



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 24th January 2025.**
Pronounced on: 27th February 2025.

+ **CS(OS) 233/2023 I.A. 5218/2024 I.A. 45781/2024**
RAJINDER KAUR GILLPlaintiff

Through: Mr. Nishant Das, Ms. Sanyya Pawar,
Advocates.

versus

SHRI SARDOOL SINGH BHATTI & ORS.Defendants

Through: Mr. Abhimanyu Walia, Ms. Tanishq
Sirohi and Mr. Kunal Sharma,
Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

I.A. 5218/2024 (Application under Order VII Rule 11 of CPC)

1. This application has been filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (“*CPC*”) by defendants, seeking rejection of the plaint, on the basis that plaintiff is admittedly not in possession of the suit property, has been ousted from the same, and ought to pay *ad valorem* Court Fees.

2. The suit has been filed by plaintiff seeking declaration, partition and permanent injunction regarding properties alleged to have been acquired by *Late Sh. Sujan Singh Bhatti*, who died intestate. The *suit properties* mentioned in *paragraph 2* of the plaint are extracted as under:



“1.A/C 10 Ganga Rain Vatika, Mukherjee -Park, Chaukhandi, Tilak Nagar, New Delhi - 110018;
2. B/26 Kacha Tihar Village, West Delhi- 110018;
3. Shop No. 27, DDA Shopping Center Jail Road, Opposite Mera Read Light, New Delhi - 110018;
4. Shop in Lottery Bazar in Tilak Nagar, New Delhi - 110018;
5. 35% ownership of Sebel Cinema Hall at D-L/Bareja Tower, Mathura Road, Badarpur, New Delhi 110044.
6. Additionally, a Farm. House at Manu Nagar, Rampur. Uttar Pradesh admeasuring approximately about 60 acres was also purchased by the deceased Shri Sujan Singh Bhatti in the name of the following persons:
a) Late Shri Sujan Singh
b) Shri Sardool Singh (Defendant No. 1 herein)
c) Shri Amardeep Singh (Defendant No. 5 herein)
d) Shri Amarjit Singh Sandhu (Defendant No. 2D herein)
e) Shri Jaspal Singh (husband of Defendant No. 3 herein)
f) Shri Ranjit Singh (husband of Plaintiff herein)
Further, in addition to the aforementioned self-acquired properties of the Deceased, the deceased had also acquired interest in a property at Kachha Tihar, Near Chatrivala Park, New Delhi - 10018 from his father Shri Wadhawa Singh Bhatti, which was developed into a Gurdwara by the name of Gurdwara Guru Singh Sabha. It is pertinent to mention here the deceased, Shri Sujan Singh Bhatti was the Chairman of the said Gurudwara during his life time.”

3. It is stated in the plaint that *Late Sh. Sujan Singh Bhatti* died intestate on 07th December 1997 and was survived by the following legal heirs:



NAME	RELATION	PARTIES
Late Smt. Suhagvanti (died in the year 2004)	Wife	-
Late Smt, Gurvinder Katir (died in the year 2017)	Daughter	-
Rajinder Kaur Gill <i>alias</i> Bobby	Daughter	Plaintiff
Sardool Singh Bhatti	Son	Defendant No.1
Surinder Kaur <i>alias</i> Bholly	Daughter	Defendant No. 3
Satvinder Kaur <i>alias</i> Dolly	Daughter	Defendant No. 4
Amardeep Singh <i>alias</i> Shibu	Son	Defendant No. 5

4. In *paragraph 5* of the *plaint*, *plaintiff* states as under:

“5. It is pertinent to note that as per an oral understanding between the Plaintiff and the Defendants, since arrived at in the year 2011, it was so agreed between the parties that the possession of all the aforementioned properties shall remain with the Defendant No. 1 and the Defendant No. 5. It was further consented that such an arrangement would continue till the need to sell off any of the properties should arise, in which event a family partition would be effected thereupon to ensure proper and equitable distribution of all the assets/properties of Late Shri Sujan Singh Bhatti amongst all his legal heirs.”

