



2025:DHC:7100-DB



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

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Judgment reserved on:06.08.2025

Judgment pronounced on: 21.08.2025

+ FAO(OS) 173/2024, CM APPL. 71085/2024, CM APPL.
73925/2024 & CM APPL. 27986/2025
ANURAG SANTAppellant

Through: Mr. Ashok Kumar Singh,
Senior Advocate along with
Mr. Rakesh Chaudhary, Mr.
Rajeev Chauhan, Mr. Rajat
Joshi, Ms. Eesha Garg and Ms.
Saloni Singh, Advocates.

versus

ANUPRIYA VIJ & ANR.Respondents

Through: Mr. Shekhar Gupta, Mr.
Mehendra Pratap and Mr.
Anand Mishra, Advocates.

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

J U D G M E N T

ANIL KSHETARPAL, J.

1. The Appellant has preferred the present Appeal assailing the correctness of the order dated 28.08.2024 (hereinafter referred to as the “**Impugned Order**”) passed by the learned Single Judge of this Court in CS(OS) 52/2022, titled as *Anupriya Vij and Anr. vs. Anurag*



Sant. By the Impugned Order, the learned Single Judge dismissed I.A. No. 11295/2022 in CS(OS) 52/2022, filed by the Appellant/Defendant therein under *Order VII Rule 11(b)* of the Code of Civil Procedure, 1908¹, seeking rejection of the plaint on the ground of non-payment of appropriate *ad valorem* Court Fees based on the correct valuation of the concerned suit property. The Respondents/Plaintiffs therein have instituted the aforesaid Civil Suit, which is currently pending before the learned Single Judge.

FACTUAL MATRIX:

2. The relevant facts, necessary for adjudication of the present Appeal, are briefly stated as under:

i. The parties in the present matter are the children and Class-I legal heirs of Late Shri Shiv Chand Sant (deceased on 17.12.2020) and Late Smt. Vijaya Sant (deceased on 09.08.2020), both being the common ancestors from whom the rights in the concerned suit properties devolve. The Respondents [Plaintiffs before the learned Single Judge] are the real sisters of the Appellant [Defendant before the learned Single Judge].

ii. The dispute arises in respect of two immovable properties [hereinafter collectively referred to as the “**suit properties**”]:

a) Property bearing No. B-215, Ashok Vihar, Phase-I, Delhi-110052, constructed on a plot admeasuring 300 sq. yards(250.80 sq. meters) [hereinafter referred to as “**Ashok Vihar Property**”];

¹Hereinafter referred to as ‘CPC’.



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and

b) Property bearing No. 5-B, Nath Market, Nai Sarak, Delhi–110006, admeasuring 600 sq. feet [hereinafter referred to as the “**Nai Sarak Property**”].

iii. The present *lis* originated with the institution of the Civil Suit by the Respondents/Plaintiffs, wherein they sought partition of the suit properties, partition of the immovable assets of the father’s businesses, namely Umesh Prakashan and Umesh Publications, *mesne* profits, rendition of accounts, and permanent injunction along with a declaration in respect of the suit properties.

iv. The factual controversy centers on the allegation that the Appellant/Defendant, along with his family, is in exclusive use and occupation of the Ashok Vihar Property to the exclusion of the Respondents. The Respondent/Plaintiffs assert that, as Class-I legal heirs, they and the Appellant/Defendant are each entitled to an undivided 1/3rd share in the suit properties and the immovable business assets.

v. The Appellant/Defendant disputes this claim by placing reliance upon two registered Wills dated 26.08.2015 (executed by the late father) and 24.09.2019 (executed by the late mother) which, according to him, confer upon the Plaintiffs a combined 34% share only in the Ashok Vihar Property. The validity of the aforesaid Wills is directly in issue in the pending Civil Suit, the Respondents/Plaintiffs alleging that they were procured by the Appellant/Defendant through undue influence and coercion.



3. In the course of proceedings, the Appellant/Defendant raised a preliminary objection under *Order VII Rule 11(b) of the CPC*, contending that the Civil Suit was liable to be rejected for non-payment of *ad valorem* Court Fees by the Respondents/Plaintiffs on their own valuation of the Ashok Vihar Property. It was urged that, having valued the relief for possession, the Respondents/Plaintiffs were required to pay Court fees in accordance with *Section 7(iv)(b) of the Court Fees Act, 1870*².

