

04.04.2026

Present : Sh.Praveen Gaur, Ld. Counsel for plaintiff through VC.
Ld. Counsel for defendants.

ORDER

1. Vide this order, the present court shall decide the application under Order VII Rule 11 CPC for rejection of plaint filed on behalf of defendant.
2. The present application has been filed by the defendant under Order VII Rule 11(b) read with Section 151 CPC seeking rejection of the plaint on the ground of undervaluation. It is stated by the defendant that the plaintiff has filed the present suit for partition, permanent and mandatory injunction, damages and possession in respect of various properties situated at Chattarpur, New Delhi and also a property at Gautam Budh Nagar, Uttar Pradesh. The defendant has submitted that one of the properties mentioned in the plaint is wrongly described, however, the remaining properties as mentioned by the plaintiff are not disputed.
3. It is further the case of the defendant that the plaintiff has undervalued the suit for the purpose of court fees and jurisdiction. As per the defendant, the plaintiff has valued the suit property at Rs. 1,98,00,000/-, whereas the actual market value of the properties is around Rs. 7,00,00,000/-. It is alleged that by undervaluing the suit property, the plaintiff has intentionally tried to avoid payment of proper court fees and has caused prejudice to the defendant as well as to the Court.

4. Reply to the application has been filed by the plaintiff. The plaintiff has admitted the description of the properties as mentioned, however, she has denied the allegation of undervaluation. The plaintiff has stated that the valuation of the suit property as mentioned in the plaint is correct and not more than Rs. 1,98,00,000/- and the allegations made by the defendant are false and without any basis. It is further stated by the plaintiff that she is residing in the suit property and has filed the present suit seeking her share by way of partition. The plaintiff has prayed for dismissal of the present application with costs, stating that the same has been filed without any valid grounds.
5. I have heard the arguments and perused the record carefully.
6. Plaintiff has filed suit for partition, permanent & mandatory injunction, damages and possession. It has been argued by the Ld. Counsel for the defendant that plaint is liable to be rejected as the plaintiff has undervalued the Court Fees for the relief sought. Plaintiff is the daughter of defendant no. 1 and sister of defendant nos.2, 3 & 4. It has been submitted by the plaintiff that the suit property belonged to her father as well as of the defendant no.2, 3 & 4 and husband of defendant no.1 and therefore it is joint family property.
7. It would be pertinent herein to refer the relevant Section for ready reference :

Order VII Rule 11 CPC

Rejection of plaint: The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

8. The careful perusal of the plaint shows that the plaintiff has pleaded that defendant nos.1 to 3 are enjoying the property by way of collecting rent and residing purposes whereas the plaintiff had been given only one room to live in the property. She has neither been given any share of the properties or share in the rental money. She has also pleaded that many attempts were made to force her out of even

that one room where the plaintiff and her son is residing. Perusal of the plaint also shows that there is specific pleadings that she is residing at the same house and she has given one room, so there is physical presence in the joint family property and regarding other four properties, it is the defendant who are enjoying the rental income of those properties and plaintiff has not been given any share in rental income, so there is no ouster/exclusion from the properties. There is no categorical submissions made in the plaint that she had been excluded from the possession of the joint family estate. For the purpose of valuation in her partition case, the joint possession or complete exclusion/ouster become very important for valuation of Court Fees.

9. It is an admitted fact that she is in joint possession and there is no categorical pleading regarding her being out of the possession of entire estate. Plaintiff has only pleaded that she has been given one room for living and the defendants are enjoying the income from the other properties, which, in its true essence, does not amount to ouster. The possession in one of the property as a co-sharer is also deemed possession in all the joint family property until there is specific plea of exclusion or ouster which in our case is completely missing. Even if we accept the ouster from other joint family properties, it would be a mixed question of law and fact. In the facts and circumstances of the case, more specifically in absence of pleading in the plaint in this regard which is very important for deciding the application under Order VII Rule 11 CPC.

10. It is submitted by the plaintiff that the value of the suit for the purposes of pecuniary jurisdiction is fixed at Rs.1,98,00,000/- and for

the purposes of court fees it is fixed at Rs.200/- on which requisite court fees has been paid.

11. In the judgment, *Tara Chand Gaur v. Satish Chand Sharma, 2018 SCC OnLine Del 12923*, it has been held as under:

“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.”

12. It is settled law under Article 17(vi) of the Court Fees Act that where a plaintiff is in joint possession of the suit property, a fixed court fee is payable and valuation on ad valorem basis is not required. The Hon’ble Supreme Court in *Neelavathi and Others v. M. Natarajan and Others 1980 AIR 691*; has categorically held that where joint possession is admitted or established, the plaintiff is not required to value the relief on the basis of the market value of the property.

13. Even if defendant pleads ouster, then it can be decided only after leading evidences from both sides as it would be mixed question of law & facts and at the appropriate stage, issues would be framed regarding the same. However, at this stage, she is still in possession

and inside the property. There is nothing on record, which would be taken as a prima-facie case to show that there is clear plea of ouster. The plaintiff is residing in one of the room in the joint family property and her possession would be constructive/symbolic in nature regarding other joint properties which is sufficient for the valuation of Court Fees and in such cases, fixed court fee is payable.

14. A bare perusal of the plaint shows that there is nothing on record which shows that the suit of the plaintiff is liable to be rejected. Hence, at this stage, there is no ground for rejection of the plaint.
15. In view of aforesaid discussions, the present application in Order VII Rule 11 CPC stands **dismissed**.
16. Put up now for filing of affidavit of admission/denial of documents and framing of issues on **18.05.2026**.

(Ambika Singh)
District Judge-01, South
Saket Court, New Delhi
04.04.2026