

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 6th February, 2020.

+ CS(OS) 1737/2007, CCP(O)88/2015, IA No.5753/2012(u/S.25(2) of DV Act), IA No.20636/2015 (u/S.26 of DV Act), IA No.12698/2017 (u/S.151 of CPC) & IA No.9712/2019 (u/S.151 of CPC)

MASTER ANANT NARAYAN RAI AND ANR. Plaintiffs

Through: Mr. Sanjeev Sahay with
Mr. Sulalit Sisodia, Advs.

Versus

SIDDHARTH RAI & ANR.

..... Defendants

Through: Mr. P.P.Malhotra, Sr. Adv. with
Mr. Pramod Kumar, Ms. Tanya
Kathuria & Mr. Akshya, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 25th September, 2019, the following order was passed in this suit:

"1. This suit for partition of the following Joint Family Properties:

"A. Joint Family Properties:-

- 1. Flat at D-4, Upasana Building, Hailey Road, Connaght Place, New Delhi: 110001; At present the said flat is on rent @ over Rs.90,000/- per month.*
- 2. Farm House (8.5 acre) bearing khasra number 7, 11, 14/1, 17/2, 18, 19, 20, 21/1, 22/1, 23/1 situated in Dera Gaon, New Delhi in the name A.B.S enterprises of which Defendant no. 1 is a sole proprietor*
- 3. Ancestral House bearing khasra number 275,1056 measuring .4150 hectare situated at Semri Jamalpur, Mau, Uttar Pradesh of around 1 bigha; (currently occupied by plaintiff no.2 and defendant).*

4. 20 Bigha agricultural ancestral land bearing khasra no. 938,1145,1144 of land measuring 2.4740 hectare situated at Semri Jamalpur, Mau, Uttar Pradesh. (current capital value of which is approximately 50 lacs; Defendant no.1 takes all the produce and income)
5. 5 Bigha Mango Orchard bearing khasra no.945,1147 land measuring 4.9350 hectare situated at Semari, Jamlpur, Distt Mau, U.P; capital value of which is around 12 lacs; (Defendant no.1 takes all the produce and income) ”

and for rendition of accounts and permanent injunction, post-trial is ripe for final hearing.

2. The senior counsel for the plaintiffs and the senior counsel for the defendant no.1 have been heard. The only other defendant namely M/s Innovative B2B Logistics Solutions Pvt. Ltd. was proceeded against ex parte on 9th July, 2008 and remains ex parte.

3. It is not in dispute that the plaintiff no. 1 Master Anant Narayan Rai, who has since attained majority, is the son and the plaintiff no.2 Dr. (Mrs.) Sita Kumari Rai, who is the wife of the defendant no.1 Siddharth Rai.

4. The senior counsel for the plaintiffs has drawn attention to the issues framed in the suit on 24th January, 2011 and has contended that the present suit has been filed for partition of the plaintiff no.1's share in Kalpnath Rai HUF; it is informed that Kalpnath Rai died on 6th August, 1999.

5. Since the suit is for partition of share in HUF, and Kalpnath Rai, informed to be the karta/co-parcenor of the HUF is stated to have died prior to institution of the suit, I have enquired from the senior counsel for the plaintiffs about the natural heirs of Kalpnath Rai inasmuch as in terms of Section 6 of the Hindu Succession Act, 1956, on the demise of Kalpnath Rai, there would be a deemed partition and the share of Kalpnath Rai in the HUF would be inherited by his natural heirs, in accordance with Section 8 of the said Act and would not devolve upon the remaining co-parcenors/members of the HUF.

6. The senior counsel for the plaintiffs informs that Kalpnath Rai left defendant no.1 as his only son, a wife and five married daughters.

7. Thus, the share of Kalpnath Rai in the HUF would be divided into seven shares and of which the defendant no.1 would have one-seventh share only. Though, the senior counsel for the plaintiffs has contended that the said one-seventh share inherited by the defendant no.1 out of his father's share in the HUF would also be HUF property in the hands of the defendant no.1 but the senior counsel for the plaintiffs has not been able to support the said contention with any case law and the position of law is clear that the property inherited by Class I heirs, even if out of share of, their predecessor in HUF property, is inherited by them in their personal individual capacity and not as property of the HUF. Reference in this regard may be made to **Commissioner of Wealth Tax, Kanpur Vs. Chander Sen** (1986) 3 SCC 567, **Yudhishter Vs. Ashok Kumar** (1987) 1 SCC 204, **Satyawati Vs. Suraj Bhan** 2017 SCC OnLine Del 7961, **Jai Narain Mathur Vs. Jain Prakash Mathur** (2016) 228 DLT and **Sunny (Minor) Vs. Raj Singh** (2015) 225 DLT 211.

