

Master Kunal Vs. Harsh Dev Shinghari and ors.

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Court : Delhi

Decided On : Oct-29-2002

Reported in : 101(2002)DLT299; 2003(66)DRJ57

Judge : K.S. Gupta, J.

Acts : Tamil Nadu Court-fees and Suits Valuation Act - Sections 37 and 37(1)

Appeal No. : Suit No. 2637/97

Appellant : Master Kunal

Respondent : Harsh Dev Shinghari and ors.

Advocate for Def. : D.C. Vohra, Adv. for defendants 1, 2 & 8 and ; N.N. Dhingra, Adv. for defendants 5 & 7

Advocate for Pet/Ap. : J.P. Sengh and; Arun Sharma, Advs

Judgement :

K.S. Gupta, J.

1. I heard Sh. J.P. Sengh for plaintiff, Sh. D.C. Vohra for defendants 1, 2 & 8 and Sh. N.N. Dhingra for defendants 5 & 7 on the issue if requisite court fee had been paid by the plaintiff.

2. Prayers made in the suit are as under:-

'(a) Decree of declaration declaring that the documents viz settlements, releases, bonds, gifts or wills executed by the defendants or Late Pandit Gian Chand not bind the plaintiff qua his share in the suit properties being joint family properties as mentioned in paragraph No. 6 of the plaint;

(b) Decree of partition, preliminary and final, of separate possession of plaintiff's 1/12th share in the suit properties set out in paragraph No. 6 of the plaint;

(c) Decree of rendition of account, preliminary and final directing the defendants to render accounts of the rental income and other profits derived from the suit properties detailed in paragraph No. 6 of the plaint;

(d) If the defendants contest the claim for the partition and separate possession of share of the plaintiff a decree for mesne profits at the rate of Rs. 25,000 per month or such further rate as may be determined by this Hon'ble Court pendente lite and future till the decree for partition is fully implemented; and

(e) The costs of the suit.'

3. In para No. 15, the suit for the purposes of jurisdiction and payment of court fee has been valued thus:-

'Jurisdiction Court Fee a) For relief of declaration Rs.200/-Rs.20/- b) For relief of partition Rs.2,00,00,000/- Fixed court fee of Rs. 19.50 is payable as the plaintiff is in joint possession . c) For relief of rendition of accounts. Rs.200/-Rs.20/- d) For relief of Mesne profits Since the relief is contingent and uncertain for the present it is valued at Rs. 200/-Rs.20/-

4. Constitution advanced by the counsel of both sets of defendants was that the court fee paid for relief of partition of properties and valuation given for relief of rendition of accounts in para No. 15 of plaint are arbitrary and highly inadequate. To appreciate the contention, it is necessary to refer to the allegations made in plaint. It is alleged in paras 1 & 2 that plaintiff is the great grandson of Pt. Gian Chand who died on 24th January, 1997. Defendant No. 2 is the grandfather while defendant No. 3 is the father of plaintiff. Plaintiff was born on 24th December, 1986 from the wedlock of Ms. Veena and defendant No. 3 whose marriage was

dissolved by a decree of divorce by mutual consent in November, 1992. Plaintiff has been living separately with his mother after divorce. Defendant No. 5 is another son of deceased Pt. Gian Chand and defendants 6 & 7 are the sons of defendant No. 5. Defendant No. 4 is the son of pre-deceased son of Pt. Gian Chand, In para No. 3, it is stated that Pt. Gian Chand who acquired several properties, formed an HUF with his sons in 1965 and all the moveable and immovable properties acquired by him, were thrown into the hotch-potch of HUF. In para No. 4, it is alleged that plaintiff is a co-parcener to the extent of 1/12th share in the properties left by Pt. Gian Chand those being ancestral. In para No. 6, the details of movable/immovable properties left behind by the said deceased have been given as under:-

- i) House No. C-32/33, Amar Colony, Lajpat Nagar-IV, New Delhi-24.
- ii) Plot No. 333, measuring 125 sq. yds. G-Block, in Preet Nagar Cooperative House Building Society Ltd. known as Preet Vihar Colony, Delhi.
- iii) Share in land measuring 43 bighas and 9 bids was in village Hauz Rani, Delhi.
- iv) Compensation/ownership rights in plot No. 3A, in Khasra No. 420, measuring 300 sq. yds. in colony Preet Nagar Extension, Delhi.
- v) Compensation/ownership rights in plot No. 1-B in Khasra No. 1256/922/153 measuring 790 sq. yds. in Scheme B, Block B, situated in village Mandawali Fazalpur, Delhi.
- vi) Compensation/ownership rights in plot No. 1/5 of A1 + A2 + A5 in Khasra No. 1265/608, measuring 300 sq. yds. in colony Nirman Vatika, situated in village Mandawali Fazalpur, Delhi.
- vii) M/s Deva Brothers, C/o P-9, Sector 5, Railway Road, Faridabad (Haryana).
- viii) Fixed Deposit Receipts with M/s. Amarnath Bhasker & Sons (B.N. Bhasker & Sons) Ishwar Nagar, 10/1 KM Mathura Road, New Delhi or with any firm, company or Bank either singly or jointly in the name of the deceased.
- ix) Share & Debentures of companies as per ANNEXURE-A.

