

(1994) 03 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : O.M.P. No"s. 5 of 1993 and 508 of 1991 in C.S. 107 of 1991

Kr. Chandrajit Singh

APPELLANT

Vs

Kr. Ratanjit Singh and Others

RESPONDENT

Date of Decision : 29-03-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 10
Guardians and Wards Act, 1890 — Section 10

Citation : (1994) 2 ShimLC 224

Hon'ble Judges : D.P. Sood, J

Bench : Single Bench

Advocate : Arun Mohan and K.D. Sood, for the Appellant; Chhabil Dass, for Defendants 1 to 7, R.K. Gautam, for Defendants 8, 10 and L.Rs. 9A, A.K. Goel, for Defendant 12 and M.A. Khan, Vice Counsel for Defendant 17, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Sood, J.—This order shall dispose of both the above said applications, as the decision of OMP 508 of 1991 would depend upon the ultimate

Raja Suchet Singh (died in 1900) | Raja Charanjit Singh (died in 1970) | _____

_____ | | | | Kanwar Ajit Singji Kr.Sarabjit Singh Kr.Ripjit Singh Kanwarani (died in 1958) (died in 1976) (died in 1949) Pamela Smt Rajan | Kanwarani | (daughter) widow | Sarabjit | Smt. Nilina Df. 17 Df. 8 | Singh | (widow) | Widow- Df.11 | Df. 4 _____

_____ | | | | | | | | | | Damanjit Smt. Sonia Kamaljit Smt. Devika Smt. Neelam Sumanjit Smt. Ramnee | Singh(son) (daughter) Singh Dhamna B. Singh Singh Shivadasani | Df. 9 Df. 10 (Son) (daughter) (daughter) (Son) Df.16 | | Df. 12 Df. 13 Df.14 Df.15 | | | | _____ | | | | Kanwarani Shabana Smt. Nilika Km. Rene Ratanjit Karanjit Rajan Ajit Df. 9-B

daughter) (daughter) Singh(son) Singh Singh Df. 8 Df. 7 Df. 6 Df. 1 (son) Df. 9-A Df.5 Smt. Pronot (wife) Df. 2 | _____ | _____ | | Chandrajit Smt. mandira Singh (son) (daughter) Plaintiff Df. 3

decision of the Ors. connected OMP 5 of 1993. Both OM Ps are arising from the same facts, involved in the instant suit.

2. The two questions involved in the instant applications are:

(i) whether the instant suit registered as civil suit 107 of 1991 is liable to be stayed u/s 10 of CPC ? and

(ii) In case point No. 1 is decided in the negative, whether the interim relief granted by this Court vide its order dated 2-12-1991 is liable to be vacated ?

In order to understand the real controversy, it would be necessary to detail certain facts. The pedigree table pertaining to the parties is reproduced above:

3. Common ancestor of the parties vis-a-vis the property in dispute was late Raja Charanjit Singh. The property in dispute detailed in the plaint, initially belonged to him along with Ors. properties. During his life-time, litigation ensued in between Kr. Ajit Singh, predecessor-in-interest of Defendant No. 8, 9-A, 9-B and 10 and Kr. Sarabjit Singh, predecessor-in-interest of Defendants 11 to 16 on the one hand and late Raja Charanjit Singh along with Kr. Ripjit Singh, predecessor-in-interest of Plaintiff and Defendants 1 to 7 on the Ors. . It would be better in case the various disputes arising in between the parties are detailed herein below in three stages:

(i) From 1932 to 1937,

(ii) from 1982 to 1987, and

(iii) Pertaining to the instant suit.

