

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

% **Date of decision: 4th November, 2016.**

+ **CS(OS) 131/2016 & IAs No.3506/2016 (u/O 39 R-1&2 CPC) & 3507/2016 (u/O 2 R-2 CPC)**

DIVYA JYOTI KANAL & ANR **..... Plaintiffs**

Through: Mr. Alok Mahajan and Mr. Abhay Mahajan, Advs.

Versus

SANJUKTA S J BAHADUR & ANR **..... Defendants**

Through: Mr. I.S. Alag, Mr. J.S. Lamba, Mr. R.S. Bisht, Mr. Rajesh Kumar and Mr. Ahmad Shahrooz, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This suit for partition, declaration, rendition of accounts and for permanent injunction is listed today for framing of issues.
2. The counsel for the plaintiffs states that applications for condonation of delay in filing the replication and affidavit of admission/denial have been filed.
3. The same are not found to have been listed.
4. The delay in filing the replication and affidavit of admission/denial of documents on behalf of the plaintiffs is condoned and the replication and affidavit stated to have been filed by the plaintiffs be taken on record.

5. The counsels, on enquiry, state that some documents filed by the other party have been admitted by the parties. Exhibit marks thereon be put by the Joint Registrar when the matter is posted next before him/her.
6. The counsel for the plaintiffs and the counsel for both the defendants have handed over proposed issues and which have been perused.
7. However, on going through the pleadings, I do not find the need to frame the issues, either as suggested by the plaintiffs or as suggested by the defendants. Rather, I am surprised why the defendants have proposed as many as eleven issues and want the suit to be put to trial.
8. Issues are to be framed only on substantial questions of law and facts which cannot be adjudicated without trial. However, on perusal of the plaint, it is found that even if all the contents thereof are to be believed, the plaintiffs have no cause of action and the suit can be disposed of immediately under Order XV of Code of Civil Procedure, 1908 (CPC).
9. The two plaintiffs, namely Mrs. Divya Jyoti Kanal and Mrs. Lalat Jyoti Nanda, being the married daughters of the defendant No.1 and sisters of the defendant No.2 Mr. Babbar Bahadur, have filed this suit seeking the reliefs of:

(I) partition of:

- (a) entire first and second floors and terrace rights of built up property No.C-424, Defence Colony, New Delhi;
 - (b) any/all other property(ies) which have been acquired by Sanjukta Bahadur HUF and are not to the knowledge of the plaintiffs at the time of filing of the suit;
 - (c) bank account/s of Sanjukta Bahadur HUF wherein the sale proceeds of Amritsar, Punjab and Dalhousie, Himachal Pradesh properties have been deposited/invested;
 - (d) income from the properties of Sanjukta Bahadur HUF;
- (II) Declaration that the two plaintiffs together have half share/interest in the aforesaid properties;
- (III) Rendition of accounts; and,
- (IV) Permanent injunction restraining the defendants from dealing with the properties of Sanjukta Bahadur HUF.

10. It is the case of the plaintiffs:

- (A) that the plaintiffs had instituted a suit for permanent injunction being Suit No.926/1985 of this Court, against their father and his brothers with respect to i) property No.C-424, Defence Colony, New

Delhi; ii) land (orchard) measuring 25.6 acres situated at Village Jamalpur in Pathankot, Punjab; iii) Bungalow with Guest House in a compound measuring 4.6 acres and compound area of 1.17 acres situated at Village Dalhousie, Himachal Pradesh; and, iv) certain properties situated in Amritsar, Punjab, on the basis of the Will dated 10th July, 1981 left by their paternal grandfather Wing Commander Roopchand;

(B) that one of the paternal uncles of the plaintiffs also filed Suit No.1893/1986 of this Court against the father of the plaintiffs challenging the competence of the said Wing Commander Roopchand to alienate HUF properties by testamentary disposition;

(C) that subsequent to the death of their father, the plaintiffs and the defendants were substituted in his place in Suit No.1893/1986;

(D) that upon marriage, both the plaintiffs migrated to United States of America (USA);

(E) that after death of the father, the defendant No.1 being the mother of the plaintiffs, during the visit of the plaintiffs to India in February, 1995 on the occasion of the wedding of the defendant No.2, made the plaintiffs sign and register a document titled 'Release Deed'

on the pretext that the same was required for the pending litigation and representing that the properties will remain of the HUF;

(F) that sometime in 2002 or 2003, the defendant No.1 being the mother of the plaintiffs again approached the plaintiffs for giving a power of attorney for the purposes of the said litigation;

(G) that the aforesaid litigation i.e. suit No.1893/1986 was settled on 29th January, 2003 but the plaintiffs were not furnished any particulars thereof;

(H) that the plaintiffs, on making enquiries in August, 2013, became aware that a daughter of the brother of their father had filed a suit for partition against her father and brother with respect to the aforesaid properties;

(I) that upon learning of the same, the plaintiffs became alarmed and asked the defendants for details and particulars of the properties but the defendants avoided to give the same;

(J) that thereafter on making enquiries the plaintiffs became aware that their mother the defendant No.1 had given more than the due share to the brother of the father of the plaintiffs in the settlement aforesaid;

(K) that subsequent to the settlement / compromise of 29th January, 2003, an entity by the name of Sanjukta Bahadur HUF was created, purportedly out of an earlier HUF under the name and style of Wing Commander Roopchand HUF;

(L) that the plaintiffs found that under the settlement dated 29th January, 2003:

- (i) 50% share in 13 shops at Amritsar, Punjab;
- (ii) 50% share in summer house with guest house in 'Alvely' at Dalhousie, Himachal Pradesh; and,
- (iii) entire first and second floors and terrace rights of property No.C-424, Defence Colony, New Delhi.

had fallen to the share of the plaintiffs' branch of the family.

