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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS (OS) No. 1229 of 2008 & IA Nos. 7556 of 2008, 9896 of 2010

MANJEET KAUR & ORS ..... Plaintiffs
Through: Ms. Richa Kapoor with Ms. Karuna Chatwal, Advocates.

versus

DAYA SINGH ALIAS SUPHWAS SRICHAWLA & ANR ..... Defendants
Through: Mr. Samrat Nigam, Advocate for D-2.

With

CS (OS) No. 1231 of 2008 & IA Nos. 7559 of 2008, 9892 of 2010

MANJEET KAUR & ORS ..... Plaintiffs
Through: Ms. Richa Kapoor with Ms. Karuna Chatwal, Advocates.

versus

DANIEL SRICHAWLA & ANR ..... Defendants
Through: Mr. Samrat Nigam, Advocate for D-2.

With

CS (OS) No. 1232 of 2008 & IA Nos. 7561 of 2008, 666 of 2009, 4597 of 2009, 9898 of 2010

MANJEET KAUR & ORS ..... Plaintiffs
Through: Ms. Richa Kapoor with Ms. Karuna Chatwal, Advocates.

versus

SAVITRI SRICHAWLA & ANR ..... Defendants
Through: Mr. Samrat Nigam, Advocate for D-2.

With

CS (OS) No. 1233 of 2008 & IA Nos. 7562 of 2008, 9910 of 2010

MANJEET KAUR & ORS ..... Plaintiffs
Through: Ms. Richa Kapoor with Ms. Karuna Chatwal, Advocates.

versus

PURSHOTAM SINGH CHAWLA ALIAS
PRACHOTAM SINGH CHAWLA & ANR ..... Defendant
Through: Mr. Gaurav Sarin with Ms. Charul Sarin, Advocates.

With

CS (OS) No. 1428 of 2008 & IA Nos. 8739 of 2008, 9899 of 2010, 7396 of 2012, 7397 of 2012

MANJEET KAUR & ORS ..... Plaintiffs
Through: Ms. Richa Kapoor with Ms. Karuna Chatwal, Advocates.

versus

NARIN SRICHAWLA ALIAS
NARINDER SINGH CHAWLA & ANR ..... Defendants
Through: Mr. Gaurav Sarin with Ms. Charul Sarin, Advocates for D-2.

With

CS (OS) No. 1498 of 2008 & IAs. 10447 of 2009, 9955 of 2010

MANJEET KAUR & ORS ..... Plaintiffs
Through: Ms. Richa Kapoor with Ms. Karuna Chatwal, Advocates.

versus

SUE SEUNG SYANG SRICHAWLA AND
ANR ..... Defendants
Through: Mr. Gaurav Sarin with Ms. Charul Sarin, Advocates for D-2.

And

CS (OS) No. 1500 of 2009 & IAs. 10460 of 2009, 9944 of 2010, 20035 of 2012

MANJEET KAUR & ORS ..... Plaintiffs
Through: Ms. Richa Kapoor with Ms. Karuna Chatwal, Advocates.

versus

SUKHBIR KAUR & ANR ..... Defendants
Through: Mr. Gaurav Sarin with Ms. Charul Sarin, Advocates for D-2.

CORAM: JUSTICE S.MURALIDHAR

ORDER
05.12.2013

1. This is a batch of seven suits filed by Smt. Manjeet Kaur, Plaintiff No. 1, Smt. Surinder Kaur, Plaintiff No. 2, Shri Amornthep Srichawla, Ms. Orasa Srichawla, and Ms. Orapin Srichawla, Plaintiffs 3, 4 and 5, all children of late Shri Ongkar Singh seeking declaration and mandatory injunction for enforcing the Plaintiffs' preferential rights to acquire the shares in the property at 28, Pusa Road (Ajmal Khan Road), New Delhi ['the suit property'] under Section 22 of the Hindu Succession Act, 1956 ('HSA').

2. The facts of the first suit CS (OS) No.1229 against Shri Daya Singh @ Suphwas Srichawla, Defendant No. 1 and Y.T.C. Housing Private Limited, Defendant No. 2 may be set out illustratively since the issues that arise in all the suits are more or less the same.

