

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

Reserved on: 21.04.2014
Date of Decision: 17.10.2014

+ CM (M) No.111/2013 & CM No.1507/2013

SHRI GURCHARAN SINGH THROUGH HIS LRs
SHRI HARMOHAN SINGH Petitioner
Through: Ms. Deepika V. Marwaha, Adv.

versus

SHRIINDERJIT SINGH & ORS. Respondents
Through: Mr. T.K. Tiwari, Adv. for R-5.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition under Article 227 of the Constitution of India impugns an order dated 04.01.2013, whereby the Trial Court allowed the application under Order I, Rule 10 of CPC filed by respondents no. 3 & 4; they were impleaded as plaintiffs no. 1(c) and 1(d) in the suit instituted by one Mr. Gurcharan Singh (deceased plaintiff) for declaration and partition.

Brief facts

2. The deceased plaintiff passed away on 24.09.1991. He was survived by his wife, two sons and two daughters. For the sake of brevity,

the two sons (petitioner and respondent no. 5 herein) shall be referred to as brothers and the two daughters (respondents no. 3 & 4 herein) as sisters, hereinafter. Upon the death of the deceased plaintiff, an application for substitution as LRs was filed on 17.10.1991. In the said application, the names of all the aforesaid legal heirs of the deceased plaintiff were disclosed. During the pendency of the said application, the wife of the deceased plaintiff too passed away i.e., on 07.05.1995. The application for substitution as LRs was allowed on 27.01.1997 but only the brothers were substituted as LRs of the deceased plaintiff.

3. In the application for impleadment, the sisters had submitted that though the aforesaid application dated 17.10.1991 disclosed the names of all the legal heirs including theirs but since at that time they were married and were not in a position to conduct the case, they had informed their brothers to not get them impleaded in the suit. It was further submitted that the brothers had obtained their signatures on already prepared applications and affidavits, assuring them that they would not be impleaded in the suit; that they were under the *bona fide* impression that the brothers were prosecuting the case diligently and they (sisters) would get their respective shares upon partition of the suit property; that thereafter, they started getting evasive replies from their brothers and therefore, a legal notice dated 08.01.2010 was sent to them; that Mr. Harmohan Singh (one of the brothers) gave a reply to the said legal notice and stated that there was a settlement between all the legal heirs of the deceased plaintiff by which the sisters had relinquished their shares in favour of their mother and the two brothers; that in view of this reply, the

sisters came to know that a consent preliminary decree dated 28.04.2000 had already been passed in the suit; that they never relinquished their shares in the suit property and that fraud was played upon by the brothers in the earlier application for substitution as LRs wherein it was mentioned that the sisters were not claiming their shares; that they became aware of the same when they inspected the court file; that the order dated 27.01.1997 allowing substitution as LRs did not hold that the sisters had relinquished their shares in favour of the brothers. It was finally submitted that the alleged relinquishment was not by way of a registered relinquishment deed or any other registered document. Consequently, the sisters sought their impleadment in the suit.

4. The application of the sisters, seeking impleadment was opposed by Mr. Harmohan Singh (Petitioner herein) and it was submitted that the sisters were well aware of the litigation since 1983, pending between their father and their uncles; that the suit property was a coparcenary property purchased by the father of the deceased plaintiff and the defendants in their mother's name; that after the death of the plaintiff, a settlement took place between all the LRs of the deceased plaintiff apropos all the movable and immovable properties and the sisters even executed a relinquishment deed in favour of Mr. Harmohan Singh apropos tenancy rights in a shop; that the sisters did not have any share in the coparcenary property under section 6 of the Hindu Succession Act but still averments in the application for substitution were made that the sisters were not claiming any share in the suit property as LRs of the deceased plaintiff and that they had given up their shares in favour the mother and the two

brothers; that the sisters had also executed an affidavit supporting the said plea in the application for substitution; that no relinquishment deed was required under section 6 of the Hindu Succession Act as the suit property is a coparcenary property; that the application for substitution as LRs was allowed in favour of the brothers and this fact has been in the sisters' knowledge for the last 15 years; that the sisters were deliberately trying to delay the suit proceedings in connivance with Mr. Sarabjit Singh; that earlier one Mr. Tanbeek Singh had filed an application for his impleadment but was rejected by the High Court, cautioning him and his father to not delay the suit proceedings; that after the preliminary decree was passed on 28.04.2000, several rounds of talks were held between the two brothers in which the sisters had also participated with their husbands and thus, they were aware of the developments in the suit but kept mum all along; that the application for impleadment was not only time barred but also that the sisters were estopped from raising the said plea; that the inheritance opened in 1991 with respect to the coparcenary property and the sisters were not the LRs of the deceased plaintiff; that the preliminary decree was passed more than 12 years ago and had become final and executable; that under the right of survivorship, only the sons inherit the coparcenary property and that the application for impleadment had been filed only to delay the suit proceedings. It was finally argued that the sisters were business women and were always capable of prosecuting the case.

