

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

CS 136 OF 2023
IN THE MATTER OF:
KAILASH NEVATIA
VS
SHIV KUMAR NEVATIA AND ANR.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 14th July, 2023.

Appearance:
Mr. Nirmalya Dasgupta, Adv.
Mr. Dibanath Dey, Adv.
Ms. Pallavi Pain, Adv.
For plaintiff

The Court : The plaint which has come up for presentation and admission is for institution of a partition suits. The plaintiff intends to institute the suit by paying court fees of Rs.100/- on the contention that in case of a suit for partition where the plaintiff is in possession of the property, the same can be instituted by paying fixed court fees. In fact, in this case, the plaintiff says that he has paid at least some additional court fees over and above the fixed court fees payable.

In the partition suit, the plaintiff has sought for mandatory injunction as also other injunctions. The moment the relief of injunction is sought for, the plaintiff has to pay court fees on the basis of the value of the share, which the plaintiff claims to have, in the joint properties.

In the aforesaid facts and circumstances, the plaint is presented and admitted subject to scrutiny by the department upon payment of the deficit court fees.

It appears from the schedule of the plaint that partition has been sought for in respect of a land measuring about 12 Cottahs 8 Chittacks and 31 sq.ft.

along with building erected thereat situate and lying at premises no.76, Bentinck Street, Kolkata – 700001 and another property comprising of land measuring about 17 Cottahs 15 Chittacks and 14 sq.ft. with brick-built structure there at being premises no.123A, Lenin Sarani, Kolkata – 700013.

The plaintiff claims to be 2/3rd owner of the first property and 1/3rd owner of the second property. The valuation of the plaintiff's share in the two properties as aforesaid is much in excess of Rs. 1 crores.

In the aforesaid facts and circumstances, the maximum court fees of Rs. 50,000/- is required to be paid by the plaintiff and not the ad valorem court fees on the basis of the valuation proposed by the plaintiff.

Mr. Dibanath Dey, learned advocate-on-record for the plaintiff, is appointed as receiver without remuneration to collect and deposit the court fees within 28th July, 2023.

It is made clear that in default of putting in the deficit court fees within the time provided, the suit shall stand dismissed without any further order.

(ARINDAM MUKHERJEE, J.)

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