

**(2015) 05 MP CK 0047**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 2317/15**

Indrajeet Shinde

APPELLANT

Vs

Hemlata Ganpat Rao Shinde and Others

RESPONDENT

**Date of Decision :** 06-05-2015

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151, 7, 7 (iv), 7 (iv) (b), 7(iv)  
Constitution of India, 1950 — Article 227

**Citation :** (2015) 05 MP CK 0047

**Hon'ble Judges :** Sujoy Paul, J

**Bench :** Single Bench

**Advocate :** N.K. Gupta, Senior Advocate and Sanjay Sharma, for the Appellant;  
C.P. Singh, Advocates for the Respondent

**Final Decision :** Partly Allowed

## Judgement

Sujoy Paul, J.—This petition filed under Article 227 of the Constitution assails the order dated 5.2.2015 whereby the petitioner's application under Section 151 CPC is rejected by court below.

2. The respondent No. 1/plaintiff filed a suit for partition, declaration and permanent injunction. Admittedly, an amendment application dated 8.2.2013 (Annexure P-3) was filed in the said civil suit which was allowed by the court below. As per the amended paragraph 11, the value of the disputed building is shown as Rs. 25 lakhs. The plaintiff has claimed 1/4 share of the said building and, therefore, assessed the value as 6,25,000/-. The amendment application was allowed by the court below by the impugned order dated 5.2.2015. In the application under Section 151 CPC, the petitioner contended that as per para 11 of the amended pleading, the plaintiff has valued the suit for 6,25,000/-. As per the civil court rules, the jurisdiction to try such suit is with Civil Judge Class-I. This objection of the petitioner is rejected by the Court below by holding that value of the building is Rs.25,00,000/- and, therefore, A.D.J Court has jurisdiction to entertain the same.

3. The learned counsel for the parties have taken diametrically opposite stand in the present matter. Shri Gupta submits that valuation has to be on the basis of and to the extent share is assessed by the plaintiff, whereas Shri C.P. Singh contended that there is no error in the order of Court below in quantifying it on the basis of value of total building. In addition, Shri N.K. Gupta, learned senior counsel submits that the point involved has a direct relation with the pecuniary jurisdiction of the Court below. If contention of other side is accepted, the matter will be dealt with by the A.D.J. Court. It will ultimately deprive the plaintiff from a right of appeal.

4. No other point is pressed by the learned counsel for the parties.

5. I have heard learned counsel for the parties at length and perused the record.

6. A plain reading of relief claimed in the plaint shows that the plaintiff is seeking a declaration on the undivided co-parcenary property. She is claiming 1/4th share of the said property. In addition, she is seeking a declaration that the property in question is an ancestral property and being daughter of Ganpat Rao Shinde, plaintiff be declared as 1/4th owner of suit property and possession holder. Injunction is also prayed for restraining the other side to create any hindrance on the possession and title of the plaintiff. Certain other ancillary reliefs are also claimed.

7. The question of court fee in these kind of matters is a vexed question. The Apex Court in S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, AIR 1958 SC 245 : (1958) 1 SCR 1021 had opined that the question which still remains to be considered, is whether the Division bench was justified in directing the appellant to pay court-fees both on the plaint and on the memorandum of appeal on the basis of the valuation for Rs.15,00,000. In our opinion, the appellant is justified in contending that this order is erroneous in law. Section 7, sub-s.(iv) (b) deals with suits to enforce the right to share in any property on the ground that it is joint family property and the amount of fees payable on plaints in such suits is "according to the amount at which the relief sought is valued in the plaint or memorandum of appeal". Section 7 further provides that in all suits falling under Se.7 (iv) the plaintiff shall state the amount at which the value of the relief is sought. If the scheme laid down for the computation of fees payable in suits covers by the several sub-sections of S.7 is considered, it would be clear that, in respect of suits falling under section 7(iv), a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court-fees. The theoretical basis of this provision appears to be that in cases in which the plaintiff is given the option to value his claim, it is really difficult to value the claim with any precision or definiteness. Take for instance the claim for partition where the plaintiff seeks to enforce his right to share in any property on the ground that it is joint family property. The basis of the claim is that the property in respect of which a share is claimed is joint family property. In other words, it is property in which the plaintiff has an undivided share. What the plaintiff purports to do by making a claim for partition

is to ask the court to give him certain specified properties separately and absolutely on his own account for his share in lieu of his undivided share in the whole property. Now it would be clear that the conversion of the plaintiff's alleged undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. That is why legislature has left it to the option of the plaintiff to value his claim for the payment of court-fees. It really means that in suits falling under S.7 (iv) (b) the amount stated by the plaintiff as the value of his claim for partition has ordinarily to be accepted by the court in computing the court-fees payable in respect of the said relief. In the circumstances of this case it is unnecessary to consider whether, under the provisions of this section, the plaintiff has been given an absolute right or option to place any valuation whatever on his relief.

8. In *Chief Inspector of Stamps Vs. Indu Prabha Vachaspati (Smt) and Others*, (1998) 7 JT 610 : (1998) 9 SCC 157, the Apex Court opined as under:-

"Valuation of a claim for the purpose of court fees depends on the prayers in the plaint. In paragraph 10 of the plaint, the plaintiff has clearly stated that the immovable properties in question are at present in the occupation of tenants and the plaintiff has got constructive possession of the same. The High Court has rightly held that the plaint does not disclose anywhere that the plaintiff had divested herself of the possessory right in the said properties or that she was out of possession after the execution of the documents which are impugned in the plaint. The plaintiff's case is that she is in constructive possession through her tenants. Hence the High Court has rightly held that the court fees would be payable on the 1/5 th value of her share as has been done by her."

9. In the light of aforesaid legal position, it is clear that the defendant has rightly contended before the court below that the suit is required to be valued on the basis of share claimed by plaintiff and not on the basis of total value of the property. The suit needs to be filed before the lowest court having pecuniary jurisdiction. In view of aforesaid legal position, I am inclined to hold that valuation of the suit has to be on the basis of the share claimed by the plaintiff. To this extent, the order dated 5.2.2015 is set aside. The matter is remitted back to the court below to proceed from the said stage. Needless to mention that if as per the valuation now decided, the matter is to be tried by some other court, appropriate steps be taken by the court below to ensure that matter is sent to the court of competent jurisdiction.

10. Petition is allowed to the extent indicated above. No cost.