5. The defendant, therefore, claims that there is a clear assertion of ouster from possession and no evidence of possession has been placed as part of the *plaint*. *Plaintiff*, therefore, relies upon the decision in *Sushma Tehlan Dalal v*



Shivraj Singh Tehlan, 2011 SCC OnLine Del 1156, and *Suresh Kapoor v. Shashi Krishan Lal Khanna*, 2014 SCC OnLine Del 1947.

6. In reply, plaintiff's counsel contends that the plaintiff and defendant are legal heirs of *Late Sh. Sujan Singh Bhatti*, as their relationship was amicable, and the agreement was entered into, whereby defendant no.1 and defendant no.5 would retain possession until further distribution of estate.

7. It is further contended that plaintiff, in fact, donated his kidney to his *brother*, defendant No.1, and, therefore, there was no question of any animosity between them. However, plaintiff, apprehends that the said properties will be disposed of, and defendant no.1 and defendant no.5 have propounded a Will. Defendant No.2, defendant no.3 and defendant no.4 have agreed to the Will. These aspects came to light in November 2022, when defendant no.1 and defendant no.5 sold several properties of the deceased without the knowledge or consent of the plaintiff.

8. The plaintiff's came to know in January 2023 that defendant no.1 was attempting to sell a residential house at *A/C 10, Gangaram Vatika, Mukherjee Park, Tilak Nagar, New Delhi*, to the exclusion of the other stakeholders. It was stated that the application under Order XXXIX Rule 1 & 2 of CPC (in *I.A. 6878/2023*) was not allowed in favour of the plaintiff. The Court, on 29th November 2023, noted the following submissions of the parties, extracted as under:

“5. Ms. Sannya Pawar, counsel for the Plaintiff, raises the follows contentions:



5.1. Late Sh. Sujan Singh Bhatti died intestate on 7th December, 1997. The parties to the present suit are his surviving legal heirs, each entitled to a 1/7th share in the estate of the deceased.

5.2. Defendants No. 1 and 5 have presented a Will dated 30th October, 1995, which they claim was executed by the late Sh. Sujan Singh Bhatti. However, the Plaintiff was completely unaware of this document's existence until it was referenced in the written statement submitted by the said Defendants. The authenticity of the Will is called into question for several reasons. Notably, it references properties that were allegedly sold during the lifetime of the late Sh. Sujan Singh Bhatti, prior to the Will's stated date. This discrepancy raises significant doubts as to the document's veracity. Furthermore, there has been no effort by the Defendants to act upon or execute the provisions of this purported Will, despite over two decades having passed since the death of Sh. Sujan Singh Bhatti in 1997. This lack of action further undermines the credibility of the Will, suggesting that it may not be a genuine document.

5.3. In November 2022, the Plaintiff discovered that Defendant No. 1 had sold several properties involved in the lawsuit without the Plaintiff's knowledge or consent. It has come to the Plaintiff's attention that Defendants No. 1 and 5 are alleged to have engaged in forgery. Specifically, they are accused of forging the signatures of Defendant No. 2(d), Sh. Jaspal Singh (husband of Defendant No. 3), and Late Sh. Ranjit Singh (husband of the Plaintiff). Utilizing these forged signatures, they have purportedly transferred the rights, title and interests of the Plaintiff and aforementioned Defendants in the Farm House located at Manu Nagar, Rampur, Uttar Pradesh. Additionally, Defendant No. 1 is accused of donating the Gurudwara at Kachha Tihar to the Trust of one Mr. Lakha Singh Nanaksar Jagraonwala,



disregarding the Plaintiff's objections. Moreover, Defendant No. 1 has allegedly attempted to unilaterally sell the residential property at A/C 10 Ganga Ram Vatika, Mukherjee Park, Chaukhandi, Tilak Nagar, Delhi, thereby excluding the other stakeholders.

