



2025:DHC:8260-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 16.09.2025**

+ FAO(OS) 25/2020 & CM APPL. 8650/2020 (For Stay)

AJAY MALIK & ORS.

.....Appellants

Through: Mr. Kunal Kher and Mr. Arjan
Ajay Singh Chonkar,
Advocates.

versus

PREM LATA & ORS.

.....Respondents

Through: Mr. Ashok Gurnani, Advocate.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)**ANIL KSHETARPAL, J.**

1. The present appeal assails the **Impugned Order dated 09.12.2018¹** passed by the learned Single Judge of this Court in I.A. 8284 of 2018, filed by the Defendant No. 2 [“Respondent No. 2” herein] in CS (OS) 1379 of 2015 thereby directing the Plaintiffs [“the Appellants” herein] to pay the *ad valorem* Court Fee on the market value of the share claimed by the Plaintiffs in a suit primarily filed for partition of the property.

2. While filing the suit, the Plaintiffs had prayed for the following reliefs:-

“P R A Y E R

It is, therefore, respectfully prayed, that this Hon’ble Court may kindly be pleased to:

¹ Impugned Order



(a) Pass a preliminary decree of partition in favour of the Plaintiffs and against the Defendants thereby declaring that the Plaintiffs, are the co-owners/co-sharers to the extent of $\frac{2}{3}$ rd share, in the property bearing No. C-2/28, Model Town, Delhi and after passing a preliminary decree thereby holding that the Plaintiffs are the co-owners/co-sharers to the extent of $\frac{2}{3}$ rd share and thereafter, a final decree of partition may kindly be passed in accordance with law, thereby separating $\frac{1}{3}$ rd share of the Plaintiffs No. 1 and 2 and $\frac{1}{3}$ rd share of the Plaintiff No. 3, by metes and bounds in the aforesaid property in the interest of justice.

IN THE ALTERNATIVE

If the aforesaid property cannot be partitioned and demarcated by metes and bounds amongst the parties hereto, the Hon'ble Court may order sale of the said property and pay the amount so realized amongst the Plaintiffs and the Defendants in accordance with their shares i.e. $\frac{1}{3}$ rd of the amount in favour of the Plaintiffs No. 1 and 2; $\frac{1}{3}$ rd of the amount in favour of the Plaintiff No.3; and $\frac{1}{3}$ rd of the amount in favour of the Defendants.

(b) Pass a decree for the amount of Rs.24,00,000/- (Rupees Twenty-Four Lakhs Only) in favour of the Plaintiffs and against the Defendants towards the damages/mesne profits and the Defendants be directed to pay a sum of Rs,3,00,000/- (Rupees Three Lakhs Only) to the Plaintiffs effective from 01st May, 2015 till the time the suit property is partitioned and the portion of the Plaintiffs is demarcated by metes and bounds.

(c) Pass a decree of permanent injunction against the Defendants, thereby restraining the said Defendants, their agents, attorneys, representatives and any other persons claiming on their behalf, from parting with the possession of the property, or creating any encumbrances or otherwise dispose of the. property bearing No.C-2/28, Model Town, Delhi, or any part thereof.

(d) Award cost of the suit to the Plaintiffs; and

Pass such other and further orders as the Hon'ble Court, may deem fit and proper in the circumstances of the case.”

3. The learned Single Judge, on the basis of assertions made in Paragraph Nos. 12 & 13 of the plaint, came to the conclusion that the Plaintiffs stand ousted from the property and, hence, they are liable to pay *ad-valorem* Court fee. Paragraph Nos. 12 & 13 of the plaint are



extracted as under:-

“12. That since August, 2014, the Plaintiffs observed a change in the attitude of the Defendants inasmuch as they were making attempts to sideline the Plaintiffs totally and absolutely in respect of matters relating to the said property. However, giving importance to the family interest, the Plaintiffs did not make any issue put of such conduct of the Defendants.

13. That, however, the things turned to worst in the month of August, 2014, inasmuch as when the Plaintiffs visited the said property in the second week of August, 2014, the Defendants have restrained the Plaintiffs from entering the said property.”

4. Learned counsel for the Appellants, while relying upon judgment dated 21.08.2025 in **Anurag Sant v. Anupriya Vij & Anr.**², submits that *ad-valorem* Court fee in a suit for partition is not payable because every co-sharer is presumed to be in constructive possession of the property and, hence, is not required to pay *ad-valorem* Court fee.

5. *Per contra*, learned Counsel for the Respondents submits that apart from the relief of partition, the Plaintiffs have also prayed for declaration as would be evident from the prayer (a) of the plaint as extracted above. Hence, in view of judgment passed by the Division Bench this Court in **Ranchor Das Shamji Das Khermani & Anr. v. Balbar Malik**³, *ad-valorem* Court fee is payable.

6. It is further contended that from a reading of Paragraph Nos. 12 & 13 of the plaint, it is evident that the Plaintiffs are not in actual physical possession of the property and they admit that Defendants [“Respondents” herein] are not permitting them to enter the premises. Hence, there is ouster of the Plaintiffs and, consequently, *ad-valorem* Court fee on the relief of partition is payable.

² SCC OnLine Del 5592

³ 1971 SCC Online Delhi 113



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7. Learned Counsel for the parties have been heard at length and, with their able assistance, the paper book has been perused. This Court has considered the submissions of learned Counsel for the Parties.

8. The judgment in *Ranchor Das Shamji Das Khermani & Anr. (supra)* is distinguishable, as the dispute therein pertained to shares in a limited company, and the petitioners also claimed entitlement to a certain amount. In that context, while relying upon the **Punjab Court Fees (Amendment) Act, 1953**, the Division Bench of this Court held that, in respect of a relief of declaration, Court fee according to such value is payable. However, the said amendment is not applicable to immovable properties such as land, houses, and gardens. In the present case, since the suit property is a house, the amendment has no application.

9. With regard to the second submission, it is noticed that this Bench in *Anurag Sant (supra)*, after relying upon a Full Bench decision of the Lahore High Court in *Asa Ram v. Jagan Nath*⁴ and a Division Bench decision in *Saroj Salkan v. Capt. Sanjeev Singh & Ors.*⁵, came to the conclusion that, in a suit for partition, every co-sharer is presumed to be in constructive possession of the property, which is a statutory presumption. Hence, *ad valorem* court fee is not payable. The various judgments relied upon by the parties have already been considered.

10. Keeping in view the aforesaid discussion, the Impugned Order is set-aside and learned Single Judge (Roster Bench) is requested to proceed with the case without insisting upon the Plaintiffs paying the *ad-valorem* Court fee on the relief of partition.

⁴ A.I.R. 1934 Lahore 563

⁵ 2008 SCC OnLine Del 1278.



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11. Accordingly, the present Appeal along with pending application(s), if any, stands disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 16, 2025/tk/kr/rn