1st stage:

4. Both Kr. Ajit Singh and Kr. Sarabjit Singh jointly filed a Civil Suit claiming partition of the property belonging to and in the hands of late Raja Charanjit Singh. However, the trial Court dismissed the suit vide its order dated November 30, 1933 (Civil suit was registered as 51 of 1932). Aggrieved with the aforesaid judgment, both Plaintiffs aforesaid assailed it in the Lahore High Court by way of appeal. A cross appeal was also filed by late Raja Charanjit Singh and Kr. Ripjit Singh, since deceased. The dispute was, however, compromised before the High Court and vide its judgment dated 4-6-1935, the case was remanded for the passing of the final decree in terms thereof. Resultantly, final decree was passed in the original suit by the learned Senior Sub-Judge, Jalandhar on 30th December, 1937. At this stage, the terms of the compromise would be material to be mentioned here. Certain properties detailed in list as "A", "B" and "C" annexed with the original plaint were kept personal and out of the remaining, 1/2 share thereof was allotted to the Plaintiffs by way of partition and the remaining

half was kept joint in between the Defendants, namely, late Raja Charanjit Singh and Kr. Ripjit Singh, since deceased, as coparcenary property.

IInd stage:

5. Now, in the year 1982, Defendant No. 12, namely, Sh. Kamaljit Singh alongwith some Ors. s filed anOrs. suit for partition and rendition of accounts of the estate of Raja Charanjit Singh in the Court of Senior Sub-Judge, Jalandhar ultimately registered as Civil Suit No. 90 of 1986. In that suit, the Plaintiff was not made a party though his father Kanwar Ratanjit Singh, Defendant No. 1, was impleaded in the array of Defendants. The trial Court passed a decree on 20th April, 1987, against which RFA was filed by Kr. Rattanjit Singh (Defendant No. 1) in the Punjab and Haryana High Court, which is pending. . During the pendency of the RFA, an application for stay of the further proceedings before the trial Court was filed. Ex-parte stay was granted on 9th June, 1987, which was ultimately vacated on November 16, 1987. The LPA filed by Kr. Ratanjit Singh and Ors. s against the vacation of the stay, was also dismissed on 4-1-1988, which was assailed in SLP un-successfully and the same (S. L. P.) was dismissed by the Apex Court vide its order dated 7-3-1988. Vide the interim order passed on 2-12-1991, the Defendants, in the instant case, have been restrained from continuing the final proceedings arising out of Civil Suit No. 90 of 1986, titled Kr. Kamaljit Singh v. Kanwarani Ajit Singh and Ors. decided on 20-4-1987, presently pending in the Court of Senior Sub-Judge, Jalandhar and also from partitioning or taking actual possession in pursuance thereto of the properties mentioned in Schedule "B" annexed with the plaint thereof.

6. The third stage: begins with the filing of the instant suit on August 23, 1991 by the Plaintiff, namely, Chandrajit Singh, son of Defendant No. 1, Kr. Ratanjit Singh, seeking the reliefs of declaration, partition and for separate possession of his share in the disputed property. The basis of the suit is, firstly, that the disputed property is coparcenary property belonging to late Raja Charanjit Singh who expired on 21-8-1970, and secondly, that in that coparcenary property, he, being a coparcener having acquired his right by birth, is entitled to his share therein. The Plaintiff has categorically alleged that he was born on August 25, 1970 and that his interest in the coparcenary property commenced with his conception. According to the allegations made in the plaint, he has claimed his right independently of his father in the coparcenary property owned and possessed by late Raja Charanjit Singh.

7. Defendants 8 to 16 i. e. the branches of two sons of late Charanjit Singh, namely, Kr. Sarabjit Singh and Kr. Ajit Singh, both since deceased, have vehemently contested the suit by raising various preliminary objections as to the maintainability, estoppel and res-judicata etc. On merits, they have contested the suit by contending that Sh. Ripjit Singh, the father of Defendant No. 1 and grand-father of the Plaintiff got married himself with Smt. Nilina on 14-8-1935 under the provisions of Special Marriage Act (Act III of 1872), and thereby she being Christian, the relation of late Sh. Ripjit Singh and late Raja Charanjit Singh

came to an end and relationship of H.U.F. thereby was disrupted The second contention raised by them is that no doubt, a decree in the year 1937 was passed whereby the partition of the coparcenary property was effected and share of pre- decessor-in-interest of Defendants 8 to 16 was severed, yet late Ripjit Singh though declared to be a coparcener in the joint Hindu family property alongwith late Raja Charanjit Singh alone, encashed his share in terms of money and thereby his share was purchased by late Raja Charanjit Singh and the property in dispute, thus, became the personal property of the common ancestors, referred to above. According to them, there being no coparcenary property and thus, no locus-standi of the Plaintiff to challenge or claim any share therein, the present suit is not maintainable.

