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Harjeet Singh Maini Vs. Paramjit Singh Maini

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Court : Delhi

Decided On : Mar-31-2008

Reported in : 153(2008)DLT127; 2008(102)DRJ446

Judge : Hima Kohli, J.

Acts : Code of Civil Procedure (CPC) - Sections 10 and 24 - Order 14, Rule 2 - Order 22, Rule 3

Appeal No. : I.A. 5370/2006 in CS (OS) No. 664/2005 and Transfer Petition (C) No. 12/2006

Appellant : Harjeet Singh Maini

Respondent : Paramjit Singh Maini

Advocate for Def. : Ravi Gupta, Adv. in CS (OS) No. 664/2005 and Tr. P. (C) No. 12/2006

Advocate for Pet/Ap. : Sanjay Jain, Sr. Adv. and; Nalin Tripathi, Adv. in CS (OS) No. 644/2005 and Tr. P (C) No. 12/200

Judgement :

Hima Kohli, J.

1. By this common order, the Court proposes to dispose of an application under Section 10 of the CPC, being I.A. No. 5370/2006 filed by the defendant in CS(OS) No. 664/2005, Shri Paramjit Singh Maini praying inter alias for stay of further proceedings in the suit till disposal of suit bearing No. 272/2002 entitled 'Ram Singh Maini (deceased) through LR v. Harjeet Singh Maini', pending before the Civil Judge, Delhi, and the transfer petition being Tr.P. (C) No. 12/2006 entitled 'Harjit Singh Maini v. Paramjit Singh Maini' filed by the plaintiff in CS(OS) No. 664/2005, Shri Harjit Singh Maini, praying inter alias for transfer of Suit No. 272/2002 from the Court of Civil Judge, Delhi, to this Court.

2. A reference to the factual matrix of the case is necessary before proceeding to deal with the aforesaid application under Section 10 of the CPC and the Transfer Petition. In October, 2002, the father of the parties, Shri Ram Singh Maini filed a civil suit as the owner of the property bearing No.A-266, New Friends Colony, New Delhi, bearing Suit No. 272/2002 (hereinafter referred to as 'the first suit'), praying inter alias for a decree of mandatory injunction against his elder son, Shri Harjit Singh Maini to remove all his belongings from the first floor of the property in question. The stand taken in the aforesaid suit was that Shri H.S.Maini was only a licensee in respect of the first floor of the suit property, which license was terminated by a legal notice dated 25.9.2001 and thus he was liable to remove himself from the suit property. A written statement was filed by Shri H.S. Maini in the aforementioned suit denying the right of his father, to institute the suit, whereunder, one of the pleas taken was that Shri H.S. Maini had become the owner of the first floor of the suit property by virtue of an oral settlement arrived at between the family members in the years 1983-84.

3. The following issues were framed in the first suit on 9.12.2002:

1. Whether the present suit is not maintainable in the present form? OPD

2. Whether the present suit is not properly valued for the purposes of court fees and jurisdiction? OPD

3. Whether the plaintiff is entitled to mandatory injunction, as claimed? OPP

4. Relief.

4. During the pendency of the aforesaid first suit, the father of the parties, Shri Ram Singh Maini, expired on 29.1.2004. His younger son, Shri Paramjit Singh Maini, filed an application under Order XXII Rule 3 of the CPC for impleadment in the said suit as a plaintiff, on the basis of his claim that his father had left behind a duly executed registered Will dated 7.9.2001 in his favor. The aforesaid application was allowed by the Civil Judge, vide order dated 19.3.2005 and Shri Paramjit Singh Maini was permitted to be substituted as a plaintiff in place of his deceased father.

5. Thereafter, Shri H.S. Maini filed an application under Order XIV Rule 2 of the CPC praying inter alias that an issue pertaining to the suit being actually in the nature of a suit for possession be framed and treated as a preliminary issue, along with issue No. 2 framed earlier. The aforesaid application was rejected, vide order dated 23.8.2005. Aggrieved by the said rejection order, Shri H.S. Maini filed CM(M) No. 1651/2006 in this Court, which was dismissed with costs of Rs. 7,500/-, vide order dated 17th October, 2006 with the observation that the petitioner therein had filed said proceedings with the mala fide intention of delaying the proceedings in the suit and not permitting the evidence to be recorded.

