

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

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Date of decision: 26th March, 2014.

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CS(OS) No.350/2012

SANGEETA BHAMBANI

..... Plaintiff

Through: Mr. Uttam Datt, Mr. Nawab Singh
Jaglan & Mr. Shubham Aggarwal,
Advs.

Versus

JATINDER SARDANA & ORS.

..... Defendants

Through: Mr. Praveen Chauhan, Mr. Vijay
Kumar & Mr. Kailash Chand, Advs.
for D-1.
Mr. P. Choudhary & Mr. P.C.
Dhingra, Advs. for Applicant in IA
No.538/2014.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The plaintiff has instituted this suit for partition of property constructed on plot No.94, Block-51, Panchsheel Co-operative Housing Society, Panchsheel Park, New Delhi, pleading:-

- (i) that the mother of the plaintiff and the defendant no.5 Shri Sandeep Bhambani was the daughter of late Shri Chiranjiv Lal Sardana and Smt. Leelawati Sardana;

- (ii) Shri Shri Chiranjiv Lal Sardana was the only son of Shri Uttam Sardana who was a resident of Pakistan; Shri Uttam Sardana was a doctor by profession and owned vast ancestral agricultural lands, shops and houses in Pakistan;
- (iii) that upon the demise of Shri Uttam Sardana all his aforesaid properties were inherited by Shri Chiranjiv Lal Sardana as his only legal heir.
- (iv) that Shri Chiranjiv Lal Sardana though an Advocate by profession, only managed the aforesaid properties;
- (v) upon partition in the year 1947, Shri Chiranjiv Lal Sardana migrated to Gwalior leaving behind the properties aforesaid in Pakistan;
- (vi) that in lieu of properties left in Pakistan, Shri Chiranjiv Lal Sardana was allotted agricultural lands in Hisar, Haryana;
- (vii) that Shri Chiranjiv Lal Sardana was working with the Rehabilitation Department, Govt. of India for a brief time and his wife Smt. Leelawati Sardana was employed with the Home Department, Government of India;

- (viii) Shri Chiranjiv Lal Sardana, from the joint family funds, in or about the year 1959 purchased a house in Karol Bagh;
- (ix) that in or about the year 1961-62 Shri Chiranjiv Lal Sardana applied for plot of land in Panchsheel Co-operative Housing Society in the name of his younger son Shri Surender Sardana;
- (x) that Shri Chiranjiv Lal Sardana died on 30th October, 1963;
- (xi) that Shri Surender Sardana sold the lands in Hisar for the family needs, including for payment of installments of the plot aforesaid in Panchsheel Park;
- (xii) that a perpetual Sub Lease of the plot aforesaid in Panchsheel Park was executed in favour of Shri Surender Sardana on 13th April, 1969;
- (xiii) Shri Surender Sardana in or about the year 1985 sold the Karol Bagh house and invested the sale proceeds thereof in raising the construction over the plot in Panchsheel Park;
- (xiv) that Shri Surender Sardana started living alone in the Panchsheel Park house in the year 1999;
- (xv) that sale proceeds of the jewelry of Smt. Leelawati Sardana were also used in construction of the house at Panchsheel Park;

- (xvi) that Shri Chiranjiv Lal Sardana and Smt. Leelawati Sardana, besides the mother of the plaintiff and the defendant no.5 and Shri Surender Sardana aforesaid, also had another son namely Shri Jatinder Sardana (defendant no.1 herein) and three other daughters namely Smt. Sushma Dewan (defendant no.2), Smt. Sushila Arora (defendant no.3) and Smt. Pushpa Mediratta (defendant No.4);
- (xvii) that the mother of the plaintiff and the defendant no.5 expired on 9th November, 1993;
- (xviii) that Shri Surender Sardana was allowed to stay in the Panchsheel Park house as a he did not have a source of income and was unmarried;
- (xix) that the Panchsheel Park house was “a joint family property, it was always subject to partition amongst the children of Shri Chiranjiv Lal Sardana”;
- (xx) that Shri Surender Sardana always assured the plaintiff that the Panchsheel Park house would be partitioned and the plaintiff would be given her share therein;

