

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

% **Date of decision: 30th September, 2019.**

+ **CS(OS) 509/2019**

MEGHNA GROVER & ORS

..... Plaintiffs

Through: Mr. Shiv Charan Garg and Mr. Imran
Khan, Advs.

Versus

AMIT GROVER & ANR

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

IA No.13725/2019 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

**CS(OS) 509/2019 & IAs No.13726/2019 (u/O XXXIX R-1&2 CPC),
13727/2019 (u/O XXXII R-2 CPC) & 13728/2019 (for condonation of 19
days delay in re-filing)**

3. The three plaintiffs, namely (i) Meghna Grover, (ii) Shreya Grover and (iii) Rannveer Singh Grover, have instituted the suit for (a) declaration of the plaintiffs as lawful co-owners having share in property No.11/40, West Punjabi Bagh, New Delhi; (b) permanent injunction restraining the two defendants Amit Grover and Sumit Grover from alienating, encumbering or parting with the aforesaid property; (c) mandatory injunction directing the defendants not to interfere with the plaintiffs shifting

into one of the floors in the property and the plaintiffs' peaceful use and occupation of the said property.

4. It is the case of the plaintiffs in the plaint, (i) that the three plaintiffs are the wife, daughter and son respectively of defendant No.1 Amit Grover; the defendant No.2 Sumit Grover is the brother of defendant No.1; (ii) that property No.11/40, West Punjabi Bagh was acquired by Satpal Grover, father of the two defendants, under a Will dated 20th July, 1980 of his own father Ishwar Dass Grover, who died on 25th July, 1982; (iii) that Satpal Grover died on 3rd June, 2019 leaving a Will dated 21st November, 2007 bequeathing the said property to his sons i.e. the two defendants; (iv) that Ishwar Dass Grover had acquired the property from his ancestral funds; ancestors of Ishwar Dass Grover were doing business of leather at Dev Nagar, Karol Bagh, New Delhi; (v) that Satpal Grover was also having a plot No.121, Pocket-C-II, Sector-36, Rohini Residential Scheme, Delhi; (vi) that the defendant No.1 is carrying on his business in the name and style of M/s Pal Properties, in two shops in the property situated at 5840/4, Dev Nagar, Karol Bagh, New Delhi; the defendant No.1 has acquired these shops by way of inheritance; (vii) that the defendant No.1 is making construction on plot No.11/40, West Punjabi Bagh; (viii) that the defendant No.1 is not discharging his obligations towards the plaintiffs; (ix) that the plaintiffs apprehend that the defendant No.1 wants to transfer, alienate or create third party interest in properties acquired by him i.e. property No.11/40, West Punjabi Bagh, plot No.121, Pocket-C-II, Sector-36, Rohini Residential Scheme and two shops in property No.5840/4, Dev Nagar, Karol Bagh; (x) that the plaintiff No.1, since her marriage to the defendant No.1, was residing at property No.11/40, West Punjabi Bagh which is the matrimonial

home of the plaintiff No.1; (xi) that in March, 2018, the defendant No.1 asked the plaintiff No.1 to leave the said property claiming that the same was to be re-constructed; (xii) that on 1st May, 2018, the plaintiffs and defendant No.1 started residing at H. No.102, Sahridaya Apartment, A-4 Paschim Vihar, New Delhi; (xiii) that various litigations/complaints are pending between the plaintiff No.1 and defendant No.1; (xiv) that the defendant No.1 has been threatening to dispose of all the three properties aforesaid; (xv) that Satpal Grover, under his Will dated 21st November, 2007 has bequeathed the entire ground floor to defendant No.1 and the entire first floor to the defendant No.2, indicating an intention to give the property equally to the defendants No.1&2; and, (xvi) that construction upto fourth floors has already been carried out at property No.11/40, West Punjabi Bagh.

5. The suit has come up today for admission.

6. This is yet another suit filed under a misconception, that children have a share in the property inherited by their father from his own father. I have in *Aditya Prasad Dube Vs. Shobha Dube* 2018 SCC OnLine Del 6567, *Kamlesh Devi Vs. Shyam Sunder Tyagi* 2017 SCC OnLine Del 12701, *Saurabh Sharma Vs. Om Wati* 2018 SCC OnLine Del 9186 and *Neelam Vs. Sada Ram* 2013 SCC OnLine Del 384 lamented, that lawyers born after the coming into force of the Hindu Succession Act, 1956, seem to remember only the Hindu Law of inheritance in force of prior to their birth, and not the Hindu Law of inheritance as codified in the Hindu Succession Act, 1956. Under Section 8 of the said Act, the property of a male Hindu devolves on his heirs as their personal property, and not as property in which their own

children have a share. It appears that the said judgments have also not been read and suits under the same misconception continue to be filed.

