IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.84 OF 2018
ALONG WITH
CIVIL REVISION APPLICATION NO.85 OF 2018

Krishnawatar Satyanarayan Agarwal & Ors. .... Applicants
V/s.
Sitaram Chiranjilal Agarwal & Ors. .... Respondents

Mr. Shishir Joshi, a/w. Ms. Bhakti Jogal, i/by Mr. Mahendra D. Jain, for the Applicants.

Mr. Navin Parekh, i/by Mr. Prem Gidwani, for Respondent Nos.1 and 2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 21ST MARCH, 2018.

P.C. :

1. Heard Mr. Joshi, learned counsel for the Applicants, and Mr. Parekh, learned counsel for Respondent Nos.1 and 2.

2. Both these Revision Applications are arising out of the common order dated 15th November 2017 passed by the learned Judge of the City Civil Court, Greater Bombay, below the Notices of Motion Nos.2321 of 2017 and 3099 of 2017 in Suit No.4819 of 2011.

3. These two Notices of Motion were taken out by the Applicants, who

are Original Defendant Nos.1(a) to 1(c), under Order 7 Rule 11(a) and 11(d) of the Code of Civil Procedure, 1908, for rejection of the plaint on the ground that, the Suit does not disclose the cause of action and the reliefs claimed in the Suit are barred by law.

4. Respondent Nos.1 and 2 herein have filed a Suit for partition of the suit property and claiming their separate share therein on the count that, the suit property is the joint family property of Mahadeolal Agarwal (HUF), in view of the declaration made by him on 15th May 1963. It is submitted that, the lease-hold coparcenery rights in the suit property were acquired by late Mahadeolal Agarwal in his own name by the registered 'Lease Deed' dated 30th March 1963 from Shri Rajasthan Co-operative Housing Society. However, thereafter, he had thrown the said property in the common hotchpotch of Hindu joint family property, thereby blending the same with the character of 'Hindu Undivided Family property', by declaration dated 15th May 1963. In view thereof, as already the partial partition had taken place and this property is remained to be partitioned, therefore, it should be now partitioned and Respondent Nos.1 and 2 should be allotted their separate share.

5. According to the Applicants, however, if it was a self-acquired property of late Mahadeolal Agarwal, then, unless and until there is documentary evidence showing that there was a coparcenery property,

from the nucleolus of which the property was purchased, such property cannot be considered to be the joint family property. Moreover, for throwing such property in common hotchpotch also, there has to be already existing joint family property. In this case, according to him, there is no evidence to that effect. Secondly, it is submitted that, once the property is acquired as independent separate property, then, unless some document is executed, which has to be registered, such property cannot loose its character and become the joint family property. Here in the case, it is submitted that the alleged declaration dated 15th May 1963, made by late Mahadeolal, is not registered. Hence, the Suit cannot lie on the basis of such unregistered document, especially when it is not produced also.

6. According to learned counsel for the Applicants, Section 5(2) of the Transfer of Property Act, 1882, applies to even transfer by one person to himself and as per Section 54 of the said Act, such transfer needs to be in writing on proper stamp-paper and it should be registered also. Section 17 of the Registration Act, 1908, further makes the registration of the document evidencing the transfer as mandatory. Hence, if such document is not registered, then, it cannot be taken into consideration for holding that the suit property validly came into hotchpotch of joint family property.

7. However, in my considered opinion, this aspect is rightly considered by the Trial Court by placing reliance on the Judgment of the Apex Court in the case of *Goli Eswariah Vs. Commissioner of Gift Tax, A.P., 1970 DGLS (SC) 258*, wherein it was held that,

> *"The act of throwing self-acquired property by a coparcener into common hotchpotch is an unilateral act. Clause (d) of Section 2(xxiv), which contemplates a "transaction entered into" by one person with another, cannot apply to a unilateral act. It is true that, for the purpose of the Act, a Hindu Undivided Family can be considered as a "person", but the coparcener by his act does not enter into any transaction with his family. The act cannot also be considered as a "disposition" under the main part of Section 2(xxiv). It is clear from the context in which the word "disposition" is used that it refers to a bilateral or a multi-lateral act. It does not refer to a unilateral act of throwing self-acquired property into common hotchpotch."*

8. In view thereof, needless to state that, the above-said provisions of Transfer of Property Act and Registration Act, on which learned counsel for the Applicants has placed reliance, cannot be made applicable to the facts of the present case.

9. The next submission advanced by learned counsel for the Applicants that, in order to hold that the party has thrown its self-acquired property in common hotchpotch, there has to be some joint

family property, then only, the blending can take place, in this respect, he has placed reliance on the Judgment of the Hon'ble Apex Court in the case of *Mallesappa Bandeppa Desai Vs. Desai Mallappa @ Mallesappa, 1961 DGLS(SC) 50.* However, as rightly held by the Trial Court, the said Judgment cannot be made applicable to the facts of the present case, as in that case, the issue involved was whether the property held by a female Hindu as a limited owner could be blended with the joint family co-parcenery property and in that factual matrix, it was held that, the immovable property held by Hindu female as a limited owner could not be blended without the evidence relating to existence of joint family property.

