counsel for defendant no.1 and have perused the records.

19. Before advertng to the facts of the present case, apt would it be to refer to the judgments laying down the law regarding rejection of plaint in a suit for partition under Order VII Rule 11(c) of CPC.

20. The Hon'ble Supreme Court in ***Neelavathi*** (supra) laid down the general principle regarding valuation of a suit for partition where the parties are co-owners of the suit property. The Hon'ble Apex Court held that possession of one is possession of all in law, unless ouster or exclusion is proved. It was, thus, summarised that so long as the plaintiff has right to a share and the nature of the property as joint is not disputed, the law presumes that such party is in joint possession unless he is excluded from such possession. Therefore, the Court held that *ad valorem* court fee would be attracted only when on a reading of the plaint, a clear and specific averment can be made out stating exclusion from such joint possession. The relevant part of the decision is as under:

“8. *Section 37 of the Tamil Nadu Court Fees and Suits Valuation Act relates to partition suits. Section 37 provides as*



follows:

“37. (1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the rates prescribed.”

*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. 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)

21. The aforesaid judgment was relied upon and reiterated by the Hon’ble Supreme Court in **Jagannath Amin** (supra). Furthermore, in **Saroj Salkan** (supra) wherein the appellant/plaintiff had pleaded constructive possession in the tenanted suit property, the Division Bench of this Court followed the aforesaid principle laid down by the Hon’ble Supreme Court and held that the plaintiff ought to only pay the fixed court fees as per Article 17(vi) in Schedule II since the plaintiff had a natural right over the suit property and, thus, was a co-owner, meaning thereby, that in law she was in joint possession. The relevant extract of the said decision is as under:

“13. It is settled law that in a suit for partition, the Court fees to be paid if joint possession is pleaded by the plaintiff on the basis that he is the co-owner of the property sought to be partitioned, fixed Court fees would be payable under Article 17(vi) of Schedule II of the Court Fees Act presuming the joint possession of the plaintiff even if the plaintiff is not in actual possession. It is because of the reason that in the case of co-owners, the possession of one is in law possession of all, unless from the averments in the plaint read as a whole, a clear case of ouster is made and in that situation the plaintiff is liable to pay ad valorem Court fees on the market value of this share as provided under Section 7(iv)(b) of the Court Fees Act notwithstanding the fact that it is also pleaded that the plaintiff was in constructive possession.

(emphasis supplied)

22. Similarly, in **Dev Raj Chaudhry** (supra), this Court reiterated that when the plaintiff asserts shared possession of the property in a partition suit, whether actual or constructive, the plaintiff is only required to pay fixed



court fee in accordance with Article 17(vi) of Schedule II of the Court Fees Act. It was further held that *ad valorem* court fee under Section 7(iv)(b) of the Court Fees Act can be applied only when the plaintiff has been ousted from possession of the suit property and seeks restoration of the joint possession. Such ouster must indisputably be admitted by the plaintiff in their plaint. This Court held that once an express plea of constructive possession had been made, the onus to prove ouster for the purposes of court fee shifts on to the defendants.

23. In *Durga Parmar* (supra), this Court observed that the controversy regarding valuation of the suit is a factual controversy which cannot be adjudicated upon without recording of evidence. The Court noted that some of the properties left behind by the deceased therein were with tenants and rejected the plea of defendant no.1 therein that the suit is undervalued since the plaintiffs were not in possession of any part of the suit property. It was further noted that the plaintiffs had also claimed their share on the rents being collected by the defendant no.1. On a *prima facie* view of the facts, it was held that valuation of a suit depends upon the prayers made in the plaint, and in a suit for partition where the immovable properties are with tenants, the co-owners are deemed to be in constructive possession. It was clarified that in such cases, co-owners cannot be held to be out of possession of the property and cannot be made to pay court fee on the value of the share claimed by them. The relevant paragraphs of the judgment are as under:

*“3. In view of the fact that an issue has already been framed on the question of the valuation of the suit and the payment of Court-fee by the plaintiffs, the application of the defendant No. 1 under Order VII Rule 11, CPC for rejection of the plaint appears to be misconceived and premature for the reason that **in the facts and***



circumstances of the case, the controversy in regard to the valuation of the suit is a factual controversy which cannot be adjudicated upon without recording evidence thereon. The plea of the defendant No. 1 that on the face of it the suit is undervalued and proper Court-fee has not been paid inasmuch as the plaintiffs are not in a possession of any part of the suit property cannot be sustained as in the plaint itself the plaintiffs have pleaded that some of the properties left behind by the deceased are with tenants. They have made a claim on the rents which are being collected by defendant No. 1. The law is well-settled that the valuation of a suit for the purposes of Court-fee depends upon the prayers made in the plaint and in partition suits where immovable property sought to be partitioned is with the tenants, the co-owners are deemed to be in constructive possession. In such cases, they cannot be, prima facie, held to be out of possession of the property and cannot be made to pay Court-fee on the value of the share being claimed by them. The judgment of the Apex Court in Chief Inspector of Stamps v. Indu Prabha Vachaspati (Smt.) & Ors., (1998) 9 SCC 157, is a direct authority on this question. The judgment of this Court in Smt. Prakash Wati v. Smt. Dayawanti & Anr., AIR 1991 Delhi 48, is not applicable to the facts of the present case inasmuch as in the said case it was shown from the pleadings made by the plaintiff that the defendants had dispossessed the plaintiff from the possession of the suit property and had warned her not to come to the property in suit. It was held that the plaintiff was not in physical possession of any part of the property prior to the filing of the suit and was not being allowed even to visit the property by defendant. In view of such pleadings, it was inferred that the plaintiff was not in possession of any portion of the property in question.

4. *In the present case, there is neither any averment in the plaint nor any material on record to show that the plaintiffs are not even in constructive possession of any part of suit property. Admittedly, the tenants are there in the property which is enough to conclude prima facie that the plaintiffs are in constructive joint possession of the property in suit. As such, it cannot be held at' this stage that the suit has not been valued properly for the*



purposes of Court-fee and as such is liable to be rejected. As observed earlier, an issue has already been framed which awaits trial. This objection of defendant No. 1 will be decided by way of disposal of the said issue.”

(emphasis supplied)

24. Likewise, in ***Tara Chand Gaur*** (supra), this Court held that in a partition suit by a co-owner, court fee payable would be in terms of Article 17(vi) Schedule II of the Court Fees Act 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 the defendants claim exclusive possession and ouster of the plaintiff in question, the said question of fact has to be proved by them by leading evidence. The relevant paragraph of the decision is as under:

*“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)

25. In *Sushma Tehlan Dalal* (supra) this Court has also held that it is not necessary for the plaintiff to claim to be in joint possession of each of the properties in respect of which partition is sought by him. Even if joint possession has been claimed with regard to one of the properties, either wholly or partly, the same would suffice to bring the case within the ambit of Article 17(vi) of Schedule II of the Court Fees Act. The relevant part of the judgment is reproduced hereunder:

“13. In the present case, the plaintiff has specifically alleged that she is in exclusive possession of house No. 2/28, Roop Nagar, Delhi and in joint possession of certain other parts of the aforesaid house. Thus, the plaintiff has undisputedly claimed joint possession with respect to one of the properties in respect of which partition has been sought by her. In my view, in order to constitute joint possession, it is not necessary that the plaintiff should claim to be in joint possession of each of the properties in respect of which partition is sought by him/her. If she claims to be in joint possession of even one of the properties either wholly or partly, that would be sufficient to bring the case within the ambit of Article 7(iv) of Court-fees Act [sic]¹, because what is relevant is joint possession of the estate in respect of which partition is sought. The plaintiff is seeking partition not with respect to any one property, but with respect to all the properties which were owned by her late parents. If partition is sought in

¹ Article 17(vi) of Court-fees Act.



respect of more than one property and one of the co-owners possesses one property or a part of it and the other co-owners possess the remaining properties, all of them will be deemed to be in joint possession of the properties subject matter of partition. In this regard, the following observations made by this Court in Sudershan Kumar Seth v. Pawan Kumar Seth, 124 (2005) DLT 305.