x) National Savings Certificates bearing No. 6NS/10EE930405 for Rs. 10,000/- 6NS/10EE930406 for Rs. 10,000/- or any other certificate standing or taken out in the name of the deceased.

xi) Unit certificates of Unit Trust of India bearing No. 404-94-1530003516 for face value of Rs. 10,000/-. List of any other certificate standing or taken out in the name of the deceased with Unit Trust of India is attached as ANNEXURE-B.

xii) Amounts lying in the accounts of the deceased in Allahabad Bank, Lajpat Nagar, New Delhi or any other Bank, company or firm.

xiii) Plot admeasuring 1000 sq. yds. near Sati Kund, Haridwar (U.P.).

xiv) Lands at village Bhagu Budha near Sultanpur Lodhi Distt. Kapurthala (Punjab).'

5. In para No. 7 of the plaint, it is further alleged that plaintiff filed a suit for permanent injunction on 23rd November, 1995 in the Court of Civil Judge, Delhi when he learnt that defendants were intending to dispose of one of the said properties bearing No. C-32/33, Amar Colony. In the course of that suit, the plaintiff came to know that defendant No. 1 had got family settlements, bonds, releases etc. executed from other defendants in respect of said properties in his favor. These documents purport to extinguish the share of the plaintiff. In para No. 8, it is alleged that as per defendant No. 1, Pt. Gian Chand had left behind a Will dated 16th September, 1991 bequeathing the said properties in his favor besides making several bequeaths. In para No. 9, it is claimed that the documents/settlements/releases/bequeaths are not binding upon the plaintiff nor do they in any manner effect his right in said properties. In para No. 11, it is pleaded that plaintiff being co-owner is in joint/constructive possession of said properties. In para No. 12, it is alleged that defendant No. 1 is liable to render accounts of the rents and other incomes accrued from said properties and plaintiff is entitled to a share therein.

6. Needless to say that said sets of defendants have contested the suit by filing written statements.

7. In support of the submission that requisite court fee had been paid for relief of partition, reliance was placed by the counsel of plaintiff particularly on the decisions in *Neelavathi and Ors. v. N. Natarajan and Ors.*, : [1980]2SCR307 and *Jagdish Pershad v. Joti Pershad* 1975 rlr 203. Former case was rendered with reference to Section 37 of the Tamil Nadu Court-fees and Suits Valuation Act. Omitting immaterial portion, in para No. 6 (at page 693) of this decision, it was held:-

'It is settled law that the question of court fee must be considered in the light of the allegation made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. All the material allegations contained in the plaint should be construed and taken as a whole.'

8. In para No. 8 (at pp. 694-95) which is also material, it was held:-

'The general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiff could be called upon to pay court fee under Section 37(1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been 'excluded' from joint possession to which they are entitled to in law. The averments in the plaint that the plaintiff could not remain in joint possession as he was not given any income from the joint family property would not amount to his exclusion from possession.'

9. In *Jagdish Pershad's* case (supra), it was held that in a suit for partition by coparcener alleging joint possession, fixed court fee as described by Article 17(vi) in Schedule 11 is payable and for that purpose only the averments made in Plaint are to be seen.

10. In the light of ratio of said two decisions and reading the allegations made in plaint as a whole, without reference to pleas in written statements, the plaintiff must be held to have paid requisite court fee for paid relief of partition.

11. This brings me to the controversy about suit being properly/improperly valued for relief of rendition of accounts. In annexure 'A' referred to in para No. 6(ix) of the plaint, late Pt. Gian Chand is shown to be having shares and debentures in as many as 67 companies. In annexure 'B' referred to in para No. 6(xi), the deceased is shown to be holding other certificates numbering 10 in all. To be noticed that the plaintiff also claims rendition of accounts in respect of compensation of the plots referred to in para No. 6(iv), (v) & (vi), of the business of M/s. Deva Brothers, in fixed deposits, NCSs., Unit certificates and amounts lying in the name of deceased in banks as noted in para No. 6(vii), (viii), (x), (xi) and (xii) respectively. Obviously, tentative valuation of Rs. 200/- as given by the plaintiff in para No. 15 for the said relief is highly arbitrary and unreasonable and the same deserves to be rejected (See: Abdul Hamid Shamai v. Abdul Majid and Ors., : [1988]3SCR507). Thus, upholding the objection taken by the defendants regarding valuation for relief of rendition of accounts as being whimsical and arbitrary, the plaintiff is directed to amend para No. 15 and/or any other para of the plaint by giving suitable amount for the said relief within four weeks from today.

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