

C.R. No.2812 of 2023 (O&M)
and other connected cases

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.2812 of 2023 (O&M)
and other connected cases
Reserved on: 12.12.2023
Pronounced on: 22.12.2023

Kanchan Dua

.Petitioner

Versus

Ravinder Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Vijay Kumar Jindal, Sr. Advocate, with
Mr. Akshay Jindal, Advocate
Mr. Brijender Kaushik, Advocate
Mr. Pankaj Gautam, Advocate
for the petitioner.

Mr. Amit Jhanji, Sr. Advocate, with
Mr. Sanjay Jain, Advocate
Ms. Priyanka Kansal, Advocate,
for respondent no.1 (in CR-2812, 2581, 2936, 2937,
2938 of 2023 and for respondent no.2 (in CR-2526 of 2023)

Mr. Sunil Chadha, Sr. Advocate, with
Mr. Akshay Chadha, Advocate
Ms. Taanvi Dhull, Advocate
Mr. Raghav Chadha, Advocate,
for respondent no.2 to 5 (in CR-2812-2023)
for respondent no.2 (in CR-2936-2023)
for respondent no.2 (in CR-2937-2023)
for respondent no.1 (in CR-2526-2023)
for respondent no.2 & 3 (in CR-2938-2023 and
for respondent no.2 to 4 (in CR-2581-2023)

ANIL KSHETARPAL, J

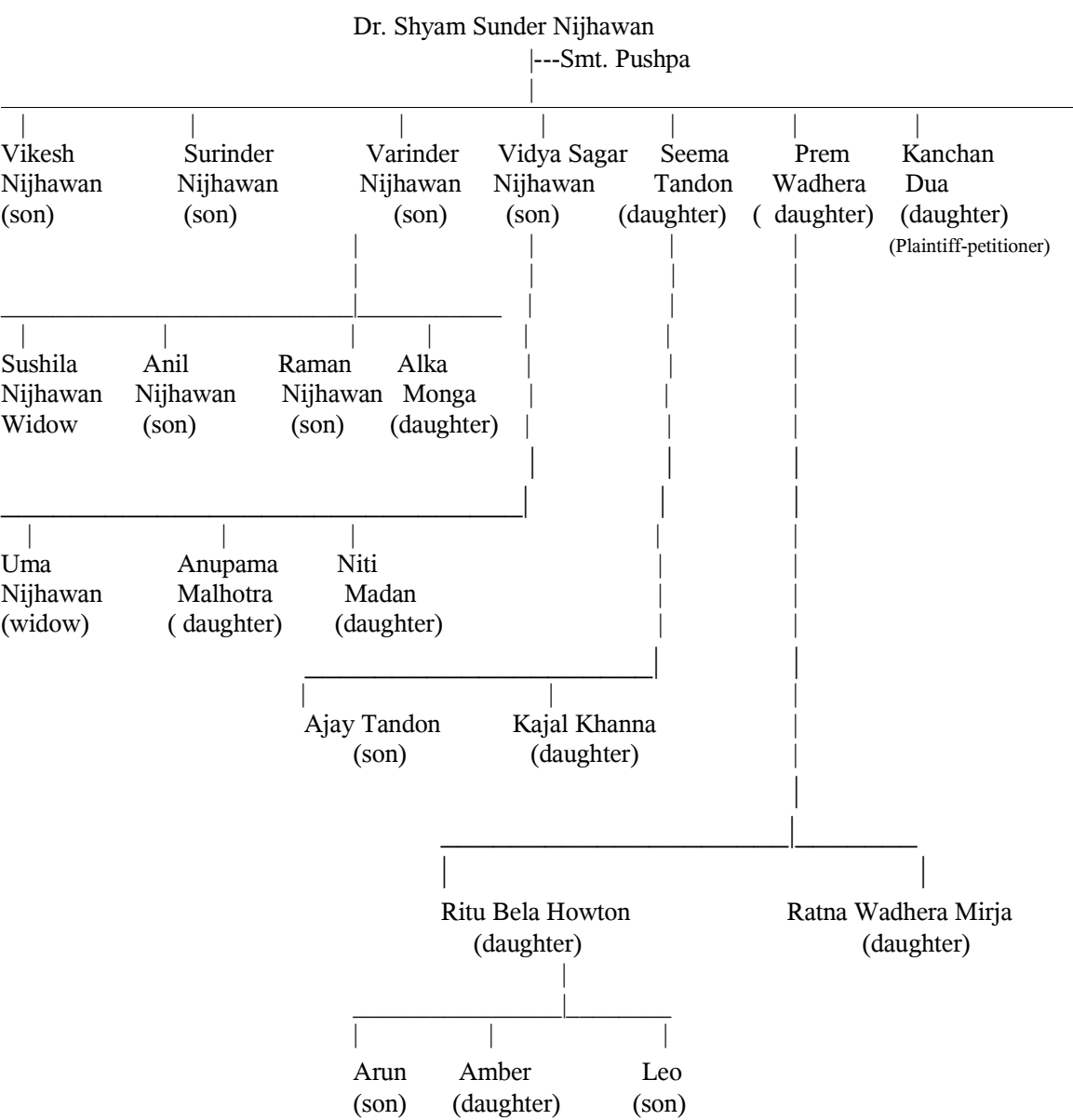
1. This batch of six connected revision petitions has been filed to challenge the correctness of the judgments passed by the trial court while rejecting as many as 6 identical plaints under Order VII Rule 11 of the Code of Civil Procedure (hereinafter referred to as 'CPC') which have been