“It is settled that in order to decide as to what relief has been claimed by the plaintiff, the whole of the plaint has to be read. From the perusal of the plaint if it can be inferred that the plaintiff is in possession of the any of properties to be partitioned, then the court fees shall be payable under Article 17(6) [sic]² of Schedule II of the Court fees Act i.e. fixed court fees at the time of institution of the suit but if the conclusion is that the plaintiff is not in possession of any part of the properties then the plaintiff has to pay Court fees under section 7(iv)(b) of the Court fees Act i.e. on the value of plaintiff’s share.”

(emphasis supplied)

26. The position of law emerging from the aforesaid decisions is that a plaintiff seeking partition of a property need only pay the fixed court fee in terms of Article 17(vi) of Schedule II of the Court Fees Act wherein he is claiming share in the suit property by way of natural succession and is a co-owner in joint possession. Such joint possession may not be for all the suit properties, but even if the plaintiff has joint possession over one of the properties, either wholly or partly, the same would also suffice. Furthermore, co-owners of a tenanted property are deemed to be in constructive possession in law when the same is occupied by the tenants.

27. However, the plaintiff would have to pay *ad valorem* court fee as per Section 7(iv)(b) of the Court Fees Act, in case the plaintiff has specifically

² Article 17(vi)



and in clear terms pleaded ouster from the suit property. If such ouster is not averred by the plaintiff but has been pleaded by the defendant(s), then such ouster has to be proved by the defendant by leading evidence at a later stage, before plaintiff could be called upon to pay *ad valorem* court fee.

28. In the present case, the plaintiff and defendant no.1 are siblings of the deceased, Dr. Ashok Kumar Walia and, thus Class II legal heirs. It is not in dispute that the deceased had not left behind any Class I legal heirs, therefore, the plaintiff and defendant no.1 would be entitled to a share in the estate of the deceased by natural succession. It is also an admitted position that the property situated at Laxmi Nagar as mentioned in para 05 of the plaint is rented out to Bank of India. The relevant excerpts of para 05 from the plaint are thus:

“5. That at present, the Plaintiff has been able to ascertain that Late Dr. Ashok Kumar Walia has left behind the following assets/properties:-

Details of Immovable Properties:

I. House No. 4843/24, Darya Ganj, Delhi – 110002.

II. A-45, Guru Nanakpura, Laxmi Nagar, Delhi – 110092.

(Presently rented to Bank of India)

III. Walia Nursing Home, G-60, Laxmi Nagar, Delhi – 110092.

IV. 36, Bharti Artist Colony, Vikas Marg, Delhi – 110092.

V. Property at Basti Harphul Singh, Delhi – 110006.”

29. Furthermore, on 07.05.2021 when the present matter was listed for the first time before this Court, both parties submitted that the tenants in the suit properties shall continue to deposit rent in the bank accounts maintained by the deceased. The relevant part of the said order is as under:



“4. *Learned counsels for the parties also submit that as an interim arrangement, till the next date of hearing, the tenants shall continue to deposit the rent in the bank accounts maintained by the deceased at the Bank of Baroda and Bank of India.*”

30. Subsequently, this Court *vide* order dated 08.09.2021, directed the keys in respect of the tenanted premises of the deceased be deposited with the Registrar General of this Court after vacation of the said premises by the tenant.

