



2024:DHC:7734



\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CS(OS) 645/2024 & I.A. 36638/2024****SMT PRIYANKA ALIAS ANURADHA SHARMA**PlaintiffThrough: **Mr. K.C. Mittal, Senior Advocate with
Mr. Yugansh Mittal and Mr. Keshav
Poonia, Advocates**

versus

AMANDEEP BHARDWAJ & ORS.DefendantsThrough: **Mr. Rahul Sharma, Advocate for D-1
and 4 with D-1 in person
Mr. Jaideep Singh, Advocate for D-2
and 3**

%

Date of Decision: 01st October, 2024**CORAM:****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T (O R A L)**

1. Summons are yet to be issued in this suit.
2. Mr. Rahul Sharma, learned counsel enters appearance on behalf of defendant nos. 1 and 4. Mr. Jaideep Singh, Advocate enters appearance on behalf of defendant nos. 2 and 3.

Arguments of the defendant nos. 1 and 4

3. Learned counsel for defendant nos. 1 and 4 states that the plaintiff has not disclosed in the plaint the factum of the pendency of CS(OS) 643/2022 filed by defendant no. 3 herein i.e., Smt. Kamlesh Vats for identical reliefs of partition of the same properties along with other properties. He further states that the plaintiff has deliberately not filed a copy of the paper book of CS(OS) 643/2022. He has handed over a copy of the paper book of CS(OS)



643/2022 along with copy of the order dated 22.04.2024.

3.1 He states that in CS(OS) 643/2022, the plaintiff is arrayed as defendant no. 2. He states that the suit properties in respect whereof partition is sought in the present suit are all the subject matter of the suit in CS(OS) 643/2022.

3.2 He states that, the number of suit properties in CS(OS) 643/2022 is eight (8), whereas in the present suit the relief of partition is only sought in respect of five (5) of the same properties. He states that the relief(s) sought in both the suits are identical.

3.3 He states that the plaintiff herein has duly entered appearance in CS(OS) 643/2022 as defendant no.2. He states that her right to file the written statement in the said suit has been closed by this Court vide order dated 05.09.2023 and therefore, the present suit has been filed to overreach the said order passed in CS(OS) 643/2022.

3.4 He states that a second suit for relief of partition for the very same properties cannot be maintained and the plaint ought to be dismissed. He states that the reliefs sought in CS(OS) 643/2022 are pari-materia with the reliefs sought in the present suit.

Arguments of the defendant nos. 2 and 3

4. Mr. Jaideep Singh, learned counsel for defendant nos. 2 and 3 states that it is a matter of record that the reliefs sought in both the suits is identical and the suit properties are common. He, however states that he has no objection to the continuation of the present suit as the plaintiff herein has raised additional pleas to maintain the relief of partition to the suit properties in the present suit.



Arguments of the plaintiff

5. In reply, learned senior counsel for the plaintiff states that the factum of pendency of CS(OS) 643/2022 has been duly disclosed at paragraph '33' of the plaint. He, however, fairly states that the plaint and the paper book of the previous suit has not been annexed and also the order dated 05.09.2023 passed in the said suit has not been disclosed.

5.1 He states that while it is correct that the relief of partition qua the five (5) properties sought in the present suit is also a subject matter of CS(OS) 643/2022 however, in law there is no bar on the present plaintiff for filing an independent suit for partition in exercise of her own rights.

5.2 He also states that the grounds on which the Will dated 08.09.2020 has been challenged in this suit are separate and in addition to the grounds raised by defendant no. 3 (as a plaintiff) in CS(OS) 643/2022.

5.3 He states that the share of the plaintiff herein in the suit properties is not a subject matter of CS(OS) 643/2022 and that the said suit only pertains to the share of defendant no. 3 i.e., Smt. Kamlesh Vats (the plaintiff therein) and therefore, the present suit is maintainable.

5.4 He states that the plaintiff is claiming her rights in the suit properties as ancestral properties by virtue of the Hindu Succession (Amendment) Act of 2005 to Section 6 of the Hindu Succession Act, 1956.

Analysis and findings

6. This Court has considered the submissions of the parties and perused the record. This Court has also perused a copy of the paper book of CS(OS) 643/2022 handed over by defendant nos. 1 and 4.

7. A perusal of paragraph '3' of the captioned plaint with paragraph '2' of CS(OS) 643/2022 shows that the suit properties are enlisted at serial nos.



(iii) to (vii) of CS(OS) 643/2022. Thus, the suit properties are common. Similarly, a perusal of the prayers of the captioned suit with CS(OS) 643/2022 shows that all the prayers are common. The plea of ancestral properties has also been urged at paragraph '14' of CS(OS) 643/2022. Thus, the cause of action and the relief(s) sought in both the proceedings are identical and the issue raised in the captioned suit are directly and substantially in issue in the previously instituted suit i.e., CS(OS) 643/2022.

8. The submission of the plaintiff counsel that the share of the plaintiff in the suit properties is not a subject matter of CS(OS) 643/2022 is incorrect and it is trite law that in a suit for partition the Court declares the shares of all the co-owners and not the plaintiff alone. In the considered opinion of this Court, the plaintiff's share in the suit properties is thus, directly an issue in CS(OS) 643/2022 and therefore, both the suits are based on the same cause of action.

9. The challenge laid by the plaintiff herein to the Will of late Sh. Ram Kumar Bhardwaj dated 08.09.2020 in the present suit is also a subject matter in CS(OS) 643/2022. The submission of the learned senior counsel for the plaintiff that since the plaintiff herein is challenging the Will dated 08.09.2020 on grounds which are in addition to the grounds already raised by defendant no. 3 in CS(OS) 643/2022, therefore, he is entitled to maintain a separate suit is not persuasive. The validity of the Will cannot be tried by two (2) separate Courts in two (2) separate trials and the determination of the challenge to the Will dated 08.09.2020 in CS(OS) 643/2022 will bind the plaintiff herein as well.