- (xxi) that the plaintiff continued under the belief that her mother's share in the Panchsheel Park house was secured;
- (xxii) Shri Surender Sardana died intestate on 5th April, 2011, without leaving any Class-I heir within the meaning of Hindu Succession Act, 1956;
- (xxiii) after the death of Shri Surender Sardana, the defendant no.1 took over the property;
- (xxiv) that the defendant no.1 inspite of demand of the plaintiff and other family members refused to partition the Panchsheel Park property;
- (xxv) that the defendant no.1 on the contrary applied to the DDA for mutation of the Panchsheel Park property in his own name; and,
- (xxvi) that the plaintiff filed objections to the said mutation.

accordingly, claiming to be one of the heirs of her mother, this suit has been filed stating that the plaintiff and her brother defendant no.5 are entitled to succeed to 1/7th share which their mother had in the Panchsheel Park property.

2. The defendant no.1 has contested the suit by filing the written statement, on the grounds:-

- (a) that the defendants no.1 to 4 had entered into a Memorandum of Understanding dated 18th January, 2012 for sale of the Panchsheel Park property to one Mr. Murari Mirchandani;
- (b) that one Mr. Raj Narain Singh had also objected to the mutation of the property in the name of the defendant no.1 on the ground that he had purchased the same from late Shri Surender Sardana;
- (c) that the plaintiff and the defendant no.5 being the children of pre-deceased sister of Shri Surender Sardana have no right, title or interest in the Panchsheel Park property as they fall under Entry-IV of Class-II of Legal Heirs of the Schedule to the Hindu Succession Act whereas the defendants no.1 to 4 fall under Entry-II of Class-II of the said Schedule and therefore only the defendants no.1 to 4 have succeeded to the estate of late Shri Surender Sardana;
- (d) that Shri Chiranjiv Lal Sardana had left Will dated 17th December, 1958 which was duly probated on 24th July, 1967;
- (e) that the lands at Hisar were allotted to Shri Chiranjiv Lal Sardana in lieu of his self acquired properties left behind in

Pakistan and not in lieu of any properties inherited by him from his father Shri Uttam Sardana;

- (f) denying that the Karol Bagh house was purchased from any joint family funds and contending that the same was acquired by Shri Chiranjiv Lal Sardana from his own funds;
- (g) Shri Chiranjiv Lal Sardana in his Will which was probated had clearly mentioned that he was the exclusive owner of the lands / property in Hisar, Haryana and of the Karol Bagh house besides other movable properties and had bequeathed the lands at Hisar to the defendant no.1 and Shri Surender Sardana in equal shares and the house at Karol Bagh to his two sons i.e. Sh. Surender Sardana & defendant No.1 and to his wife Smt. Leelawati Sardana and after her death to his sons defendant no.1 and Shri Surender Sardana;
- (h) that the address given by the plaintiff of the Panchsheel Park house was wrong; its correct address is S-94, Panchsheel Park;
- (i) that the Panchsheel Park house was acquired by Shri Surender Sardana from his own funds;

- (j) denying that the Panchsheel Park house was acquired by Shri Surender Sardana from any joint family or ancestral funds;
- (k) that the father of the plaintiff had let out his house at Gulmohar Enclave to Shri Surender Sardana and had instituted a petition for eviction of Shri Surender Sardana therefrom and Shri Surender Sardana was evicted from the said house in execution; the relationship of Shri Surender Sardana with the plaintiff's parents was thus strained;
- (l) that Shri Surender Sardana did not require any permission from his siblings to reside in the Panchsheel Park house which belonged to him exclusively;
- (m) denying that any assurances were ever meted out by Shri Surender Sardana to the plaintiff;
- (n) denying that the mother of the plaintiff had any share in the Panchsheel Park house; and,
- (o) denying that the plaintiff has any share in the Panchsheel Park house.

