

CS286/21

SMT SUSHMA KUMARI Vs. SH. JATIN

27.05.2023

Present: Sh. G. K. Sharma, Ld. Counsel both the Plaintiffs.
Sh. Rakshpal Singh, Ld. Counsel for the defendants
alongwith defendant no. 3.
Put up at 04.00 PM for order.

(Sanatan Prasad)
Addl. District Judge-02 (East)
Karkardooma Courts/ 27.05.2023

04.00 PM

Present: None.

It appears that in the present suit for permanent injunction, partition, declaration, recovery of possession, rendition of accounts and recovery of rent received by the defendants for the portion of the plaintiffs, while framing the issues vide order dt. 29.03.2022, my Ld. Predecessor of this Court had treated the issue no. 6 as a preliminary issue, reproduced as below: -

“Whether the suit has been properly valued for the purpose of Court Fees and Jurisdiction (in view of Section 7 of the Court Fees Act r/w Sec. 8 of Suit Valuation Act) ? OPP.”

I have heard arguments by the Ld. Counsels for the parties, in terms of Order dt. 15.04.2023 and in the present suit both the plaintiffs claimed their respective share/(s), of second and third floor with roof /terrace rights, on the strength of the WILL DEED, dt. 15.11.2017, executed by Late Smt. Chander Kanta and the suit has been valued for the purpose of jurisdiction at Rs.11 Lakhs,

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(the estimated value of the second floor and third floor with terrace rights of the suit property) and for the relief of permanent injunction at Rs.130/-, while affixing the Court Fees of Rs.13/- for this relief, and mentioning that the second and third floor of the suit property are in physical possession of two different tenants, therefore, the plaintiffs are in constructive possession of the suit property and for the relief of partition, as per the Rule 17, of Schedule II of the Court Fees Act, while affixing the Court Fees of Rs.10/-. That for the relief of Declaration and consequential relief of Possession, the plaintiffs have affixed Court Fees of Rs.200/- and thus, total Court Fees of Rs.223/- has been affixed on the plaint with the averments that the plaintiffs will pay further Court Fees on the recovery of amount/ rent from the defendants after the final assessment and when the defendants will render /provide the entire accounts of the rent received by them for the period from 15.02.2018 till the handing over the physical possession of the suit property and the plaintiffs also undertake to pay further Court Fees, if any, as and when directed by the Court. Sh. G. K. Sharma, Ld. Counsel for the plaintiffs has also relied on a decision, reported as, 2004 VII AD (Delhi) 452, LA No. 1136 of 2002, in suit no. 1695 of 1996, DOD 19.04.2004, in the case of Durga Parmar (Dr.) and Ors. vs. V. K. Verma and others, of our own Hon'ble High Court and has drawn my attention to the paragraph number 3 of the decision.

It is to be noted that the question of Court Fees for the relief of rendition of accounts can not be pre-empted at this stage, as the such amount has yet to crystallize after going through the trial, yet to

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be held.

I have carefully considered the submissions made by the Ld. Counsels for the parties and I am fully convinced that the decision relied on, as far as the reliefs of partition and possession is concerned, the authority does not go to help the plaintiffs, for the reasons that in paragraph number 12 of the plaint, the plaintiffs themselves aver that it is the defendants, who are receiving the rent and thus, if the averments are taken to be true then the plaintiffs can not be considered to be in constructive possession of the second and third floor of the premises, as mentioned in paragraph number 12 of the plaint and evasively denied by the defendants, the preliminary issue, thus, stands decided in this fashion.

In view of above, the plaintiffs are directed to submit Court Fees for their respective shares on the valuation put by them accordingly, while making formal amendments, if necessary, to the plaint and then also place on record such amended plaint and its duplicate copy, while supplying advance copies to the Ld. Counsel for the defendants, against receipt, for further consideration in the matter on **01.08.2023**.

(Sanatan Prasad)
Addl. District Judge-02 (East)
Karkardooma Courts/ 27.05.2023