8. I have next enquired, who all were the members of Kalpnath Rai HUF.

9. The senior counsel for the plaintiffs has drawn attention to Pages 17 to 20 of Part IV B File, being the copy of the income tax return for the year ending 31st March, 1996 of Kalpnath Rai HUF, and which at Page 18 in Notes to Computation of Total Income prescribes that the said HUF consisted of Kalpnath Rai as karta, his wife Sudha Rai and the defendant no.1 Siddharth Rai.

10. It thus follows that the share of Kalpnath Rai in Kalpnath Rai HUF was one-third. Axiomatically it follows that the share of defendant no.1 in the HUF is one-third only.

11. I have next enquired from the senior counsel for the plaintiffs, whether not the plaintiff no.1, claiming though his father defendant no.1 who had one-third share in the HUF, can, on the principle of per stirpes, have only half of the said one-third share.

12. The senior counsel for the plaintiffs has not controverted.

13. Though the senior counsel for the plaintiffs has sought to claim a share for the plaintiff no.1 out of the share of Sudha Rai aforesaid also, but Sudha Rai having not been impleaded as a party to this suit, no adjudication with respect to her share in the HUF can be made.

14. No further argument has been made in this respect.

15. In view of the aforesaid position, I have straightway called upon the senior counsel for the defendant no.1 to address.

16. The senior counsel for the defendant no.1 has first contended that the agricultural land aforesaid was the personal property of the defendant no.1 as evident from the Sale Deeds with respect thereto in favour of defendant no.1, proved by the plaintiffs themselves.

17. However the fact remains that the said land in the income tax return of the HUF, has been shown as belonging to the HUF. There is no bar in law to the property, title deeds with respect to which are in the individual name of the karta or co-parcenor, being put in HUF hotchpotch and/or being declared to be an HUF property and once the said land is shown in the income tax return as of the HUF, in the absence of anything more, the same has to be treated as HUF.

18. The senior counsel for the defendant no.1 has then contended that the HUF was only for the purposes of income tax.

19. The said argument has no feet to stand in law.

20. There cannot be one position with respect to title of properties, including immovable property, before the Income Tax Authority and another before other fora and/or before one's progeny and spouse. The said question is no longer res integra. Reference can be made to **Moolchand Kharaiti Ram Trust Vs. Union of India** 2016 SCC OnLine Del 2840, appeal whereagainst was dismissed by the Division Bench in **Moolchand Kharaiti Ram Trust Vs. Union of India** 2018 SCC OnLine Del 9751.

21. The senior counsel for the defendant no.1 has next argued that Kalpnath Rai died on 6th August, 1999; the defendant no.1 was married to plaintiff no.2 on 17th January, 2000 and the plaintiff no.1

was born on 23rd February, 2001. It is contended that since the plaintiff no.1 was born after the demise of Kalpnath Rai, he would not have any share in the HUF.

22. On enquiry, why, the senior counsel for the defendant no.1 contends that because the HUF stood dissolved on demise of Kalpnath Rai and the question of the plaintiff no.1 getting any share in the HUF which stood dissolved prior to his birth would not arise.

23. However that, as per my understanding, is not the position in law, at least qua HUF, though may be with respect to partnerships.

24. The senior counsel for the defendant no.1 has drawn attention to **Uttam Vs. Saubhag Singh & Ors.** (2016) 4 SCC 68, particularly paragraph 19 and head note thereof but what the said judgment lays down is that the share inherited as Class I heir in the share of the predecessor in HUF is inherited as private property and the progeny has no share therein. The said judgment is not found to be laying down that an HUF stands dissolved on death of any of its member/karta.

25. The senior counsel for the defendant no.1 seeks adjournment to look up the case law.

26. The senior counsel for the plaintiffs has contended that the plaintiff no.2 who is the wife of the defendant no.1 would also have a share in the one-third share of defendant no.1 in Kalpnath Rai HUF.

27. However, the senior counsel for the plaintiffs also seeks adjournment to justify the said aspect.

28. List on 22nd October, 2019.”

2. On 22nd October, 2019, adjournment was sought on behalf of the senior counsel for the plaintiffs who had argued on 25th September, 2019. Thereafter on 4th February, 2020 it was stated by the counsel for the plaintiffs, that there had been talks of settlement between the plaintiffs and adjournment by four weeks was sought. However the senior counsel for the

defendant no.1 controverted and stated that there was no possibility of settlement. The counsel for the plaintiffs was thus requested to argue, but the counsel for the plaintiffs was not prepared therefor also. Observing, that this suit of the year 2007 could not be permitted to be pursued by plaintiffs in this manner and that the plaintiffs, after approaching the court for relief, could not drag their feet, the suit was posted for today.

