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

Date of hearing & Order: 19th July 2018

+ **FAO(OS) 97/2016, CM Appln. No.10511/2016, 20861/2018**

LT COL PARAMJIT SINGH DHILLON Appellant

Through: Mr. Sachin Datta, Senior Advocate
with Ms. Ritika Jhurani, Mr. Dinesh
Sharma, Ms. Kritika Khanna,
Ms.Prity Sharma, Advocates

versus

HARINDER SINGH GHUMAN Respondent

Through: Mr. Pramod Kumar Dubey, Mr. Shiv
Chopra, Mr. Saurabh Kumar,
Mr.Mayank, Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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19.07.2018

S. RAVINDRA BHAT, J. (ORAL)

The appellant is aggrieved by the order of the learned Single Judge of this Court, dismissing his application for rejection of the suit. The learned Single Judge notices that the appellant/defendant's claims for rejection of the suit, encompasses this Court in Delhi and Punjab and that the suit is a suit for partition for properties situated in Delhi as also in Punjab and some of them were agricultural properties. The learned Single Judge considered the application –framed issues, and has pressed his opinion in the following terms:

“6. The contention of the applicant/defendant relying upon Section 16 CPC that this Court would not have territorial jurisdiction with respect to properties in Punjab is misconceived because of Section 17 CPC which states that where more than one court has jurisdiction, a suit can be filed at any one court where anyone immovable property is situated. Applicant/defendant has overlooked the provision of Section 17 CPC.

7. So far as the issue that defendant has filed a suit against the plaintiff which is pending in the Court at Punjab and therefore the trial of the present suit should not continue as per Section 10 CPC, it is noted that the defendant has not raised such issue/defence of Section 10 CPC framed when issues were framed on 30.1.2015. Learned senior counsel for the applicant/defendant also concedes that no defence/objection as per Section 10 CPC has been raised in the written statement filed by the defendant. Clearly therefore application beyond the scope of written statement cannot be looked into. So far as properties in Punjab are concerned, as already stated above, if are taken piecemeal for decision of the issues in the suit, the same will result in various decrees and therefore in the facts and circumstances of the case, more so in view of the fact that there may be issues with respect to interpretation of various provisions of the Punjab Land Revenue Act, in the peculiar facts of the present case, it will be appropriate that all the issues are decided together after leading of evidence, and at the stage of final arguments.

8. Dismissed.”

Mr. Sachin Datta, learned senior counsel appearing for the Appellant specifically relies upon Rule 3 of the Delhi High Court Rules, Part B, to say that the courts can entertain the suit relating to the dispute as to title and revenue assessed land in a partition

proceeding, when the revenue officer declines to determine the question as though he were a Civil Court and, refuses to partition until the question is determined by a competent Court.”

The learned senior counsel also relied upon Section 158 read with Section 117 of the Punjab Land Revenue Act, 1887 (hereinafter “PLR Act”) to submit that there is a threshold as to the maintainability of the suit before this Court, as it predominantly involves agricultural land for which local courts initially have exclusive jurisdiction.

Section 158(17) of the PLR Act pertinently states as follows:

“158. Exclusion of jurisdiction of Civil Courts in matters within the jurisdiction of Revenue-officers:- Except as otherwise provided by this Act- (1) a Civil Court shall not have jurisdiction in any matter which the [State Government] or a Revenue-officer is empowered by this act to dispose of or take cognizance of the manner in which the {State Government} or any Revenue-officer exercises any powers vested in it or him by or under this Act; and in particular-

(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely: -

(i) Any question as the limits of any land which has been defined by a revenue-officer as land to which this Act does or does not apply;

(ii) any claim to compel the performance of any duties imposed by this Act or any other enactment for the time being in force on any Revenue-officer as such.

...

(xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought.

This Court concurs with the observation of the learned Single Judge that the suit pending before the Court – which is by way of claim of partition, not merely of one or two properties, but the entire estate of the deceased Late Shri K.S. Dhillon is maintainable on account of General Provisions of the substantive procedural law i.e. Section 16 of the Civil Procedure Code. Clearly, that observation is correct and justified because there is no territorial bar to the maintainability of the suit where the cause of action encompasses a property that is located within the jurisdiction of a Court. Section 17 is even more specific, in that, where, in a suit to obtain relief in respect of any immovable property situated within the jurisdiction of different courts is involved, a suit can be instituted in any Court within the limit of whose jurisdiction a portion of the property is situated. There is no territorial bar to maintainability of suit in Delhi, because there are properties located in Delhi. As far as the second issue with respect to the bar/maintainability on the ground of subject matters is concerned, this Court is of the view that here again Section 158(2)(xvii) clearly states that the issue of title would be gone into exclusively by a Civil Court, after which the question of shares, if any, and other consequential directions or orders may be made by the Revenue Courts. In the present case, the dispute both, in the Punjab Court (where the appellant/defendant appears to have filed a suit for

declaring (that the deceased Shri K.S. Dhillon has bequeathed properties in his favour) as well as the Delhi suit were concerning issues of title. In these circumstances, even the bar under the PLR Act does not apply.

This Court notices that the appellant had sought and was granted stay on further proceedings in the suit at the outset itself. This has enabled it effectively to forestall all further proceedings. The suit was at the stage of evidence of the plaintiff; the conduct of the defendant/ appellant was to somehow to delay the proceedings. In these circumstances, and having regard to the fact that there is no merit in the appeal, the present appeal filed by the Appellant is dismissed with costs quantified at Rs.50,000/-. Local Commissioner will be appointed by the Court to record the evidence and conclude the proceedings as expeditiously as possible (preferably within a period of six months).

With aforesaid observations and directions, the present appeal filed by the appellant is dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 19, 2018
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