affirmed in equal number of appeals by the appellate court.

2. With the consent of the learned counsel representing the parties this batch of six connected revision petitions is being disposed of by a common order.

3. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

4. A genealogical tree of the family illustrating the relationships and lineage of its memebtrs is drawn as under:-



5. Dr. Shyam Sunder Nijhawan (hereinafter referred to as Dr. S.S.Nijhawan) died on 19.10.1982, leaving behind his widow Smt. Pushpa,

four sons and three daughters. Smt Pushpa, the widow, died on 24.01.1987. Except the plaintiff in all the six suits (petitioner herein)-Smt. Kanchan Dua, the remaining heirs of Dr. S.S.Nijhawan sold their respective shares vide as many as six sale deeds executed in December, 2022 and January, 2023. While invoking Section 22 of the Hindu Succession Act, 1956 (hereinafter referred to as 'the 1956 Act') the plaintiff filed as many as six different suits for grant of decree of declaration that she is entitled to the preferential right to purchase and acquire the interest of remaining heirs of Dr. S.S.Nijhawan. She also sought a decree of declaration that the various sale deeds executed by heirs of Dr. S.S.Nijhawan are not valid and binding on the rights of the plaintiff along with a consequential relief of permanent injunction restraining the defendants from taking the possession of the property. In the plaint, it is mentioned that Dr. S.S.Nijhawan a Hindu governed by the Hindu Succession Act, passed away on 19.10.1982. The property was inherited by all seven heirs in equal shares, making them co-owners/co-sharers. The plaintiff in paragraph 7 of the plaint asserts that the suit property remains undivided and is under the joint possession and the remaining heirs of Dr. S.S.Nijhawan wanted to sell the suit property to the strangers to which she disagreed and as a consequence Mr. Vikesh Kumar Nijhawan filed a suit for partition in the Court in which the petitioner while filing the written statement expressed her readiness and willingness to purchase the share of remaining defendants. While relying upon Section 22 of the 1956 Act, the plaintiff claims that she has the preferential rights to purchase the property. The Court did not grant interim order and the remaining heirs sold the property. On comprehensive reading of the plaint, it is evident that the

entire suit filed by the plaintiff is founded on her rights outlined in Section 22 of the the 1956 Act, which is extracted as under:-

Section 22 in The Hindu Succession Act, 1956

22. Preferential right to acquire property in certain cases.—

(1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred. Explanation.—In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

6. It is evident that *sine-qua-non* for invoking the enabling power under Section 22 of the 1956 Act is that the predecessor in interest should have died intestate, without leaving any testamentary disposition.

7. Order VII Rule 14 CPC mandates the plaintiff to produce the document that is relied upon by him and is in his possession. In **Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra)(D) through LRs, (2020) 7 SCC 366**, the Supreme Court in paragraph 23.8, made it evident that the documents relied upon by the plaintiff in the plaint or referred therein become part of the plaint and these documents can be taken into consideration while deciding applications under Order VII Rule 11 CPC.

