

\$~9

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

% *Date of Decision : August 14, 2015*

+ **RFA(OS) 132/2013**

SACHIN & ORS Appellants

Represented by: Mr.Samarat Nigam, Advocate

versus

KRISHNA KUMARI NAGIA & ORS Respondents

Represented by: Mr.Sanjiv Bahl, Advocate with
Mr.Eklavya Bahl, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.16564/2013

Allowed.

CM No.10011/2014

Allowed.

The legal heirs of deceased respondent No.1 have already been impleaded as respondents in the appeal, with the admitted mistake that the third sibling of respondents No.2 and 3 who was impleaded as defendant No.4 in the suit has inadvertently not been impleaded as respondent No.4 in the appeal. Thus, we take on record that respondent No.1 has died. We bring on record respondent No.4. We record that on the death of respondent No.1 her legal heirs being respondents No.2 to 4 are already on record.

CM No.10012/2014

For the reasons stated in the application the delay of 463 days in filing the appeal is condoned.

RFA (OS) No.132/2013

1. The appellants were the plaintiffs. Suit filed by them has been dismissed by the learned Single Judge vide impugned judgment and decree dated July 12, 2013.
2. Appellants claimed that their mother Raj Kumari was married to Late Sh.Pran Nath Nangia as per Hindu Rites and Customs on December 12, 1963, and during the wedlock the appellants were born. As per the appellants, Late Sh.Pran Nath Nangia was the owner of property bearing Municipal No.AB-14, Safdarjung Enclave, Community Centre. As per the appellants Pran Nath Nangia died on January 22, 1985. It is the case of the appellants that on the death of Pran Nath Nangia they and their mother Raj Kumari were the only legal heirs to inherit the property.
3. The plaint is silent about the relationship between the appellants and the defendants. It is silent on the relationship of the defendants with Late Sh.Pran Nath Nangia, but if we look at the memo of parties, the relationship emerges. Respondent No.1 is stated to be the wife of Late Sh.Pran Nath Nangia and respondents No.2 to 4 are disclosed to be the children of Late Sh.Pran Nath Nangia.
4. It is thus apparent that as per the appellants, the defendants were the wife and the children of Pran Nath Nangia.
5. In the written statement filed, it was pleaded that Late Sh.Pran Nath Nangia was married to the respondent No.1 on January 20, 1949 and during the wedlock, defendants No.2 to 4 were born. Admitting that Late Sh.Pran

Nath Nangia was the owner of the suit property, it was pleaded that on his death the property was inherited by the defendants. It was pleaded that Smt.Raj Kumari, the mother of the appellants was the wife of one Krishan Lal Batra who was alive. It was pleaded that Raj Kumari, the mother of the appellants started relying upon a will purportedly executed in her favour by Pran Nath Nangia on March 04, 1984. It was pleaded that because a cloud was created on the right of the respondents by the act of Smt.Raj Kumari propounding a will they were constrained to file a suit for declaration which was registered as Suit No.1550/1991 in which a decree was passed in their favour on July 26, 1995 declaring them to be the owners of the suit property with further declaration that Raj Kumari had no right herein.

6. Leaving aside the technical issues settled on the pleadings, it would be sufficient if we would highlight that the core issue settled was whether the mother of the appellants Late Smt.Raj Kumari was the legally wedded wife of Sh.Pran Nath Nangia.

7. The appellants proved the Kundali-Milan of Late Sh.Pran Nath Nangia and their mother Smt.Raj Kumari, birth certificate Ex.PW-1/B of appellant No.1 recording therein that his father's name was Pran Nath Nangia, Ex.PW-1/1 being the school certificate of appellant No.3 in which her father's name is recorded as Late Sh.Pran Nath Nangia. Two witnesses were examined by the appellants who deposed that Pran Nath Nangia and Raj Kumari used to live together as husband and wife.

8. The respondents led evidence to prove that Late Sh.Pran Nath Nangia was married to Krishna Kumari Nangia and three children were born during the wedlock. Decree passed in their favour by a learned Single Judge of this Court on July 26, 1995 was proved.

9. Faced with the evidence of proof of marriage between Pran Nath Nangia and Krishna Kumari, and with the realization that since their mother was married to one Krishan Lal Batra who was still alive and that the marriage between their mother and Krishan Lal Batra had not been dissolved, a fact admitted by appellant No.1 who appeared as a witness for the plaintiffs, the appellants contended before the learned Single Judge that even if they were the illegitimate children of Late Sh.Krishan Lal Batra, they would be entitled to a share in the estate of the deceased.

10. With respect to the said stand taken by the appellants two points arose for consideration before the learned Single Judge. The first concerned whether at all the appellants proved that their mother Raj Kumari underwent the ritual or performed the rites required to be performed for Raj Kumari to be said to have married Pran Nath Nangia. The second was whether the appellants were born to their mother through Pran Nath Nangia.

11. Concededly, if the second point which was urged before the learned Single Judge and on which the appellants have been unsuccessful, is decided against the appellants, that would be the end of their claim because in appeal as argued today the case of the appellants is that Late Sh.Pran Nath Nangia was indeed married to Krishna Kumari Nangia on January 20, 1949. Their mother Raj Kumari was married to Krishan Kumar Batra. There is no proof that Raj Kumari and Krishan Kumar Batra ever dissolved their marriage.

12. Unfortunately for the appellants Section 112 of the Evidence Act, 1872, hits them at the very foundation of their claim for the reason the appellants have led no evidence that during the subsistence of the marriage between Raj Kumari (the mother of the appellants) and Krishan Kumar Batra during which period the appellants were born there was no access

between the two to each other. Not only has no witness of the appellants so deposed, and indeed could not have so deposed. The only person who could have so deposed was Ms.Raj Kumari the mother of the appellants, who did not step into the witness box at all.

13. Section 112 of the Evidence Act, 1872 reads as under:-

“112. Birth during marriage, conclusive proof of legitimacy –

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.”

14. It is thus a case of there being conclusive proof that the appellants are the children of Raj Kumari and Krishan Kumar Batra, as rightly held by the learned Single Judge. Once Section 112 of the Evidence Act, 1872 results in a fact in issue being conclusively proved, no other evidence needs to be looked into, because if proof of a fact results in conclusive proof of another fact, upon proof of the primary fact the conclusiveness of the proof of the other is un rebuttable.

15. The appeal is accordingly dismissed because no further discussion is warranted on other aspects of the impugned judgment.

16. No costs.

CM No.17227/2014

This is an application by Pinky Sharma, daughter of Krishna Kumar Nangia and Pran Nath Nangia praying that she should be impleaded as respondent No.4 in the appeal because she was defendant No.4 in the suit.

In view of the order passed hereinabove allowing CM No.10011/2014, instant application is disposed of as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 14, 2015
mamta