

Neelam and anr Vs. Sada Ram and ors

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Court : Delhi

Decided On : Jan-30-2013

Judge : Rajiv Sahai Endlaw

Appellant : Neelam and anr

Respondent : Sada Ram and ors

Advocate for Def. : Mr. B.S. Maan, Ms. Smita Maan, Mr. Jitin Singh

Advocate for Pet/Ap. : Mr. Deepender Hooda

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision:

30. h January, 2013. + CS(OS) 823/2010, I.A. No.5597/2010 (u/O 3.R-1 & 2 CPC) & I.A. No.5598/2010 (u/O 4.R-1 CPC) NEELAM & ANR Through: Plaintiffs Mr. Deepender Hooda, Advocate. Versus SADA RAM & ORS Through: Defendants Mr. B.S. Maan, Ms. Smita Maan and Mr. Jitin Singh, Advocates for D-1 to 5. CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW JUDGMENT 30 01.2013 % 1. This suit is predicated on the fact that the two plaintiffs have a share in the properties inherited by their grandfather (defendant No.1) from his own father. The entire case of the plaintiffs is that the said properties are thus ancestral properties in the hands of their grandfather defendant No.1 and in which the father of the plaintiffs had a share by birth and which share, upon the death of their father devolved on the plaintiffs and their mother (defendant No.6). The plaintiffs thus

claim partition. The defendants No.2 to 5 are the paternal aunts of the plaintiffs and the daughters of the defendant No.1. According to the plaintiffs, defendants No.1 to 5 have 1/6th share each and the plaintiffs and defendant No.6 together have remaining 1/6th share in the said properties.

2. It has at the outset been enquired from the counsel for the plaintiffs as to when the father of the grandfather of the plaintiffs died. He is informed to have died in the year 1974.

3. The Hindu Succession Act, 1956 enacted more than half a century ago did away with the concept of ancestral properties, as existed prior thereto. After the coming into force thereof, the property inherited by a male from his father is held as self acquired property in which children of such male do not acquire any right by birth. Reference in this regard can be made to Commissioner of Wealth Tax, Kanpur Vs. Chander Sen AIR 198.SC 175.and Yudhishter Vs. Ashok Kumar AIR 198.SC 558.The counsel for defendants No.1 to 5 in this regard has also referred to Master Daljit Singh Vs. S. Dara Singh AIR 200.Delhi 292 and Pratap Vs. Shiv Shanker 164 (2009) DLT 479.However the popular misconception of ancestral properties continues to hold field, as is apparent from plethora of claims, even in courts, being made on the said premise.

4. Thus, the properties inherited by the grandfather of the plaintiffs on the demise of his own father in the year 1974, were held by him as his personal properties and in which his son i.e. the father of the plaintiffs did not acquire any share. Axiomatically, the question of the plaintiffs inheriting any such share on demise of their father does not arise.

5. The counsel for the plaintiffs has relied on Om Prakash Gulshan Vs. J.D. Gulshan AIR 200.Delhi 360 (DB), particularly to para 14 thereof. However the said para 14 refers to the case of a coparcenary. On the contrary the case of the plaintiffs is merely on the basis of the properties being ancestral properties. No case of any coparcenary of grandfather and father of the plaintiffs is pleaded.

6. The counsel for the plaintiffs, faced therewith, has invited attention to para No.15 of the plaint, where it has been mentioned that the cause of action first

arose when the plaintiffs had acquired share in the ancestral/joint family properties.....

7. However, what the plaintiffs say therein becomes clear from para No.14 of the plaint, where it is mentioned that the said ancestral properties are the joint family properties which have never been divided by metes and bounds..... The claim of the plaintiffs of the properties being joint family properties is thus based only on the factum of the same being ancestral properties in the hands of their grandfather and not on the factum of there being any coparcenary or HUF in existence and of which no foundation whatsoever is laid in the plaint.

8. A plea of the property being Joint Family Property owing to being jointly owned by members of a family is not the plea of existence of a coparcenary or a HUF. The Supreme Court in *Sathyaprema Manjunatha Gowda Vs. Controller of Estate Duty, Karnataka* (1997) 10 SCC 68.held that even HUF & coparcenary are not one and the same under the Hindu law though for the purposes of taxation under the taxation laws are treated as one and the same. The law of succession after coming into force of the Hindu Succession Act is governed thereby only. Of course, Section 6 thereof carved out an exception qua interest held by the deceased in a Mitakshara coparcenary property and provides that such interest shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the Act. However, it is not the case of the plaintiff that there was any coparcenary of which their grandfather, his father and the plaintiffs father were a member. This Court recently in *Premwati Vs. Bhagwati Devi* MANU/DE/4784/2012 held that for a case for claiming a share in the property otherwise than under the Hindu Succession Act, it has to be pleaded that there existed an HUF since prior to coming into force of the Succession Act and which HUF by virtue of Section 6 of the Act has been permitted to continue. There is no such plea in the present case also.

9. The suit is therefore clearly misconceived and not maintainable.

10. It may be clarified that though no preliminary issue on the aforesaid aspect has been framed but as far back as on 31 st July, 2012 arguments on this aspect were ordered to be heard and the matter has been adjourned several times thereafter

for the said purpose and the counsel for the plaintiffs has also proceeded to argue and has not raised any procedural objection.

11. The suit is accordingly dismissed. The interim order dated 4 th June, 2010 also stands vacated. Decree sheet be drawn up.

12. It is however worthwhile to record statement of the counsel for the defendants No.1 to 5 that the mother of the plaintiffs (defendant No.6) continues to reside with the defendant No.1 in the same house and this misconceived action on the part of the plaintiffs will not be allowed to come in the way of the said defendant No.6 continuing to so reside in the house. No costs. RAJIV SAHAI ENDLAW, J
JANUARY 30 2013 bs

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