8. Alongwith the suit, the Plaintiff also filed an application under Order 39, Rules 1 and 2 CPC registered as OMP 508 of 1991, in which the Defendants have been restrained vide order dated 2-12-1991, as indicated above. Later, out of the contesting Defendants, after having filed their written statements, Sh. Kamaljit Singh, Defendant No. 12, has moved the Ors. application for stay of this suit, inter-alia on the grounds pleaded in the written statement which have been detailed above. In addition, the Defendant No. 12 applicant has refuted the claim of the Plaintiff that he is a member of Hindu Un-divided Family or a coparcener of late Raja Charanjit Singh. Also, it has been contended that late Raja Charanjit Singh did not own or possess any coparcenary property as alleged by the Plaintiff. Further, that Civil Suit No. 90 of 1986 titled as Kamaljit Singh and Ors. v. Kanwarani Ajit Singh and Ors. was filed in the Court of Senior- Sub-Judge, Jalandhar, wherein a preliminary decree with respect to the property in dispute, has already been passed on April 20, 1987 and the questions raised by the present Plaintiff in the instant suit, have already been answered and repelled by the concerned Court. As regards the allegations that Plaintiff being not a party to the suit pending at Jalandhar, it is contended that he had duly been represented by his "father Kr. Ratanjit Singh (Defendant No. 1), who keenly contested the case and as such, the Plaintiff now has no right to re-agitate the same question, with respect to the claim made by him, which has directly and substantially been adjudicated upon in the aforementioned civil suit. According to the contesting Defendants, Kr. Ratanjit Singh acted as Manager/A Tarta/Head of the family to which the Plaintiff belongs.

9. In reply to the applications, referred to above, the parties have again reiterated their respective stand, as pleaded by them in their pleadings and as such, I need not repeat it.

10. I have heard the learned Counsel for the parties and have also carefully gone through the record.

11. Sh. Arun Mohan, learned Counsel appearing on behalf of the Plaintiff, has vehemently urged that the stay of the suit requires the consideration as envisaged u/s 10 of the Code of Civil Procedure, which reads:

10. Stay of suit.-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 in any Ors. Court in India, having 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.

His argument is that Plaintiff was not a party to the suit ; that he is now claiming as coparcener of late Raja Charanjit Singh with respect to. the property which continued to be in the hands of the latter. His further submission is that he is not claiming any share in the personal property which may have been owned and possessed by late Raja Charanjit Singh at the time of his death on 21-8-1970. In order to show the prima-facie case, he has taken me through various documents, commencing from the decree passed in the year 1937 to show the different kinds of properties owned and possessed by the parties after the passing of the decree. The Ors. documents are deed of settlement dated 16-5-1949, registered power of attorney dated 21-3-1951 in favour of Sunder Singh and decree dated 30-5-1960 passed by the Court of City Magistrate, Lakhimpur Kheri in the case of Raj Kumar Ratanjit Singh v. Raja Charanjit Singh and Ors. as also the written statement filed by late Raja Charanjit Singh dated 16-2-1960. According to him, all these documents indicate that both father and son, namely, late Raja Charanjit Singh and Kr. Ripjit Singh continued to be joint not only till the death of the latter but also subsequent thereto and properties owned by them which they acquired pursuant to the decree passed in the year 1937, also continued to be held as joint Hindu family/ coparcenary property. It is pointed out that the contesting Defendant Kamaljit Singh neither pleaded the nature of the property held by late Charanjit Singh nor specifically alleged as to how it become his personal property in the subsequent suit filed by him in the year 1982 in the Court of learned Senior Sub-Judge, Jalandhar. Rather, according to him, neither any issue was framed to that effect nor any evidence was led to see as to whether the disputed properties detailed in that suit were the personal properties of late Raja Charanjit Singh or it continued to be held as coparcenary property.