3. The case of the Plaintiffs is that the suit property was owned by Shri Narain Singh Chawla who died on 2nd March 1974 leaving behind Smt. Harjinder

Kaur, (wife), his children, Shri Onkar Singh @ Seth Ongkar Singh, Shri Jagtar Singh, Shri Pritpal Singh, Shri Narankar Singh, Shri Narinder Singh, Shri Daya Singh (Defendant No. 1), Shri Gurdip Singh, Shri Parshotam Singh and his daughters Smt. Manjeet Kaur (Plaintiff No. 1), Smt. Kuljeet Kaur and Smt. Sukhbir Kaur. It is stated that Shri Ongkar Singh died on 20th May 2002 leaving behind Smt. Surinder Kaur Srichawla (Plaintiff No. 2), Shri Amornthep Srichawla, Ms. Orasa Srichawla and Ms. Orpin Srichawla (Plaintiff Nos. 3 to 5).

4. Shri Narankar Singh died on 20th January 2002 leaving behind his wife, three sons and one daughter. His two sons Shri Sukhdev Singh and Shri Manjit Singh along with their mother, Smt. Vinder Kaur, filed CS (OS) No. 1196 of 1988 seeking partition, declaration and permanent injunction in respect of the properties including the suit property. A preliminary decree of partition was passed on 8th May 2007 in the said suit with the consent of the parties and their respective shares were determined in terms of the chart submitted to the Court. Prior to the preliminary decree, Shri Manjit Singh and Shri Sukhdev Singh executed a relinquishment deed dated 31st May 2005 relinquishing their shares in all the properties including the suit property in favour of Shri Purshotam alias Shri Prachotam Srichawla, the Defendant in CS (OS) No. 1233 of 2008. Thereafter, on 6th August 2005, Shri Manjit Singh and Shri Sukhdev Singh filed IA No. 6402 of 2005 seeking to withdraw CS (OS) No. 1196 of 1988. Plaintiff Nos. 2 to 5 were parties to the suit as legal representatives ('LRs') of Defendant No. 3 in the said suit. The LRs of Defendant No. 3 made a statement on 1st September 2005 that they should be transposed as Plaintiffs. On 25th April 2008, an order was passed in IA No. 6402 of 2005 permitting the Plaintiffs to withdraw the suit and dismissing the suit as withdrawn. In the said

order, the Court recorded the submission of learned counsel for Shri Manjit Singh and Shri. Sukhdev Singh that they had executed deeds of relinquishment in favour of Shri Purshotam Chawla. It may be noted that the suits filed by the Plaintiffs challenging the relinquishment deeds dated 31st May 2005 in favour of Shri Purshotam Chawla were dismissed by this Court by a judgment dated 8th November 2013 in CS (OS) Nos. 1228 of 2008, 1230 of 2008, 1420 of 2008, 1421 of 2008, 1433 of 2008 and 1434 of 2008.

5. As far as the present case is concerned, the prayer is for the declaration of the Plaintiffs' pre-emptive right to purchase the suit property from Defendant No. 1, who, according to them, failed to inform them of his proposal to transfer his share in the suit property to Defendant No.2. Certain undisputed facts concerning the suit property need to be noticed. Suit No. 294 of 1972 was filed during the life time of late Shri Seth Narain Singh Chawla in relation to the suit property. The said suit was decreed on 19th May 1978. Pursuant thereto, sale deeds were executed by the Registrar of this Court in respect of the 1/12th shares of each of the twelve LRs of late Shri Seth Narain Singh Chawla. This included Plaintiff No. 1, Shri Ongkar Singh (husband of Plaintiff No. 2 and father of Plaintiffs 3 to 5). As a result Smt. Harjinder Kaur (the widow of late Shri Seth Narain Singh Chawla) and each of the 11 children got their 1/12th share in the suit property absolutely.