3. The plaintiff has not filed any replication to the written statement aforesaid of the defendant no.1 despite opportunity.

4. The defendants no.2&3 have adopted the written statement of the defendant no.1 and the right of the defendant no.4 to file the written statement stands closed.
5. The defendant no.3 died during the pendency of the suit and the defendants no.1,2 &4 were substituted as her legal heirs.
6. The defendant no.5 being the brother of the plaintiff has failed to appear despite service and is proceeded against *ex parte*.
7. The defendant no.1 has filed IA No.16449/2012 under Order 7 Rule 11 of the CPC on the grounds, (i) that the plaintiff is not an heir of Shri Surender Sardana; and, (ii) that the plaintiff is not in possession of the property, and has not appropriately valued the suit for the purposes of Court Fees and jurisdiction and not paid appropriate Court Fees thereon.
8. One Shri Raj Narain Singh has filed IA No.538/2014 for impleadment in the present suit pleading that Shri Surender Sardana had vide Agreement to Sell dated 24th February, 1986, General Power of Attorney, Will, affidavit etc. agreed to sell the said property to him and had against receipt of entire sale consideration handed over all title documents with respect to the said property to him and he is in power and possession and enjoyment of the said property since 24th February, 1986 and a Conveyance Deed of freehold

rights in the property has also been executed in his favour by the DDA. The counsel for the applicant during the hearing today has further informed that the defendant no.1 had filed a writ petition in this Court for cancellation of the mutation of the property in favour of the applicant Shri Raj Narain Singh but the said writ petition was dismissed and the appeal filed by the defendant no.1 thereagainst is pending consideration. It is also informed that a suit has also been filed in this regard.

9. Arguments have been heard from the counsel for the plaintiff and the counsel for the defendant no.1 on the application aforesaid of the defendant no.1 for rejection of the plaint.

10. The counsel for the plaintiff has argued that the application under Order 7 Rule 11 of the CPC is misconceived and has been filed on the assumption that the plaintiff is claiming a share in the said house as an heir of Shri Surender Sardana. It is argued that the plaintiff is not claiming a share as an heir of Shri Surender Sardana but on the basis of the said Panchsheel Park property belonging to the maternal grandfather of the plaintiff Shri Chiranjiv Lal Sardana and as heir of one of the daughters of Shri Chiranjiv Lal Sardana. It is further argued that no ground for rejection of the plaint on the basis of valuation or on the ground of payment of

deficient Court Fees is also made out as at this stage, for the purposes of Court Fees, only the averments in the plaint are to be seen and as per which averments the suit has been appropriately valued and appropriate Court Fees been paid thereon. It is further argued that if at all after evidence and adjudication it is held that the Court Fees paid by the plaintiff is deficient that deficiency shall be made up.

11. Merit is found in the aforesaid contention of the counsel for the plaintiff.

12. No case for rejection of the plaint on the two grounds urged by the counsel for the defendant no.1 is made out.

13. It has however been enquired from the counsel for the plaintiff as to how the plaintiff can claim the property to be of her maternal grandfather Shri Chiranjiv Lal Sardana when it was admittedly in the name of Shri Surender Sardana and whether not the argument of the plaintiff, of Shri Chiranjiv Lal Sardana being the owner of the property though in the name of Shri Surender Sardana, for the reason of Shri Chiranjiv Lal Sardana having contributed to the purchase price thereof, is barred by the The *Benami* Transactions (Prohibition) Act, 1988.

14. The counsel for the plaintiff then changes his stand and states that the plea of the plaintiff is, of the Panchsheel Park property being the ancestral property / joint *Hindu* property of Shri Surender Sardana and Shri Surender Sardana holding the same for the benefit of the family.

15. The counsel for the plaintiff is however unable to show from the plaint, any pleading to the effect that Shri Surender Sardana was holding the property for the benefit of the family.