8. In **Azhar Hussain vs. Rajiv Gandhi, 1986 (Suppl.) SCC 315**, the Supreme Court emphasized that futile and purposeless litigation should not be allowed to consume the valuable time of the judiciary. In paragraph 12 of the aforementioned judgment, the court held as under:-

*“12. Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. **The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocle need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action.**”*

9. It may be noted here that the petitioner (plaintiff) in para 9 of all the plaints has specifically referred to her written statement filed in civil suit titled as **Vikesh Kumar Nijhawan vs. Surender Kumar Nijhawan and others.** The courts below have relied on the copy of the written statement to hold that the plaintiff's suit under Section 22 of the 1956 Act is not maintainable. While replying to as many as nine paragraphs the petitioner herein (defendant in the aforesaid suit) repeatedly asserted that Dr. S.S.Nijhawan left behind a Will dated 25.06.1982, through which he partitioned the joint property. This assertion of the plaintiff establish beyond doubt that Dr. S.S.Nijhawan did not die intestate. In her plaints the plaintiff does not assert that Dr. S.S.Nijhawan died intestate, nor does it challenge the validity of Will dated 25.06.1982. It also does not assert that the will was ever challenged after the death of Dr. S.S.Nijhawan. To invoke jurisdiction under Section 22 of the 1956 Act, the common ancestor must have died without leaving any testamentary disposition.

10. This Bench has heard the learned senior counsel representing the parties at length and with their able assistance perused the paper book.

11. The learned counsel representing the petitioner in all the six revision petitions contends that while deciding application under Order VII Rule 11 CPC, only the contents of the plaint are required to be taken into consideration as specifically provided in Order VII Rule 11 CPC(d). He submits that the written statement was not a part of the plaint and therefore, the assertions and claims made in the written statement cannot be taken into consideration while rejecting the plaint. He further contends that the courts have erred in dismissing the suit on the ground that the adequate court fees

has not been paid particularly when the plaintiff is not an executant and she has not sought annulment of the sale deeds. He further contends that the plaintiff being a Class-I heir, is entitled to maintain the suit.

12. On the other hand, the learned counsel representing the respondents has submitted that the plaintiff never filed any suit during the lifetime of Mr. Varinder Nijhawan, Mr. Vidyasagar Nijhawan, Ms. Seema Tandon and Mr. Prem Vadhera. After the demise of the aforementioned family members, the property has passed to their heirs so the suit filed by the plaintiff is not maintainable. In support of his submissions, he relies upon the following judgments:-

***“1. Ganehsappa since dead by his LRs and others vs. Krishnamma and others, 2005, AIR (Karnataka) 160;
2. Balasaheb Annasaheb Jasud vs. Anirudha Vilas Kurbetti and others, 2018 (1) ICC 613.”***

13. This court has considered the submissions of the learned counsel representing the parties.

14. The Supreme Court in paragraph 23.8 of **Dahiben's case** (**supra**) held as under:-

“23.8 Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, form the basis of the plaint, it should be treated as a part of the plaint.”

15. It has been specifically laid that while deciding application an Order VII Rule 11(d) CPC, the court is well within its jurisdiction not only consider the plaint but also the documents which are relied upon and

referred to in the plaint because they become an integral part of the plaint in view of Order VII Rule 14 CPC. It is important to note that the correctness of assertions made by the petitioner in her written statement filed in the suit titled as Vikesh Nijhawan vs. Surender Nijhawan and others, are not disputed by the learned counsel representing the petitioner either before the courts below or before this court.

16. It is noted herein that this court has some reservations about the observations made by the courts below with the rationale presented in para 16 of the trial court's judgment, asserting that the right under Section 22 of the 1956 Act is available only until the property is in the name of the heirs, the plaintiff has not filed suit with clean hands and inadequate court fee for rejecting the plaints in all the civil suits. Nevertheless, considering the preceding discussion, the concurrent judgments of the courts below regarding the non-applicability of Section 22 of the 1956 Act are upheld because it is admitted by the plaintiff that Dr. S.S.Nijhawan did not die intestate.

17. With these observations, all the connected revision petitions are dismissed.

18. All the pending miscellaneous applications, if any, are also disposed of.

22nd December, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO