

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

% **Date of decision: 2nd August, 2019**

+ **CS(OS) 2665/2013, IA No.22130/2012 (u/O XXXIX R-1&2 CPC), IA No.654/2013 (u/O XXXIII r/w S 151 CPC), IA No.9087/2015 (u/O VII R-11 CPC)**

RAJ KUMAR **Plaintiff**

Through: Ms. Shreya Rao, Adv.

Versus

RAM BHAJ BANSAL & ORS **Defendants**

Through: Mr. S. Chaturvedi, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff Raj Kumar instituted this suit against his father Ram Bhaj Bansal and against his father's three brothers viz. Ram Kumar, Laxmi Narayan and Narayan Dass, for a) declaration, b) partition, and, c) permanent and mandatory injunction.

2. The father of the plaintiff, defendant no.1, having died during the pendency of the suit, his heirs minus the plaintiff were substituted.

3. The suit came up for admission before the undersigned on 8th January, 2013, when doubts were expressed as to the maintainability thereof and on request of the counsel for the plaintiff, hearing adjourned to 15th January, 2013. The plaintiff thereafter sought amendment of the plaint which was allowed on 15th January, 2013. Though on 15th January, 2013 also doubts were expressed as to the maintainability of the suit on the plea of existence of an HUF, reasoning that the claim of the plaintiff was contrary to *Commissioner of Wealth Tax Vs. Chander Sen* (1986) 3 SCC 567 and *Bhanwar*

Singh Vs. Puran (2008) 3 SCC 87, but finding that the plaintiff had sued as an indigent person, enquiry into the indigency of the plaintiff was ordered.

4. The counsel for the plaintiff informs that the plaintiff subsequently withdrew the application under Order XXXIII Rule 1 of the CPC to sue as an indigent person and the plaint was registered as a suit. The defendant no.(1a), 3 and 4 have filed written statement to the plaint. The written statement of none of the other defendants are on record, and the counsel for the plaintiff states that the remaining defendants have been proceeded against *ex parte*.

5. Today, IA No.9087/2015 of the defendant no.(1a), 3 and 4 under Order VII Rule 11 of the CPC is for consideration and the counsel for the applicants / defendants and the counsel for the plaintiff have been heard.

6. It is the case of the plaintiff in the amended plaint, (i) “that the plaintiff is seeking partition in the properties purchased and left behind by his grandfather Late Sh. Gyani Ram in the capacity of a coparcener in the Joint Hindu Family which was headed by Late Sh. Gyani Ram during his life time.”; (ii) that the plaintiff and the defendants (1a) to (1d) were born out of the first marriage of deceased defendant no.1 and the defendants (1e) & (1f) were born out of the second marriage of deceased defendant no.1; (iii) “that since the year 1940 and during his life time Late Sh. Gyani Ram was carrying on the business of dal and grains under the name and style of ‘M/s Kanhaiya Lal Gyani Ram’ from the premises No.2074, Old Anaj Mandi, Narela, Delhi and was looking after the affairs and interest of the entire family

comprising of himself and other family members including the defendants”; (iv) that Gyani Ram, out of joint family funds, purchased various properties in the name of one or the other member of the joint family, with the intention that the same should be used for the benefit of all the members / coparceners of the joint family / coparcenary; (v) list of 17 properties is given in paragraph 5(iv) of the plaint; (vi) that Gyani Ram, till his death was residing along with his family members at 2074, Old Anaj Mandi, Narela, Delhi which was purchased by Gyani Ram for the benefit of and / or enjoyment of all of the family members; (vii) that in November, 2009, the plaintiff learnt that the defendant no.1 had filed a suit for partition of 2074, Old Anaj Mandi, Narela, Delhi and another property against the defendants no.2 to 4, claiming each of the defendants no.1 to 4 to be having one-fourth undivided share therein; (viii) that the plaintiff applied for impleadment in the said suit, pleading the properties with respect to which the suit was filed to be joint family properties; however the said application was dismissed, holding that the plaintiff ought to file a separate suit asserting his rights; (ix) that a preliminary and thereafter final decree for partition was passed in the said suit; and, (x) that the said preliminary as well as final decree are bad in law and liable to be cancelled, having been obtained by fraud and depriving the plaintiff of his one-eighth share in the property. On the said pleas, reliefs of (a) declaration that the preliminary and final decree for partition in the suit *inter se* the defendants no.1 to 4 had been obtained by misrepresentation and by playing fraud; (b) declaration that the properties listed in paragraph 5(iv) of the plaint are properties

purchased by Late Sh. Gyani Ram as Karta of Hindu joint family from joint family funds; (c) declaration that the plaintiff is entitled to one-eighth share from the proceeds of sale of the two properties with respect to which the preliminary and final decree for partition had been passed; (d) declaration of the plaintiff being entitled to 1/32th share in the properties mentioned in paragraph 5(iv); and, e) partition of the said properties and injunctions with respect thereto have been claimed.