12. On the contrary, Sh. Arun Goel, Advocate, and Ors. learned Counsels, appearing on behalf of the contesting Defendants, have vehemently urged that the 1982 suit had been filed by Defendant No. 12, namely, Kamaljit Singh, claiming the share in the personal property of late Raja Charanjit Singh. No objection was raised by the guardian of the Plaintiff in that suit. The real controversy arising in between the parties thereto, was known to each one of them. Evidence was adduced to show the nature of the property. Rather, the subject matter of the decree passed in the year 1937 was never in dispute Further, that the trial Court considered all the aspects with respect to the fact as to what estate was held by late Raja Charanjit Singh on the date of his death and thereafter the preliminary decree has been passed on 20th April, 1987. In Ors. words, according to him, parties in that suit as also in the instant suit are the

same and the matter in issue in the instant suit was also directly and substantially in issue in the earlier suit, instituted in between the same parties. In any case, it is urged that Plaintiff is litigating under the title derived by him through his father Rattanjit Singh, his guardian in the earlier suit and thereby the Plaintiff cannot now re-agitate the question by way of collateral proceedings in this Court. In support of his arguments, he has referred to an application filed by Smt. Nilina (Defendant No. 4), widow of late Kr. Ripjit Singh u/s 10 of the Guardian and Wards Act on May 25, 1953. It is contended that in that application, it has specifically been averred that she being a Christian had contracted marriage under the provisions of Special Marriage Act, 1872 as late Kr. Ripjit Singh whose relationship with his father late Raja Charanjit Singh was severed. Further, it has been pointed out that by an Ors. admission in this application, even if late Kr. Ripjit Singh is considered to be a coparcener with his father, late Raja Charanjit Singh, he had sold his share to the latter and thereby divested himself of the coparcenary property. In any case, according to him, the coparcenary property referred to by the Plaintiff in his pleadings, was not as such but was the personal property of late Raja Charanjit Singh and the matter was thoroughly considered by the learned Senior Sub-Judge, Jalandhar in his judgment dated April 20, 1987, whereby preliminary decree was passed by him and against which, the appeal is still pending in the Punjab and Haryana High Court at Chandigarh. Apart from it, it is contended that Plaintiff's remedy was solely by way of intervening in the proceedings and filing an appeal against the preliminary decree, by seeking leave of the Court or in the alternative to file a civil suit in the same Court on the basis of fraud and mis-representation of facts as pleaded by the Plaintiff in the instant case or by having become a party to the pending proceedings. It is further contended by Sh. A. K. Goel, learned Counsel for Defendant No. 12. that interest of the Plaintiff or the branch of late Kr. Ripjit Singh has amply been protected by the order passed on 16-11-1987 by the order of Punjab and Haryana High Court in RFA 1382 of 1987, inasmuch as the Plaintiffs would not be dispossessed after the passing of the final decree and they are at liberty to file an application for seeking stay at that stage.

13. Before the rival contentions of the parties are considered by this Court, it would be proper to detail certain admitted facts.

14. The subject-matter of this suit was a portion of the joint property owned and possessed by late Raja Charanjit Singh who had succeeded thereto from his father late Raja Suchet Singh, who died in the year 1900. By decree passed in the year 1937, some of the property was kept personal of late Raja Charanjit Singh and out of the remaining half share was allotted to the predecessor-in-interest of the contesting Defendants 8 to 16 and remaining half was continued to be joint in between the grand father, Kr. Ripjit Singh, of the present Plaintiff and late Raja Charanjit Singh. The factum of dates of death of the various male descendants of late Raja Charanjit Singh, as has been pointed out in the pedigree table is not disputed. Also, the fact that previous suit by Defendant No. 12 in the Court of Senior Sub-Judge, Jalandhar was filed with respect to the

partition of estate of late Raja Charanjit Singh, is also not disputed. Further, fact that the Plaintiff was not arrayed as a party in the earlier proceedings, he being a minor at the relevant time, is also not disputed. It is in the light of these admitted facts that the question with respect to the stay of proceedings in the instant suit is to be considered.

