

Pamela Kumar Vs. Arun Mohan Etc.

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Court : Delhi

Decided On : Aug-22-1997

Reported in : 1997VAD(Delhi)560; 68(1997)DLT359

Judge : Devinder Gupta and; K.S. Gupta, JJ.

Acts : [Hindu Succession Act, 1956](#) - Sections 30

Appeal No. : First Appeal No. 93 of 1997

Appellant : Pamela Kumar

Respondent : Arun Mohan Etc.

Advocate for Pet/Ap. : Pamela Kumar and; Pamela Kumar, Advs

Judgement :

Devinder Gupta, J.

(1) We have heard the appellant, respondent No. 1 and respondent No. 3 in person, who -incidentally are practicing Advocates in this Court.

(2) The appellant seeks to challenge the order passed on 9.9.1996 by learned Single Judge dismissing her eight miscellaneous applications (I As 3342/96, 6224/96, 6225/96, 6226/96, 6227/96, 7781/96. 8365/95 & 8366/96). The ground in rejecting the misc. applications being that prima facie the claim of the plaintiff is

not tenable in law as she was already married before the death of her father, she cannot make any claim in the joint family of her father who had also executed a Will in respect of his interest in the property which had been duly proved in probate proceedings long ago.

(3) Plaintiff in her suit for declaration, partition and rendition of accounts has prayed for:

(i) declaration that daughters of a Joint Hindu Family have equal coparcenary rights as the sons of a Joint Hindu Family or in lieu of declaration, as a merciful alternative, the Hindu practice of female infanticide as legal. (ii) Preliminary Decree for partition be passed in favor of the plaintiff and as against the defendants for half share of the assets of Radhe Mohan Lal (HUF). (iii) Decree for rendition of accounts be passed in favor of the plaintiff and as against defendant No. 1 directing him to render the accounts of Radhe Mohan Lal (HUF). (iv) Final decree for partition of the assets of Radhe Mohan Lal (HUF) by metes and bounds in terms of the preliminary decree be ordered to be drawn and the parties to be put in exclusive possession of their respective shares/assets. Any other and further orders this Court thinks fit and proper in the circumstances of the case. Costs of the suit as against defendant No. 1, Mr. Arun Mohan, Senior Advocate, be awarded.

(4) The unfortunate part is that plaint does not conform to the law of pleadings as envisaged in the Code of Civil Procedure that the pleadings shall contain and contain only material facts on which the party pleading relies and shall not contain facts which are only evidence by which such material facts are to be proved. The general rule of pleading also requires that pleading must state only facts and not law. Whatever we have been able to gather from reading of the material on record is that late Radhe Mohan Lal, Advocate, who died on 12.6.1977, owned assets as an individual as also had interest in a coparcenary, which he headed. Appellant plaintiff, one of the daughters of Radhe Mohan Lal, was married during the lifetime of her father. Respondent No. 1 is appellant's brother and son of late Radhe Mohan Lal. Respondents 2 and 3 who are defendants 2 and 3 respectively in the suit are the sisters of the appellant and the married and unmarried daughters

respectively of the deceased Radhe Mohan Lal.

(5) Claim of plaintiff-appellant, which is also being supported by respondent No. 2, appears to be that in Mitakshara copracenary, a daughter is also a coparcener and entitled to a share equal to that of a son. A daughter on marriage neither ceased to be a member of father's family, nor becomes a member of her husband's family and as such despite her marriage during the life-time of her father, she continued to be the member of her father's family and did not become a member of her husband's family. Challenging the Will executed by late Radhe Mohan Lal on 8.6.1977, for which letter of administration was granted by this Court on 14.12.1978, it is the appellant's case that interest of a male Hindu in Mitakshara co-parcenary property could not be disposed of by Will and whatever properties have been purchased by respondent No. 1 are accretions to the the coparcenary and respondent No. 1 will be deemed to have separated from the coparcenary due to the reasons, which have been stated by her in her plaint.

(6) Learned Single Judge in the impugned order noticed the aforementioned aspects and as observed earlier held prima fade the claim to be not legally maintainable.

(7) In Surjit Lal Chhabda v. Commissioner of Income-tax, : [1975]101ITR776(SC) , the constitution of a Hindu coparcenary in the Mitakshara Law was considered that it is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property namely the sons, grandsons, and great grandsons of the holder of the joint property for the time being, that is to say, the three generations next to the holder in unbroken male descent. In Mitakshara law, the right to joint family property by birth is vested in the male issues only. Females, who come in only as heirs, to obstructed heritage cannot be coparceners. This position in law has always been understood and holds good till date. The same decision also says that a joint Hindu family consists of persons lineally descended from a common ancestor and includes their wives and unmarried daughters. The daughter, on marriage, ceases to be a member of her father's family and becomes a member of her husband's family.

(8) As regards the right of a Hindu member of a coparcenary to dispose of his undivided property by Will, Section 30 of [Hindu Succession Act, 1956](#) asserts the general rule that a Hindu may dispose of by Will any property, which is within his power to bequeath by any testamentary disposition. The Explanationn to Section 30 is the most vital part of the section, which clarifies that interest of a male Hindu in Mitaksha coparcenary shall be deemed to be the property capable of being disposed of within the meaning of the section notwithstanding anything contained in the Act or in any other law for the time being in force.

(9) In view of the established position in law, we do not find any ground to interfere with the impugned order passed by learned Single Judge by which it has been held that prima facie the claim of plaintiff not being sustainable no ground is made out to pass any order on misc. applications in which the plaintiff is seeking numerous directions such as restraint orders on respondent No. 1, receivership etc. with respect to various properties, which, according to the appellant, are part of coparcenary property held by the coparcenary headed by Radhe Mohan Lal.

(10) On the question 'raised by the plaintiff-appellant that respondent No. 1 will be deemed to have separated from coparcenary the answer is that where a member of the joint family had no congenial disqualification and had acquired by birth an interest in the joint property later supervening disqualification while, it might debar him from claiming a partition, would not prevent him from acquiring the property by survivorship. None of the disqualifications enumerated in the Hindu Inheritance (Removal of Disabilities) Act, 1928, which excludes an heir from inheritance has been pleaded by the plaintiff-appellant. In view of the above, we find no force in the appeal. Dismissed. Appeal dismissed.

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