10. Apart from that, there is also the 'Declaration' dated 13th March 1977, which is produced on record at page Nos.173 and 172 to the Revision Applications, respectively, and which was made by Chirajilal, son of Mahadeolal Agarwal. He was the father of Defendant No.1. It contains following paragraphs :-

> *"1. I am the 'Karta' of the 'Hindu Undivided Family', known as 'Mahadeolal Agarwal', which consists of myself, my younger brothers, namely, Shri Satyanarayan Agarwal and Shri Shivshankar Agarwal, both being co-parceners, and Smt. Dakhidevi Agarwal, my mother. My father Mahadeolal Agarwal was the 'Karta' of this 'Hindu Undivided Family' upto the date of his death and after his death, I became the 'Karta' of the said family, being his eldest son.*

2. *<u>Our 'Hindu Undivided Family' is owning a house at Andheri</u> and in addition to the same, our 'Hindu Undivided Family' is also having a Bank Account with Bank of Baroda and Loan Account with M/s. Ganeshnarayan Mahadeolal. It was mutually decided against the co-parceners and members of the family that out of the liquid funds of the family, a sum of Rs.54,000/- be partitioned amongst the family members and co-parceners equally and in pursuance of the said agreement, it was decided on or about 12th March 1977 to partition a sum of Rs.54,000/- , out of the amount lying with Bank of Baroda amongst the three co-parceners, namely, myself and my two younger brothers, namely, Shri Satyanarayan Agarwal and Shri Shivshankar Agarwal, and my mother Smt. Dakhidevi Agarwal.*

In pursuance of the said agreement, cheques were issued to each of the said co-perceners and my mother Smt. Dakhidevi Agarwal of Rs.13,500/- each on 12th March 1977 drawn from Bank of Baroda.

[Emphasis Supplied]"

11. Paragraph No.2 of the 'Declaration' referred here-in-above, not only admits the existence of Hindu joint family property, but also the fact that the suit property is the 'house' owned by this 'Hindu Undivided Family', in addition to some other Bank Accounts.

12. There is also the 'Assessment Order' from the 'Income Tax Department' of the Assessment Year 1977-78, further certifying the existence of Hindu joint family property. It reads as follows :-

"The Assessee is assessed to tax. During this year, there is a partial partition of the property of the assessee. A copy of 'Declaration Deed' dated 13th March 1977 is filed. The assessee family had Rs.54,000/- lying in deposit with Bank of Baroda. This amount has been distributed amongst 4 members equally. The members have accepted the money at Rs.13,520/-, each, on 12.3.77. They have signed the declaration having received the amount. The Income Tax Return includes property income and interest income. The Balance Sheet for this year shows that, Rs.54,000/- have been deducted from capital of the H.U.F."

13. Thus, the existence of Hindu Undivided Family property is apparent on the face of record, considering the Income Tax Return and the 'Declaration' dated 13th March 1977, which is signed by Original Defendant No.1, i.e. the predecessor of the present Applicants, acknowledging himself as the 'Karta' – Mahadeolal Agarwal (HUF). In view thereof, none of the contentions raised by learned counsel for the Applicants hold any substance.

14. As a matter of fact, all the contentions raised by the Applicants are pertaining to the merits of the Suit and they cannot be considered for rejection of the plaint on the ground of non-disclosure of cause of action or on the ground of it being barred by any provisions of law. Learned

counsel for the Applicants has failed to show that, there is no cause of action, either disclosed in the plaint or there is no real cause of action and whatever is shown is merely a camouflage of cause of action, so that one can consider such application for rejection of the plaint.

15. Learned counsel for the Applicants has also not shown any provision of law, which expressly or impliedly barred such Suit for the Civil Court to take cognizance. Whatever arguments are advanced, are relating to merits of the matter or about the ultimate success or failure of the Suit. Those contentions cannot be considered for the purpose of deciding the application under Order 7 Rule 11(a) or 11(d) of the CPC. For deciding such application, the averments made in the plaint are *sine qua non*. In the plaint, Respondent Nos.1 and 2 have clearly averred as to how the suit property became part of the joint family property, as a result of Mahadeolal Agarwal blending it in the common hotchpotch. There are averments to that effect in paragraph Nos.2 and 11 and the cause of action is also stated in paragraph No.11, making out the clear case as to how the Respondents are having share in the suit property. Thus, on plain and meaningful reading of the plaint, it can hardly be accepted that, it does not disclose the cause of action or it is barred by any provisions of law.

16. In view thereof, the Trial Court has rightly rejected both the

Notices of Motion filed under Order 7 Rule 11(a) and 11(d) of the CPC. In the revisional jurisdiction, no interference is warranted or justified in the impugned order.

17. Therefore, both the Revision Applications stand dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]