6. During the pendency of the suits, Plaintiff No. 1 Smt. Manjit Kaur expired on 18th April 2010. Even prior to her death, she sold her 1/12th share in the suit property to Defendant No. 2, YTC Housing Private Limited, by a registered sale deed dated 29th July 2009. Clause 5 of the sale deed stated that the vendor admitted that neither she nor her legal heirs and successors would have any

right, title and interest in the said share in the suit property and would not claim any right in future and have been left with no right, title and interest of any nature whatsoever in the said share in the suit property and that the vendee, i.e., YTC Housing Private Limited has become the absolute owner of the 1/12th share in the suit property. Apart from an indemnity bond executed on the same date, Plaintiff No. 1 has also sworn an affidavit of the same date agreeing to withdraw the cases filed by her in this Court. This was in the context of Plaintiff No. 1 having filed as many as 21 cases in this Court in relation to the suit property and certain other properties. The above facts have been brought on record by Defendant No. 2 in one of the suits which was dismissed on 8th November 2013. The said facts have not been denied by the Plaintiffs.

7. One consequence of the above development was that Plaintiff No. 1 entirely gave up her right in the suit property during her life time. Consequently, there was no right for her LRs to inherit. Therefore when they filed IA No. 9896 of 2010 under Order XXII Rule 3 CPC, even while Defendant no. 2 did not object to their being brought on record, it raised an objection that as a result of Plaintiff No. 1 selling her 1/12th share in the suit property to them, nothing survived in this suit. In its order dated 16th May 2013 allowing the application of the LRs of Plaintiff No.1, the Court kept open the above objection of Defendant No. 2.

8. Ms. Richa Kapoor, learned counsel appearing for the Plaintiffs, submitted that notwithstanding all of the above developments, the pre-emptive right of the LRs of Plaintiff No. 1 and the LRs of late Shri Ongkar Singh Chawla (Plaintiffs 2 to 5) to purchase the undivided share of Defendant No. 1 which

was sold to Defendant No. 2 by a registered sale deed dated 7th May 2008 still survives. According to her, what was sold by Defendant No. 1 is the 'undivided share' in the suit property which implied that the partition of the suit property was yet to take place. Building on this argument, she submitted that the LRs of Plaintiff No.1 and Plaintiff Nos. 2 to 5, who were the LRs of Shri Ongkar Singh, had inherited the pre-emptive right of their respective predecessors under Section 22 of the HSA. She further submitted that although the decision of this Court in ***Kusum Kumria v. S.P. Kumria 2006 (88) DRJ 233*** does not support her submission, it fails to take into account the decisions of the Supreme Court in ***Kanta Rani v. Rama Rani AIR 1988 SC 726, Girja Nandini Devi v. Bijendra Narain Choudhury AIR 1967 SC 1124, Hazari v. Neki AIR 1968 SC 1205***. She also relied upon the decisions in ***Audh Behari Singh v. Gajadhar Jaipuria AIR 1954 SC 417, Bhagirathi Chhatoi v. Adikanda Chhatoi AIR 1988 Orissa 285*** and ***Valliyu Sreedev Amma v. Subbadra Devi AIR 1976 Kerala 19***.

9. Mr. Gaurav Sarin, learned counsel for Defendant No. 1, pointed out that the decision in ***Kusum Kumria v. S.P. Kumria*** clearly holds that the right under Section 22 HSA was confined to Class I heirs. Plaintiff Nos. 2 to 5 were not Class I heirs of late Shri Seth Narain Srichawla. Shri Ongkar Singh was not a pre-deceased son, but a deceased son of late Shri Seth Narain Srichawla. The son of a deceased son was not a Class I heir. He further submitted that as far as Plaintiff No. 1 is concerned, she sold all her rights in the suit property to Defendant No. 2 during the pendency of the suit. Thirdly, Mr. Sarin pointed out that Plaintiff No.1 had earlier filed CS (OS) No. 405 of 2009 seeking identical reliefs as in these suits. Mr. Sarin produced a copy of orders dated 8th April 2009 and 13th May 2009 passed in the said suit which showed that the

Plaintiff had abandoned her claim both for permanent and mandatory injunction when it was realised that she had not paid the requisite court fee as the suit had been grossly undervalued. Lastly, it is submitted that the present suits were an abuse of the process of law. The suit themselves could not have been filed by Plaintiff Nos. 2 to 5 by themselves, as it was Plaintiff No.1 who was the Class 1 heir. She sold away her right to Defendant No.2 during the pendency of the suit. As regards Plaintiff Nos. 2 to 5 are concerned, they were parties to the earlier partition suit CS (OS) 1196 of 1988 in which the order dated 25th April 2008 was passed in their presence recording the fact that the shares of those Plaintiffs were sold to Shri Parshotam Chawla.