(M) that the plaintiffs approached the defendants for partition but the defendants avoided;

(N) that the plaintiffs are co-parceners in Sanjukta Bahadur HUF, being the members of Sanjukta Bahadur HUF;

(O) that the plaintiffs till now have been acting out of the natural love and affection for their mother and brother, the defendants herein;

(P) that the plaintiffs also learnt that the properties of Amritsar,

Punjab and Dalhousie, Himachal Pradesh have been sold by the defendants.

11. A perusal of the registered relinquishment deed, though not filed by the plaintiffs themselves but filed by the defendants along with their documents and execution whereof the plaintiffs as aforesaid admit, shows that the plaintiffs thereunder released their “unidentified definite share” in property No.C-424, Defence Colony, New Delhi and in the properties at Pathankot, Amritsar and Dalhousie which were HUF properties and which were subject matter of Suit No.926/1985 and Suit No.1893/1986 aforesaid in favour of the defendant No.1 out of natural love and affection for the defendant No.1.

12. The plaintiffs though in the plaint have pleaded that their mother defendant No.1 had got executed and registered the said Release Deed from the plaintiffs in a hurry and without even allowing the plaintiffs to read the contents thereof but have not claimed any relief for declaration of the said Release Deed as void or null or ineffective on the said ground or on any other ground or for cancellation thereof.

13. I have thus enquired from the counsel for the plaintiffs that the plaintiffs having released and relinquished their shares in the aforesaid

properties vide Relinquishment Deed dated 21st February, 1995, how can the plaintiffs claim partition of their share in the said properties.

14. The counsel for the plaintiffs states that the plaintiffs are claiming partition of the said properties as members of Sanjukta Bahadur HUF in which the said properties vested as per the settlement/compromise dated 29th January, 2003. Attention in this regard is invited to photocopy of IA No.851/2003 under Order XXIII Rule 3 of CPC filed in Suit No.1893/1986 aforesaid.

15. I have however further enquired from the counsel for the plaintiffs as to how the plaintiffs can be treated as the members of Sanjukta Bahadur HUF which according to the counsel for the plaintiffs also came into existence only on 29th January, 2003. The plaintiffs as married daughters could not be a part of HUF created after their marriage and after nearly twelve years from the death of their father in the year 1991.

16. The counsel for the plaintiffs has no answer.

17. Section 6 of the Hindu Succession Act, 1956, as it stood prior to the amendment of the year 2005, provided for devolution of interest of a male Hindu in a Mitakshara Coparcenery Property, by survivorship upon the surviving members of the Coparcenery and not in accordance with Section 8

of the said Act, thereby saving the Customary Hindu Law. However even under the Customary Hindu Law, the plaintiffs as married daughters would not have any share in an HUF of their mother and brother which has come into existence after the marriage of the plaintiffs. In fact, I have enquired from the counsel for the plaintiffs, whether HUF is such an entity which can be created by contract and for instance, whether an HUF can be created between him and the counsel for the defendants.

18. The counsel for the plaintiffs fairly agrees that HUF is a creature of Customary Hindu Law and cannot be so created.

19. Section 6 supra was amended by the Hindu Succession (Amendment) Act, 2005 to provide that w.e.f. thereafter i.e. from 9th September, 2005, in a Joint Hindu Family governed by Mitakshara Law, the daughter of a coparcener shall become coparcener in her own right in the same manner as the son and shall have the same rights in the coparcenary property as a son. However the proviso thereto provides that nothing contained therein will affect or invalidate any disposition or alienation of property which had taken place prior to 20th December, 2004.

20. The plaintiffs have already, by a registered document, as far back as in 1995, relinquished their right, title, interest, claim and share in the

properties of which partition is sought in favour of the defendant No.1. The said deed, besides by the plaintiffs, is found to have been executed by defendant No.2 also, releasing his share in favour of defendant No.1.

21. Thus, the question of the plaintiffs, under the amendment aforesaid of the year 2005 also becoming entitled to anything does not arise. In any case the plaintiffs are claiming rights in the properties not since the lifetime of their father but on creation of Sanjukta Bahadur HUF in the compromise effected in Suit No.1893/1986 on 29th January, 2003. In fact the plaintiffs have not even disclosed the outcome of Suit No.926/1985 filed by them.

22. The need to put this suit to trial does not arise, as the plaint, on the averments therein, does not disclose a cause of action for the plaintiffs to sue for partition.

23. The counsel for the plaintiffs then states that the proceedings be adjourned to enable the plaintiffs to make necessary amendments to the plaint.

24. Once the suit is found to be stillborn, such adjournments cannot be granted. Moreover, if the plaintiffs are entitled in law to claim any relief by pleading differently, the plaintiffs would always be entitled thereto and need to perpetuate such stillborn suits is not felt.

25. The counsel for the plaintiffs then contends that Preceding Judge of this roster issued notice of the suit after being satisfied of maintainability thereof.

26. Merely because notice has been issued does not come in the way of dismissal of the suit, if at the stage of framing of issues it is found that the plaint does not disclose a cause of action.

27. The plaint is thus rejected, leaving the parties to bear their own costs.

28. Needless to state that the interim orders are vacated.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 04, 2016

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