

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

**+ C.R. P. 131/2012 & CM Applications 18385/2012
& 18386/2012**

Date of Decision: 31.10.2012

SMT. USHA ARORA Petitioners

Through: Mr. I.S. Bakshi, Adv.

Versus

SH. JAGDISH CHANDER VERMA & ANR. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This revision petition is directed against order dated 01.09.2012 of ADJ, Central whereby an application under Order 12 Rule 6 CPC read with Order 7 Rule 11 CPC, filed by the petitioner, who was defendant No. 3 in the suit, was dismissed.

2. The respondents had filed a suit for partition against the petitioner and other defendants. They had sought partition of the suit premises on the plea of the same being the Joint Hindu Family property of late Shri Kalu Ram. The defendants including the petitioner were contesting the suit and one of their pleas was that the

suit premises was self acquired property of late Kalu Ram. They had also taken the plea that Kalu Ram had executed a registered Will dated 30.08.1972 in favour of his wife Bhagwanti Verma. Subsequently, the respondents conceded to the plea of the defendants that the suit property was self acquired property of late Kalu Ram. On such a plea being taken by the respondent/plaintiff, the defendants including the petitioner filed the instant application under Order 12 Rule 6 read with Section 7 Rule 11 CPC stating that this amounted to unequivocal and unconditional admission on the part of the respondents that the suit premises was self acquired property of Kalu Ram and that being so, there does not survive any cause of action in their favour. In response to the application, it was submitted by the respondents/plaintiffs that respondent Jagdish Chander Verma S/o Kalu Ram is aged 82 and since he intends to see the outcome of the suit during his life time, he gave up the plea of suit property being a joint Hindu Family property. They, however, denied that giving up the plea of the suit property being Joint Hindu Family Property amounted to admission on their part and would render the suit without cause of action.

3. The learned ADJ dismissed the application observing as under:

“It is not a case that entirely new facts not set up by either of the branches of parties is being propounded by plaintiffs. They have not violated the parameters enunciated in the **Bachhaj Nahar Vs. Nilima Mandal AIR 2009 SC 1103** case, relied upon by the defendants. Even if the court would have reached the conclusion of suit property being self acquired property of late Sh. Kalu Ram, after trial, the question of entitlement of plaintiffs to the partition of suit property would certainly have been considered. The partition suit are not of the nature of normal civil litigation. It does not really matter as to on which side one is arrayed to define individual share of share of each of them in the property left behind by common ancestor, of course subject to the decision on other pleas viz. Limitation, existence of Will, Sale etc.”

4. I have heard the learned counsel for the petitioner and perused the record.

5. The litigating parties are the branches/successors of late Kalu Ram from his two wives. The initial plea of the respondents was that the suit property was a Joint Hindu Family property, whereas that of the petitioner and the defendants was that it was a self acquired property of Shri Kalu Ram. The latter was also relying upon the execution of a Will by Sh. Kalu Ram dated 30.08.1972. the

respondents have disputed the execution of the Will, which is admittedly not yet proved. On 12th October, 2011 a statement was made by the learned counsel for the respondents to the effect that the suit property may be taken as self acquired property of late Kalu Ram. However, the original relief of partition was maintained. What was changed by the respondents was only a plea as regard to the status of the suit property. In a suit for partition, the issue regarding the suit property being self acquired or Joint Family Property was essentially required to be determined. Even if the plea of the respondents of the suit property being Joint Hindu Family Property, was not substantiated, the question of their entitlement to the partition was necessarily required to be determined. The learned ADJ observed and rightly so that even if the Court was of the opinion that the property was self acquired of late Kalu Ram after trial, the question of entitlement of respondents/plaintiffs would certainly be required to be considered. No new case was sought to be set up by the respondents. It was not that they had admitted the entire claim of the defendants. The provisions contained in Order 12 Rule 6 read with under Order 7 Rule 10 CPC are not attracted to the factual matrix of the instant case.

6. I do not see any infirmity or illegality in the impugned order.
The petition has no merit and is dismissed hereby in limini.

M.L. MEHTA, J.

OCTOBER 31, 2012

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