3. Today, the counsel for the plaintiffs states that no settlement is possible.

4. I have drawn the attention of the counsel for the plaintiffs to the detailed order dated 25th September, 2019 aforesaid, after substantially hearing final arguments in the suit and *inter alia* recording that though this suit has been filed for partition of joint family properties of Kalpnath Rai HUF, but impleading only the father of the plaintiff no.1 (who is the husband of the plaintiff no.2) as a party and without impleading other members of the HUF and the natural heirs of Kalpnath Rai who would have a share on his demise and it has thus again been enquired from the counsel for the plaintiffs, that since the necessary parties to a suit for partition have not been impleaded, whether not the suit is liable to be decided on this ground.

5. It appears that the parties proceeded to trial without considering the said aspect and have thereby not only wasted their own time but also the time of the Court.

6. I may also notice that though vide order dated 24th January, 2011, the following issues were framed in the suit:-

- “i. Whether the suit properties, as mentioned in Schedule-A to the plaint, fall within the ambit of Hindu Undivided Family and are liable to be partitioned? (OPP)*
- ii. Whether defendant No.1 is liable for rendition of accounts in respect of share of the plaintiffs in Schedule-A of the plaint? (OPP)*
- iii. Whether the suit properties are self acquired properties of defendant No.1? (OPD-1)*
- iv. Whether the jurisdiction of the Civil Court to entertain and adjudicate the present suit for partition in respect of agricultural lands is expressly barred by the provisions of the Delhi Land Reforms Act, 1954 and U.P. Zamindari Abolition and Land Reforms Act, 1950? (OPD)*
- v. Whether the plaintiff No.2 has no locus standi to file the instant suit on behalf of plaintiff No.1 in view of Section 6 of the Hindu Minority and Guardianship Act, 1956 as well as her own behalf? (OPD)*
- vi. Whether the Bhumidari rights in the agricultural lands governed by the provisions of the Delhi Land Reforms 1954 and Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 is controlled only by the provisions of the said Acts, and excluded from the operation of the law applicable on the joint family property and if so, to what effect? (OPD)*
- vii. Whether defendant No.1 and the other legal heirs of Sh.Kalphath Rai have inherited the suit property as per Section 6 of the Hindu Succession Act, 1956 as their separate property? (OPD)*
- viii. Whether the suit is bad for non-joinder of the necessary parties? (OPD)*
- ix. Whether the alleged declaration made by deceased Kalpnath Rai in the Income Tax return are contrary to the*

provisions of the Delhi Land Reforms 1954 and Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and not binding on defendant No.1 and if so, to what effect? (OPD)

x. Relief.”

but returning any finding thereon, in the absence of all the necessary parties who would be interested in the said findings, is not deemed appropriate and the exercise would again be in waste of time of the Court.

7. Interestingly, though issue no. viii aforesaid of non-joinder was framed on the plea of the defendant no.1 in paragraph 6 of the preliminary objections of his written statement to the effect that the HUF consists of, besides the defendant no.1, his four real sisters and one step sister but the plaintiffs, even then, did not implead the necessary parties and correct their course of action.

8. The counsel for the plaintiffs has contended, (i) that the defendant no.1, in his evidence, did not depose a single line on the issue no. viii onus whereof was on the defendant; (ii) “that in the written statement, it was not disclosed which HUF”; and, (iii) in the Income Tax Returns, the HUF was mentioned as consisting of Kalpnath Rai, his wife and defendant no.1 only and there was no mention of the sisters.

9. The aforesaid contentions also do not justify this suit for partition of HUF and its assets, with defendant no.1 only as a party thereto. In the order dated 25th September, 2019, aforesaid set out, this aspect has been dealt with in detail and the devolution of rights in HUF property is a matter of law and not a matter of leading of evidence. If, as held in the order dated 25th

September, 2019, on demise of Kalpnath Rai, his daughters also get a share out of his share in the HUF, no amount of negligence of either party in drafting its pleadings, can change the position in law and the Court cannot grant orders/decrees in contravention of the applicable law.

10. The counsel for the plaintiffs then states that adjournment be granted to enable the plaintiffs to now implead the aforesaid persons, “to save time”.

11. It is the plaintiffs who have been wasting time and now when it is found that as many as six or more necessary parties to a suit have not been impleaded, permitting an application to be filed for impleadment at this stage would only lead to further complexities and waste of time. Instead it is better that the plaintiffs, if at all desirous and serious with respect to their claim, initiate a properly constituted fresh action.

12. Though per Order I Rule 9 of CPC no suit can be defeated for non-joinder of parties but the proviso thereto clarifies that nothing in the said rule applies to non-joinder of necessary parties. In a suit for partition, all plaintiffs having a right to sell share in properties of which partition is sought, are a necessary party and no rights claimed can be determined in their absence and no partition effected. Reference in this regard may be made to ***Kanakarathanammal Vs. V.S. Loganatha Mudaliar*** AIR 1965 SC 271, ***Mira Gupta Vs. Dinesh Chand*** 2005 SCC OnLine Del 141 and ***A. Ramachandra Pillai Vs. Valliammal*** 1983 SCC OnLine Mad 44 (DB).

