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

+ FAO(OS) 283/2017 & CM Nos.39155-56/2017

% Date of decision : 4th December, 2017

MANJEET SINGH & ORS. Appellant
Through : Mr. Medhanshu Tripathi and
Mr. A.K. Singh, Adv.
versus

NARJEET SINGH Respondents
Through : Ms. Manpreet Kaur, Adv.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CM No.39156/2017 (Condonation of delay of 51 days in filing the appeal)

1. Heard ld. counsels for the parties.
2. It is stated in the application that the ld. counsel for the appellant had gone to his native place to see his ailing father for which reason the appeal could not be filed within the statutory period of limitation.
3. The explanation tendered appears to be reasonable and is hereby accepted.
4. The delay in filing the appeal is condoned.
5. The application is allowed.

FAO(OS) 283/2017

6. The appellant assails the order dated 8th August, 2017 passed in ***CS(OS)No.1672/2009 Narjeet Singh vs. Shiv Lal Yadav & Ors.*** whereby the Id. Single Judge has allowed I.A.No.5357/2017, filed by the respondent no.1/plaintiff under Order VI Rule 17 of the CPC and granted leave to the appellant herein/defendant no.6 to withdraw I.A.No.8575/2016 filed by him under Order VII Rule 11 of the CPC premised on Section 8 of the Hindu Succession Act.

7. We have heard Mr. Medhanshu Tripathi, Id. counsel for the appellants and Ms. Manpreet Kaur, Id. counsel for respondent.

8. The record of CS(OS)No.1672/2009 has been called and also perused by us.

9. It appears that CS(OS)No.1672/2009 was filed by the respondent no.1/plaintiff, seeking relief of partition and permanent injunction with regard to immovable properties, claimed to be ancestral properties, in the hands of his father Shri Shiv Lal Yadav, arrayed as defendant no.1. The children of the defendant no.1, including his daughters were impleaded as defendant nos.2,4,6 and 7. Shri Manjeet Singh, appellant herein being a son of Shri Shiv Lal Yadav was impleaded as defendant no.6 in the suit.

10. The claim of the respondent no.1/plaintiff rested primarily on the plea that properties were owned by the respondent's father Shri Paras, who died intestate in 1960s and a portion of his properties devolved by succession and came into the hands of Shri Shiv Lal Yadav – defendant no.1.

11. The defendant no.6 claimed that the properties were self acquired properties of the father of Shri Shiv Lal Yadav. It is further submitted that even if the shares devolved upon Shri Shiv Lal Yadav, as the heir of his deceased father - Shri Paras, by virtue of Section 8 of the Hindu Succession Act, the properties could not be treated as ancestral property and had to be treated as self acquired property in his hands.

12. It is to be noted that issues were framed on the pleadings of the parties by an order passed on 5th August, 2015. The same are set out hereunder in extenso :

1) Whether the suit for partition instituted by the plaintiff, is devoid of any cause of action? (OPD-1&6)

2) Whether the suit property is a self-acquired property of the defendant no.1? (OPD-1&6)

3) Whether the suit property is ancestral in nature? (OPP)

4) If issue no.3 is decided in favour of the plaintiff, whether the GPA, will and other documents of sale executed by the defendant no.6 in respect of a part of the suit premises in favour of defendant no.9 and 10, are liable to be declared as null and void? (OPP)

5) Whether the plaintiff is entitled to a decree of partition, as prayed for in prayer clause 19(a)? OPP

6) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for in prayer clause 19(b)? OPP.

7) Relief

(Emphasis supplied)

13. It appears that Shri Shiv Lal Yadav, defendant no.1 in the suit unfortunately expired on 25th October, 2015. As a result, respondent no.1/plaintiff had to seek variation in the shares of the property.

14. It appears that in the written statement filed in October, 2009, defendant no.6 set up a plea that a portion of the property had been sold to other persons.

15. In this background, respondent no.1/plaintiff had sought amendment of the plaint which was granted by an order dated 8th August, 2017. As a result, defendant nos.9 and 10 were impleaded as parties and all of the defendants were permitted to file amended written statement.