31. The pleaded case of the plaintiff is that he is a co-owner, having 1/2 share in the estate of his late brother Dr. Ashok Kumar Walia, by virtue of succession. Further, since some of the properties were admittedly tenanted at the time of filing the suit, therefore, in view of the law discussed above, it cannot be said that the plaintiff would not be deemed to be in joint possession of the suit properties, unless the plaintiff has failed to make any averment with regard to actual or constructive possession, or else in the plaint there is specific averment of ouster from joint possession.

32. A perusal of following paragraphs from the plaint demonstrates that the petitioner has successfully pleaded being in constructive possession of the suit properties by virtue of being legal heir of late Dr. Ashok Kumar Walia:

“21. *That the Plaintiff is in joint and constructive possession of the suit properties (to the extent partition is sought) being the legal heir of Late Dr. Ashok Kumar Walia.*

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23. *That the value of the Suit for the purposes of jurisdiction and the relief of partition is assessed at Rs. 30,00,00,000/- (Rupees thirty crores only), being the 1/2 share of the Plaintiff in all the suit properties. As stated above, the Plaintiff is in possession/constructive possession of their respective 1/2 undivided shares in the subject suit properties. The Plaintiff*



enjoys joint possession, as co-owner over the subject properties. With the Plaintiff continuing being seized of possession as co-owner, fixed court fee is payable under Article 17 (vi) of Schedule II of the Court Fee Act.

(emphasis supplied)

33. Clearly, the plaintiff has duly pleaded joint and constructive possession in respect to the suit properties. Further, on a wholistic reading of the plaint, it appears that the plaintiff has also pleaded sufficient facts to show the premise on which he is claiming joint and constructive possession. There is specific pleading to the effect that the plaintiff is the legal heir of his deceased brother. Further, there is an averment that one of the suit properties has been rented out. This Court also observes that there is no pleading suggesting ouster of the plaintiff from joint possession of the suit properties. The defendant no.2/applicant has also not been able to point out any such claim having been made in the plaint.

34. Therefore, the contention of defendant no.1/applicant that there is no averment in the plaint supported with evidence or document to show as to how the plaintiff claims to be in joint and constructive possession, is rejected. Joint and constructive possession of a co-owner in the suit property is a presumption in law that can only be negated by an admission of the plaintiff himself in the plaint whereby he specifically claims ouster or exclusion from the suit property. Accordingly, reliance by the defendant no.2/applicant on the judgment of this Court in ***Om Prakash Arora*** (supra) to buttress his above contention, is misplaced. The distinguishing factor in the said case is that plaintiff therein, who was claiming partition in the suit property, was not a blood relative of the other parties. He, in fact, was the purchaser of a share in the suit property. This distinction has also been noted



by this Court in **Hem Madan** (supra), relevant excerpt of which is as under:

*“32. The learned counsel for defendant No. 2 has made a misplaced reliance on the **Om Prakash Arora v. Meenakshi Sardana** (supra). In the said case, the plaintiff claiming partition of the suit property, was not a blood relative of the other parties as he alleged to have purchased a share in the suit property by way of an Agreement to Sell for which no proof or substantiation had been given by him. In fact, the co-owner from whom the plaintiff has purchased a share in the property had been earlier ousted and not even an averment had been made in the plaint explaining how his possession had been restored after the ouster of his predecessor. The facts of the said case are distinguishable from the present facts as the plaintiff and the defendants are admittedly the Class I heirs of late Shri Tek Chand Anand.”*

(emphasis supplied)

35. Similarly, reliance placed by defendant no.2/applicant on the decision of the Division Bench in **Ramesh Kumar Bhagchandka** (supra) is also misconceived since it was a case of absolutely no averment with regard to actual or constructive possession of the suit properties. On the contrary, plaintiff therein had pleaded that first defendant had ousted the other parties from certain businesses and properties which were controlled by him. In this backdrop, the Court held as under:

“4. Appellant pleaded that he and his brothers - the defendants (heirs of late brothers) were of the trading community in Rajasthan having a custom that the male children with their father would invariably constitute Hindu Joint Family even after the father's death. That the father of the parties Lakhi Prashad died on October 18, 2004 and during his life time he and his sons constituted a Joint Hindu Family. Various companies names whereof were disclosed in Schedule 1 to the plaint, being 60 in number, were incorporated with shareholding as per Schedule 2 (and we find that in the said Schedule shareholding only in 24 companies has been indicated). That the main



companies, being 3 in number were as per Schedule 3, all of which belong to the joint family. Lands detailed in Schedule 4 and Schedule 5 were acquired in the names of different companies or members of the family. It was pleaded that irrespective of whether the assets were individual, joint, or held by a company or a trust, they were always treating as belonging to the joint family. It was pleaded that before the father died he had expressed a wish that the brothers should separate because the businesses were becoming somewhat unmanageable. It was pleaded that such businesses and properties which were controlled by the first defendant were held out by him to be his. Immediately thereafter it was pleaded, and we refer to paragraph 18 of the plaint, that as of the date when the suit was filed the entire businesses and properties were directly/indirectly under the control of the first defendant. It was pleaded that the first defendant claims all of them to be his personal property. Seeking partition, in paragraph 37, for purposes of value of the suit qua jurisdiction it was valued at Rs. 1000,00,000,00/- (Rupees One Thousand Crores only) but for purposes of court fee it was valued at Rs. 250/- (Rupees Two Hundred and Fifty only).

5. **Strikingly, there are no averments in the plaint that the appellant was in actual or constructive possession of the suit properties.**

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18. We need not make a cornucopia of the case law for it would be better for us to state the principle of law applicable. **Where a property is admittedly joint property, possession by one joint owner has to be treated in law as possession on behalf of all and a suit for partition of such a property would not be having a claim by the plaintiff, to be put in possession of the property. The claim would be to sever the jointness by partitioning the property and allocating separated shares with possession thereof to the joint owners with reference to the share of each in the whole property. But where title is not joint and has to be established with the property standing in the name of an individual, the principle that the possession of the recorded owner would be treated in law as possession on behalf of the plaintiff would not be attracted and in such a case the plaintiff**



would have to first succeed on title followed by possession and hence ad-valorem court fee has to be paid.

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22. *To put it pithily : where meaningfully read the averments in the plaint would show that the plaintiff admits ouster by the defendants to keep him away from immovable property and the ouster is premised on the plaintiff's right, title or interest in the property being denied; title, right or interest has to be established and only thereupon partition claimed followed by possession. In the decision reported as 20 Cal. 762 Mohendra Chandra Ganguli v. Ashutosh Ganguli it was held that if it was a case of complete ouster, a claim of being a co-sharer in an immovable property and hence partition with recovery of possession as the prayer would warrant ad-valorem court fee to be paid on the plaint.*

23. *The plaint in the instant case is a classic instance of Mufassil pleadings in a corporate litigation. A claim for change of shareholding in companies has been intermingled with a claim for partition of immovable properties held by some companies and in the name of some individuals. **The plaint overlooks the fact that a company is a distinct juristic entity vis-à-vis its shareholders and movable as also immovable properties in the name of the company belong to the company.** A shareholder cannot seek partition pleading that since he holds 20% shares of a company he is entitled to a partition of the movable and immovable properties of the company and to be put in possession of 20% thereof.”*

(emphasis supplied)

36. In view of the above, the defendant no.2/applicant has not been able to make out a case in support of the present application under Order VII Rule 11(c) of CPC. Thus, the plaintiff need not pay *ad valorem* court fee under Section 7(iv)(b) of the Court Fees Act, 1870 and the fixed court fee paid by the plaintiff in accordance with Article 17(vi) Schedule II of the said Act cannot be faulted with.

37. The application is, therefore, dismissed.



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38. List before the Roster Bench for directions on 28.07.2025.

VIKAS MAHAJAN, J

JUNE 09, 2025
N.S.ASWAL