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

Date of decision: 17.08.2023

+ **CM(M) 1314/2023 & CM APPL. 42103/2023, 42104/2023**

SH. JAIPAL KOHLI & ORS. Petitioner

Through: Mr. Yash Anand, Advocate

versus

HARISH KUMAR KOHLI & ORS. Respondent

Through: Mr. Naresh Gupta and Mr. Rachit
Gumber, Advocates for R-2 to R-6

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 12.04.2023 passed by the ADJ-04, North District, Rohini Court, Delhi ('Trial Court') in Partition Suit No. CS DJ 227/2018 titled as "*Sanjay Kohli & Ors. V. Harish Kumar Kohli*" whereby, the Trial Court dismissed the application filed by the Petitioners herein under Order I Rule 10 Code of Civil Procedure ('CPC') seeking impleadment as plaintiffs in the civil suit.

1.1. The civil suit has been filed seeking partition of property bearing No. A-280, New Sabji Mandi, Azadpur, Delhi ('subject property').

1.2. The Respondent Nos. 2 to 6 are plaintiffs in the civil suit. The Respondent No. 1 is the sole defendant in the civil suit.

1.3. The Petitioners are not party to the civil suit though the Petitioners



have been aware about the pendency of the said civil suit since inception and in fact, the Petitioner No. 1 was examined as DW-2 in support of the defence and counter claim set up by the sole defendant (i.e., Respondent No. 1).

2. It is the admitted case of the parties that the subject property was allotted to late Shri Madan Lal Kohli, who died intestate on 02.12.1974 leaving behind five (5) class-I legal heirs i.e., (i) Inder Kumar Kohli (son) (ii) Harish Kumar Kohli (son) (iii) Jaipal Kohli (son) (iv) Usha Sahni (daughter) (v) Pooja Sahni (daughter).

2.1. It is the stand of the plaintiffs in the civil suit that Jaipal Kohli, Usha Sahni and Pooja Sahni have relinquished their rights in the subject property in favour of the plaintiffs herein.

2.2. It is the case of the plaintiffs that the rights in the subject property now remain only between the plaintiffs and defendant i.e., the Respondent No. 1 herein. In the aforesaid facts, the plaintiffs filed the suit for partition and damages with respect to the subject property.

2.3. In the civil suit filed by the plaintiffs, the plaintiffs rely upon the registered relinquishment deed dated 23.03.2000 executed by Petitioner No. 1 herein with respect to his share in the subject property in their favour.

3. In the written statement filed by Respondent No. 1, the Respondent No. 1 has relied upon a registered relinquishment deed dated 18.11.2016 executed by Petitioner No. 1 for the same share in his favour.

3.1. Petitioner No. 1 herein supported the stand of the Respondent No. 1 and entered the witness box as DW-2 and was cross-examined by the plaintiffs.

4. The defendant evidence stood concluded on 09.05.2019 and



thereafter, the matter was listed for final arguments. This Court has been informed that in fact, the final arguments have already commenced in the matter as on 12.07.2023.

5. The Petitioners herein filed at this belated stage, when the civil suit was for final arguments, filing an application seeking impleadment as a plaintiff and a declaration that the statement recorded by the Petitioner No. 1 as DW-1 in evidence has been obtained by misrepresentation and fraud.

6. The Trial Court *vide* impugned order dated 12.04.2023 has dismissed the said application by a detailed order along with costs of Rs. 10,000/-. The present petition has been listed for the first time on 17.08.2023 after four (4) months of the said dismissal.

7. The learned counsel for the Petitioner states that in the civil suit, a specific issue has been framed with respect to non-joinder of necessary parties and with respect to the validity of the relinquishment deed(s) relied upon by the plaintiffs and defendant respectively.

7.1. He states that in view of the said issues, the Petitioners herein are necessary parties for deciding the said issues.

7.2. He states in the alternative, the relinquishment deed(s) have been executed by the Petitioner No. 1 herein alone. He states however since the subject property is an ancestral property, his children Petitioner Nos. 2 and 3 as well have an independent right in the said property and they are not bound by the said relinquishment deed(s).