5.4. Given the afore-stated circumstances wherein the Defendants have already alienated certain properties involved in the suit, and considering the risk that they might attempt to further create third-party interests in the remaining properties, urgent judicial intervention is imperative. The urgency of this situation necessitates prompt action to prevent any further unauthorized disposal of the suit properties, thereby ensuring that the rights and interests of all parties are safeguarded throughout the pendency of the suit.

6. Mr. Abhimanyu Walia, representing Defendant No. 5, disputes these allegations. He argues that the document dated 30th October, 1995, is indeed the duly registered Will of the late Sh. Sujan Singh Bhatti. According to Mr. Walia, this Will had initially granted a life interest to Sh. Bhatti's first wife, the late Smt. Suhagwanti Kaur. Following her demise, the Will stipulates that the suit properties are to be equally divided among her children, specifically Defendants No. 1 and 5. Consequently, he asserts that the Plaintiff and other Defendants do not possess any rightful claim to shares in these properties. Furthermore, Mr. Walia contends that the Plaintiff and other concerned parties were always aware of the Will's existence. He argues that this prior knowledge renders the current lawsuit both misconceived and untenable as they cannot at this belated stage challenge the Will without any basis.

(emphasis added)

The Court after assessing the submissions, concludes as under:



“10. The primary consideration for granting an interim injunction hinges on the establishment of a strong prima facie case by the Plaintiff, indicating a high probability of success in the main suit. In the present matter, the Plaintiff has failed to substantiate such a case. The evidence presented, particularly the registration and acknowledgment of the Will dated 30th October, 1995, and the subsequent actions taken in accordance with this Will, significantly undermines the Plaintiff's position. The affidavits acknowledging the Will, executed by Defendants No. 3 and No. 4, further erode the Plaintiff's claim. Additionally, the transfer of property titles as per the available legal documentation, which have not been effectively disputed by the Plaintiff, indicates a lawful change in ownership that cannot be ignored in the assessment of this case.

11. Furthermore, the Court must also consider the balance of convenience and the possibility of irreparable harm. In the present scenario, granting an injunction would not only disrupt the legal status quo of property ownership, but also potentially inflict undue harm on the Defendants, who have acted in accordance with the registered Will. Considering these considerations, issuing an interim injunction would be both inappropriate and disproportionate, tilting the balance of convenience unfavourably against the Defendants without a compelling legal basis to do so.

12. At this juncture, Mr. Walia states that Defendant No. 5 and the LRs of Defendant No. 1 have no intention of selling the suit property at Paragraph2(IV), however, should the need to sell this property arise in the future, his clients will seek the Court's permission before proceeding with any such transaction.

13. In light of the aforesaid, and in view of the afore-noted statement of Mr. Walia, no interim injunction is warranted.”



(emphasis added)

9. The plaintiff, therefore, claims that the order cannot be read in isolation, and there has been a change in the enjoyment of the property, and in any event constructive possession continues due to the Oral Agreement, which was admitted between the parties. *Paragraph 4* of the plaintiff would bear this out and states as under:

“4. That at the time of Shri Sujan Singh Bhatti's death, he left the aforementioned properties among others, which were inherited by all his surviving legal heirs in equal share, having died intestate. The said properties have till date, remained joint properties of all the legal heirs and its ownership is still joint amongst the Plaintiff and the Defendants.”

(emphasis added)

10. Plaintiff relies upon the decision in ***Krishna Gupta and Ors v Rajinder Nath & Co. and Ors & Co.*** 2013:DHC:690, wherein the Court held that reading abstracts of the plaintiff are impermissible, and the entire plaintiff must be read to understand the context to pleadings. Relevant paragraphs are extracted as under:

“60. As noted above, reading certain sentences of the plaintiff in abstract is impermissible and the entire plaintiff has to be read to understand the context of the pleadings. If the plaintiff is read as a whole, what emerges is that the plaintiffs have pleaded that they are coparceners by birth of the HUF and Class-I heirs of Late Sh.Rajinder Nath and Late Smt.Kamla Devi and in the said capacity, they are co- owners of the residential premises, the joint family business and the joint assets.



In fact, they profess to be in joint and constructive possession of the assets that form the subject matter of the present suit and partition whereof has been prayed for. The factum of the plaintiffs being Class-I heirs of Late Sh.Rajinder Nath and Late Smt.Kamla Devi is not denied by the other side, but the defendants seek to exclude them on the basis of wills propounded by their parents, that have been denied by the plaintiffs and on the ground that Section 6 of the 2005 Act is not retrospective in operation and thus inapplicable to the plaintiffs. In para 22 of the plaint, the plaintiffs have denied that Late Sh.Rajinder Nath or Late Smt.Kamla Devi had executed any wills and have stated that the said documents, if any, are forged and fabricated. In the light of the averments made in the plaint, the argument of the defendants No.2 & 4 that the plaintiffs are not governed by Article 17 (vi) of Schedule II of the Court Fees Act 1870 or that ouster has been admitted by them, cannot be acceded to and is turned down.

61. Further, reliance on the judgments of the learned Single Judge of this court in the cases of Sudhir Joshi(supra) and Harjit Kaur(supra) will not advance the case of the defendants No.2 & 4 when the plaintiffs have pleaded constructive possession based on the demise of the owners of the suit properties, and when all the parties are Class-I legal heirs. The observations of the learned Single Judge in both the aforesaid cases were based on the averments made in the plaints in those cases from where the Court had inferred that the plaintiffs therein had been ousted from possession of the suit properties. The decisions in those cases are based on their own facts and no parallel can be drawn between the said cases and the present suit where the plaintiffs have categorically stated that they are in joint and constructive possession of the suit properties and ouster/exclusion has not been pleaded by them.



.....
67. To condense the aforesaid legal proposition, it has been held that a co-sharer cannot succeed in claiming absolute title by adverse possession and mere possession however long, does not oust the other co-sharer unless it is established by convincing evidence that there has been ouster of such a co-sharer as in the eyes of law, possession of joint property by one co-sharer is possession of all and passage of time does not extinguish the right of the co-owner, who has been out of possession of the joint property, except in the event of ouster or abandonment.”

(emphasis added)

11. Plaintiff relies on the observations of the Supreme Court in *Neelavathi & Ors. vs. N. Natrajan & Ors* (1980) 2 SCC 247, wherein the Court held that determination of court fee must be based on the averments in the plaint and cannot be influenced by the contentions in the written statement or the outcome of the suit. Relevant paragraph is extracted as under:

“6. On reading of the plaint as a whole, we are unable to agree with the view taken by the High Court. It is settled law that the question of court fee must be considered in the light of the allegation 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. All the material allegations contained in the plaint should be construed and taken as a whole vide S. Rm. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar [AIR 1958 SC 245 : 1958 SCR 1021, 1031-32 : 1958 SCJ 407]. The plaint in para 5 states that Muthukumaraswamy Gounder died intestate and undivided and Muthukumaraswamy's father Vanavaraya Gounder was managing all the



ancestral joint family property as the head of the Hindu undivided joint family till his death. In para 8 the plaintiffs stated that on the death of Muthukumaraswamy Gounder his 1/3rd share in the joint family properties devolved upon his sons and daughters. It further alleged that the plaintiffs were in joint possession of the properties along with Vanavaraya Gounder and his other sons. In para 9, it is stated that each of the plaintiffs is entitled to a share in the suit properties as heirs of the late Muthukumaraswamy Gounder and also as heirs of the late Vanavaraya Gounder. In para 11, it is stated that since the death of Vanavaraya Gounder Defendants 1 to 6 are receiving the income from the properties and are liable to account to the plaintiffs. In para 12, it is stated that since the death of Vanavaraya Gounder Defendants 1 to 6 failed to give the plaintiffs their share of income and the plaintiffs could not remain in joint possession. Therefore the plaintiffs demanded partition and the Defendants 1 to 6 were evading. Again in para 13, it is claimed that each of the plaintiffs as co-owners is in joint possession of the suit properties, and this action is laid to convert the joint possession into separate possession so far as the shares of the plaintiffs are concerned. Throughout the plaint, the plaintiffs have asserted that they are in joint possession. We are unable to agree with the High Court that recitals in all the paragraphs is merely a formal statement repeating the statutory language. The plea in para 12 which was relied on by the High Court states that the Defendants 1 to 6 failed to give the plaintiffs their share of the income and the plaintiffs could not remain in joint possession. The plea that they were not given their due share would not amount to dispossession. Reading the plaint at its worst against the plaintiffs, all that could be discerned is that as the plaintiffs were not given their share of the



