

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

% **Pronounced on: 31<sup>st</sup> January, 2022**

+ CS(OS) 1470/2010  
SHAILENDRA GHAI ..... Plaintiff

Through: Mr. Prag Chawla, Advocate

versus

ANIL GHAI & ORS ..... Defendants

Through: Mr. Atul Nigam. Advocate

**CORAM:**  
**HON'BLE MS. JUSTICE ASHA MENON**

**ORDER**

**O.A.30/2021 (by the plaintiff under Chapter II Rule 5 Delhi High Court (Original Side) Rules, 2018 read with Section 151 CPC), I.As.16272/2021 (by the respondent under Section 5 of the Limitation Act read with Section 151 CPC for condonation of delay of 3 days in filing the accompanying chamber appeal) & 16273/2021 (by the respondent under Chapter IV Rule 3 (e) read with Section 5 of the Limitation Act and Section 151 CPC for condonation of delay of 10 days in filing the accompanying chamber appeal)**

1. This is an appeal that has been filed by the plaintiff being aggrieved with the orders of the Joint Registrar dated 8<sup>th</sup> October, 2021 directing the plaintiff to pay the deficient Court Fees without fail before the next date of hearing.

2. I.A. no.16272/2021 has been filed seeking condonation of delay of three days in filing the appeal.

3. Mr. Prag Chawla learned counsel for the plaintiff submits that the suit has been filed for partition and the Fixed Court Fees has already been

paid. It is his contention that merely because the Registry raised an objection, the learned Joint Registrar could not have directed the plaintiff to pay the deficient Court Fees without first applying its mind to determine whether in fact the Court fees paid was deficient or not. Learned counsel submitted that in the plaint, the plaintiff has asserted that he was in possession of part of the properties that constituted the estate of the deceased father. Therefore, the plaintiff had only to pay Fixed Court Fees and not ad-valorem Court Fees on market value of the properties. Learned counsel pointed out that in the written statement, the factum of possession has been admitted by the defendants. Hence, it was submitted that the impugned orders be set aside and the plaintiff be exempted from filing further Court Fees.

4. Mr. Atul Nigam, learned counsel on behalf of the defendants on the other hand, contended that the first order in this regard was passed on 18<sup>th</sup> January, 2020 but that order has not been challenged. Several other orders were passed repeating the direction to the plaintiff to file the deficient Court Fees. On 8<sup>th</sup> October, 2021, a final opportunity seems to have been granted to the plaintiff by the learned Joint Registrar as by that date, the application filed by the defendants on 13<sup>th</sup> September, 2021 under Order VII Rule 11 had also been filed. It is only thereafter, that this appeal has been preferred. Technically, according to the learned counsel, this appeal was not maintainable. On merits, learned counsel submitted that no claim in the plaint had been made by the plaintiff of being in part possession of the properties and thus the appeal be dismissed.

5. It is settled law that in a suit for possession and partition, if the plaintiff pleads that he is the co-owner of the properties sought to be

partitioned and joint possession is pleaded, only fixed Court Fees would be payable under Article 17 (vi) of the Schedule II of the Court Fees Act, 1870 even presuming the joint possession of the plaintiff, even if the plaintiff is not in actual possession. Unless, there is a clear case made out, by the defendants of ouster of the plaintiff or the plaintiff himself pleads such ouster, there would be, in fact, no occasion for the plaintiff to pay ad-valorem fees on the market value of his share as provided under Section 7 (iv) (b) of the Court Fees Act, 1870. This Court has in several cases applied this principle of law while dealing with partition suits.

6. Turning to the plaint, it is clear that the plaintiff has sought partition, declaration, possession, permanent injunction alongwith mesne profits and damages in respect of several properties as listed in Para No.18. The plaintiff has specifically pleaded that he was in possession of the Basement, ground floor and roof of the residential property at 28/75, West Punjabi Bagh, New Delhi, along with roof, except for two servant rooms on the roof and a plot situated at Kotdwara Road, Najibabad, District Bijnor, U.P, admeasuring 1500 sq. yds. which has been leased out to M/s. Ghai Housing and Agro Industries Pvt. Ltd. and which was inducted as a tenant in the premises by the late father of the parties during his lifetime as mentioned in para no.36 of the plaint.

7. These are clear and specific averments made in the plaint that the plaintiff is in part possession of the estate comprising of several properties of which he is seeking partition. Learned counsel for the defendants has not pointed out to any plea set up by the defendants of the clear ouster of the plaintiff from the entire estate.

8. In these circumstances, despite the technicalities that have been pointed out by the learned counsel for the defendant/respondent and particularly in view of the fact that an application under Order VII Rule 11 CPC is also pending, the delay in filing the appeal is condoned and the appeal is allowed. The order of the learned Joint Registrar directing the plaintiff to pay deficient Court Fees is set aside.

9. It is underlined that when an objection as to adequacy of Court Fees is raised, it is incumbent upon the learned Joint Registrar to consider the question independently of any objections recorded by the Registry and to pass appropriate orders.

10. The appeal is, accordingly, allowed.

11. List before the Joint Registrar on 20<sup>th</sup> April, 2022.

12. The order be uploaded on the website forthwith.

**(ASHA MENON)**  
**JUDGE**

**JANUARY 31, 2022**

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