
(1972) 07 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Revision Application No. 260 of 1971

Khemchand

APPELLANT

Vs

Yaswantchand and Others

RESPONDENT

Date of Decision : 11-07-1972

Acts Referred:

Rajasthan Court Fees and Suits Valuation Act, 1961 — Section 35(3)

Citation : AIR 1973 Raj 81 : (1972) RLW 519 : (1972) WLN 439

Hon'ble Judges : Jagat Narayan, C.J

Bench : Single Bench

Advocate : Jaswant Raj Tatia, for the Appellant; Mohan Lal Calla, for Non-Petitioner No. 1 and Roopchand, Party in Person, for the Appearing Parties

Final Decision : Dismissed

Judgement

Jagat Narayan, C.J.—This is a revision application by Khemchand, defendant No. 6, in a suit for partition of joint Hindu family property filed by Yaswant Chand, respondent No. 1. Respondents 9, 10 and 11 are the sons of defendant No. 6. Respondent No. 12 is the brother of defendant No. 6. The petitioner and his sons and respondent No. 12 filed one written statement. They admitted that the property mentioned in plaint was joint Hindu family property except one property which defendant No. 6 claimed as his personal property. These defendants did not claim partition and separate possession of their shares of the remaining property in the plaint. Their objection was that certain joint family property was in the possession of defendant No. 5 and had not been included in the suit and consequently it was not maintainable as a suit for partial partition of joint Hindu family property did not lie. Further they claimed partition and separate Possession of this additional property. This property is valued at Rs. 79,775/-. According to their allegations their share in this property comes to ----.10/16

2. An objection was taken by other party that these defendants must pay court-fee for claiming partition and separate possession over this property. An issue was framed on the point by the trial Court (issue No. 25) and was decided

against these defendants. Against that order defendant No. 6 has filed this revision application.

3. Section 35 of the Rajasthan Courts-fees and Suits Valuation Act runs as follows:--

"35. Partition suits:-- (1) In a suit for partition and separate possession of a share in joint family property or of property owned, jointly or in common by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share of the property.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates, namely:--

(1) Rupees thirty if the value of plaintiff's share is Rs. 5,000 or less;

(ii) Rupees one hundred if the value is above Rs. 5,000 but does not exceed Rs. 10,000; and

(iii) Rupees two hundred if such value exceeds Rs. 10,000.

(3) Where, in a suit falling under Sub-section (1) or Sub-section (2), a defendant claims partition and separate possession of his share of the property, fee shall be payable on his written statement computed on half the market value of his share or at half the rates specified in subsection (2) according as such defendant has been excluded from possession or is in joint possession.

(4) Where, in a suit falling under Sub-section (1) or Sub-section (2), the plaintiff or the defendant seeks cancellation of decree or other document of the nature specified in Section 38 separate fee shall be payable on the relief of cancellation in the manner specified in that section".

4. The contention of the learned counsel for these defendants before the trial Court was that Sub-clause (3) of Section 35 is only applicable to such property as is mentioned in the plaint and that the Rajasthan Court-fees and Suits Valuation Act does not make provision for charging court-fee on property not shown in the plaint, but claimed to be joint Hindu family property in which partition and separate possession is sought by a defendant. He relied on the decision in *V, Vadhyar v. Govinda Bhatt*, AIR 1954 Trav-Co 315 (FB) by way of analogy. The trial Court has not met this objection.

5. The case cited by the learned counsel for the petitioner is of no help as it is based on an interpretation of Article 1 of Schedule I of the Indian Court-fees Act which was applicable to partition suit in Travancore-Cochin when that case was decided. In the same way the decision in *Smt Bittan Devi v. Rudra Sen* AIR 1966 All 601 cited on behalf of the plaintiff is based on the interpretation of Article 2-A of Schedule I inserted in Uttar Pradesh. The present case has to be decided on an interpretation of Section 35 of the Rajasthan Court-fees and Suits Valuation Act. Sub-sections (1) and (2) are applicable to plaints. Sub-section (1) applies

where the plaintiff is excluded from possession. Sub-section (2) applies where the plaintiff is in joint possession. Then comes Sub-section (3) which begins:

"Where, in a suit falling under subsection (1) or Sub-section (2), a defendant claims partition and separate possession of his share of the property.....".

6. The contention on behalf of the petitioner is that the words "his share of the property" refer to the property specified in the plaint. It is argued that article "the" refers to the property falling under Sub-section (1) or (2) and mentioned in the plaint. On the other hand it is contended on behalf of the plaintiff that what the learned counsel for the petitioner wants is to add the words "mentioned in the plaint" after the words "his share of the property". I am of the opinion that the Article "the" refers to joint family property in general whether specified in the plaint or not.

7. There is another way of looking at the matter. In a suit for partition every defendant who claims partition and separate possession is in the position of the plaintiff. It stands to reason that the legislature would intend that he shall pay the same court-fee as person who files the plaint initially on which the partition suit is commenced.

8. If the interpretation canvassed on behalf of the petitioner is accepted then the State can be deprived of court-fee by collusion between members of a joint family, who wish to set their property partitioned through Court by the plaintiff not, showing all the properties in the plaint and the defendants mentioning these properties in their written statement and claiming partition and separate possession over the same.

9. I accordingly hold that the decision of the trial Court is correct and dismiss the revision application. In the circumstances of the case I leave the parties to bear their own costs of this revision application.

10. The stay order passed in the case is discharged.