10. The above submissions have been considered. First and foremost it requires to be noted that the twelve heirs of late Shri Seth Narain Singh Chawla became absolute owners of their respective 1/12th share each in the suit property when sale deeds were executed in their favour in respect thereof consequent upon the order dated 19th May 1978 in Suit No. 294 of 1972. Consequently, just as Smt. Manjit Kaur became the absolute owner of her 1/12th share in the suit property, so did each of the other heirs, including Shri Daya Singh, as regards their respective shares. The said shares were 'undivided' only in the sense that they perhaps were not demarcated as such. However, after the execution of the said sale deeds, nothing remained of the suit property for being partitioned. These eight suits proceed on the misconception that the suit property is yet to be partitioned. Consequently, the prayer for declaring any pre-emptive right of the LRs of Plaintiff No.1 or Plaintiff Nos. 2 to 5 to purchase the share of Defendant No.1 in the suit property is misconceived.

11. The facts in ***Kanta Rani v. Rama Rani*** and the other decisions cited by Ms. Kapoor are entirely different. They were in the context of rights in ancestral properties remaining to be partitioned. None of the said decisions involve a situation where registered sale deeds have been executed in respect of 1/12th shares of each of the heirs of late Shri Seth Narain Singh. Once that event occurred, there was no property left to be partitioned. The word 'undivided' only connoted the need for the 1/12th share in the suit property to be demarcated.

12. As far as Plaintiff No.1 is concerned, there is no dispute in the fact that during her life time and after filing the present suits, she sold her 1/12th share in the suit property to Defendant No. 2 by a registered sale deed. After that, she did not have any surviving right in the suit property. As far as the Plaintiff No.1 is concerned, nothing survived in the suits thereafter. Further after the sale deeds transferring their respective 1/12th share in the suit property in their favour were executed, each heir of late Shri Seth Narain Singh could have validly transferred such share, even if it was not yet demarcated, to any third party. This is what both Plaintiff No.1 and Defendant No.1 did. The question of that share being offered again to the Plaintiffs or their LRs for purchase does not arise.

13. As far as Plaintiff Nos. 2 to 5 are concerned, they were parties to the earlier partition suit CS (OS) 1196 of 1988 in which the order dated 25th April 2008 recording the fact of transfer of the shares of Shri Sukhdev Singh and Shri Manjeet Singh to Shri Parshotam Chawla by the relinquishment deed was recorded in their presence. That order has become final. Plaintiff Nos. 2 to 5 cannot be permitted to reopen the issue concerning their share in the suit

property. Further, the decision in ***Kusum Kumria v. S.P. Kumria*** precludes them from claiming any pre-emptive right under Section 22 HSA since they are not Class I heirs of late Shri Seth Narain Singh.

14. The above reasons are sufficient for the court to conclude that the suits do not disclose any cause of action and that none of the prayers made in the suits can be granted in law. However, there are other factors as well that preclude the Court from permitting the suits to proceed. Although there were five Plaintiffs at the time of filing of these suits, the plaint and the affidavit in support of the plaint in each suit was signed only by Ms. Orasa Srichawla, Plaintiff No. 4 for 'self and attorney'. Plaintiff No. 1 did not sign the plaint or the affidavit in support thereof at any time till her death on 18th April 2010. Secondly, it is correct that these suits, which pray for permanent and mandatory injunctions have been undervalued for the purposes of court fee. There is no averment in the plaints that the Plaintiffs were in constructive or physical possession of any of the suit properties. The question of paying a fixed court fee does not, therefore, arise. Although the Court could have insisted on the Plaintiffs first making good the deficit court fee, it is not inclined to do so since in any event, for the reasons already stated, the reliefs prayed for in the suits cannot be granted in law.

15. The suits and pending applications are dismissed.

S. MURALIDHAR, J.

DECEMBER 05, 2013
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