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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (OS) 2246/2013 & IA No. 18436/2013

NIRMALA KUMARI

..... Plaintiff

Through: Mr. Sanjay Gupta and Mr.M.S.
Chauhan, Advocates.

versus

SADARAM & ORS.

..... Defendants

Through: Mr. Vishal Maan, Mr. Aditya Singh and
Mr. Naresh Maan, Advocates for Defendant No.1.

CORAM: JUSTICE S. MURALIDHAR

ORDER

02.09.2016

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1. The background to the present suit filed by Ms. Nirmala Kumari, who is the widowed daughter-in-law of Mr. Sadaram (Defendant No.1), seeking partition of the suit properties mentioned in para 29 of the plaint, is that the Plaintiff was married to late Mr. Suresh Kumar, the son of Defendant No.1. It is stated that Mr. Suresh Kumar was born in 1955 and was a member of the Mitakshara coparcenary/Joint Hindu Family ('JHF') which consisted of one Mr. Ramdhan and his two sons Mr. Arimal and Mr. Maha Singh.

2. It is stated that Mr. Ramdhan passed away in or about 1940 and a few years later, a partition took place of the coparcenary property between Mr. Arimal and Mr. Maha Singh. It is stated that Mr. Arimal along with his five sons formed a separate Hindu Undivided Family ('HUF'). It is stated that

the sons of Mr. Arimal, except the Defendant No.1, separated themselves from the Mitakshara coparcenary property of which Mr. Arimal was the common ancestor. However, as far as Mr. Arimal and Defendant No. 1 were concerned, the HUF was continued. The Plaintiff states that her husband, the late Mr. Suresh Kumar, also by birth, became one of the coparceners in the said property along with his father and grandfather Mr. Arimal.

3. In order to make good the above plea, reliance is placed by the Plaintiff on a judgment dated 26th November 2010 passed by the learned Senior Civil Judge, Tis Hazari Courts in Suit No. 854/02/95. The said suit was filed by the Plaintiff along with her two daughters (arrayed as Plaintiff Nos. 2 and 3 in the said suit) against Mr. Sadaram seeking relief of rendition of accounts as well as permanent injunction. In the said suit, one of the issues framed was “Whether the suit properties are self required properties of the Defendant?”. While answering the said issue in para 6 of the said judgment, the learned Senior Civil Judge noticed an admission made by the Defendants in his cross-examination that “the properties as mentioned in my affidavit as well as written statement are through ancestral properties, but I have become the owner as Bhumidar.” On the said basis the learned Court returned a finding that the Defendant therein and his deceased son Suresh Kumar were members of the JHF and that the properties being ancestral shall be inherited “in equal shares”.

4. Subsequently, another suit was filed by the Plaintiff’s two daughters against the grandfather and five others being CS (OS) No. 823/2010 in this Court. Admittedly, the Plaintiff was Defendant No.6 in the said suit. On 30th

January 2013, the said suit was dismissed by a detailed order. The first paragraph of the said order sets out what the issue considered by the Court was and which reads as under:

“1. The suit is predicated on the fact that the two Plaintiffs have a share in the properties inherited by their grandfather (defendant No. 1) from his own father. The entire case of the plaintiffs is that the said properties are thus 'ancestral properties' in the hands of their grandfather defendant No. 1 and in which the father of the plaintiffs had a share by birth and which share, upon the death of their father devolved on the plaintiffs and their mother (defendant No.6). The plaintiffs thus claim partition. The defendants No.2 to 5 are the paternal aunts of the plaintiffs and the daughters of the Defendant No.1. According to the plaintiffs, defendants No. 1 to 5 have $\frac{1}{6}^{\text{th}}$ share each and the plaintiffs and defendant No.6 together have remaining $\frac{1}{6}^{\text{th}}$ share in the said properties.”

5. The attention of the Court, which passed the above order, was not drawn by the Defendants or even by the Plaintiff herein who was Defendant No.6 in the said suit to the decision dated 26th November 2010 passed by the learned Civil Judge in CS No. 854/02/95. On the other hand, it was noted in para 8 by this Court as under:

“.....However, it is not the case of the plaintiff that there was any coparcenery of which their grandfather, his father and the plaintiff's father were a member.

6. Since it was not clear that there existed a HUF prior to coming into force of the Hindu Succession Act, 1956 the suit was held to be misconceived and not maintainable. It was further observed in para 12 of the order dated 30th January 2013 as under:

“12. It is however worthwhile to record statement of the counsel for the defendants No. 1 to 5 that the mother of the plaintiffs (defendant No.6) continues to reside with the defendant No. 1 in the same house and this misconceived action on the part of the plaintiffs will not be allowed to come on the way of the said defendant No,6 continuing to so reside in the house.”

7. When the Court enquired from the Plaintiff in the present suit as to why the said order was not appealed against if indeed the Plaintiff was aggrieved by it, learned counsel for the Plaintiff stated that an appeal being RFA (OS) 38/2014 was filed in this Court with delay of 334 days and the order passed by the Division Bench on 7th February 2014 reads as under:

“1. 334 days delay in filing the appeal is prayed to be conodoned for the reasons stated in CM No. 2557/2014. The stated reason being that the appellant got misled by paragraph 12 of the impugned order dismissing the suit as not maintainable, as if the right of the appellant was recognized by the learned Single Judge.

2. The said plea is an eye wash for the simple reason that the appellant and her sister Mahima had sought partition of 6 properties listed in paragraph 2 of the plaint. It was pleaded that partition of the estate left behind by Arimal was being claimed. The defendant No.1 is the grand-father of the plaintiffs, i.e. the son of Arimal.

3. The learned Single Judge has noted that it was conceded by the plaintiffs, though not pleaded in the plaint, that Arimal died in the year 1974.

4. Noting the decisions reported as AIR 1986 SC 1753 Commissioner of Wealth Tax, Kanpur v. Chander Sen, AIR 1987 SC 558 Yudhishter v. Ashok Kumar, AIR 2000 Delhi 292 Master Daljit Singh v. S. Dara Singh and 164 (2009) DLT 479 Pratap v. Shiv Shanker the learned

Single Judge has held that after the enforcement of the Hindu Succession Act, 1956, the law has got changed. A son inheriting property from his father after 1956 would not impart colour to the property of being ancestral vis-a-vis his son i.e. the grand-son of the original owner.

5. So holding the suit has been held to be not maintainable.

6. The reasoning comes to an end in paragraph 10 of the decision. In paragraph 12 of the decision the learned Single Judge has simply noted that since mother of the plaintiffs is residing in the house belonging to her father-in-law i.e. defendant No.1, counsel for said defendant has stated that the misconceived action by the daughters would not result in the grand-father of the plaintiffs requiring the mother of the plaintiffs to move out from the house.

7. We do not understand as to how come said observation, which records a concession made, can be misunderstood by anybody to mean as if the learned Single Judge has accepted the ancestral character in the property vis-a-vis the plaintiffs.

8. No case is made out to condone the delay to file the appeal, which even otherwise is without any merit.

9. The appeal and CM No. 2557/2014 are accordingly dismissed.

10. No costs.”

8. Learned counsel for the Plaintiff then pointed out that against the above order, the Plaintiff filed SLP (Civil) 16335/2014 which was dismissed by the Supreme Court on 8th August 2014.

9. Consequently, the order dated 30th January 2013 passed by this Court in CS (OS) No. 823/2010 has attained finality.

10. There is no doubt that the issue whether the property in question was ancestral or not was clearly addressed by this Court in its judgment dated 30th January 2013 which was affirmed both by the Division Bench as well as the Supreme Court. The same issue, therefore, cannot be permitted to be agitated by the Plaintiff by way of the present suit. The mere fact that there was a judgment in favour of the Plaintiff on this issue passed by the learned Senior Civil Judge on 26th November 2010 is to no avail since the Plaintiff ought to have pursued that issue as Defendant No.6 in CS (OS) No. 823/2010 where that very question was addressed by the Court. The Plaintiff cannot be permitted to have repeated rounds of litigation on the same issue. Consequently, the suit is dismissed as being barred by *res judicata*. The application for interim injunction, I.A. No. 18436 of 2013 is also accordingly dismissed.

S. MURALIDHAR, J

SEPTEMBER 02, 2016

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