

* **HIGH COURT OF DELHI : NEW DELHI**

I.A. No. 12189/2008 in CS (OS) 1285/2008

Judgment reserved on: 11th February, 2009

% Judgment decided on : 20th February, 2009

Smt. Ramesh Devi Arora
183, The Drive, Ilford,
Essex, IGI 3PL, U.K.

.....Plaintiff

Through : Mr. R.M. Sinha, Adv.

Versus

Smt. Anita Singh & Anr.

.....Defendants

Through: Mr. Rajesh Rattan, Adv. for D-1
Mr. V. Sudeer, Adv. for D-2

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. By this order, I shall dispose of the application filed by the defendant no.1 under Order 1 Rule 10 read with Section 151 CPC for impleading Mr. Narinder Arora as defendant.

2. The present suit has been filed by the plaintiff for declaration of cancellation of General Power of Attorney dated 7th January, 1999 executed by plaintiff in favour of defendant no. 1 (daughter of the plaintiff) and for mandatory injunction against defendant no. 2 Bank directing it to remit the money of fixed deposits in the Savings Bank

account of the plaintiff.

3. The plaintiff is an eighty years old lady who is a permanent resident of United Kingdom. She has a saving bank account bearing no. 995 in the Syndicate Bank, Kirti Nagar Branch, which is defendant no. 2 in the present case and has following fixed deposits with the defendant no. 2 Bank:-

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| (i) FD No. NRNR 901049-111 | Amount: Rs. 6,58,278/- plus interest |
| (ii) FD No. NRNR 901048-110 | Amount: Rs. 5,50,156/- plus interest |
| (iii) FD No. NRNR 901047-109 | Amount: Rs. 6,83,873/- plus interest |

4. Vide the abovesaid GPA, the plaintiff appointed defendant no. 1 to look after the assets and bank accounts in India.

5. According to the plaintiff, the defendant no. 1 in collusion with defendant no. 2 Bank on the strength of the said GPA, got the above said fixed deposits renewed and got her name added with the plaintiff in the same. The receipt of the fixed deposits were also taken away by the defendant No.1 and has not been returned to the plaintiff as yet.

6. On reporting the abovesaid matter to defendant No.2 Bank, by letter dated 27.12.2005, defendant no. 2 Bank asked defendant no. 1 for the return of the above said FDs failing which criminal action will be taken against her. The plaintiff wrote a letter dated 03.02.2006 to defendant no. 2 Bank requesting pre-mature payment by transferring the said amount of FDs in the plaintiff's saving bank account.

7. It is averred that on one hand, the defendant no. 2 Bank threatened the defendant no. 1 to initiate the criminal action vide letter

dated 27.12.2005 while on the other hand, it did not allow the plaintiff to withdraw the same who for the same purposes once visited India to the defendant no. 2 Bank. A legal notice dated 04.03.2006 was also issued to defendant no. 2 Bank with regard to the same.

8. By the letter dated 10.03.2006, defendant no.2 Bank informed the plaintiff's counsel that the amount of FDs cannot be transferred to the saving bank account of the plaintiff unless the dispute between the plaintiff and defendant no. 1 is resolved.

9. It is submitted that the defendant no. 1 was authorized to look after the property as well as bank accounts only for a period of two years from the date of execution of power of attorney. The defendant no. 1 ceased to be attorney of the plaintiff on 06.01.2001 and therefore, cannot deal either with the immovable property in India or the aforesaid fixed deposits lying in the defendant no. 2 Bank. No right, title or interest either in immovable property or in the amount of FDs has been transferred in favour of defendant no.1. It is alleged that defendant no. 1 fraudulently abused the power of attorney and cheated the plaintiff and is guilty of breach of trust.

10. It is further submitted that vide order dated 31.10.1978 of the Hon'ble High Court of Justice, the principal registry of the family division United Kingdom granted a letter of administration in favour of the plaintiff with regard to the entire assets of the deceased husband of the plaintiff.

11. Defendant No.1 filed a written statement and counter claim against the plaintiff and defendant No.2 Bank. It is submitted that three

FDRs in question are in the joint names of the plaintiff and defendant No.1 issued by defendant No.2 Bank which is not liked by Mr. Narinder Arora, son of the plaintiff and elder brother of defendant No.1 who has forced, manipulated and ill-treated his mother i.e. the plaintiff to file the present suit to misappropriate the said FDRs. It is submitted that the plaintiff is an old lady and the entire story has been cooked up by Mr. Narinder Arora whose conduct is apparent from the judgment dated 2.8.2001 passed by His Honour Deen QC, in the case titled “Ramesh Devi Arora Vs. Anita Singh”, wherein it has been held that the plaintiff is susceptible to manipulation and the said proceedings were under the direct manipulation of Mr. Narinder Arora. Mr. Narinder Arora has already grabbed most of the properties of the plaintiff by forging her signatures.

12. It is stated that the veracity and validity of the power of attorney dated 7.1.1999 has already been upheld by the High Court at London against which no appeal has been filed as the leave was refused by the Hon’ble Judge at London. All the three FDRs were due for maturity on 3rd July, 2006. It is claimed that the defendant No.1 is entitled to receive her share of the matured proceeds of the FDRs.

13. It is alleged by defendant No.1 that plaintiff in collusion with Mr. Narinder Arora and officials of defendant No.2 Bank has played a fraud against defendant No.2 Bank and defendant No.1 as he managed to release payment of 17300 sterling pounds equivalent to approximately Rs.16 lacs (Indian Currency) against FDRs lying in the name of Mr. Vasdev Arora, husband of the plaintiff who died intestate

leaving behind five legal heirs equally entitled to 1/5th share in the said payment. However, the payment was made by the bank vide cheque No.308050 on 14.11.2005 to the plaintiff only which was used and taken by Mr. Narinder Arora by forging the signatures of defendant No.1.

14. Defendant No.1 filed a counter claim in the suit and has alleged that defendant No.1 is legally entitled to 1/5th share in the above said payment.

15. In the present application, it is prayed that presence of Mr. Narinder Arora is necessary to effectually and completely adjudicate upon and settle all the questions involved in the present suit and counter claim. Hence, he should be impleaded as a necessary party.

16. It is argued by the counsel for defendant No.1 that the plaint in the present case has not been attested by the Indian High Commission at London and further alleged that the plaintiff is not aware of the pendency and contents of the present suit as the plaintiff's signature on the plaint and in the applications may have been forged by her son Mr. Narinder Arora, who wants to grab the entire proceeds of the said FDRs in an illegal and unlawful manner, who is the real brain behind the filing of the present suit.

17. In the written statement filed by defendant No.2 Bank, it is stated that on 16th February, 1999 the plaintiff through her attorney converted the three FDRs to the joint account by inclusion of defendant No.1 with repayment clause to be paid 'jointly'. On 21.4.1999 defendant No.2 Bank confirmed the inclusion of defendant No.1 by the plaintiff

and in reply the plaintiff by letter dated 29.4.1999 confirmed the contents of banks letter dated 21.4.1999. However, on 10.5.2000, the plaintiff requested to delete the name of defendant No.1 from the abovesaid FDRs and executed a deed cancelling the power of attorney executed by her in favour of her daughter on 19.3.2002.

18. Order I Rule 10 CPC provides for the impleadment of necessary or proper parties. The relevant portion is reproduced hereunder :

“Order I Rule 10. Suit in name of wrong plaintiff

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(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”

19. A necessary party is one without whom no order can be made effectively. The principle underlying the above Rule is that the court puts itself in the position of being able to effectually and completely adjudicate upon and settle and the questions involved in the suit, even though no relief is claimed against such a party. The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled. The necessary consideration before the court while determining the question of impleadment of a party to the proceedings is whether the said party is necessary or proper party and presence of such party

before the court is necessary for complete and effective adjudication of the subject-matter even though no relief is claimed against such a party.

[Sundergarh Shramik Sangh v. The Industrial Finance Corporation of India Ltd., AIR 2005 NOC 441 (Orissa)]

20. In the case of **Hardeva Vs. Ismail and Ors.; AIR 1970 Raj 167** it was held as under :

“Two tests have been laid down by the Full Bench decision of the Allahabad High Court in the Benares Bank Ltd. v. Bhagwan Das, AIR 1947 All 18 (FB) for determining the question who is a necessary party to a proceeding and these two tests are firstly there must be a right to some relief against such party in respect of the matter involved in the proceedings in question and secondly it should not be possible to pass an effective decree in the absence of such a party. Their Lordships of the Supreme Court in Deputy Commissioner, Hardoi, in charge Court of Wards, Bherawan Estate v. Rama Krishna Narain, AIR 1953 SC 521, approved of the law laid down by the Full Bench of the Allahabad High Court in this respect. This principle is enunciated in Rule 9 (10?) of Order 1 Civil P. C. and in the instant case it cannot be said that no effective decree can be passed in favour of the plaintiffs in the absence of Noora. Poonamchand's case, ILR (1955) 5 Raj 77 = (AIR 1954 Raj 287) supra, was referred by Dwivedi J. in Ramgopal v. Jhau Lal, AIR 1963 All 126 and was dissented from by the learned Judge in view of the Full Bench authority of the Allahabad High Court and the law laid down by the Supreme Court.”

21. The power is confined to two cases i.e. first when a party ought to have been joined but not joined and is a necessary party and, secondly when, without the presence of such party the question involved in the case cannot be completely decided.

22. The presence of the person added must be necessary to effectually and completely adjudicate upon and settle all points involved

in the suit. The object of the rule is to enable the addition of parties for the sole purpose of completely and effectually adjudicating the dispute arising between the original parties in the presence of such of the newly impleaded parties, without which there may be multiplicity of proceedings. At the stage of hearing of the application under Order 1 Rule 10(2), a court is not required to adjudicate the claim of the proposed added party finally. While deciding an application for impleadment, the Court has to record only a prima facie finding to find out whether the application is bona fide. It cannot finally adjudicate the questions of fact which could be decided in the suit itself.

23. In the case in hand, the plaintiff has mainly sought the prayer for cancellation of power of attorney executed in favour of defendant No.1, therefore, impleading of Narinder Arora in the suit filed by the plaintiff may not be necessary as there are no allegations made by the plaintiff against him. However, since the defendant No.1 filed a counter claim alleging Mr. Narinder Arora to be the only force behind the present suit who has forged and manipulated the plaintiff's signature and against whom the adverse orders have been passed in UK Court, I am of the opinion, that Mr. Narinder Arora is a necessary party for complete and final adjudication of the counter claim filed by defendant No.1 and to settle the dispute finally between the parties. No prejudice would be caused to the plaintiff in case Mr. Narinder Arora is made as a party in the counter claim filed by defendant No.1. Whatever allegations have been made against him in the counter claim, have to be

proved by the defendant No.1, therefore, he is directed to be impleaded as defendant No.3 in the matter.

24. For the reasons stated above, the present application is allowed. The defendant No.1 is directed to file the amended memo of parties within one week and upon filing the same, notice shall be issued to newly added party i.e. defendant No.3 for 22.04.2008 on filing of process fee and registered AD cover by the defendant No.1 within 10 days from the date of this order.

I.A. No. 12189/2008 under Order I Rule 10 CPC filed by the defendant No.1 is disposed of accordingly. No cost.

MANMOHAN SINGH, J.

FEBRUARY 20, 2009

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