5. The aforesaid application had been opposed by Mr. Sarabjit Singh (Bawa) too, Respondent no. 5 herein though halfheartedly. It was
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submitted that only Mr. Harmohan Singh used to take care of the litigation and even his signatures were obtained on already typed applications; that he used to sign the same without even going through their contents; that after the death of their mother, dispute arose between him and Mr. Harmohan Singh and they engaged separate lawyers; that he was aware of the fact that the sisters had given up their shares in the suit property and he never misrepresented any fact to the sisters.

6. Mr. Devender Singh, Respondent no.2 herein had also opposed the application of the sisters, seeking impleadment in the suit. It was submitted that he was not aware of the allegations made in the application but however, the application should not be allowed.

7. The sisters thereafter, filed rejoinder to the application and claimed that at least their mother's share vested in all the children including them after her demise.

Impugned order

8. The Trial Court was of the view that since the sisters had claimed misrepresentation by the brothers, it would be improper for it to outrightly reject their contention. It was further of the view that in any case, after the mother's demise, the sisters had a share in the suit property. The Trial Court took note of the fact that the relinquishment, if any by the sisters was in favour of the mother as well as the two brothers. It was observed that relinquishment of rights in any immovable property of the value of Rs. 100 and above had to be by way of registered documents but admittedly, there was no written or registered relinquishment deed apropos the shares of the sisters. The contention of Mr. Harmohan Singh

that the suit property was a coparcenary property and the sisters had no right to shares was rejected by the Trial Court. In this context, it was observed that the suit, originally instituted by the deceased plaintiff had arrayed his three sisters as defendants in the suit. The Trial Court was further of the view that Mr. Harmohan Singh, in the earlier application seeking substitution as LRs could have taken the plea that the sisters had no share in the suit property but to the contrary, it was claimed that the sisters were not claiming their shares.

9. The Trial Court relied upon a decision of the Supreme Court in *Prema v. Nanje Gowda & Ors.*¹ wherein it was held that in a partition suit, by a preliminary decree, only shares of the parties were determined and the actual partition does not take place; therefore, the proceedings could not be termed to have become final so far as the actual partition of the joint family properties were concerned. It was further held that if the rights of the parties to the suit change due to other reasons, the Court seized with the final decree proceedings was not only entitled but also duty bound to take notice of such change and pass appropriate orders.

10. The Trial Court was further of the view that the deceased plaintiff himself had impleaded his sisters as defendants. Furthermore, the Trial Court was of the view that it will be question of fact and law as to whether the sisters, being daughters of the deceased plaintiff were entitled to their shares or not which must be determined in the suit and not prejudged in their application under Order I, Rule 10 of CPC. The Trial Court had also

¹ AIR 2011 SC 2077

relied upon a decision of the Supreme Court in *Hardeo Rai v. Sakuntala Devi & Ors.*² to distinguish between a Mitakshara coparcenary property and a joint family property and was of the view that it was necessary to determine the status of the sisters and the brothers. In view of the aforesaid, the Trial Court held that the sisters being Class-I legal heirs of the deceased plaintiff, were entitled to be impleaded in the suit.

Submissions before this Court

11. The learned counsel for the parties were heard. The learned counsel for the petitioner has submitted that the application of the sisters, seeking impleadment was time barred and their right in the property, if any had extinguished with the passage of time. She has relied on the provisions of Sections 3 and 27 read with Article 110 of the Limitation Act, 1963 in support the said contention. She has also placed strong reliance on a decision of this Court in *Amrit Kaur v. Sarabjeet Singh & Ors.*³ and also on four other judgments.⁴

12. The learned counsel for the sisters has submitted that Article 110 of the Limitation Act has no application in the instant case since the period of limitation, envisaged under the said provision is with respect to institution of a suit whereas in the instant case, the suit had already been instituted long ago. It is further submitted that Order I, Rule 10(2) of CPC

² AIR 2008 SC 2489

³ (2008) 153 DLT 392

⁴ Ashis Kumar Hazra v. Rubi Park Cooperative Housing Society Ltd. & Ors., (1997) 6 SCC 26; Ashok K. Khurana v. Steelman Industries & Anr., AIR 2000 Del 336; Chhotelal Babulal & Anr. v. Premlal Girdharilal & Ors., AIR 1977 MP 34; Prem Singh & Ors. v. Birbal & Ors., JT 2006 (5) SC 311, (2006) 5 SCC 353.

enables the Court to add a party at any stage of the proceedings provided that such a party is a necessary one so that the Court can completely adjudicate upon all the questions involved in the suit; that there is no limitation for filing an application under the said provision and the only restriction is that the suit must be pending; that only a preliminary decree for partition has been passed and the final decree is yet to be passed; that till such time the final decree is passed and the allottees are put in possession of the respective properties, the partition is incomplete and has relied on two judgments.⁵ It is further submitted that in case some of the legal heirs of the deceased party are already on record, then there is no limitation for bringing on record the other legal heirs and has relied on two judgments.⁶ It is also submitted that since fraud was played upon by the brothers, the Trial Court was right in holding that the shares of the sisters must be determined after making them parties to the suit.

Analysis

13. This Court has given due consideration to the arguments advanced by the learned counsel for the parties and the authorities relied upon by them. The question which needs to be considered is whether the Trial Court was right in impleading the sisters in the partition suit after a preliminary decree had already been passed. The sisters had contended that they never relinquished their rights/shares in the suit property and that

⁵ S. Sai Reddy v. S. Narayana Reddy & Ors., (1991) 3 SCC 647; Prema v. Naje Gowda, AIR 2011 SC 2077.

⁶ Mahabir Prasad v. Jage Ram & Ors., AIR 1971 SC 742; Badri Narain Prasad Sah & Ors. v. Bansidhar Prasad & Ors., AIR 1982 Patna 138.

fraud was played upon by the brothers in claiming that the sisters had relinquished their shares.

14. This Court is of the view that the Trial Court was correct in impleading the sisters in the suit. Insofar as the sisters had contended that they had rights/shares in the suit property and that the consent preliminary decree was allegedly obtained by fraud, the status and the rights/shares of the sisters had to be determined at Trial. It could not have been prejudged at the stage of their application seeking impleadment. Resultantly, they had to be impleaded in the suit. Furthermore, the Trial Court was correct in holding that relinquishment of shares, if any by the sisters was not by way of registered documents. Under Section 17 of the Registration Act, 1908, extinguishment of any right, title or interest in an immovable property, whether vested or contingent shall be compulsorily registered. Insofar as the alleged relinquishment of rights/shares by the sisters did not comply with the mandatory requirements of law, relinquishment by way of affidavits was ex-facie invalid. Furthermore, the sisters' right to inheritance from their mother's share too would commence upon her demise on 7th May, 1995.

15. This Court is unable to subscribe to the submission of the learned counsel for the petitioner that the application of the sisters, seeking impleadment was time barred. Sections 3 and 27 of the Limitation Act, 1963 are reproduced as under:

“3. Bar of limitation.- (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed

period shall be dismissed, although limitation has not been set up as a defence.

(2) For the purposes of this Act-

(a) a suit is instituted-

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue is made; and

(iii) in the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set-off, on the same date as the suit in which the set off is pleaded;

(ii) in the case a counter claim, on the date on which the counter claim is made in court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court;

27. Extinguishment of right to property – At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

Under Article 110, Part IX of the Schedule to the Limitation Act, the limitation period is twelve years for instituting a suit by a person excluded from a joint family property to enforce a share therein. The time from which the said period begins to run is when the exclusion becomes known to the plaintiff.

16. Under Section 27 of the Limitation Act, at the determination of the period prescribed thereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. However, in the present case, the sisters have not instituted a fresh suit for claiming their shares in the suit property but have only sought their impleadment in an already instituted/pending suit. Therefore, it cannot be said that the right of the sisters in the suit property had extinguished with the passage of time, as was contended by the learned counsel for the petitioner.

17. The learned counsel for petitioner had contended that a valuable right had accrued in favour of the petitioner and could not be allowed to be defeated by an erroneous order. She had placed strong reliance on Section 3 of the Limitation Act which provides that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed. She had also relied on the period prescribed under Article 110 of the Limitation Act. This Court is also of the view that the limitation period envisaged under Article 110 of the Limitation Act is applicable only to institution of suits and not to applications and a bare reading of the said statutory provision would make it abundantly clear. Insofar as Article 110 is not applicable to the present case, reliance on Section 3 of the

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Limitation Act is irrelevant. Furthermore, under Order I, Rule 10 (2) of CPC, a Court has the power to add a party at any stage of the proceedings to effectively and completely adjudicate upon all the questions involved in the suit. The expression '*at any stage of the proceedings*' would also include a stage wherein the preliminary decree has already been passed.

18. The reliance on **Amrit Kaur (supra)** by the learned counsel for the petitioner is also misplaced. In the said decision, this Court had rejected the plaint of the plaintiff therein since the suit had been instituted after the expiry of the limitation period. It was held that the cause of action i.e., exclusion from the joint family property arose in 1988, at best in 1993 and the suit instituted in 2006 was held to be clearly barred by time. The reliance on **Ashis Kumar Hazra (supra)** is also misplaced since the issue in it related to condonation of delay for instituting a suit within the ambit of Section 95(3) of the West Bengal Cooperative Societies Act. The reliance on **Ashok K Khurana, Chotelal Babulal and Prem Singh (supra)** would also not help the case of the petitioner since the facts of the present case are entirely different.

19. In view of the aforesaid discussion, this Court finds no merit in the present petition. The reasoning for and the conclusion arrived at in the impugned order is a plausible view in law; it does not suffer from material irregularity, illegality or any infirmity. This petition is without merit and is accordingly dismissed.

OCTOBER 17, 2014
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