4. Consequently, I.A. No. 11295/2022 was dismissed by the learned Single Judge *vide* Impugned Order, who, after considering the contentions, held as under:

“This Court on the reading of the plaint concluded that the plaintiffs have not admitted their ouster or exclusion from the suit property. Therefore, in the judgments of Anil Kumar Bansal [Col. (Retd.)] & Anr. v. R.K. Bansal & Ors.³ and Nisheet Bhalla and Ors. v. Malind Raj Bhalla and Ors.⁴ relied upon by the applicant/defendant in the facts of this case as noted above, there is no exclusion admitted by the plaintiff. Accordingly, the said judgments are of no assistance to the plaintiff herein.

Accordingly, the plea of the defendant that the plaintiffs ought to pay ad-valorem Court fees as per Section 7(iv) (b) of the Court Fees Act, 1870 for the relief of separate possession with respect to Ashok Vihar suit property despite admitting their co-ownership is without any merits and is hereby dismissed.”

SUBMISSIONS OF THE APPELLANT:

5. It is submitted and pleaded by learned senior counsel for the Appellant that the Respondents/Plaintiffs are admittedly ousted from

² Hereinafter referred to as ‘Act’.

³ 198 (2013) DLT 723.

⁴ AIR 2007 DELHI 60.



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the suit properties and thus, they are under legal obligations to pay *ad valorem* Court Fees under *Section 7(iv)(b)* of the Act.

6. Indisputably, the learned senior counsel for the Appellant submitted that, in accordance with the registered Will dated 26.08.2015, executed by his father, the decision to let out the suit property was solely taken by the Appellant/Defendant as its 'absolute owner'. This, according to the Appellant/Defendant, reflects that the Respondents/Plaintiffs are neither in possession of the suit property nor do they exercise any influence or control over its day-to-day management. The Appellant/Defendant also relied upon the valuation report dated 25.02.2022. For this, as per the aforesaid Will, the Appellant/Defendant is declared the head of the house with responsibility for his parents, whose decisions are binding on the family, and is granted succession rights in the property from the testator to his wife, and thereafter to the Appellant/Defendant exclusively.

7. The Appellant/Defendant contends that, in view of the rent agreement dated 01.11.2021 between the Respondents/Plaintiffs and the tenant of the Ashok Vihar Property, Sh. Vipin Nagpal, the Appellant, has himself asserted ownership over the suit properties. Hence, the Respondents/Plaintiffs cannot claim constructive possession thereof through the said tenant.

8. Learned senior counsel for the Appellant, further, pleaded that a bare perusal of the registered Will dated 26.08.2015 and 24.09.2019 stipulates the parents' desire with similar expression and sentiments,



and these are in norms of the society, that consequential ouster or exclusion from the suit properties, which has been admitted in clear and unambiguous terms.

9. In view of the aforementioned submissions, the learned senior counsel relied on *Prakash Wati vs. Dayawanti & Anr.*⁵ where a party is not in possession of the property and alleges ouster, as in this case, the claim amounts to seeking possession of their share, making *ad valorem* Court Fees on the market value of that share mandatory, rather than the fixed fee applicable to joint possession cases.

10. Learned senior counsel for the Appellant also relied upon *Nisheet Bhalla & Ors. vs. Maini Raj Bhalla & Ors.*⁶ and *Col. (Retd.) Anil Kumar Bansal vs. R.K. Bansal*⁷ that the plaintiffs were bound to pay *ad valorem* Court Fees on that valuation as per the Act. It further held that the plaintiffs were not in possession of any portion of the suit property at the time of filing and had admitted their exclusion, making them liable to pay *ad valorem* fees on the value of their shares for partition and possession.

SUBMISSIONS OF THE RESPONDENTS:

11. *Per contra*, learned counsel for the Respondents, in opposition to the submissions advanced on behalf of the Appellant and as stated in their reply to the *Order VII Rule 11(b) of the CPC* application, contended primarily on two grounds: Firstly, that the Respondents/Plaintiffs therein had knowledge of the alleged Wills

⁵AIR 1991 Delhi 48.

⁶ 2006 SCC OnLine Del. 649.