16. At this stage, the appellant/defendant no.6 filed a written statement dated 26th August, 2014 wherein a plea was taken to the effect that *“the defendant no.1 has given the said property to the defendant no.6 and no one has any right or share in the said property, the said property has been gifted to defendant no.6 by defendant no.1.”*

17. It is to be noted that appellant/defendant no.6 tendered no details of the manner in which the property was ‘given’. It is submitted by ld. counsel for the appellant that even though there were no specific pleadings of the details of the gift or the giving, the documents in support thereof were filed on record.

18. It is submitted by Ms. Manpreet Kaur, ld. counsel that so far as the documents relied upon by the appellant, which have been filed

without any supporting pleadings, are concerned, even these are unregistered documents and do not create any right in the appeal.

19. It is not for this court to go into the either legality of the gift relied upon by the appellant/defendant no.6 or on the merits of the rival claims inasmuch as we are required to consider only the correctness of the order passed on the amendment application.

It is trite that while considering the amendments, the court is concerned with the merits of the plea sought to be incorporated by way of amendments.

20. As extracted above, by the order dated 5th August, 2015, the court had framed the issues on both pleas, i.e., as to whether the properties were ancestral in the hands of Shri Shiv Lal Yadav or not, and would be examining the same.

21. It is also not disputed before us that Shri Shiv Lal Yadav expired on 25th October, 2015, the fact which is subsequent to the filing of the plaint and consequently there would be variation in the shareholding as pleaded by the plaintiff. The defendant no.6/appellant has not relied on any Will or Testament of deceased Shri Shiv Lal Yadav.

22. Ms. Manpreet Kaur, ld. counsel for respondent no.1 points out that a photocopy of an alleged unregistered gift deed and the power of attorney were produced on record by the appellant/defendant no.6 without making any reference thereto in his pleadings. It is submitted that the appellant/defendant no.6 also did not press any claim or issue premised on these documents when issues were framed.

Ld. counsel for the appellants disputes this position.

23. A bald reference to “*gifted*” and “*given*” has been made in the written statement without reference to any details which by itself is completely insufficient. However, it is not disputed before us that the photocopies of the documents relied upon by the appellants, have surfaced only after filing of their written statement.

24. The respondents/plaintiff had initially pleaded that the properties in which partition was sought were ancestral properties in the hands of the respondent.

25. As a result, the respondent filed IA No.5357/2017 under Order 6 Rule 17 of the CPC seeking to incorporate an alternate plea to the effect that in the event the property is found to be self acquired, the plaintiff would nevertheless be entitled to share thereof and seek his share amounting to 1/7th share in both the suit properties. On a consideration on the submissions made before us and the pleadings of the parties, however, makes it quite clear that it was the plea set up by the appellants, which necessitated the amendment which was sought.

26. The amendment is therefore, premised on subsequent facts and documents produced by the appellants.

27. Additionally, the plea which the respondent no.1 has sought to incorporate is an alternative plea based on the defence of the respondent to the effect that if Id. Single Judge was to conclude that the properties were self acquired, the same had to be partitioned between his children.

28. By way of the impugned order, the Id. Single Judge has concluded that the amendments as prayed were necessary for the just decision of the suit.

29. It is well settled that the plaintiff is permitted to set up an alternative plea. In the present case, the alternative plea sought to be incorporated by the respondent no.1/plaintiff, is premised on the defence of the appellants/defendant no.6. The challenge to the documents filed by the plaintiffs has been raised when they have been produced on record by the defendants and appears to have been a matter of abundant caution.

30. In our view, the challenge to the order dated 8th August, 2017 is completely misconceived and untenable. The same is hereby rejected.

31. The appeal is dismissed.

32. Let the record of CS(OS)No.1672/2009 be returned to the original side of this court.

33. It is clarified that we have not expressed any opinion on the merits of the rival contentions of any of the parties.

CM No.39155/2017 (Stay)

In view of the order passed in the appeal, this application does not survive for adjudication and is hereby dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

DECEMBER 04, 2017

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