16. Section 4(1) of the *Benami* Transactions (Prohibition) Act bars any suit or claim or action by any person claiming to be the real owner of the property, to enforce any right in respect of the said property against the person in whose name the property is claimed to be held benami. Though Section 4(3) makes the provisions of Section 4(1) inapplicable, where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family or where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity, but no such case has been pleaded. The plaintiff has not filed a single document to show the existence of any

coparcenary or Hindu undivided family of Shri Chiranjiv Lal Sardana and his sons. Upon being quizzed, the counsel for the plaintiff states that he will examine witnesses who will depose about the existence of a coparcenary. However the question of the plaintiff or the other witnesses so deposing arises only when there is any plea to the said effect. As a reading of the plaint and as set out hereinabove would show, there is no such plea. So much so, that the plaintiff has not even given the date of demise of Shri Uttam Sardana being the father of Shri Chiranjiv Lal Sardana. If Shri Uttam Sardana died after the coming into force of the Hindu Succession Act, 1956, any properties even if inherited by Shri Chiranjiv Lal Sardana from his father Shri Uttam Sardana would be held by Shri Chiranjiv Lal Sardana as his individual properties and not for the benefit of his sons. On the contrary, the defendant no.1 has filed a copy of the probated Will supra of Shri Chiranjiv Lal Sardana and which negates the plea of the plaintiff of existence of any HUF. The probate of the said Will is a judgment in rem, and the mother of the plaintiff who was the daughter of Shri Chiranjiv Lal Sardana and who was alive at that time is not stated to have filed any objection thereto and / or contended otherwise and the said probate was binding on her and binding on the plaintiff as well as her heir. The plaintiff

cannot have a better right than her mother, through whom she claims. The said Will also clearly negates the case set up by the plaintiff of the Panchsheel Park house being the joint family property for the reason of having been acquired from the sale proceeds of the lands at Hisar and the Karol Bagh property which are claimed to be ancestral properties. The lands at Hisar and the Karol Bagh property, as per the said probated Will, were the self acquired exclusive properties of Shri Chiranjiv Lal Sardana and which were bequeathed to the defendant no.1 and Shri Surender Sardana and the plaintiff after nearly half a century cannot be heard to contend otherwise, especially when the mother of the plaintiff in her lifetime did not make any such claim.

17. It is clearly evident that the present suit is speculative in nature and is intended to be used as a tool of oppression on the defendants no.1,2&4.

18. It is also not as if the plaintiff or her father have had a cordial relationship with Shri Surender Sardana. The defendant no.1 in his written statement and to which no replication has been filed despite opportunity, has pleaded of the father of the plaintiff having forcibly evicted Shri Surender Sardana from the Gulmohar Enclave house of the father of the plaintiff.

19. I have already in ***Ramesh Advani Vs. Hiro Advani*** MANU/DE/2025/2013 held that such vague pleas of joint Hindu family cannot be permitted to defeat the legislative intent in enacting the *Benami* Act. The plaint in present case is yet another instance of the same. The Division Bench of this Court also, in ***Smt. Santosh Malik Vs. Maharaj Krishan*** MANU/DE/0448/2012 has held that vagueness of pleadings and non-pleading of material facts can constitute a ground for rejection of plaint.

20. Be that as it may, even if it were to be believed that there was a coparcenary / HUF of Shri Chiranjiv Lal Sardana, though not pleaded by the plaintiff, the mother of the plaintiff, through whom the plaintiff claims, being a married daughter of Shri Chiranjiv Lal Sardana was not a member or coparcener thereof. The Hindu Succession (Amendment) Act, 2005 which came into force w.e.f. 9th September, 2005, for the first time made a daughter a coparcener in the same manner as the son and vested in the said daughter the same rights in the coparcenary property as she would have had if she had been a son. However the proviso to Section 6 of the Hindu Succession Act as amended provides that nothing therein affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place prior to 20th December, 2004.