10. Section 10 of the Code of Civil Procedure, 1908 (CPC) bars the trial of a subsequent suit in which subject matter/cause of action is directly and



substantially in issue in a previously instituted suit. Moreover, public policy requires that there should be an end of litigation and parties and Courts should endeavor to avoid multiplicity of proceedings. A Co-ordinate Bench of this Court in **Som Nath Kalra v. Deepa Kalra & Ors¹**, while dealing with a situation wherein two (2) suits were filed for the same relief of partition, held as under:

“7. At this stage, it may also be appropriate to refer to Section 10 of the Code of Civil Procedure (CPC) which reads as under and provides that no Court ought to continue with the trial of any suit in which the matter in issue is directly and substantially in question in a previously instituted suit between the same parties. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

8. It is evident that the objective of Section 10 CPC is to prevent Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject matter and the same relief. This provision is not only meant to obviate the possibility of two contradictory verdicts in the same matter by two different Courts but is also to save the parties from multiplicity of cases. **In the present case, once the plaintiff admits that a suit for partition of the very same property filed at the behest of defendant no.1 is pending adjudication before the learned ADJ, the present suit would be clearly hit by Section 10 of the CPC.**

10. **Once the plaintiff, as a defendant in CS DJ No. 482/2022, has already prayed for his share in the very same suit property, of which partition is being sought in the present suit, permitting the plaintiff to prosecute the present suit would, in my opinion be clearly violative of Section 10 CPC.** In the ordinary course, this Court would have stayed the proceedings in the present suit till the pendency of CS DJ No. 482/2022. **However, taking into account that summons are yet to be issued in the present suit, no useful purpose would be served in**

¹ 2023 SCC OnLine Del 4956.



first issuing summons and then staying the suit to await the outcome of CS DJ No. 482/2022. I, am, therefore of the opinion that this is a fit case where the plaint ought to be rejected and returned to the plaintiff.”

(Emphasis supplied)

11. Further, it is settled law that in a suit for partition each party is a plaintiff. With respect to the said proposition of law this Court in the case of **Naseema v. Munavvar Ali & Ors.**² held as under:

“12.All that can be said is that as long as the suit previously instituted by the plaintiff for the same reliefs as claimed in this suit is pending consideration, the present suit is not maintainable and had the factum of pendency of the previously instituted suit been known to the court on the date when this suit came up for admission, the suit would not have even been admitted.

13. Even if the Court where the previously instituted suit is pending does not have pecuniary jurisdiction, on the plaintiff taking the said plea, the plaint therein would be returned with permission to file before this court and it is that suit which would be entertained.

14. As far as the plea, of the plaintiff of having not joined in institution of the previously instituted suit, is concerned, **even if the plaintiff had not joined as plaintiff therein, would have been impleaded as a defendant and the position would have been the same i.e. that during the pendency of one suit for partition, a second suit for partition of the same properties does not lie.**

15. **In a suit for partition, each party enjoys the same status i.e. of plaintiff as well as the defendant and it is immaterial whether impleaded as a plaintiff or as a defendant.** Reference, if any required, may be made in this regard to **Chandra Mohan Ramchandra Patil v. Bapu Kayappa Patil (Dead)**, (2003) 3 SCC 552; **Mahender Kumar Lamba v. Satender Prakash Lamba**, 2006 SCC OnLine Del 1124; and, **Om Prakash v. Amit Chaudhary**, 2019 SCC OnLine Del 9311.”

(Emphasis supplied)

12. Thus, the plaintiff herein who is arrayed as defendant no. 2 in CS(OS) 643/2022 is a plaintiff in the said suit. The aforesaid judgments evidences

² 2019 SCC OnLine Del 10866.



that parties who claim co-ownership cannot maintain separate suit of partition for the same suit property. The facts in the present case are similar to the facts which were placed before the coordinate Bench in **Som Nath Kalra** (supra) and **Naseema** (supra) and therefore the present plaint is liable to be rejected.

13. In view of the facts that summons have not been issued in the present suit and since the present suit on the date of filing itself thereof, was not maintainable, therefore, the same is now being dismissed as not maintainable under Order VII Rule 11(d) CPC.

14. The plaintiff was entitled to raise all her pleas in CS(OS) 643/2022 by filing her written statement. It appears to this Court that the present suit has been filed to overcome the rigors of the order dated 05.09.2023 passed in CS(OS) 643/2022 whereby her right to file the written statement was closed. The present suit has thus been filed to overcome the rigors of Rule 4 of Chapter VII of Delhi High Court (Original Side) Rules, 2018. Such modus cannot be permitted and entertaining this suit, would amount to abuse of legal process.

15. Be that as it may, in view of the fact that defendant no. 3 herein (i.e., the plaintiff in CS(OS) 643/2022) and plaintiff herein are both claiming same shares in the same suit properties and to that extent they are supporting each other in their claims, therefore, the rights/claims of the plaintiff herein are sub-judice in CS(OS) 643/2022 and the plaintiff is not being rendered remediless.

16. It is made clear that present dismissal is not an expression on the merits of the plaintiff's claims/rights to the suit properties or the challenge to the validity of the Will dated 08.09.2020, which are issues directly in



2024:DHC:7734



consideration in CS(OS) 643/2022.

17. Pending applications stand disposed of.

OCTOBER 1, 2024/msh/sk

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any