⁷2012 SCC OnLine Del 5635.



executed by their father and mother, respectively. Secondly, the Respondents have been ousted from the suit properties, and therefore, Court Fees ought to be affixed on the plaint. In view of these submissions, the Respondents/Plaintiffs have categorically disputed the genuineness and validity of the alleged Wills of their father and mother, respectively, and have also raised allegations of both mental and physical abuse. With respect to the issue of ouster and payment of *ad valorem* Court fees, the Respondents/Plaintiffs have clearly stated in the plaint that they are in ‘constructive possession’ of the suit properties and also claim to be co-owners thereof.

12. In view of the aforesaid submissions, the learned counsel for the Respondents placed reliance on *Jagannath Amin vs. Seetharama (Dead) By LRs. and Others*⁸ and *Neelavathi and Others vs. N. Natarajan and Others*⁹ to emphasize that the suit properties, though not strictly so, are treated as undivided joint family property. In law, when property is jointly owned, possession by one co-owner is deemed possession for all, unless it is clearly established that a co-owner has been ousted or excluded. Therefore, a Plaintiff is considered to be in joint possession in the eyes of the law even without physically possessing any part of the property.

13. Learned counsel for the Respondents further submitted that it is a settled position of law that for the purpose of determining constructive possession, only the averments made in the plaint are to be considered, and where joint possession is pleaded on the basis of

⁸2007 (1) SCC 694.

⁹(1980) 2 SCC 247.



co-ownership, the Court Fees are payable under *Article 17(vi)* of Schedule II of the Act, and no *ad valorem* Court Fees are payable. In this view, the Respondents/Plaintiffs urge that where joint possession is pleaded on the basis on co-ownership, Court Fees are payable under *Article 17(vi)* of Schedule II of the Act, even if the Respondents/Plaintiffs are not in actual possession, it is a settled position of law that, where they are in constructive possession of the suit properties, no *ad valorem* Court Fees are payable. It is also admitted by the Respondents that the first floor of the Ashok Vihar suit property is in the possession of a tenant and such possession by the tenant is on behalf of all the joint owners. Therefore, no *ad valorem* Court Fees are payable on the plaint.

14. Learned counsel for the Respondents, placing reliance on ***Saroj Salkan vs. Capt. Sanjeev Singh & Ors.***¹⁰ Submitted that in a partition suit, if the plaintiff claims joint possession as a co-owner, fixed Court Fees under *Article 17(vi)* of Schedule II apply, even without actual possession, as possession of one co-owner is deemed to be the possession of all. However, if the plaint clearly discloses ouster, *ad valorem* Court Fees under *Section 7(iv)(b)* must be paid on the market value of the plaintiff's share, even if constructive possession is pleaded. For this, the learned counsel for the Respondents has also relied upon ***Geeta Tandon vs. Sunil Gomber***¹¹, wherein the Court held that the Court Fee is determined from the plaint's averments, not the defence or suit's outcome. The *ad valorem* Court Fee arises only if ouster is proved, joint possession in law does not require actual

¹⁰2008 SCC OnLine Del 1278.

¹¹(2023) 5 HCC (Del) 247.



possession.

ANALYSIS AND FINDING:

15. This Court has given consideration to the submissions advanced at the bar and have gone through the Impugned Judgment. With the assistance of learned counsel for the parties, this Court has perused the material placed on record.

16. The question that arises for consideration, in the present appeal, is whether the Court Fee is payable on an *ad valorem* basis or in accordance with *Article 17(vi)* of Schedule II of the Act.

17. This Court has not found any substance in the arguments submitted by learned counsel for the Appellant.

18. On study of various judgments passed by the Courts, it becomes evident that for deciding the question of requirement to pay *ad valorem* Court Fee is dependent upon the assertions made in the Plaint. In each case, it has been held that the pleadings are required to be examined carefully in order to determine whether *ad valorem* court fee is payable or not.

19. In the plaint, the Respondents/Plaintiffs have asserted that they are in joint and constructive possession of the suit properties, the relevant averments being reproduced hereinbelow:

“29. That it is stated that the plaintiff no.1 and 2 used to go to the Ashok Vihar property and stayed there with mother and father without any obstruction and the plaintiffs are in joint and constructive possession of the Ashok Vihar property. It is also stated that the Nai Sarak property is a tenanted property and the said property has been inherited to the



plaintiffs to the extent of 1/3rd each and they are in joint and constructive possession of the Nai Sarak property.”

