

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

% *Date of Decision : January 18, 2016*

+ **FAO(OS) 269/2015**

SANJEET TANEJA Appellant

Represented by: Mr.Pramod Ahuja, Advocate

versus

RAVINDER KUMAR TANEJA & ANR Respondents

Represented by: Mr.Arun Francis, Advocate with
Ms.Manju A.Pattiyani and
Mr.PrasanthKulambil, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

PRADEEP NANDRAJOG, J.

1. The prolix plaint spanning 34 pages is full of verbosity and irrelevant pleadings. The concentrate of the decoction of the pleadings would simply be that the appellant/plaintiff is the son of respondent No.1 (defendant No.1) born to him from his first wife, whom respondent No.1 had divorced. That respondent No.1 inherited a property No.A/14 -16, Jangpura Extension, New Delhi, from his father and sold the same to purchase the suit properties being flat No.B-7/54/1 DDA Flats, Safdarjung Enclave, New Delhi, and I-9, Dattaguru Co-operative Housing Society, Deonar, Mumbai-400088. As per the appellant, since the funds to acquire the suit properties were generated by selling an ancestral property, it partakes the character of an ancestral property, liable to be partitioned. As per the appellant his grand-mother was living in the flat at Safdarjung Enclave, New Delhi and she had permitted him to reside in a room. As per the appellant, his father took his grand-mother to Mumbai for treatment where she died during the pendency of the

suit.

2. Grievance in the appeal is to the interim order dated February 06, 2015, passed by the learned Single Judge dismissing I.A. No.13556/2013 filed by the appellant and declining relief prayed by the appellant that the keys of the flat at Delhi be handed over to the appellant by respondent No.1.

3. The learned Single Judge has noted that vide order dated May 28, 2004, the respondent No.1 had been restrained from selling the suit properties and that in the flat in question the mother of respondent No.1, who would be the grand-mother of the appellant, was residing and she had died during the pendency of the suit on August 08, 2013.

4. Learned counsel for the appellant relied upon the pleadings in paragraph 57 of the written statement filed by the respondent No.1, to appellant's pleading in para 57 of the plaint, to bring out an admission that when appellant's grand-mother was alive she had permitted the appellant to use one room in the flat.

5. From said admission the appellant wants to establish his possession qua the flat and therefore the relief that respondent No.1 should hand over the key of the flat to him.

6. In the written statement filed by respondent No.1 he has admitted that property No.A/14-16, Jangpura Extension, New Delhi was inherited by him and his brother from their father on the death of their father and that the suit properties were purchased somewhere in the year 1989, being the year when the property at Jangpura was sold, but has denied use of funds generated by sale of the property at Jangpura to purchase the suit properties.

7. The date of the death of the grand-father of the appellant is not disclosed in the pleading, but is concededly after the Hindu Succession Act,

1956 was promulgated. The admission by the respondent No.1 that the property at Jangpura was inherited by him and his brother on the death of their father and was sold in the year 1989, would thus prima-facie be of no help to the appellant because it is settled law that intestate succession by Hindus after 1956, when the Hindu Succession Act, 1956 was promulgated, would be under the said Succession Act and if a son inherits a property from his father it would not partake ancestral character vis-a-vis his son.

8. This view was first taken in the decision reported as AIR 1986 SC 1753 Commissioner of Wealth Tax, Kanpur & Ors. vs. Chander Sen & Ors.

In paragraph 21 and 22 of the decision it was held as under:-

“21. It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

22. In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by Section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by Section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no

such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under Section 8 of the Act included widow mother, daughter of predeceased son etc.”

9. This decision was followed by the Supreme Court in the decision reported as AIR 1987 SC 558 Yudhishter vs. Ashok Kumar, in para 11 whereof it was held as under:-

“11. This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Others v. Chander Sen and Others, [1986] 3 SCC 567 where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by section 8, he does not take it as Kar of his own undivided family but takes it in his individual capacity. At pages 577 to 578 of the report, this Court dealt with the effect of section 6 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th Edn. pages 924-926 as well as Mayne's on Hindu Law 12th Edition pages 918-919. Shri Banerji relied on the said observations of Mayne on 'Hindu Law', 12th Edn. at pages 918-919. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and was unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12th Edn. page 919. In that view of the matter, it would be difficult to hold that property which

developed on a Hindu under section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a- vis his own sons. If that be the position then the property which developed upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house.”

10. The appellant therefore does not have a strong prima-facie case as per the legal position. Even on facts, the appellant would not be entitled to the relief because title of the two suit properties is that of respondent No.1, who claims to have purchased the properties from his own funds. Admittedly, the respondent No.1 had permitted his mother to reside in the flat at Delhi and as per him she locked the flat when respondent No.1 took her to Mumbai for medical treatment where she died and the keys of the flat came in the possession of respondent No.1. Merely because the deceased mother of respondent No.1 gave permissive possession to the appellant who was her grand-son, to live in a room in the flat would not confer any legal or equitable right in favour of the appellant to, by way of an interim order get possession of the flat at Delhi.

11. The usual mantra. Nothing said by us would be construed as an expression on the merits of the suit filed by the appellant and what we have observed above is a prima-facie view.

12. The appeal is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

JANUARY 18, 2016/skb