7. Need to go into the written statement of the defendants (1a), 3 and 4 is not felt, being of the view that the present is yet another suit of the genre of suits which have been dealt with by this Court in *Neelam Vs. Sada Ram* 2013 SCC OnLine Del 384, *Sunny (minor) Vs. Raj Singh* 2015 SCC OnLine Del 1346, *Surender Kumar Vs. Dhani Ram* (2016) 227 DLT 217, *Kamlesh Devi Vs. Shyam Sunder Tyagi* 2017 SCC OnLine Del 12701 and *Saurabh Sharma Vs. Om Wati* 2018 SCC OnLine Del 9186, obviously filed on a misconception of the ancient Hindu law prevalent prior to the coming into force of the Hindu Succession Act, 1956 and of the Hindu Succession Act, 1956 itself. In fact, I may mention that plaint as originally filed and which had come up first before this Court on 11th December, 2012 was purely on the basis of the belief that since the properties qua which the suit was filed were of the grandfather of the plaintiff, the plaintiff had a share therein. It is only when the counsel for the plaintiff was quizzed on 11th December, 2012 and 8th January, 2013, that the application for amendment was filed to bring in the words of Joint

Hindu Family and coparcenary in the plaint, and which is obviously an afterthought.

8. This misconception is evident, from the counsel for the plaintiff today also, being unable to tell, upon asking, as to when Gyani Ram, grandfather of the plaintiff, died. The counsel for the plaintiff is unable to also respond whether it was before or after coming into force of the Hindu Succession Act.

9. Though the plaintiff, in the amended plaint has paid lip service to a claim for partition, by using the terminology Joint Hindu Family and coparcenary, but the averments in the plaint do not constitute any plea of Joint Hindu Family. It is not the plea in the plaint that Gyani Ram had inherited anything from his ancestor. All that is pleaded is that Gyani Ram with his income had purchased the properties, of which partition is sought, in different names. There is nothing also to show, apart from a bare plea, that Gyani Ram acquired the properties from a nucleus of the Joint Hindu Family for the properties acquired to be presumed to be joint family property. It is not even the plea that Gyani Ram, at any point in his lifetime, though not having any coparcenary or Joint Hindu Family, constituted any Joint Hindu Family with his sons and threw all his personal properties into the hotchpotch of Joint Hindu Family.

10. Else, after coming into force of the Hindu Succession Act, 1956, there is no presumption of jointness and even if the averments in the plaint are to be accepted on their face, the plaintiff, as a grandson of Gyani Ram, would not have any share in the estate of Gyani Ram.

11. The counsel for defendants No.(1a), 3&4 has also informed that the plaintiff filed objections in the execution proceedings of the decree for partition with respect to two properties, in the suit aforesaid and which objections were premised on the same facts as in this suit and were dismissed vide order dated 21st January, 2017 by the Court of Additional District Judge, Central-07, Delhi and no remedy thereagainst also has been preferred.

12. Once the plaintiff has preferred objections in the execution proceedings and which as per law are required to be disposed of in the same way as a suit, and the said objections have been dismissed, even if without recording any evidence, the plaintiff at least qua two of the properties which were subject matter of the said decree, is barred by the principles of *res judicata* from agitating the same by way of this suit. Thus, the suit, insofar as for declaration of the decree in Suit No.892/2008 to be bad, is even otherwise not maintainable and the claim for partition of the properties subject matter thereof is barred by *res judicata*.

13. The counsel for the plaintiff has argued that at the time of purchase of property No.2074, Old Anaj Mandi, Narela, Delhi, defendant No.1 i.e. the father of the plaintiff was in a government job and had no means to purchase the said property and the defendant No.2 was working with the father, the defendant No.3 was barely 22 years of age and the defendant No.4 was 4 years old and it is quite obvious therefrom that the property was purchased by Gyani Ram from his own monies.

14. As aforesaid, even if it be so, the plaintiff still gets no share in the estate of Gyani Ram.

15. Even otherwise, the plea of Gyani Ram being the real owner of the property, though in the name of others, is also barred by the Benami Law, as also held in the judgment of dismissal of objections to the execution filed by the plaintiff.

16. The counsel for the plaintiff has also argued that the defendant No.1, being the father of the plaintiff, was taking care of his children from his second marriage only and was not taking care of the plaintiff and defendants No.(1a) to (1d).

17. If the plaintiff had any right against his father, the remedy of the plaintiff was to sue his father only and not to sue for partition of the entire estate of Gyani Ram.

18. The suit, on the averments in the plaint, does not disclose any right, title, interest or entitlement of the plaintiff to a share in the properties of which partition is sought, and the suit, insofar as for declaration of the decree in Suit No.892/2008 as bad in law, is barred by *res judicata*.

19. The counsel for the defendants no.(1a), 3 and 4 now informs that Gyani Ram died in the year 1999.

20. On demise of Gyani Ram, after coming into force of Hindu Succession Act, only his sons will have a share therein and the plaintiff, being a grandson, will have no share.

21. The suit is thus dismissed with costs of Rs.25,000/- payable by the plaintiff to the defendants No.(1a),3&4.

No costs.

Decree sheet be drawn up.

22. The dismissal of this suit will however not come in the way of plaintiff claiming share in estate of his father.

RAJIV SAHAI ENDLAW, J.

AUGUST 02, 2019

‘gsr/bs’..

(Corrected & released on 16th August, 2019)

