

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **IA No.10977/2007 & CS (OS) No.1418/2007**

Date of decision : 18th August, 2009

SMT. JAI LAKSHMI SHARMA PLAINTIFF
Through : Mr. H.S. Gautam, Advocate

Versus

SMT. DROPATI DEVI & ORS. DEFENDANTS
Through : Mr. N.S. Negi, Advocate for
defendants No. 1, 2, 3 & 6.
Mr. Harpreet Singh Sodhi, Adv.
for defendants No.5 & 7.
Mrs. Meena Sharma, Adv. for
defendant No.8.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

ORDER

ARUNA SURESH, J.

IA No.10977/2007 (Order 7 Rule 11 CPC)

1. Plaintiff is the daughter of defendant No.1 and defendants No. 2 and 3 are her unmarried brothers,

whereas remaining defendants except defendant No.8 are married sisters and defendant No.8 is her unmarried sister. Defendant No.1 is widow aged about 80 years. Plaintiff has filed the present suit against all the defendants seeking, declaration, partition and permanent injunction in respect of property known as Shiv Bari, Shri Bhola Mandir, Dhauli Piao, situate at Village Paushangi Pur, Najafgarh Road, forming part of Khasra No.5/23, 10/2/1 and 3/1 claiming herself to be the co-owner of the said property having 1/9th share in the same.

2. One Ram Pat had a son named Bhola. Ram Pat was alleged to be the owner of the suit property which after his death was succeeded by Bhola. Bhola was married to Champa. Defendant No.1 was born out of the wedlock of Bhola and Champa. Bhola pre-deceased Champa. After the death of Bhola, Champa Devi being the wife of Bhola received the said property. After Champa's death defendant No.1 being the sole legal heir became owner of the property by inheritance. Plaintiff and other defendants are children of defendant No.1.

3. Claim of the plaintiff is that the suit property is an ancestral property of the plaintiff and the defendants and therefore she has 1/9th share in the property and accordingly has filed the present suit. Defendants No. 1, 2, 3 and 6 have contested the suit of the plaintiff on various grounds and one of the objections raised in the written statement is that defendant No.1 by virtue of Section 14 of the Hindu Succession Act, 1956 (hereinafter referred to as Act) became absolute owner of the property and plaintiff therefore cannot seek any partition of the property and the suit deserves dismissal under Order 7 rule 11 CPC.
4. Present application under Order 7 Rule 11 CPC has been filed by the defendants seeking rejection of the plaint on the grounds contending inter alia that Smt. Champa Devi had executed a registered relinquishment deed in respect of suit property in favour of defendant No.1 vide relinquishment deed No.1185 dated 25.2.1955 and land was mutated in the name of defendant No.1 vide mutation No. 333 dated 20.2.1955 and therefore as per the revenue

record defendant No.1 received the property by virtue of relinquishment deed executed in her favour and she became owner of the property. After coming into force of the Hindu Succession Act as amended in 2005 defendant No.1 became absolute owner of the property in suit and therefore neither the plaintiff nor any of her sons and daughters have any right, title or interest in the suit property. The ancestral property situate at Village Gubhana, Bahadurgarh was succeeded by all the legal heirs of late Sh. Akshma Dutt, father of the plaintiff and defendants No. 2 to 8 and her share in the said property has already been disposed of by the plaintiff vide registered sale deed dated 10.8.2006 for a sum of Rs.9 lacs. Since claim of the plaintiff is barred under the provisions of Section 14 of the Act, the suit cannot be proceeded with and is liable to be rejected under Order 7 Rule 11 (d) CPC.

5. Plaintiff had contested this application but has not filed any formal reply to the same.
6. It is argued by Sh. H.S. Gautam, counsel for the

plaintiff that suit property was owned by Ram Pat. After his death, the property devolved upon Bhola, his son by succession. Bhola pre-deceased his wife Champa and his daughter Dropati, defendant No.1. The suit property being ancestral property was inherited by Champa and Dropati and after the death of Champa defendant No.1 held the ancestral property as joint owner with the plaintiff and defendants No.2 to 8. He has argued that since suit property is an ancestral property plaintiff has an equal share in the said property and has claimed a declaration to the effect that she holds 1/9th share in the property and also is entitled to claim partition in the property, specially when plaintiff is in possession of a shop in the said property and therefore, according to him the suit filed by the plaintiff is maintainable and is not barred by any law as alleged.