7.3. Lastly, he states that though the relinquishment deed(s) are registered but the same are inadequately stamped and for this additional reason, they cannot be read in evidence by the Trial Court.

8. The learned counsel for Respondent Nos. 2 to 6 (i.e., the plaintiffs)



has entered appearance.

8.1. He states that plea raised before this Court in this petition that relinquishment deed dated 23.03.2000 is deficiently stamped was not a ground raised by the Petitioners before the Trial Court and in this regard, he places reliance on the application filed by the Petitioner herein on 25.08.2022.

8.2. He states notwithstanding the above, in view of the fact that the relinquishment deed dated 23.03.2000 has already been admitted in evidence and has been exhibited by the Trial Court, without any objection with respect to deficiency of stamping, he states that in view of Section 36 of the Indian Stamp Act, 1899 no objection to its admissibility can be raised by any party at this stage of the trial.

8.3. He further states that with respect to the issue of non-maintainability of the suit on account of non-joinder of necessary parties, the onus has been placed on the plaintiffs herein. He states that the plaintiffs herein are not willing to implead the Petitioners as plaintiffs or parties in the civil suit as they do not admit that these Petitioners have any right, title or interest in the subject property.

8.4. He states that the Petitioners are willing to bear the consequences of the decision/finding on the issue of non-joinder of necessary parties, which may be returned by the Trial Court at the stage of the final adjudication. The said issues have been framed *vide* order dated 28.11.2018 which reads as under:

5) Whether the suit is not maintainable in absence of necessary parties namely Sh. Jaipal Kohli, Smt Usha Sahani and Smt Pooja Sahani? OPD

6) Whether the relinquishment deed sated 23.02.2000 validly cancelled by Sh. Jaipal Kohli vide declaration dated 30.04.2002 and he relinquished his share vide relinquishment deed dt. 18.11.2016 in favour of defendant, if so,



its effect? OPD

8.5. He states the with respect to the validity of issue framed with respect to the registered relinquishment deed dated 23.03.2000; he states that the onus of the said issue is on the defendant i.e., the Respondent No.1 and he has already examined DW-2 in evidence, wherein, DW-2 has already led evidence in favour of the defendant.

8.6. He states that the accuracy of the said evidence will also be examined by the Trial Court at the time of final adjudication and the Petitioner No.1 is not a necessary party having already appeared as a witness and deposed on the said issue. He states that Petitioner Nos. 2 and 3 as well do not have any right in the subject property.

8.7. He further states that this application is collusive between the Petitioners and Respondent No. 1 herein, which has only been filed to delay the final adjudication of the trial, which is listed for final arguments on 17.08.2023.

9. This Court has considered the submissions of the parties and perused the record.

10. The learned counsel for the Petitioners has not disputed that no objection with respect to the deficient stamp duty as regards the relinquishment deed(s) was raised in their application filed on 22.08.2022. It is therefore apparent that the said objection is an afterthought and has been raised for the first time in this petition.

10.1. However, as rightly pointed out by the counsel for Respondent Nos. 2 to 6, since no such objection of admissibility was raised at the relevant time during trial, when the said relinquishment deed was being tendered by the plaintiffs in evidence, no such objection of admissibility can be raised at this



belated stage in trial in view of Section 36 of the Stamp Act, 1899. The suit is admittedly at the stage of final arguments.

11. Similarly, the plea that the subject property is an ancestral property and therefore Petitioner No. 2 and Petitioner No. 3 have a right by birth in the said property is also a new plea, which has been raised for the first time in this petition and no such plea was raised in the application filed under Order I Rule 10 CPC on 22.08.2022. The Petitioner No.1 while executing the relinquishment deed dated 23.03.2000 has held himself to be the absolute owner of the 1/5th share inherited by him in the subject property. This plea that the Petitioner Nos .2 and 3 have a share in the said property is, therefore, an afterthought.

