

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

+ **CS (OS) No. 1574/2006 & IA Nos.8992-8993/2006,
13731/2006, 2066/2007**

Decided on : August 29th, 2008

AMRIT KAUR

.....PLAINTIFF

Through : Mr.K.T.S. Tulsi, Sr. Advocate with
Ms. Susha Unni, Advocate

versus

SARABJEET SINGH & ORS

..... DEFENDANTS

Through : Mr. R.M. Bagai, Advocate

CORAM:

Mr. Justice S. Ravindra Bhat

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| 1. | Whether reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

Mr. Justice S. Ravindra Bhat:

IA No.7743/2007

1. This order proposes to dispose of an application, (IA 7743/2007) filed by the defendants, for rejection of the plaint, under Order VII, Rule 11 (d) Code of Civil Procedure, 1908 (hereafter called “CPC”) on the ground of its being time barred.

2. The plaintiff a decree partitioning properties mentioned in Schedule A (to the suit) and other properties which may come to light in the course of the trial in these proceeding, which might have been purchased out of funds of the assets owned by her father, by metes and bounds, and declared her to be entitled to 1/5th share of the partitioned property. The plaintiff also claims a decree for rendition of accounts.

3. The plaintiff avers that Desh Raj Singh, her father was born in 1918. He went to Karachi for earnings and started his transport business there in a small scale. After partition, he started his business in Delhi under the name and style of “Karachi Taxi Co”. The plaintiff’s father and his family were living at 34/42, Punjabi Bagh, New Delhi. It is averred that the defendants, all sons of the said

Desh Raj Singh, after attaining majority, joined him in the business and were inducted as Directors of the company. It is also averred that from the earnings of the said business, her father Desh Raj Singh acquired properties listed in Schedule A. With advancing age, Desh Raj Singh's interest in the business started to wane. Accordingly, the first defendant, being his eldest son, started acting as the Karta of the Hindu Undivided Family.

4. The further material averments in the plaint, are extracted below:

"8. That it is pertinent to mention here that apart from the aforesaid business the father of the plaintiff and the defendants also started a partnership firm in the name and style of "American Express" wherein apart from her father and defendant No.1, 2 and Amrit Pal Singh, the plaintiff was also made a dormant partner to it.

9. That defendant No.1, 2 and Amrit Pal Singh, married in the year 1978, 1986 and 1983 respectively. The plaintiff was married in the year 1972. The entire expenses of these marriages was borne by the family business.

10. That Shri Desh Raj Singh expired on 19.08.1988 leaving behind his wife Smt. Ranjit Kaur, daughter Smt. Amrit Kaur and three sons, Sh. Sarabjeet Singh, Sh. Bhupinder Singh and Sh. Amrit Pal Singh as his legal heirs and after this

death the entire property referred to in para no.6 of the instant suit developed upon the plaintiff and defendants 1 to 3 and Amrit Pal Singh, in equal shares i.e. 1/5th share each. Thus the plaintiff is entitled to 1/5th share in the property which developed upon her on the death of her father.

11. That Amrit Pal Singh, youngest son of Sh. Desh Raj Singh, expired on 10.08.93 (leaving behind the following legal heirs namely :

- a) Anita kaur (wife)*
- b) Gurdev Kaur (daughter)*
- c) Gursangat Singh (son)*

12. That even after the death of late Sh. Desh Raj Singh the family remained joint and the joint business of the family was being looked after by defendant No.1 as karta of the said HUF with the help and assistance of defendant No.2.

13. That defendant no.2 obtained divorce from his wife in the year 1994 and after his divorce he got married with the wife of his deceased brother Late Shri Amrit Pal Singh in the year 1995.

14. That, it appears that, soon after the demise of Sh. Desh Raj Singh and Shri Amrit Pal Singh defendant No.1 became dishonest and in collusion with defendant no.2 started carrying on the family business in an arbitrary manner, detrimental to the interest of HUF.

15. That after the death of her father, plaintiff being sole sister of the defendants, was having full faith and confidence in her brothers and was under the impression that her interest in the property

and business also devolved upon her and was being looked after by her brothers. The plaintiff had no opportunity to imagine that defendants in collusion with each other were doing family business arbitrarily and are bent upon to take away her shares in the HUF property which devolved upon her after the death of her father.

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20. That despite repeated requests, the defendants are not willing to give the share of the plaintiff in the properties mentioned in para no.6 of the instant suit, more particularly mentioned in Schedule A, annexed herewith the suit, left behind by the father of the parties as such the present suit, nor are the defendants willing to reveal the exact description and value of the properties mentioned in Schedule A as well as large nos. of other properties in and outside Delhi which are not within the knowledge of the plaintiff.

21. That the plaintiff has learnt that defendants are negotiating for sale of some immovable properties left behind by the father of the parties. However, the details of the same are not available with the plaintiff.

22. That since the plaintiff is a married woman and generally remains busy in house hold affairs it is not possible for her to keep a watch and vigil over the suit properties on a regular basis. It is very likely and taking advantage of the fact that she lives separately with her husband, the

defendants may dispose of the suit proper ties posing themselves to be the sole owners.

23. That the plaintiff has a strong prima facie case and balance of convenience is also in her favour as they are among the surviving legal heirs of Sh. Desh Raj Singh who died intestate without leaving his property to any one of his legal heirs or others in particular. The plaintiff is sure to succeed the present suit and if the defendants are not restrained from committing their illegal design to sell of the property without giving share to the plaintiff, then the plaintiff will suffer irreparable loss and injury which cannot be compensated in terms of money. Therefore the plaintiff is entitled to have an injunction against defendants from transferring, selling, assigning or parting with the proper ties which came to the share of the plaintiff.

24. That the cause of action arose in January 2006 when defendant No.1 became dishonest and in collusion with defendant no.2 started carrying on the family business in an arbitrary manner , detrimental to the interest of HUF. The cause of action further accrued in favour of the plaintiff and against the defendants when the defendants despite repeated requests failed to render the accounts of the family business as well of partnership firm. The cause of action in favour of the plaintiff and against the defendants also accrued on various dates when the defendants refused to give the plaintiff shares in the HUF property and the accounts of the partnership firm. The cause of action in favour of the plaintiff and against the defendants further accrued when the

plaintiff after learning from common friends that the defendants were fraudulently planning to sell of the suit property without giving them their rightful shares, asked for their share and the defendants refused for the same stating that being a daughter, she did not have right to claim for the same. The cause of action in favour of the plaintiff and against the defendants is still subsisting since the defendants failed to give the share of the plaintiff in the HUF property and accounts of the partnership firm till date.”

5. Learned counsel for the applicant defendant submits that the plaint has to be rejected. Being an action seeking enforcement of rights in the joint family property, the relevant provision concerned is Article 110 of the schedule to the Limitation Act, 1963 (“the Act”) which prescribes that the period of limitation is 12 years. Counsel submitted that the period of limitation begins when the exclusion (from the property) becomes known to the aggrieved party or the plaintiff. He submitted that according to the plaintiff, immediately after her father’s death, she was excluded from her share in the properties left by him. As such the cause of action for the suit commenced from 19-8-1988; the limitation thus expired on 18-8-2000.

6. Learned counsel submitted that the plaintiff did not have any cause of action to approach this court and file the suit. Being a daughter of the late Desh Raj Singh, she was not a coparcener, in the Hindu undivided family. Counsel submitted that the plaintiff could not take advantage of amendment to Section 6 of the Hindu Marriage Act, since it was brought into force in 2005, and operated prospectively. Learned counsel submitted that the court should exercise its power under Order VII, Rule 11 and reject the plaint, to avoid what is a patently frivolous and vexatious litigation, filed speculatively.

7. Mr. K.T.S. Tulsi, learned senior counsel for the plaintiff, urged that the suit clearly reveals a cause of action. At the stage of considering whether a suit can be entertained or rejected, the court cannot look into the feasibility of the plaintiff's case on merits; it has to merely consider the averments in the plaint, and proceed on the assumption that they are correct. It was submitted that the averments in the plaint show that the late Desh Raj Singh had acquired properties; after his death, the defendants took charge of

those, as well as the family business. The plaintiff's brother, Amrit Pal Singh, died in 1993. Thereafter, the defendants became dishonest, and started to deny her rights. The plaintiff made several attempts, including the one recently, in 2007, to seek her rights, but all of them failed. As a result, she filed the present suit. The same is within the period of limitation prescribed by law.

8. Article 110 of the Schedule to the Act provides that a suit by a person excluded from a joint family property, to enforce a right to share therein is twelve years. The starting point is when the exclusion becomes known to the plaintiff.

