11 15.3.2022
Sc Ct. no.8

I.A. No. CAN 1 OF 2017
(Old No. CAN 10920 OF 2017)
(Application for injunction)
with
CAN 2 OF 2022
in
FMA 1394 OF 2018

Vikrama Singh & Ors.
Vs.
Bhim Shankar Tewari & Ors.

Mr. Aniruddha Chatterjee
Mr. Partha Pratim Ray
Mr. Shibaji Kumar Das
Mr. Sanjay Sadhu
Mr. Ahshan Ahmed
Ms. Rupsa Sreemani.
...For the Applicant/ Appellant.

Mr. Raja Basu Chowdhury
Mr. Rishav Banerjee
Ms. Sanjukta Ray.
...For the Respondent Nos. 1 & 2.

By consent of the parties the application being CAN 2 of 2022 has been treated as on day's list.

The parties to the appeal are the descendants of Sarju Prasad. The appellants are the legal heirs of the first wife of Sarju Prasad. The parties *prima facie* are governed by the Mitakshara School of Hindu Law. Initially the daughters of the Mitakshara School of Hindu Law were not considered to be coparceners, however, by reason of the amendment to the Hindu Succession Act, 1956 in the year 2005, have become entitled to the share of the unpartitioned portion of the estate of their ancestors. The appellants alleged that there are unpartitioned properties and assets and, accordingly, they are entitled to their share in such properties.

Learned trial Judge, however, seems to have not taken note of the aforesaid fact and refused to pass an order of injunction in favour of the appellants after contested hearing, *inter alia*, on the ground that the properties of Sarju Prasad were partitioned in the year 1982 relying on the documents disclosed by the respondents and further held that the daughters in a coparcenary has no interest and, accordingly, cannot claim any partition.

An interlocutory application is required to be decided on the basis of the affidavit evidence. However, at the time of considering a claim of a coparcener, the trial court was required to take into consideration the amendment made in 2005 and there were not sufficient materials to show that all properties, left by Suraj Prasad, were partitioned and, accordingly, the present appellants may not have any share in the property.

The difficulty, however, arose by reason of the order passed by the Larger Bench of the Hon'ble Supreme Court in ***Vineeta Sharma –vs.- Rakesh Sharma & Ors.*** reported in ***2020 (9) SCC 1*** in which the Hon'ble Supreme Court has observed that the provision contained in substituted Section 6 of the Hindu Succession Act, 1956 confers status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities (see paragraph 137 of the report). The impugned order was passed on 15th September, 2017. The law at that point of time was not settled. There were divergent views on the date when the impugned order was passed. On the date of the order it was possible for the trial court to exclude the daughters as coparceners. However, having regard to the fact that the law has been settled, the impugned order needs to be revisited as it now gives a right to a daughter to the coparcenary properties.

In view thereof, there shall be an order of injunction restraining the respondents from alienating, encumbering or creating any third party interest in respect of the properties as on date till the disposal of the suit.

Mr. Raja Basu Chowdhury, learned counsel appearing on behalf of the respondents has fairly submitted that on 18th January, 2016 that is during the pendency of the suit a development agreement alleged to have been entered into with the developer in respect of one of the properties. By reason of the judgment of the Hon'ble Supreme Court, the appellants could have a claim in the suit to the extent of their share in the property provided the suit is decreed in favour of the appellants.

However, having regard to the fact that the said agreement was implemented and steps have been taken towards construction of buildings, we direct the respondents to deposit Rs.2 crore (Rupees two crore) to the credit of the suit subject to the final adjudication of the suit. The learned trial judge shall invest the said amount in a nationalised bank in a short term fixed deposit yielding highest return.

The owners' allocation under the said agreement shall not be transferred without leave of the trial court.

We make it clear that we have not restrained implementation of the development agreement subject to fulfillment of the aforesaid conditions.

In view of the fact that the defendant nos. 1 and 2 have already filed their written statements, we request the trial court to pass peremptory direction with regard to procedural matters in order to make the said suit ready and dispose of the suit preferably within a period of one year from the date of framing of the issues subject to the convenience of the learned court.

In the event the other defendants have not filed their written statements, the trial court may proceed against such defendants *ex parte*.

None of the parties should be allowed to adopt dilatory tactics to delay the hearing of the suit.

The appeal and the applications are, accordingly, disposed of. However, there shall be no order as to costs.

Photostat certified copy of this order, if applied for, be furnished to the parties on usual undertaking.

(Ajoy Kumar Mukherjee, J.) **(Soumen Sen, J.)**