11.1. This plea is therefore without any merit. In any event, in view of the fact that the subject property was purchased on 22.10.1971 by late Shri Madan Lal Kohli, in view of the provisions of Hindu Succession Act, 1956, the devolution of the subject property on his Class-I legal heirs would make the said property the 'personal property' of his Class-I legal heirs and not an ancestral property as alleged by the counsel for the Petitioners. **Re: Sunny (Minor) Vs. Mr. Raj Singh; 2015:DHC:9359; dated 17.11.2005 in CS (OS) No. 431/2006**

12. This Court has also perused the impugned order. The relevant portion whereof reads as under: -

"The case of the applicants is that the applicant no.1 had relinquished his share in favour of late Sh Inder Kumar Kohli vide registered relinquishment deed dt 23.03.2000 for a consideration of Rs.4,50,000/- and the said amount was not paid by the late Sh Inder Kumar and after his demise, his legal heirs also refused to pay.

On perusal of aforesaid registered relinquishment deed, I found nothing about the consideration of Rs.4,50,000/- as alleged by the applicants. Further, no document qua the cancellation of aforesaid relinquishment deed dt 23.03.2000 by the Sub-Registrar is placed on record.



Further, even otherwise the cancellation of relinquishment deed dt. 23.03.2000 by the Sub- Registrar as alleged in the application is impermissible in law as the nature of the relinquishment deed is irrevocable and the same can be cancelled only by filing a civil suit on certain grounds like fraud, misrepresentation, coercion, undue influence, etc within the period of limitation i.e. 3 years.

It is the admitted stand of applicant no.1 that he has not filed any civil suit for cancellation of aforesaid registered relinquishment deed dt 23.03.2000.

Further, it is the case of applicants that applicant no.1 executed a fresh relinquishment deed in favour of defendant vide registered relinquishment deed dt. 18.11.2016 upon which I am of the opinion that the same is not permissible in law as the earlier registered relinquishment deed dt 23.03.2000 has not been cancelled by a civil court. Further, it is the case of the applicants that a MOU was executed in May, 2019 between defendant and applicant no.1 stating therein that if applicant no.1 depose qua cancellation of earlier relinquishment deed dt. 23.03.2000 and subsequent relinquishment deed dt 18.11.2016 in the present suit, then in lieu of the statement given by applicant no.1, defendant shall purchase a residential property in the name of the applicant no.1.”

(Emphasis Supplied)

13. This Court is of the opinion that the finding of the Trial Court that the Petitioner No. 1 having elected not to file any civil suit for cancellation of the registered relinquishment deed dated 23.03.2000 is precluded from seeking impleadment in the suit filed by the Respondents is correct and requires no interference. The Petitioner No.1 has appeared as a witness in the civil suit to support the case of the defendant and has therefore, fully participated in the trial without any demur. This application filed at the stage of the final arguments is, therefore, clearly intended at obstructing the final adjudication of the pending proceedings.

14. This is also evidenced from the fact that the impugned order is dated 12.04.2023 and the present petition challenging the said order has been first listed today on 17.08.2023 (after 4 months). The intent to delay the final adjudication in the suit is writ large on the face of the record.

15. This Court is of the opinion that the Petitioner has no locus to seek



impleadment in the suit filed by Respondent Nos. 2 to 6 against Respondent No. 1; Petitioners are neither necessary nor proper party to the said suit.

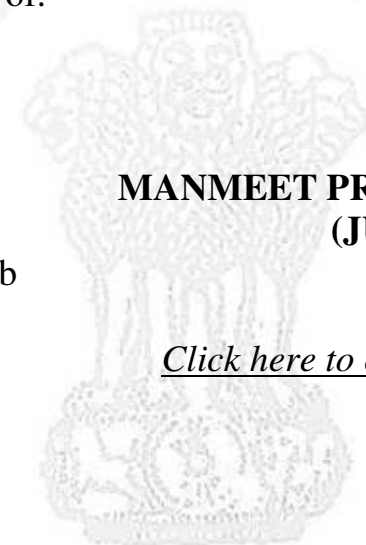
16. Further, in view of the submissions made by the learned counsel for Respondent Nos. 2 to 6 that the said Respondents are willing to defend the issue with respect to non-joinder of necessary parties at their own risk, this Court finds no merit in the submission of the Petitioner that he is a necessary party for resolving the said issue.

17. Accordingly, the present petition is disposed of. Pending application, if any, also stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 17, 2023/rhc/asb

Click here to check corrigendum, if any



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