

\$~13

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

+ **FAO(OS) 141/2016**

RENEE KHANNA

..... Appellant

Through Mr. Vikas Dhawan, Mr. Satyabrata
Panda and Mr. Sambit Manda, Advocates.

versus

SHIV SAHNI & ORS

..... Respondent

Through Mr. Nikhil Rohtagi, Mr. Shashank
Khurana and Mr. Mohit Khubchandani, Advocates
for R-1.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

27.04.2017

%

This intra-Court appeal under Section 10 of the Delhi High Court Act impugns order dated 25th April, 2016 passed in OA No.280/2015, filed in CS (OS) No.713/2011.

2. Learned counsel appearing for the respondent No.1-Shiv Sahni, who is the plaintiff in CS (OS) No. 713/2011, submits that this intra-Court appeal is not maintainable and the decision of a Division Bench of this Court in *Rahul Gupta Vs. Pratap Singh & Ors.*, ILR (2014) I Delhi 270 requires reconsideration and reference to a larger Bench. He submits that a review application has been filed in the said case, which is listed for hearing and has

not been disposed of.

3. We do not think that we are required to examine the aforesaid controversy in the present appeal in view of what has been stated by the counsel for the appellant during the course of hearing.

4. The appellant, namely, Renee Khanna, was impleaded as defendant No.11 to the suit vide order dated 23rd March, 2011 on the basis of the statement made by the counsel for the plaintiff, the first respondent before us/plaintiff. This was the first date of hearing, when the suit itself was registered.

5. The first respondent/plaintiff thereafter filed IA No.5787/2011, which was disposed of vide order dated 31st October, 2012 along with several others applications, recording as under:-

“The present application has been filed under Order 1 Rule 10 of the Code of Civil Procedure, 1908 seeking, inter alia, deletion of the names of defendants No.9 to 11 from the array of the parties and thus reviewing the order dated 23rd March, 2011 wherein defendants No.9 to 11 were impleaded as party in the present suit. It is stated in the application that defendants No.9 to 11 are family members of the plaintiff and have no concern with the partnership of firm in the name and style of “Isherdas Sahni & Brothers”.

The plaintiff further submits that merely being a member of a HUF does not empower them to claim any right in the partnership firm. The plaintiff further states

that defendants No.9 to 11 had suppressed the fact that they have filed a separate suit being Suit No.1216 of 2010 for partition of the HUF and the suit was withdrawn vide order dated 9th August, 2010. The plaintiff draws attention to the fact that defendants No.9 to 11 did not implead the partnership firm as a party in their suit, knowing full well that partnership firm and the HUF have no nexus amongst themselves. Thus the plaintiff seeks that defendants No.9 to 11 be deleted from the array of parties for the reasons mentioned herein above.

X X X X

ii) In view of the above, both the interim applications being I.A. No.4727/2011 and I.A. No.20117/2011 are disposed of. Similarly, in view of the undertaking given by the plaintiff in Court, no further orders are required to be passed in I.A. No.16439/2011 the same is also disposed of. So far as I.A. No.5787/2011 is concerned, it is a matter of fact that defendants No.9 to 11 were impleaded vide order dated 23rd March, 2011 which was passed in the presence of plaintiff's counsel which was apparently not challenged in appeal by the plaintiff. Therefore, at this stage, I am not inclined to pass the order for deletion of their names. The grievance of the plaintiff made in the application, however, would be considered at the time of final hearing of the suit. I.A. No.5787/2011 is also disposed of. iii) The defendants No.9 to 11 are at liberty to file the appropriate application with regard to sharing of profits after considering the proposal given by the plaintiff or even subject to any modification or alteration acceptable to the parties."

Appellant's mother, namely, Neena Sahni, was also impleaded as defendant No.10 to the suit, vide order dated 23rd March, 2011. Her impleadment was also the subject matter of IA No.5787/2011 and the order

dated 31st October, 2012.

6. Neena Sahni expired on 27th November, 2014 and, as per the appellant, she has left behind a registered Will dated 9th November, 2010.

7. The appellant had thereafter filed IA No.10739/2015 for taking on record this Will dated 9th November, 2010. The Joint Registrar (Judicial) vide order dated 2nd July, 2015 allowed this application for taking the Will dated 9th November, 2010, on record, being a relevant document for just and fair disposal of the suit.

8. This prompted the first respondent/plaintiff to file OA No.280/2015 before the single Judge on the ground that the Will was not a relevant document, for the purpose of determination of disputes in CS (OS) No.713/2011.

9. The impugned order dated 25th April, 2016 records as under:-

“3. In my opinion, filing of the application being I.A. No.10739/2015 by defendant no.11 is putting cart before the horse. This application is filed to take on record the Will dated 9.11.2010 of late Smt. Neena Sahni but till date there is no application filed by either of the parties for brining on record the legal heirs of defendant no.10/Smt. Neena Sahni. Admittedly, by the Will dated 9.11.2010 the share of defendant no.10 is pleaded to be inherited by defendant no.11 subject of course to the defendant no.11 proving this Will. However, the Will will only help to establish the issue of devolution of estate of late defendant no.10 and therefore the Will is a

document relevant with respect to an application to be filed under Order 22 Rule 4/10 of Code of Civil Procedure, 1908 (CPC) as also for getting the final relief at the stage of final arguments in the suit for representing the estate of defendant no.10 so far as subject matter of the disputes in the present suit is concerned. 4. The Joint Registrar and indeed the parties have overlooked this vital fact that the application I.A. No.10739/2015 could only have been a successor application and not a precursor application under Order 22 Rule 4/10 CPC and accordingly the Will dated 9.11.2010 would only be relevant for the representation of the estate of defendant no.10 by the defendant no.11, but there was no application pending as on date of the filing of the impugned order dated 2.7.2015 for representing the estate of the defendant no.10 by the defendant no.11.

5. Accordingly, this O.A. is allowed and disposed of with the directions that the impugned order dated 2.7.2015 is set aside however I.A. No.10739/2015 will be taken to be remain as pending and will be decided in accordance with law in case an application is filed for substitution and representation of the estate of the defendant no.10 by the defendant no.11, and at which stage the Will dated 9.11.2010 will be considered in support of the application under Order 22 Rule 4/10 CPC for representation of the estate of the defendant no.10 by defendant no.11. Of course, I am making no observations as to the merits of the application under Order 22 Rule 4/10 CPC for representation of the estate of the defendant no.10 by any person including defendant no.11, and such aspect with all related aspects will be decided as and when an application is filed for representation of the estate of the late defendant no.10 Smt. Neena Sahni. O.A. is disposed of with the aforesaid observations.”

We have recorded the undisputed factual matrix to highlight the factual background and orders passed, without commenting and making any observation on merits.

10. Counsel for the appellant states that he would be moving an application under Order XXII of the Code of Civil Procedure, 1908 relying upon certain judgments and stating that the appellant, who is impleaded as defendant No.11, has inherited the rights and estate of Neena Sahni.

11. We take the said statement on record and clarify that we have not affirmed or expressed any opinion on merits. The issues of law raised by the appellant and also the respondents are left open.

12. The appeal is disposed of in view of the statement made by the counsel for the appellant.

SANJIV KHANNA, J.

ANIL KUMAR CHAWLA, J.

APRIL 27, 2017
NA