9. It has been held that the object underlying this Article is to afford protection to a member of a joint Hindu family against prejudicial action by the other members of the family behind his back with respect to his interest in the family property. It has been held that this provision, prescribing the period of limitation, and the conditions of its applicability also apply to suits for partition (*Radhoba -vs- Aburao* AIR 1929 PC 231). It has also been held that "exclusion" is a fact specific circumstance, to be seen in the light of

materials on record in every case. However, what should be seen by the court is the intention of the persons so seeking to exclude the plaintiff, from the enjoyment of his (or her) share (*Haresh –vs- Hardevi* 1927 (1) ILR 49 All 763; *Velayudhan –vs- Velumpi Kunji*, ILR 1958 Ker 389 (FB) and *Marudhanayagam Pillai –vs- Sola Pillai* 77 Mad LW 697). This court too, had applied a similar criteria, when considering whether the suit was time barred, and in the judgment reported as *Ramesh Chand V. Tek Chand & Others* 115 (2004) DLT 193.

10. In this case, the plaintiff avers, clearly enough that her entitlement arose upon the death of Desh Raj Singh, in 1988; she further submits that:

“14. That, it appears that, soon after the demise of Sh. Desh Raj Singh and Shri Amrit Pal Singh defendant No.1 became dishonest and in collusion with defendant no.2 started carrying on the family business in an arbitrary manner, detrimental to the interest of HUF.”

In the averments prior to the above allegations, it was contended that the family properties were acquired by the late father, who had, after becoming advanced of age, left its management to the first

defendant, who acted as the Karta. Even if the plaintiff's right to seek partition assuming there to be one, were to be reckoned on the later date indicated, i.e after the death of the late Amrit Pal Singh, (who died in 1993) the suit was time barred, having been filed only in 2006.

11. When the court has to consider whether or not to reject the plaint, it is guided by the principles evolved by the Supreme Court in *T. Arivandandam v. T.V. Satyapal and Another*, (1977) 4 SCC 467. The Court had held that if on a meaningful, not formal, reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Court should exercise its power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. In *Roop Lal Sethi v. Nachhattar Singh Gill*, (1982) 3 SCC 487, the Court observed that when the plaint discloses no cause of action, it is obligatory upon the Court to reject it; yet the rule does not justify the rejection of any particular portion of a plaint.

12. Later again, in *ITC Ltd. v. Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70, it was held that the basic question to be decided in dealing with an application filed by the defendant under Order VII Rule 11 of the Code is to discern if a real cause of action has been set out in the plaint or something illusory has been projected, to get out of the said provision. *Saleem Bhai and Others v. State of Maharashtra and Others*, (2003) 1 SCC 557 is an authority on the issue that the Court can exercise its powers under Order VII Rule 11 of the Code at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial and for that purpose averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant. It was also held in *Mayar (H.K.) Ltd. & Ors -Vs- Owners & Parties, Vessel M.V. Fortune Express & Ors* 2006 (3) SCC 100 that the provision, the Court would be justified in rejecting the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within a time as fixed by the Court, where insufficient

Court-fee is paid and the additional Court-fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law.

13. The averments in the plaint are sufficient to deduce that the even according to the plaintiff, she was excluded from enjoyment of the joint family properties immediately after her father's death. The suit is, significantly enough, not accompanied by any document; it does not also rely on any document. No list of documents has been filed in the last two years. Further, the plaintiff does not advert to a single specific date when the defendants were asked to give her the share in properties, and when they refused. The entire case set up is on an oral demand. No notice, of lawyer, or even of the plaintiff, is relied upon. Thus, on a meaningful reading of the plaint, it has to be concluded that the allusion of demand in 2007, when other parts of the suit show that the grievance about the plaintiff's share having arisen in 1988, is an attempt to get over the question of limitation.

14. In the opinion of this court, an overall reading of the plaint shows that the alleged cause of action for filing this suit, for

enforcement of the plaintiff's rights in the Schedule A properties, according to her, arose in 1988; at best in 1993. In either case, the suit, filed in 2006 is clearly time barred. Therefore, the application IA 7743/2007 has to succeed; it is accordingly allowed. For the same reasons, the plaint in CS OS 1574/2006 is rejected. All pending applications are also dismissed. The parties shall bear their own costs.

DATED: 29th August, 2008

S. RAVINDRA BHAT, J.