
Shekhar Jain v. Shanta Jain and another

Present: Mr. Birender Singh Rana, Sr. Advocate, with
Mr. Nayandeep Rana, Advocate,
for the applicant-respondents.

Mr. Rajesh Sethi, Advocate,
for the non-applicant-petitioner.

On May 05, 2022 the following order had been passed by this
court, in the context of this application:-

“Vide this application, a review of the judgement dated 21.11.2018 is sought by the respondents in the accompanying petition.

Learned counsel submits that this court while deciding the revision petition, observed that the mandatory injunction sought by the respondents in the petition, was on the basis of an oral family settlement stated to have been arrived at on 20.12.1998 between the parties and that the petitioner had claimed the partition of the estate of his late father on the basis of such oral family partition in the year 2006, upon the death of a brother of the petitioners' father.

It is further contended that the accompanying revision petition was accepted by this court by observing in paragraph 21 of the judgment that the said oral agreement is subject matter of the suit at Ambala and in case the petitioner is unable to prove that the said property was subject matter of any other subsequent agreement, then the suit property at Ambala could cease to be a part of the suit property at Meerut; and further, that in paragraph 20 of the judgment it has also been stated that the agreement relied upon at Meerut being one contended to be at a latter point of time,

i.e. 2006, it would possibly seem to override the earlier oral agreement entered into in 1998.

It has further been contended in this review application that in the judgment it has been held that if the petitioner is unable to prove his case either on the basis of the agreement in 2006 or any other basis qua the estate of the later Sh.Parkash Chand Jain, or that at least the property as is subject matter at Ambala was also to be partitioned equally between the parties, then the suit at Ambala can proceed thereafter on the basis of evidence led before that court qua that limited property.

It is therefore contended that an error apparent on the face of the record has crept in the said judgment passed by this court, to the effect that it has been recorded that there were two agreements, i.e. an oral family settlement arrived at on 20.12.1998, and an oral partition that took place in 2006 upon the death of Sh.Kailash Chand Jain, brother of the petitioners' father Sh. Parkash Chand Jain, whereas actually there was a written settlement/arrangement between the parties, dated 05.01.1999, regarding partition of the property situate at Ambala, wherein the petitioner (Shekhar Jain), was held to be the absolute owner of property no.5309/2, whereas respondents no.1 and 2 (Shanta Jain and Ajay Jain respectively), were given ownership rights regarding property no.4179/1 and 4178, with another brother, i.e. Raj Kumar Jain, having been given property no.5488-89, Sadar Bazar, Ambala Cantt.

A copy of the settlement/arrangement dated 05.01.1999 is stated to have been annexed as Annexure P-3 with the accompanying petition itself.

It is still further contended that a partition deed dated 18.10.1993 was also admittedly executed (as contended), between Sh.Parkash Chand Jain and his two brothers, Mahesh Chand Jain and heirs of his pre-deceased brother, i.e. Kailash Chand Jain.

A copy of that document also is pointed to by learned

counsel, as Annexure P-4 with the accompany petition.

Hence, the contention is that actually there was no oral family partition in the year 2006 between Sh.Parkash Chand Jain and his brother regarding the entire estate.

For consideration of whether any of the facts stated in the judgment of this court dated 21.11.2018 are actually against the record or not, after this court has gone through the entire petition and the judgment, and if so the effect thereof on what has been held therein, adjourned to 12.05.2022.

To be taken up at 1:45 p.m.”

Today Mr. Rana, learned senior counsel appearing for the applicants (respondents in the accompanying petition decided by this court), submits that there was a partition deed executed by the late P.C. Jain and his brothers, Mahesh Chand and Kailash Chand Jain, dated 18.10.1993; and further, there was also another written settlement/arrangement dated 05.01.1999 between the sons of the late P.C.Jain and his widow, which facts were actually already before this court at the time that CR no.2645 of 2016 was decided, a copy of the said agreements having been annexed thereto as Annexures P-3 and P-4 respectively.

Learned senior counsel submits that therefore that issue not having been looked at all by this court, the order dated 21.11.2018, allowing the said revision, deserves to be recalled.

Having considered the aforesaid arguments, whereas learned senior counsel may be absolutely correct to the effect that the aforesaid written agreements as have been annexed as Annexures P-3 and P-4 with the revision petition, may not have been specifically referred to in the order allowing the

aforesaid petition, however, the issue before this court in that petition was whether, in terms of Section 10 of the Code of Civil Procedure, 1908, proceedings in the suit filed by the applicant-respondents at Ambala should be stayed during the pendency of the trial in the suit filed by the petitioner in the accompanying petition, at Meerut.

As regards whether the aforesaid written agreements/settlements would override any oral agreements or whether or not either the oral agreements or written agreements would even stand proved before the court concerned, is not an aspect that this court was required to even go into in the context of the accompanying revision, as those issues obviously would be decided by the competent court before which proceedings are pending at Meerut.

Consequently, as regards staying of the suit at Ambala during the pendency of the suit at Meerut, I see no reason to recall the aforesaid dated 21.11.2018; and hence, with it only to be noticed that the copies of the aforesaid written agreements had been brought on record in the accompanying petition at the time that the petition was heard, I do not find this application to be entertainable at all, which is consequently dismissed.

It is also to be noticed that Mr. Rana has submitted that the oral agreements referred to by this court (of the years 2006 and 1998), are actually agreements which never took place between the parties.

Again that aspect/issue is not to be gone into by this court in these proceedings and was not also subject matter of the revision petition and whether or not any such oral agreements ever took place or not, is something

that would be required to be gone into by the court where the suit is pending, at Meerut, wholly on the basis of evidence led before it.

(AMOL RATTAN SINGH)
JUDGE

May 16, 2022
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