

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

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Reserved on: 27th July, 2022

Decided on: 22nd August, 2022

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CS(OS) 172/2021

RAJINDER SINGH BHATIA

S/o Late Sh. Har Gopal Bhatia
R/o B-43, 44, Double Storey,
Ramesh Nagar,
New Delhi-110015.

..... Petitioner

Represented by: Mr. Abhishek Aggarwal,
Advocate.

versus

MANJU BHATIA

D/o Late Sh. Har Gopal Bhatia
R/o B-43, Double Storey,
Ramesh Nagar,
New Delhi-110015.

..... Respondent

Represented by: Mr. Manoj Singh, Advocate
for Claimant.
Ms. Sakshi Popli, Standing
Counsel for MCD.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

I.A.5682/2022 (For Rejection of the Suit)

1. An application under Order VII Rule 11 CPC, has been filed **on behalf of defendant** for rejection of the plaint on account of payment of deficient court fees.

2. It is submitted that the plaintiff has filed a suit for Permanent and Mandatory Injunction and has valued his suit for Rs.2.5 crores for the purpose of jurisdiction. However, he has paid the fixed court fee for Mandatory and Permanent Injunction by fixing the valuation at Rs.500/- each. It is asserted that once the valuation of the suit property has been fixed at Rs.2.5 crores, the court fee also has to be necessarily paid on the same amount. Therefore, the plaint is liable to be rejected on account of deficient court fee. The defendant has relied upon the case of Bharat Sanchar Nigam Ltd. vs. All India Bharat Sanchar Nigam Executives' Association (Regd.) & Ors. CS(OS) No.689/2004 decided on 12th January, 2006.

4. The plaintiff in his **reply** has submitted that the suit has been correctly valued for the purpose of jurisdiction and court fee has been paid correctly and there is not merit in the application.

5. In support of his assertions, the plaintiff has relied upon the case of Sant Lal Jain vs. Avtar Singh 1985 AIR(SC) 857, Joseph Severance vs. Benny Mathew 2005(7) SCC 667, Puneet Chaddha vs. B.K. Chaddha CRP No.152/2009 decided on 01st December, 2009, Padmavati Mahajan vs. Yogender Mahajan & Anr. 2008(152) DLT 363.

6. **Submissions heard.**

7. The plaintiff has filed a suit for Declaration, Permanent and Mandatory injunction for eviction of defendant and for recovery of Mesne Profits/ Damages on account of unauthorized occupation of the suit premises i.e D-43, Double Storey, Ramesh Nagar, Delhi, by the defendant. The basis

of the claim is that the plaintiff and defendant are the real brother and sister. However, disputes arose between the parties and a suit bearing CS(OS) 3380/2015 was filed for partition. The suit was decreed in favour of the plaintiff vide Order dated 12th March, 2020 on the basis of the settlement between the parties in terms of an MoU dated 06th March, 2020. According to the MoU, the parties to the suit and the sisters had clearly stated that the plaintiff would be 100% owner of the suit property. The defendant had also promised to vacate the subject property. However, the defendant has failed to vacate the property and hence, the plaintiff has filed a suit for Mandatory Injunctions for directing the defendant to remove herself and her belongings from the suit property aside from other reliefs. The plaintiff had valued his suit for the purpose of pecuniary jurisdiction at Rs.2.5 crores while the relief of permanent injunction and mandatory injunction at fixed Rs.500/- each and court fee has been paid accordingly.

8. The sole objection is that once the valuation of the suit has been done at Rs.2.5 crore for the purpose of jurisdiction, the court fee is liable to be paid on the same amount and the plaintiff cannot have a different valuation for payment of court fees.

9. It is a settled proposition of law as has also been held in the judgments referred to by the plaintiff that licensee or an unauthorized occupant can be asked to vacate the property by filing a suit for Mandatory injunction. The moot question, however, is not in regard to maintainability of a suit for Mandatory Injunction for removal of the defendant who is a licensee/ unauthorized occupant from the suit premises. The issue is of valuation and payment of court fee.

10. **Section 7 of the Court Fees Act, 1870** provides for computation of fees payable in suits. Under **Section 7(iv) (d)** to obtain an injunction, the court fee is payable according to the amount at which the relief is sought to be valued in the plaint. It further provides that the plaintiff shall state the amount at which he values the relief sought.

11. **Section 8 of Suit Valuation Act, 1887** puts an obligation on the plaintiff to value the suit for the purpose of court fee and jurisdiction identically except for the Exceptions provided in Section 7 paragraph 5, 6, 9, 10 Clause (d) of the Court Fee Act, 1870.

12. It therefore, follows that though it is in the discretion of the plaintiff to value his suit as per his bona fide belief and discretion, but once he has valued his suit in terms of Section 8 of the Suit Valuation Act, the court fee shall become payable on the same amount in terms of Section 7 of the Court Fees Act. The plaintiff cannot adopt a dual policy of valuing his suit at a certain value for the purpose of jurisdiction and for the purpose of payment of court fees. Once the suit has been valued at a certain value, the *advolerum* court fees has to be paid mandatorily on the same valuation.

13. The plaintiff in the present case has valued his suit for the purpose of jurisdiction at Rs.2.5 crores while for the purpose of court fee has assessed each relief at Rs.500/- each It is no doubt true that the law gives a discretion to the plaintiff to value his suit and such discretion as exercised by the plaintiff in mentioning the valuation of the suit must not be interfered by the Court as observed by the Full Bench in *Smt. Sheila Devi and Ors. Vs. Sh. Kishan Lal Kalra and Ors.* ILR (1974) II Delhi 491. However, once the valuation has been done on a certain value by the plaintiff in exercise of his

discretion, he is obliged to pay the court fee on the same amount in terms of Section 8 of the Suit Valuation Act as has been held in the decision of Apex Court in Commercial Aviation T. Co.(supra) and this court in Bharat Sanchar Nigam Ltd. (supra).

14. In the present case, while a suit for Mandatory injunction for seeking possession from a licensee or an unauthorized occupant is maintainable, but by virtue of **Section 8 of the Suit Valuation Act** read with **Section 7 of the Court Fee Act** it is held that the plaintiff is liable to pay advoletum court fee on the amount of Rs.2.5 crores on which he has valued his suit for the purpose of jurisdiction. The plaintiff is given one month for making good the deficient court fee.

15. List this matter before this Court on 17th October, 2022.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 22, 2022
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