6. In the meantime, Shri H.S. Maini, instituted a suit in this Court on 7th May, 2005, against his younger brother, Shri P.S. Maini for declaration, injunction and partition in respect of the suit property No. 266, New Friends Colony, New Delhi, claiming that he was the absolute owner in possession of the first floor of the suit property, comprising of 1/3rd share therein, in terms of the oral partition/family settlement arrived at amongst the family members in the year 1983. The said suit was registered as CS(OS) No. 664/2005 (hereinafter referred to as 'the second suit'). Summons were issued in the aforesaid suit on 13th May, 2005. The defendant, Shri P.S. Maini entered appearance and filed his written statement on 31st August, 2005. Pleadings have since been completed in the suit and admission/denial of documents has taken place. Issues are to be framed.

7. On 1.5.2006, Shri P.S. Maini, the younger brother, filed an application under Section 10 of the CPC in the second suit, being I.A. No. 5370/2006, praying inter

alias for stay of further proceedings in the second suit till disposal of the first suit pending before the Civil Judge, Delhi. Notice was issued on the aforesaid application on 10th May, 2006. Vide order dated 26.9.2006, it was made clear that the first suit pending in the trial court shall proceed irrespective of the pendency of any petition in this Court. Thereafter, the suit was proceeded further and it is stated that the plaintiff's evidence has already been recorded and the suit is fixed for the evidence of Shri H.S. Maini.

8. On 19.9.2006, Shri H.S. Maini filed a transfer petition under Section 24 of the CPC, being Tr.P(C)No. 12/2006 praying inter alias for transfer of the first suit from the Court of the Civil Judge, Delhi to this Court and for both the suits to be tried and disposed of together.

9. Learned Senior Advocate appearing for Shri H.S. Maini submitted that the Transfer Petition was necessitated so as to prevent a probability of conflicting judgments being passed at different forums in respect of the same property and interse the same parties. It was submitted that the scope of the second suit was much wider as compared to that of the first suit and hence, it would be appropriate to call for the file of the first suit to this Court and try both the suits together. He further submitted that even if it is assumed that Shri P.S. Maini would ultimately succeed before the Trial Court in the first suit and would be held entitled to a decree against Shri H.S. Maini, then also, the latter's claim for declaration and partition in respect of the suit property in the second suit would subsist, since his claim to 1/3rd share in the suit property, is based on his stand that the suit property was an ancestral one and an oral partition had been arrived at between the parties during the life time of their father and that the Will of the father relied on by the younger brother was forged so as to deprive him of his legal right in the first floor of the suit property. It was thus, contended that the transfer of the first suit to this Court and consolidation thereof with the second suit for the purposes of trial would set at rest all the controversies between the parties in respect of the suit property, once and for all.

10. Counsel for Shri H.S. Maini gave an assurance that it shall be his endeavor to expedite disposal of both the suits and to show his bonafides, immediately upon

issues being framed in the second suit, Sh.H.S. Maini shall file a consolidated affidavit and shall submit himself to a time-bound schedule for trial of both the cases. He further submitted on behalf of Sh.H.S. Maini that no request shall be made for treating any issue as a preliminary issue so that the parties could address arguments on all the issues at one go.

11. On the other hand, counsel for Shri P.S. Maini strongly opposed the Transfer Petition on the ground that trial had already begun in the first suit and substantial evidence had been recorded, whereas the second suit was still at the stage of framing of issues. He thus submitted that allowing the Transfer Petition filed by the other side will result in unnecessarily delaying the disposal of the first suit. Much emphasis was laid on the dilatory tactics adopted by Shri H.S. Maini in the first suit. In this context, the counsel referred to the order dated 26.9.2006 passed by this Court in CS(OS) No. 664/2005, the second suit, wherein it was directed that the trial court will continue hearing of the first suit irrespective of the pendency of the Transfer Petition. Reference was also made to the order dated 17.10.2006 passed in CM (M) No. 1651/2006 filed by Shri H.S. Maini, assailing the order dated 23.8.2005 passed by the Civil Judge, Delhi on the application under Order XIV Rule 2 of the CPC, to state that the other side had been trying to stall the proceedings on one pretext or the other and that the Transfer Petition is yet another step in that direction. In support of his submissions, counsel for Shri P.S. Maini relied on the following judgments:

1. Rabindra N. Das v. Santosh Kumar Mitra and Ors. : AIR1975 Cal381 ;

2. S.C. Jain v. Bindeswari Devi : 67(1997)DLT189 ; and

3. Bhagwati Prasad Sharma v. Ram Swaroop Sharma : 2002(61)DRJ603

12. It was further submitted on behalf of Shri P.S. Maini that the first suit pending before the Civil Judge, Delhi was instituted prior to the institution of the second suit and the question of entitlement of Shri H.S. Maini to a right in the first floor of the suit property could be validly and legally decided in the first suit as well. Counsel also referred to the order dated 19.3.2005 passed by the Civil Judge, Delhi on an application filed by Shri P.S. Maini under Order XXII Rule 3 of the CPC for his

impleadment as a legal heir of late Shri Ram Singh Maini, wherein the Court in the operative para observed as below:

By applying the aforesaid analogy to the facts of the present case, it become manifestly clear that the deceased plaintiff had left behind only three legal and natural heirs i.e. two sons and one married daughter, out of which the elder son is the defendant in the present suit and the younger son is the applicant in the application under disposal. The notice of application had been duly served upon the married daughter of the deceased plaintiff namely, Smt. Amrit Kaur, however, for the reasons best known to her, she has chosen not to contest the present application, but in view of the service of the notice of application upon her, it can be safely held that she is aware of the contents of the present application which neither of which she has decided to contest nor she had disputed the same.

In view of this fact, now there remain only two legal heirs among whom the fate of the present litigation shall be determined. Since one of them is already the defendant in the present suit, thereforee in my opinion the impleadment of the second son as plaintiff to the present suit being LR of the deceased plaintiff is essentially required in the interest of justice and the same would also not cause any prejudice to the defendant as well who is already contesting the case since its institution because in the event the applicant fails to prove his locus and title by way of proving the aforesaid will in accordance with law, in that event the rights and title of the defendant shall automatically be decided. Thereafter, in my opinion, this impleadment is necessary not only in the interest of justice but also for the purpose of proper adjudication of real issue in controversy between the parties on its merits as well.

In view of my aforesaid discussion, the present application of the applicant is allowed and he is directed to be placed as a plaintiff in the array of parties.

13. It was thus stated that though no separate issue was framed in the first suit with regard to the legality and validity of the Will of Shri Ram Singh Maini, in view of the aforesaid order dated 19.3.2005, and in view of the fact that the respondent has since then also examined witness to the Will in his evidence, the question of entitlement of Shri H.S. Maini to a part of the suit property can be validly and

legally decided in the first suit. In this regard, reliance was placed on the judgment of the Punjab & Haryana High Court in the case of State v. Chuni Lal Vohra and Anr. .

14. Insofar as the application filed under Section 10 CPC by Shri P.S. Maini in the second suit i.e. CS(OS) No. 664/2005 for stay of the suit proceedings is concerned, his counsel submitted that the matter in issue in the second suit is directly and substantially the same as in the first suit pending between the parties i.e., whether Shri H.S. Maini has any right, title or interest in the suit property. It was, thereforee, submitted that simultaneous trial of both the suits might lead to conflicting decisions and, thereforee, proceedings in the second suit may be stayed till the disposal of the first suit by the Civil Judge, Delhi.

15. Per contra, counsel for Shri H.S. Maini opposed the aforesaid application and submitted that the scope of the second suit is much wider, as the same is for declaration, injunction and partition of the suit premises by metes and bounds, whereas the first suit is only for eviction on the basis of cancellation of license and thus, it would be in the interest of justice that the first suit be summoned to this Court and be tried along with the second suit to avoid any conflicting decisions. It was further stated that the primary question to be decided in the second suit is the right, title and interest of Shri H.S. Maini to a part of the suit property and the plea of the counsel for Shri P.S. Maini that the legality and validity of the Will of Shri Ram Singh Maini will clinch the issue of the title in the suit property is baseless for the reason that the stand of Sh. H.S. Maini in the second suit is that a family settlement had been arrived at between the parties during the life time of Shri Ram Singh Maini, under which Shri H.S. Maini was given 1/3rd share in the suit property comprising of the first floor thereof. Hence, it was contended that even if evidence is led in first suit with regard to the Will, the other plea taken by Shri H.S. Maini in CS(OS) No. 664/2005 pertaining to the family settlement, would have to be established in the second suit in order to decide his right, title and interest in the suit property. Counsel thereforee submitted that not only was the first suit liable to be transferred to this Court, but the same ought to be tried along with the second suit so as to prevent conflicting judgments.