13. Here, on a reading of the plaint itself, the defect of non-joinder of necessary parties stares one in the face. The plaintiffs, in the plaint have pleaded, (i) that Mr. Kalpnath Rai, father of defendant no.1 had an HUF, consisting of himself and the defendant no.1; (ii) after the demise of Mr.

Kalpna Rai on 6th August, 1999, defendant no.1 became *karta* of the HUF; (iii) the plaintiff no.1 is the son of defendant no.1 and the plaintiff no.2 is the wife of the defendant no.1 and the two plaintiffs have 1/3rd share each in the said HUF and its properties; and, (iv) the grandfather of plaintiff no.1, “Kalpna Rai” has died intestate, hence all the properties which had devolved in the hands of Kalpna Rai (deceased) were in the nature of ancestral and Joint Hindu Family”. Even if the averments in the plaint were to be accepted *in toto*, on demise intestate on 6th August, 1999 i.e. after coming into force of Hindu Succession Act, 1956, of Kalpna Rai, his properties, whether personal or corresponding to a share in HUF, in accordance with Sections 6 & 8 of Hindu Succession Act would devolve on all his Class I heirs i.e. wife, sons and daughters and in a suit for partition thereof, all would be necessary parties. Also under the devolution in accordance with Section 8 of Hindu Succession Act, the plaintiffs, as son and wife of defendant no.1 would not have any share therein. This suit also appears to have been pursued as a result of prevalent misconception that even after coming into force of Hindu Succession Act, on demise of a male Hindu, son of his son also has a share in his properties, as has been commented upon in ***Saurabh Sharma Vs. Om Wati*** 2018 SCC OnLine Del 9186, ***Kamlesh Devi Vs. Shyam Sunder Tyagi*** 2017 SCC OnLine Del 12701, ***Neelam Vs. Sada Ram*** 2013 SCC OnLine Del 384, ***Aditya Prasad Dube Vs. Shobha Dube*** 2018 SCC OnLine Del 9658 and ***Meghna Grover Vs. Amit Grover*** 2019 SCC OnLine Del 11586. It is sad that the suit was not dismissed/rejected, when came up for admission.

14. Though the defendant no.1 in his written statement took plea of non-joinder and on which issue no. viii supra was framed, and the plaintiffs in

their replication admitted Kalpnath Rai to have left daughters also, but still, the plaintiffs, mechanically continued pursuing the suit, perhaps in the spirit that whatever the opposite party/counsel says, is “wrong and denied”, instead of at least then having realised their mistake, demonstrating the need for application of mind, not only at the stage of final arguments, but at all stages of a suit. The plaintiffs, though filed a stillborn suit which had no possibility of success, even after being informed of the defect therein by the defendants taking a plea to the said effect in their written statement as well as by the Court framing an issue thereon, proceeded to lead evidence and take adjournments for addressing final arguments. Even after the order dated 25th September, 2019 and till today, no steps for impleading necessary parties, for which adjournment is sought today, were taken.

15. It has been held in ***Uday Shankar Triyar Vs Ram Kalewar Prasad Singh*** (2006) 1 SCC 75, that procedural defects and irregularities which are curable, should not be allowed to defeat substantive rights or to cause injustice but the well recognized exception to this principle *inter alia* is, where the procedural defect is not rectified even after it is pointed out and due opportunity given to rectify it and/or where non-compliance or violation is deliberate or mischievous. Again, in ***Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust*** (2012) 8 SCC 706, it was held that where the plaintiff persists in not impleading a necessary party, inspite of objection, the consequences of non-joinder may follow. Reference may also be made to ***Gurnam Singh Vs. Achhar Singh*** 2011 SCC OnLine HP 4351.

16. The case of the plaintiffs here falls in the exceptions aforesaid. The request for adjournment is thus declined.

17. No other argument has been urged.

18. The suit is thus dismissed, but with the clarification that the plaintiffs, in accordance with law, shall be entitled to initiate fresh proceedings on the same cause of action and the defendants, shall be entitled to take all pleas available to them in defence to any fresh proceedings initiated.

19. Needless to state that all pending applications also stand disposed of and all interim orders stand vacated.

20. CCP(O) 88/2015 filed by the plaintiffs against the defendants for non-compliance of the order dated 28th April, 2015 is also disposed of.

Decree sheet be prepared.

Dasti.

RAJIV SAHAI ENDLAW, J

FEBRUARY 06, 2020

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