income, they could not remain in joint possession. The statement that they are not being paid their income, would not amount to having been excluded from possession. The averment in the plaint cannot be understood as stating that the plaintiffs were not in possession. In fact, the defendants understood the plaint as stating that the plaintiffs are in joint possession of the suit properties. In para 18 of the written statement the defendants pleaded that the plaintiffs have framed the suit as though they are in joint possession and enjoyment of the suit properties. Asserting that the plaintiffs were out of possession, the defendants stated: “While it is so, the allegation that they are in joint possession of the suit properties, is not correct”.

(emphasis added)

12. Defendant, in his rejoinder, contended that the Court in **Suresh Kapoor** (*supra*) has held, while noting previous decisions of the Court that, on the basis of the averments in the plaint, the plaintiff was claiming not to be in possession of the property and had been deprived from the same and, therefore, had to pay *ad valorem* Court Fees. Relevant paragraphs are extracted as under:

“16. In *Sarabjit Prakash v. Udyajit Prakash*, 172 (2010) DLT 707, another learned Single Judge on the basis of averments in the plaint that the Defendant was in physical and actual possession of the property and it deprived the Plaintiff from actual enjoyment and had also claimed damages, led the learned Single Judge to hold that the Plaintiff was required to pay ad valorem court fees as he was neither in actual nor in constructive possession.

17. In *Harjit Kaur v. Jagdeep Singh Rikhy*, 116 (2005) DLT 392, in para 22 of the plaint averments were made



about the cause of action and the learned Single Judge held the Plaintiff to be not in constructive possession as under : -

“... In paragraph 22 it has been pleaded that “the cause of action is a continuing one and since the defendant Nos. 1 to 4 are in actual occupation of the same, it is the submission of the Plaintiffs that they have no right to continue in possession exclusively to the exclusion of the Plaintiffs and every heirs and the only course open to the parties as to partition the property be metes and bounds and if not possible by sale of property.....”

18. Similarly, in Smt. Rani Devi v. Ashok Kumar Nagi, 76 (1998) DLT 279 on the basis of the averments made in the plaint that Defendant no. 1 is in actual possession and enjoyment of the first floor and whole of the second and third floor and symbolic possession of the property on the ground floor through tenant, only Defendant no. 1 was recovering rent from all the tenants, it was held that the Plaintiff was not in possession of any part of the suit property and is liable to pay ad valorem court fees.”

(emphasis added)

13. In the written statement, the defendant has also stated that *Late. Sh. Sujan Singh Bhatti* left a Will dated 30th October 1995, as per which the properties were to devolve upon his first wife, *Smt. Suhagvanti*.

14. The said Will was duly registered, and as per the Will, after the death of *Smt. Suhagvanti*, properties would be distributed equally between plaintiff and defendant no.5. The *mother* of the plaintiff and defendants died on 09th January 2005, thereby devolving the said properties upon defendant no.1 and defendant no.5 equally. It was also stated that, during the lifetime of *Late Sh. Sujan Singh Bhatti*, the *father*, had disowned the plaintiff, defendant no.3 and defendant



no.4 through a citation published in the newspaper of “*Punjab Kesri*” on 23rd April 1996, since certain disputes had arisen.

15. Accordingly, after the death of the *mother*, the properties devolved upon defendant no.1 and defendant no.5, which have been in their absolute possession. The aspect of oral understanding between the plaintiff and the defendants was denied on the basis that the father had died on 07th December 1997, and left behind a Will dated 30th October 1995, which was duly registered on 31st October 1995. In respect of the kidney transplant, the defendant no.1 states that the plaintiff either offered defendant no.1 one kidney or took Rs.20,00,000/- (*Rupees Twenty Lacs only*) for the offering.

Analysis

16. The basis of claiming joint and constructive possession by the plaintiff is merely an assertion of an oral understanding arrived at between the parties in 2011. There being no proof of the same, it would be difficult to accept the plaintiff’s assertion that there was an agreement to permit defendant nos.1 and 5 to hold the properties only in the interim, awaiting sale. The said averment has been duly denied by the defendant in the written statement. However, even as per the plaintiff’s assertion, *ex facie*, the understanding was that the possession would be with defendant no.1 and defendant no.5.

17. Accordingly, it would logically follow that the plaintiff was ousted from the possession by virtue of the said oral understanding, though these aspects may have to be finally decided during the trial.



18. At this stage, there is nothing in the plaint for the Court to accept the plaintiff's claim of joint and constructive possession. The defendants have also propounded a registered Will of 1995, which could divest the plaintiff of any share in the said property. Therefore, to claim that they were in joint and constructive possession and could only pay fixed Court Fees for the same would be untenable.

19. It would be worthwhile to test the merits of the claim made by the plaintiff regarding joint and constructive possession. The plaintiff, even as per the plaint, effectively avers a self-proclaimed ouster, basis the oral settlement asserted by them, as per which the possession of the property would be with defendant nos.1 and 5 until a situation arose of sale of the said property. Even if the said oral settlement is taken as its face value, there is not enough evidence on record for the Court to *prima facie* arrive at a finding that such an oral settlement was indeed arrived at. The tenability of the oral settlement asserted by the plaintiff would necessarily have to be proved during the trial.

20. What is important is to assess the contrarian assertions by the defendants in this regard, which *prima facie* dissipate the claim of joint and constructive possession. *Firstly*, there was a Will propounded by defendant Nos.1-5 of *Late Father Sh. Sujan Singh Bhatti* dated 30th October 1995 which was duly registered. As per the said Will, all the movable and immovable assets were bequeathed to his wife, *Smt. Suhagvanti*, for life, and if she pre-deceased him, it would devolve upon defendant no.1 and defendant no.5 in equal shares. The claim of the defendants is that this Will would bequeath upon them, an interest



in the property, though it may be disputed whether the wife *Late Smt. Suhagvanti* inherited an absolute interest for life interest. The issue of possession though, in favour of defendant no.1 and defendant no.5 is further buttressed by the No Objections of defendant nos.3 & 4, the other sisters of the plaintiff, agreeing to the bequest in the Will in favour of defendant no.1 and defendant no.5. Defendant No.2, the other sister, who had passed away in 2017 has been succeeded by her legal heirs in the suit. However, no protest has been placed on record by the legal heirs of defendant no.2 against the claim which has been made by defendant no.1 and defendant no.5.

21. The affidavits acknowledging the Will executed by defendant nos.3 and 4 have been noticed by the Court in its order dated 29th November 2023. It has also been noted by the Court that there was a transfer of property titles, which has not been effectively disputed by the plaintiff, indicating a lawful change in ownership that cannot be ignored in the assessment of the case. On this basis, the injunction was refused by the Court while determining the application under Order XXXIX Rule 1 & 2 of the CPC (*I.A. 6878/2023*), the extracts from the order have been given in *paragraphs 8 and 9* above.

22. Moreover, the Will dated 30th October 1995 of the *Late Father* has exclusionary terms stating that the bequest is being made ultimately in favour of defendant no.1 and defendant no.5 “*to the exclusion (of) my other legal heirs*”. The Will also states that there was consent from the *Late daughter, Smt. Gurvinder Kaur* (originally arrayed as defendant no.2). Notwithstanding the dispute regarding the nature of the interest which would have devolved upon



the mother of defendant nos.1 and 5 and the extent to which she had the right to entrust the property to defendant nos.1 and 5, the Court also notes that there is a presumption of validity of a registered document. For this, reliance may be placed on ***Prem Singh and Ors. v. Birbal & Ors***, (2006) 5 SCC 353, wherein the Supreme Court has held that the Court cannot ignore the presumption of validity of a registered document. Relevant paragraph is extracted as under:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

(emphasis added)

23. What is also relevant is that the plaintiff claims that this oral settlement was arrived at in 2011, but only now asserts a claim for partition in 2023, the *father* having passed away in 1997 and the mother, in 2004. More than 20 years have passed since the succession, even as per plaintiff, would have opened upon the death of the *Late father* in 1997 and then again on the death of the *Late mother* in 2004. The assertion by the plaintiff that they continued in joint and constructive possession is not merited, especially since no other action has been taken at the time despite the sale of the various properties by the defendants. Though the plaintiff states that only in November 2022, they became aware of the actions of defendant no.1 to dispose of the property, the silence of the plaintiff for the *20 years* seriously erodes their claims for joint and constructive possession.



24. The principles for determining Court Fees in a partition suit was on the basis of possession, and exposition has been given in a decision of this Court in ***Bakshish Singh Chandhok v. Bhavjot Singh Chandhok*** 2024 SCC OnLine Del 6124. Relevant paragraphs are extracted as under:

“6. The principle on which court fees in a suit for partition is calculated is well settled. In *Sushma Tehlan Dalal v. Shivraj Singh Tehlan*, (2011) IV AD (Delhi) 341 it has been held as under:—

“11. The following legal proposition of law emerges from the above-referred decisions:

(i) In order to ascertain whether the suit has been properly valued for the purpose of Court fee or not, only the averments made in the plaint have to be seen, without reference to the plea taken by the Defendants;

(ii) If the plaintiff claims to be in joint possession of the suit property, he has to pay a fixed Court fee in terms of Article 7(vi) of Court-fees Act.

(iii) If the averments made in the plaint show that the plaintiff has been completely ousted from the possession and is not in possession of any part of the suit property, he is required to claim possession and also pay ad valorem Court fee on the market value of his share in the suit property.”

.....

8. From the aforesaid averments, it is apparent that there is declaration of hostile animus by the Respondent-Defendant, who is in long and uninterrupted possession of the suit property and who also claims to exercise the right of exclusive ownership openly and to the knowledge of other co-owners i.e. Appellants-Plaintiffs. Consequently, the triple test relied upon by learned counsel for the Appellants is satisfied in the present case.



9. As the Appellants-Plaintiffs themselves admit to their ouster from the possession of the suit property, the court fee payable shall be ad valorem in accordance with Section 7(iv)(b) of the Act and not Article 17(vi) of the Schedule II of the Act.”

(emphasis added)

25. In this case, the plaint itself assets that the possession of the suit properties would be with defendant nos.1 and 5. As per the plaintiff, it was a temporary arrangement but there is a strong assertion of hostile *animus* by defendant nos.1 and 5 with open support of the surviving siblings (defendant nos.3 and 4).

26. Accordingly, the application allowed to the extent that the plaintiff would have to pay *ad valorem* Court Fees to continue with the suit.

27. Since, counsel for defendant pressed this application limited to the issue of Court Fees, it is, therefore, directed that the said suit will stand rejected unless the *ad valorem* Court Fees, as per Section 7(iv)(b) of the Court Fees Act, 1870, is deposited by plaintiff within a period of four weeks from the date of this judgment.

28. Needless to state that the aforesaid observations are *prima facie* in nature and have been made for adjudicating the claims raised in these applications and shall not influence the determination of the pleas of the parties at the stage of final disposal.



2025:DHC:1397



CS(OS) 233/2023

1. List before the Joint Registrar (Judicial) on 27th March 2025.
2. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)
JUDGE**

FEBRUARY 27, 2025/MK/tk