16. In support of his arguments, counsel for Shri H.S. Maini relied on the following judgments:

1. Maxwell Securities Pvt. Ltd. and Ors. v. National Stock Exchange of India Ltd. 2002 I AD (Del) 308;

2. Chitivalasa Jute Mills v. Jaypee Rewa Cement : AIR 2004 SC1687 ; and

3. Nirmala Devi v. Arun Kumar Gupta and Ors. (2005) 12 SCC 505.

17. I have heard the counsels for the parties and have carefully considered the pleadings and judgments relied on by the parties. There is no doubt in the present case that not only the parties to both the suits are common, but even the subject matter of both the suits is common, namely, the suit property. Section 24 of the CPC empowers the Court to transfer and withdraw any suit, appeal or proceedings to/from any court subordinate to it and competent to try and dispose of the same and the Court can exercise the said power on an application of any of the parties or on its own motion without notice, at any stage at its discretion.

18. In the present case, the cause of action that formed the basis for the first suit arose during the life time of the father of the parties, Shri Ram Singh Maini, when he called upon his elder son Shri H.S. Maini to vacate the suit premises and subsequently issued a legal notice upon him on 25.9.2001. The first suit was filed by Shri Ram Singh Maini against his son claiming to be the owner of the suit property and treating Shri H.S. Maini as a licensee in respect of the first floor of the suit premises, which was stated to have been terminated on the issuance of the legal notice dated 25.9.2001. Thus in the first suit the relief sought was for a decree of declaration and mandatory injunction against Shri H.S. Maini. The question of right and title to the suit property was not at issue at the said stage.

19. Upon the demise of Shri Ram Singh Maini on 29.1.2004, while allowing Shri P.S. Maini to be substituted in his place as a plaintiff in the first suit, on the basis of an assertion that a Will dated 7.9.2001 was executed by the deceased in his favor, the Civil Judge, Delhi, passed an order dated 19.3.2005 observing therein that if Shri P.S. Maini failed to prove his locus standi and title by proving the Will in

accordance with law, in that event, the right and title of the defendant in the first suit shall automatically be decided. However, fact remains that even after substitution of Shri P.S. Maini as a legal heir of the deceased father in the first suit, the issues framed much earlier on 9.12.2002 were not amended and thus, no specific issue was framed separately with regard to the legality or validity of the Will of the deceased.

20. Furthermore, even if it is assumed that the issue of the legality and validity of the Will would be considered and decided in the first suit on the strength of the order dated 19.3.2005 passed by the Civil Judge, Delhi, fact remains that in the second suit filed by Shri H.S. Maini, it is his allegation that cause of action arose when his younger brother, Shri P.S. Maini set up the Will of their deceased father and threatened Sh.H.S. Maini of dispossession from the first floor of the suit property, thus compelling him to institute the second suit for declaration, injunction and partition. In the second suit, not only has Shri H.S. Maini challenged the validity of the aforesaid Will, but in addition, has set up a plea of the suit property being ancestral in nature and oral partition thereof taking place in the year 1983-84, during the life time of their father. The said issue is certainly an issue which requires to be taken to trial, so as to fully, finally and effectually decide the disputes between the parties, pertaining to the title and ownership of the suit property. The same can also not be treated as an issue which directly and substantially arises as an issue in the first suit pending before the Civil Judge, Delhi.

21. While discussing the scope of Section 10 of the CPC, the ingredients thereof as elucidated in the case of C.L. Tandon v. Prem Pal Singh reported as : AIR1978 Delhi221 must be kept in mind. The same are as below:

(a) The matter/matters in issue should be substantially the same in the two suits;

(b) The previously instituted suit should be pending in the same Court in which the subsequent suit is brought or in another court in India having jurisdiction to grant the relief claimed; and

(c) The two suits should be between the same parties or their representatives and these parties should be litigating in the two suits under the same title.