7. The plaintiffs herein have pleaded the property No.11/40, West Punjabi Bagh, qua which only reliefs have been claimed in the present suit though mention in the plaint has been made of two other properties also, to have been acquired by Ishwar Dass Grover, being the great-grandfather of the plaintiffs No.2&3. The plaintiffs along with the plaint have filed copy of the Sale Deed dated 12th February, 1962 executed by the Refugees Co-operative Housing Society Limited in favour of Ishwar Dass with respect to plot of land bearing No.11/40, West Punjabi Bagh. The said Sale Deed does not mention the consideration thereof to have been paid by Ishwar Dass Grover by way of adjustment against any compensation for ancestral properties left in Pakistan. The plaintiffs have only vaguely pleaded that Ishwar Dass Grover acquired the property from ancestral funds, without mentioning any ancestral funds and without even pleading when the father of Ishwar Dass Grover died i.e. before coming into force of the Hindu Succession Act, 1956 or thereafter. Such vague pleas cannot be the basis of a claim, of the property qualifying as ancestral property in which the plaintiffs No.2&3 will have a share on birth. Moreover, had the property been ancestral property, the same would not have been inherited exclusively by Satpal Grover under a Will of Ishwar Dass Grover and in that case, the other members of the coparcenary / Hindu Undivided Family (HUF) for which Ishwar Dass Grover was holding the property, would also have a share. The plaintiffs even now, have not impleaded any of the other heirs of Ishwar Dass Grover or Satpal Grover, who also would have a share in the

property, in the event of the property being HUF property as parties to the present suit claim, totally belying the claim of the plaintiff.

8. A perusal of the Will of Ishwar Dass Grover, relied upon by plaintiffs themselves, shows Ishwar Dass Grover to have claimed to be the absolute owner of the property No.11/40, West Punjabi Bagh and the same being his self-acquired property and the said Ishwar Dass Grover to be having another son and daughter also, besides Satpal Grover. Similarly, a perusal of Will of Satpal Grover, again relied upon by plaintiffs themselves, shows him also to have claimed to be the absolute owner of property No.11/40, West Punjabi Bagh. Thus the claim of plaintiffs in the plaint is contrary to documents relied upon by the plaintiffs.

9. The counsel for the plaintiffs, faced therewith has contended that the plaintiff No.1, as the wife of defendant No.1, is entitled to restrain the defendant No.1 from dealing with property No.11/40, West Punjabi Bagh.

10. The Legislature, while enacting the Family Courts Act, 1984 and constituting the Family Courts thereunder, has vested the exclusive jurisdiction with respect to suits and proceedings between the parties to a marriage, with respect to the property of the parties or of either of them, in the said Family Courts. I have drawn the attention of the counsel for the plaintiffs to Explanation (c) to Section 7(1) of the Family Courts Act.

11. The counsel for the plaintiffs states that he had also considered the said provision before instituting this suit, but still instituted this suit on being unable to come up with a provision of law under which the claim of the plaintiff No.1 as wife of defendant No.1 could be made, though the jurisdiction for such claim would be of the Family Courts.

12. It is not for this Court to advise the counsel for the plaintiffs. Suffice it is to state that once the counsel also agrees that the exclusive jurisdiction of the claim of the plaintiff No.1, as wife of defendant No.1, with respect to the properties of defendant No.1 is with the Family Courts, the question of the counsel for the plaintiffs, due to not knowing the provision under which to apply to the Family Court, applying to the Civil Court, does not arise.

13. Else, as far as the claim in the present suit, on the basis of the plaintiffs No.2&3, on account of being the children of defendant No.1, having a share in the property inherited by defendant No.1 from his father is concerned, a reference may be made to *Commissioner of Wealth Tax, Kanpur Vs. Chander Sen* (1986) 3 SCC 567, *Yudhishter Vs. Ashok Kumar* (1987) 1 SCC 204, *Sunny (Minor) Vs. Raj Singh* 2015 SCC OnLine Del 13446 and *Surender Kumar Vs. Dhani Ram* 2016 SCC OnLine Del 333 holding that, after coming into force of the Hindu Succession Act, there is no such right in the plaintiffs No.2&3.

14. The suit thus, on the averments therein, is not maintainable and is dismissed. However, no costs.

15. On request, a certificate entitling the plaintiffs to refund of court fees paid be issued and handed over to the counsel for the plaintiffs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 30, 2019

‘bs’

(corrected & released on 23rd October, 2019)