7. Mr. N.S. Negi, learned counsel for defendants No. 1, 2, 3 & 6, has argued that by virtue of Section 14 of the Act defendant No.1 has become the absolute owner of the property in suit and therefore, the suit

is barred by Section 14 of the Act and is not maintainable.

8. The admitted fact are:

(i) Ram Pat owned suit property known as Shiv Bari, Shri Bhola Mandir, Dhauli Piao, situate at Village Paushangi Pur, Najafgarh Road, forming part of Khasra No.5/23, 10/2/1 and 3/1. He left behind only one legal heir Bhola, his son. Bhola, therefore, received this property by succession and became the owner of the property in suit.

(ii) Bhola pre-deceased his wife Champa and his daughter Dropati, defendant No.1. After his death Champa and Dropati became joint owners of the suit property.

(iii) Champa has since died and after Champa's death the entire property has devolved upon defendant No.1.

(iv) As per the revenue record, the entire suit

property stands in the name of defendant No.1 since the year 1955 as it stood transferred in her name after the death of Champa.

(v) Plaintiff is in possession of a shop forming part of the property in suit as shown in green colour in the site plan Annexure P-2.

9. Hindu Succession Act 1956 was amended by the Hindu Succession (Amendment) Act, 2005. The amendment to the Act came into force on 9th September, 2005. Section 14 of the Act was enforced even before the amendment to the Act became operative. However, by virtue of Section 6 of the unamended Act after the death of male Hindu who had an interest in Mitakshara coparcenary, his interest in the property devolved by survivorship upon the surviving members of the coparcenary and not in accordance with the other provisions contained in the Act. In case where deceased had left him surviving female relative specified in class I

of the Schedule or a male relative specified in that class who claimed through such female relative, the interest of the deceased in the Mitakshara coparcenary property devolved by testamentary or intestate succession, as the case may be, under the Act and not by survivorship.

10. After the amendment of Section 6 of the Act, a daughter of a coparcener governed by Mitakshara law becomes a coparcener in her own right by birth in the same manner as the son and she has been given same rights in the coparcenary property which she would have enjoyed had she been a son. In short, by virtue of the amended Section 6 of the Act, a female Hindu governed by Mitakshara law has been given all the rights and liabilities of a Hindu Mitakshara coparcener including her right to dispose of her share in the property by testamentary disposition.

11. Section 6 as amended has to be now read in conjunction with Section 14 of the Act. For convenience sake, Section 6 and Section 14 so far

as relevant for the purposes of the present case are reproduced as below:

“Section 6. Devolution of interest in coparcenary property.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu Family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

an any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidated any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu

Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,--

(a) the daughter is allotted the same share as is allotted to a son;

(b).....”

Section 14. Property of a female Hindu to be her absolute property.—

(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhan immediately before the commencement of this Act.

(2)....”

12. Section 14 of the Act makes it clear that property of a female possessed by her whether acquired before or after the commencement of the Act irrespective

of the mode of acquisition is held by her as full owner thereof and not as limited owner. However, unamended Section 6 of the Act was a bar to a female owning the property and therefore by virtue of the said section a woman remained a limited owner. Since after the amendment of Section 6 a woman has been given full coparcenary rights as a coparcener like a son and is entitled to equal share and has all the rights to dispose of her property including by way of testamentary disposition. Hence, she has become full owner of the property possessed by her whether acquired by her before or after the commencement of the Act, irrespective of the mode of acquisition.

13. In this case, defendant No.1 inherited the suit property as the sole legal heir of deceased Champa Devi after Champa Devi's death and now property stands mutated in the name of defendant No.1. Defendant No.1; Dropati is alive and had inherited this property before amendment to the Act came in force. Since she is alive, she has become the absolute owner of the suit property. Plaintiff and

other defendants interest as collaterals ceased to exist. The plaintiff therefore has no locus standi to challenge the status of defendant No.1 who is now absolute owner of the property in suit. Defendant No.1 has every right to dispose of her property by any manner i.e. by sale or by testamentary disposition. Hence, I conclude that suit is hit by the provisions of Order 7 Rule 11(d) of CPC and is not maintainable.

14. In view of my discussion above, I need not look into the other issues raised in the application which are question of law and facts.
15. The application is accordingly allowed. The suit is hereby dismissed as not maintainable. Under the circumstances, there are no orders as to cost.

**ARUNA SURESH
(JUDGE)**

AUGUST 18, 2009
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