22. In the case of Shaw Wallace & Co. Ltd. v. Bholanath Madanlal Sherawala and Ors. reported as : AIR1975 Cal411 , a Division Bench of Calcautta High Court while discussing the terms 'matter in issue' in the context of provisions of Section 10 of the CPC observed as below:

13. One of the most essential conditions of Section 10 is that the matter in issue in the latter suit which is sought to be stayed must be directly and substantially in issue in the earlier suit which is pending in the same or in any other court of concurrent jurisdiction. A mere identity of some of the issues in both the suits is not sufficient to attract this section in view of the law laid down by Sir Ashutosh Mookerjee. Unless the decision of the suit operates as rest judicata in the other suit, it cannot be said that the matter in issue is 'directly and substantially' the same in both the suits. In other words, the decision in one suit must non-suit the other suit before it can be said that the matter in issue in both the suits is directly and substantially the same.

23. Thus, Section 10 of the CPC mandates that the matter in issue in the earlier instituted suit and the subsequently instituted suit should be directly and substantially in issue in the previously instituted suit. If the cause of action in the subsequently instituted suit is different, in that event, the earlier instituted suit will not be a bar in continuation of the subsequently instituted suit. thereforee, the acid test is that the decision in the earlier suit should operate as rest judicata in respect of the subsequently instituted suit.

24. In the case in hand, it cannot be said that the whole of the subject matter in both the proceedings is identical. While the relief sought in the first suit is for a decree of permanent injunction, the second suit has a much wider amplitude for the reason that the plaintiff therein, Sh.H.S. Maini has not only sought a decree of declaration of title but also of partition of the suit property by metes and bounds. There is force in the contention of the counsel for Sh. H.S. Maini that the issues arising for a decision would be substantially common in both the suits and almost the same set of oral and documentary evidence would be needed to be adduced

for the purpose of determining the issues of facts and law arising for a decision in both the suits. No doubt there will be duplication of recording of evidence if separate trials are held and a possibility of two courts giving conflicting judgments cannot be ruled out. Thus, even if Shri P.S. Maini is held entitled to grant of a decree of permanent injunction in the first suit, the second suit instituted by Shri H.S. Maini for declaration, partition and permanent injunction has to be put to trial as the title to and the nature of the suit property is an issue which shall have to be decided in the second suit, cause of action for institution of which arose in the year 2004, on the demise of the father of the parties.

25. As this Court has held that the second suit has a much wider scope than the first suit, it cannot be said that the decision in the first suit will operate as rest judicata in the second suit for the reason that the ownership and title of Shri H.S. Maini in the suit property cannot be decided comprehensively even if Shri P.S. Maini is able to successfully establish in the first suit that the termination of the license deed of Shri H.S. Maini by the deceased father of the parties was legal and valid and the Will of their deceased father as set up by Sh. P.S. Maini, was legally and validly executed, for the reason that Sh.H.S. Maini has claimed entitlement to 1/3rd share comprising of the first floor in the suit property described as ancestral by him, on the basis of an oral family settlement stated to have been arrived at during the life time of the father of the parties, in the year 1983-84, which claim shall have to be put to trial for the purposes of returning a finding one way or the other. In this view of the matter, the judgment in the case of Chuni Lal Vohra (supra), relied on by the counsel for Shri P.S. Maini, is not applicable to the present case, the same being entirely distinct on facts as also on law, from the case in hand.

26. In light of the aforesaid discussion, while rejecting the application filed by Shri P.S. Maini, in CS (OS) No. 664/2005, namely, I.A. No. 5370/2006, the Transfer Petition (C) No. 12/2006 is allowed. File of suit bearing No. 272/2002 entitled Ram Singh Maini v. Harjeet Singh Maini, pending before the Civil Judge, Delhi, is liable to be transferred to this Court for further proceedings.

27. Insofar as the plea of the petitioner in the Transfer Petition for consolidation of the first suit with CS(OS) No. 664/2005 is concerned, it will be appropriate to take a decision as to whether to consolidate both the suits or put them for trial together only after issues are framed in the second suit.

28. The anxiety expressed on behalf of Shri P.S. Maini that any order of transferring the first suit to this Court shall result in causing delay in its disposal, can be assuaged by binding Shri H.S. Maini to his offer that at the stage of recording his evidence as defendant in the first suit, after framing of issues in the second suit, he may be directed to file a consolidated affidavit for both the suits in a time-bound manner, to which he shall have no objection and further binding him to his undertaking not to press any issue for a decision as a preliminary issue, so as to avoid prolonging the suit proceedings. Shri H.S. Maini shall remain bound by the aforesaid undertakings.

29. The Transfer Petition is allowed and disposed of. is No. 5370/2006 in CS(OS) No. 664/2005 is rejected. No orders as to costs.

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