20. A Full Bench of the Lahore High Court in *Asa Ram and Others vs. Jagan Nath and Others*¹² answered the following two questions:

“i) What is the proper Court-fee payable on a plaint in a suit for partition of property, alleged to belong to a joint family of which the plaintiff and the defendant are stated to be members, and of which the plaintiff alleges to be in actual or constructive possession?”

ii) Whether in determining the Court-fee payable the allegations in the plaint alone are to be considered, or regard should also be had to the defendant’s denials or admissions of the plaintiff’s title or possession?”

21. With regard to the first question, the Lahore High Court held that in a suit for partition of joint property where the Plaintiff alleges joint possession, a Court Fee stamp of Rs.10/- is leviable under Schedule II of *Article 17(vi)* of the Act and that *Section 7(iv)(b)* of the Act does not apply to such a case. On the second question, it was held that the allegations in the plaint alone should be considered and not the defendant’s denial thereof.

22. In pursuance thereof, a Division Bench of this Court in *Saroj Salkan* (*supra*) held that fixed Court Fee would be payable under *Article 17(vi)* of the Act presuming joint possession of the Plaintiff even if the plaintiff is not in actual possession. The Division Bench also held that a plaintiff, who claims to be in a joint possession of the property of which partition is sought, only fixed Court Fee as per

¹²1934 SCC OnLine Lah 309.



Article 17(vi) of the Act is payable. The following are the relevant extracts from the judgment relied upon:

“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.

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14. In view of the averment made in the plaint as well as e-mail dated 6.2.2005, prima facie, the plaintiff who claims to be in joint possession of the property of which partition is sought, we find that the appellant has been excluded from joint possession to which she is entitled in law and has to pay only fixed Court as per Article 17(vi) in Schedule II.”

23. The Supreme Court in ***Jagannath Amin*** (*supra*) held that, for the purpose of payment of Court Fee in a suit for partition, the plaintiff is presumed to be in constructive possession of the property, and therefore Court Fee is payable on the deemed market value of the share claimed, rather than on its actual market value, under the relevant provisions. A similar view was expressed by the Supreme Court in ***Neelavathi*** (*supra*).

24. In ***Geeta Tandon*** (*supra*), ***Ms. Uma Ghate vs. Umesh Phalpher***¹³ and ***Naseema Begum vs. Mohd. Javed & Ors.***¹⁴, similar views were also expressed.

¹³2016 SCC OnLine Del 6179.



25. The judgments relied upon by the learned counsel for the Appellant are Single Bench judgments. In *Prakash Wati (supra)*, it was found that the plaintiff was never in physical possession of any portion of property in question and since 04.07.1990, the plaintiff is not allowed to even visit the property. Thus, the Court inferred that the plaintiff is not in joint possession of any portion of the property in question and hence, directions were issued to pay the *ad valorem* Court Fee.

26. In *Anita Anand vs. Gargi Kapoor & Ors.*¹⁵, the Court in the facts of the case found that Defendant Nos.1 and 2 are living in the suit property and Defendant No.2 is deriving income from the suit property and hence, the Court found that the plaintiff is neither in physical possession nor symbolic possession of the suit property.

27. In *Nisheet Bhalla (supra)*, the Court found that the plaintiffs admit their ouster and exclusion from the suit property and hence, *ad valorem* court fee is payable.

28. Similarly, in *Anil Kumar Bansal (supra)*, the Court found that the plaintiff was not in physical possession or symbolic possession of the suit property.

29. Learned counsel for the parties have not made any other submissions.

¹⁴2013:DHC:4267.

¹⁵2018 SCC OnLine Del 11372.



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CONCLUSION:

30. Keeping in view the above-mentioned judgments, the conclusion is inevitable, particularly, when the Respondents/Plaintiffs have alleged that they are in joint and constructive possession of the suit properties.

31. Consequently finding no merit, the present Appeal, along with pending applications, is dismissed.

ANIL KSHETARPAL, J.

HARISHVAIDYANATHANSHANKAR, J.

AUGUST 21, 2025/jn/rgk