

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 4th December, 2017

+ CS(OS) 644/2017

KAMLESH DEVI

..... Plaintiff

Through Mr.Atha Sagar Verma, Advocate

versus

SHYAM SUNDER TYAGI & ORS

..... Defendants

Through None

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No. 14219/2017 (for exemption)

1. Exemption allowed subject to just exceptions.
2. Application stands disposed of.

CS(OS) No. 644/2017 & IA No. 14218/2017 (under Order XXXIX Rule 1 & 2 CPC).

3. This is yet another misconceived suit of the category dealt with by this Court in *Neelam Vs. Sada Ram* 2013 SCC OnLine Del 384, *Naval Kishore Vs. Shri Jugal Kishore* MANU/DE/0978/2013, *Bala Devi Vs. Chhotu Ram* 2013 SCC OnLine Del 1159, *Rajat Khanna Vs. R.P. Khanna* (2013) 200 DLT 203, *Harvinder Singh Chadha Vs. Saran Kaur Chadha* 2014 SCC OnLine Del 3413, *Jai Narain Mathur Vs. Jai Prakash Mathur* (2016) 228 DLT 515, *Satyawati Vs. Suraj Bhan* 2017 SCC OnLine Del 7961, *Sunny (Minor) Vs. Raj Singh* (2015) 225 DLT 211, *Surender Kumar Vs. Dhani Ram* (2016) 227 DLT 217, and *Sagar Gambhir Vs. Sukhdev Singh Gambhir* (2016) 231 DLT 247.
4. Notwithstanding the aforesaid judgments, a view that a child has a share in the grandfather's property continues to prevail.

5. In the present case, it is a daughter who has sued her father defendant no.1 pleading; i) that her grandfather Sh. Hukam Singh was the proprietor/Bhoomidar of certain agricultural land in Village Rewla Khanpur, Tehsil Kapashera, New Delhi; ii) that her grandfather Sh. Hukam Singh expired in the year 1999-2000; iii) that on the expiry of her grandfather, her father Shyam Sunder Tyagi became the Bhoomidar of the aforesaid land; iv) that Sh. Hukam Singh grandfather of the plaintiff, besides leaving the father of the plaintiff, also left two grandsons and two granddaughters (including the plaintiff), being the siblings of the plaintiff; v) that one of the brothers of the plaintiff has died leaving defendant no.2 Kanta Tyagi as his widow; vi) that under the Delhi Land Reforms Act which had come into force on 20th July, 1954 and the Hindu Succession Act which came into force on 17th June, 1956 and due to Section 4(2) of the Hindu Succession Act an embargo was placed whereby the male lineal descendants were entitled to the agricultural land but the Hindu Succession Act was amended by Parliament by passing the Hindu Succession (Amendment) Act, 2005 which came into force on 9th September, 2005 by virtue of which Section 4(2) of the Hindu Succession Act was omitted; vii) accordingly, with effect from the Hindu Succession (Amendment) Act, 2005, the daughters became the coparceners by birth in their own right in the same manner as the sons; viii) accordingly, the plaintiff being the daughter of the defendant no.1 and granddaughter of Sh. Hukam Singh became coparcener in the above said agricultural land to the extent of 1/5th share along with her father and other siblings.

6. The plaintiff has further pleaded to have come to know that the defendant no.1 has vide registered sale deed dated 28th March, 2014 already sold some part of the land and gifted the remaining land in favour of

defendant no.2 being the widow of the pre-deceased son of the defendant no.1 and in favour of defendant no.3 Smt. Jyoti Tyagi being the wife of a brother of the plaintiff.

7. The plaintiff has instituted the present suit for declaration that the gift deed executed by the defendant no.1 in favour of defendants no.2 & 3 are void and not binding upon the plaintiff and for permanent injunction restraining the defendants from dealing with land so gifted to them.

8. The plaintiff has valued the suit for the purposes of jurisdiction at Rs. 3,20,25,000/- and paid for court fees of Rs. 200/- thereon.

9. The misconception, with which this suit suffers, is that the property inherited by the father of the plaintiff from the grandfather of the plaintiff who died after coming into force of the Hindu Succession Act, 1956 i.e. in the year 1999-2000, is ancestral or coparcenary property in the hands of the father of the plaintiff and which was one of the changes brought about by the Hindu Succession Act passed in the year 1956. Everybody seems to remember the law existing more than 70 years ago and nobody seems to remember the law which has been in force for the last about 70 years.

10. As far as the reference to the Hindu Succession (Amendment) Act, 2005 is concerned, the only change which is brought about by the same is with respect to coparcenary property, as distinct from personal property succession whereof is covered under Section 8 of the Act and to which no change has been brought. However, for Section 6 to apply, there has to be a coparcenary property and Hindu Succession (Amendment) Act, 2005 did not convert the individual property of a person into a coparcenary property.

11. Not only is there not a plea or a whisper in the plaint of the aforesaid agricultural land being a coparcenary property but the plaintiff has rather

admitted that her grandfather Sh. Hukam Singh was the sole proprietor and Bhoomidar of the said agricultural land. The said agricultural land on the demise of Sh.Hukam Singh would be inherited by his class I heirs only and since the father of the plaintiff was living at the time of demise of his father as he is even now, the plaintiff was not a class I heir of her grandfather. It was only under the old Hindu Law prevalent prior to the Hindu Succession Act, 1956, that the property inherited by a son from his own father became coparcenary property in which the grandsons of the deceased also had a share.

12. The said old Hindu law with respect to coparcenary property was continued vide Section 6 of the Hindu Succession Act and which has been amended with effect from the Amendment Act, 2005.

13. The suit is thus misconceived and liable to be dismissed.

14. I may also state that the plaintiff is not entitled to value the suit differently for the purposes of court fees and jurisdiction for the relief claimed of declaration. The plaintiff is admittedly not in possession of the property and as per *Suhrid Singh @ Sardool Singh Vs. Randhir Singh* (2010) 12 SCC 112, when the plaintiff is not in possession of the property, even though is not a signatory to the document qua which declaration is sought, is required to pay *ad valorem* court fees. However, the need to give opportunity to the plaintiff to pay appropriate court fee is not felt in view of the aforesaid observations, of the suit being otherwise misconceived.

15. I also express doubt as to the maintainability of the reliefs as claimed in the suit in the absence of the plaintiff having sought the relief of partition of the property.

16. The suit is thus dismissed.

17. At this stage, counsel for the plaintiff seeks liberty to withdraw the suit to file afresh.

18. There is no formal defect, for the plaintiff to be permitted to withdraw the suit with permission to file afresh. The plaintiff, after realising that on facts as existing has no case, cannot be permitted to change the facts by cooking up the same.

RAJIV SAHAI ENDLAW, J.

DECEMBER 4, 2017

‘mw’..

(Corrected and released on 15th January, 2018).