The Supreme Court in *Ganduri Koteswaramma Vs. Chakiri Yanadi* (2011) 9 SCC 788 has held that the right accrued to a daughter in the property of the joint Hindu family governed by the mitakshara law, only by virtue of the 2005 Amendment Act. This Court also in *Rakhi Gupta Vs. Zahoor Ahmad* 197 (2013) DLT 154, following the said dicta has reiterated that the right accrues to the daughter, only “on and from” the commencement of the Amendment Act.

21. The mother of the plaintiff through whom the plaintiff claims, however died well before the coming into force of the Hindu Succession (Amendment) Act, 2005, on 9th November, 1993. Having so died, she could not have become a coparcener in the Hindu undivided family even if any, upon coming into force of the Hindu Succession (Amendment) Act, 2005. The plaintiff thus cannot claim any right on this basis also. When the mother of the plaintiff on the date of her demise on 9th November, 1993 had no right in the Panchsheel Park property, the plaintiff, on the death of her mother on 9th November, 1993 did not inherit any share in the said property, on the basis of which the plaintiff can claim partition thereof. The question of the plaintiff acquiring any share in the property on the coming into force

of the Amendment Act on 9th September, 2005 does not arise; the plaintiff also has neither pleaded nor argued so.

22. The Supreme Court in *Sheela Devi Vs. Lal Chand* (2006) 8 SCC 581 held that the succession, in that case, having opened in the year 1989, the provisions of the Amendment Act, 2005 would have no application. Similarly, in *G. Sekar Vs. Geetha* (2009) 6 SCC 99, it was held that the provisions of the Amendment Act, 2005 do not seek to re-open vesting of a right where succession has already taken place. Mention may also be made of *Sadashiv Sakharam Patil Vs. Chandrakant Gopal Desale* MANU/MH/1094/2011 where the daughter had expired prior to the coming into force of the Amendment Act of 2005; in fact she had pre-deceased the father. It was held that there is nothing to show that the Amendment Act of 2005 would apply to all females retrospectively and if such a daughter were to be included, the entire population would come to be included and the children and the grandchildren of all deceased females would claim their share in the estate of their grandparents and great grandparents through their mother and the legislature cannot be held to have intended such absurd interpretation. This judgment of a Single Judge, was referred to with

approval by the Division Bench in *Vaishali Satish Ganorkar Vs. Satish Kesharao Ganorkar* AIR 2012 Bom. 101.

23. The counsel for the plaintiff in this regard invited attention to *Sameer Magoo Vs. Vijay Kr. Magoo* MANU/DE/2994/2009 and argues that since the mother of the plaintiff could not have claimed partition by virtue of Section 23 of the Hindu Succession Act and which also has been deleted by the Amendment of the year 2005, she could not have claimed partition.

24. However the said judgment is of no assistance to the plaintiff. In that case, partition was sought by the plaintiff of the property of his maternal grandfather. The said suit was defended by pleading that since the mother of the plaintiff in her lifetime could not have claimed partition owing to the bar of Section 23 supra, the plaintiff also, notwithstanding the repeal of Section 23, could not claim partition. This Court held that the mother of the plaintiff having inherited a share in the property from her father and though being under a disability in her lifetime to claim partition, the plaintiff as her heir and upon removal of disability, was entitled to claim partition.

25. The plaintiff has not pleaded any such case. Even otherwise, the question here is not whether the mother of the plaintiff could claim partition or not but whether she at all had any right.

26. In the above view of the matter, no need for putting the suit to trial arises. In fact the suit, on the averments made, does not disclose any cause of action.

27. Once the suit itself is found to be not maintainable, the question of impleading Shri Raj Narain Singh as party thereto does not arise.

28. The suit is accordingly dismissed with costs to the defendant no.1. Counsel's fee assessed at Rs.20,000/-.

Decree sheet be prepared.

RAJIV SAHAI ENDLAW, J

MARCH 26, 2014

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