15. In order to resolve the controversy, the first question to be noted is whether the Plaintiff is litigating under the title derived by him from his father or he has filed the suit independently in his own right ? Secondly, the question to be dealt with is whether the matter in issue was directly and substantially involved in the earlier suit before Jalandhar Court in which preliminary decree has been passed ? In case both these questions are answered in affirmative, the suit is liable to be stayed.

16. At the very outset, a close perusal of the pleadings of the parties in the instant suit, shows that Plaintiff does not make any claim to the personal property of late Raja Charanjit Singh which he owned and possessed on the date of his death i. e. on 21-8-1970. He is claiming his right on the basis of being a coparcener alongwith late Raja Charanjit Singh and not on the basis of right which he had derived from his father, namely, Sh. Ratanjit Singh (Defendant No. 1). In that view of the matter, it cannot be said that the parties are the same in both the suits. The fact whether he is a coparcener in the disputed property, involved in the present suit, is to be adjudicated upon on the basis of the evidence which either party may adduce in the trial of this suit. Secondly, the question with respect to the matter in issue, has also to be decided on the basis of the evidence to be adduced by the parties. Both parties have relied upon various documents, referred to in the earlier paras, showing the nature of the property held by late Charanjit Singh. The conduct of late Charanjit Singh prima facie shows that he continued to consider not only Kr. Ripjit Singh but also his legal representatives to be the members of the Joint Hindu Family. Apart from it, the documents-decree passed in 1937, general power of attorney dated 21-3-1949, decree passed by City Magistrate, Lakhimpur Kheri, indicate that he had made a categorical admission, though against his interest which ultimately prima facie show the continuance of the joint Hindu status qua the property held by him in between Kr. Charanjit Singh and the legal representatives of late Kr. Ripjit Singh. This Court has to take a judicial notice of the documents which are more than 30 years old on the date of filing of this suit No doubt, the admission by Smt. Nilina, widow of late Ripjit Singh (Defendant No. 4) regarding the severance of" her husband and her father-in-law in respect of the residences, share of her husband Kr. Ripjit Singh in the coparcenary property held by late Charanjit Singh in terms of cash amount is also there, yet to what extent, this admission is binding upon the rights of the Plaintiff are by be on his view 10 of the CPC Code, is misconceived and is liable to be dismissed.

17. As regards the relief of temporary injunction sought for in OMP 508 of 1991, suffice it to state that allegations of fraud, concealment of facts and also

misrepresentation thereof, have been pleaded by the Plaintiffs. Apart from it, the questions with respect to the entitlement of the Plaintiff in the suit property as also the nature thereof, has yet to be gone into. Whether it was a coparcenary property in the hands of late Charanjit Singh or not, would depend upon the evidence to be adduced by the parties. There is no doubt that preliminary decree with respect to the property in dispute has been passed by the Court at Jalandhar and the High Court of Punjab and Haryana, by its order, has directed the expeditious disposal of the proceedings pending before the Jalandhar Court. In case the Defendants are allowed to continue with the suit, there is every possibility of irreparable loss to be caused to the Plaintiff which cannot be compensated in terms of money. Also, from the facts, and documentary evidence relied upon by the parties, and also the documents annexed with the pleadings, it is clear that there exists a prima facie case in favour of the Plaintiff. The balance of convenience, in such circumstances, also is in favour of the Plaintiff in comparison to the Defendants, particularly, when once the property in dispute is divided and disposed of by the contesting Defendants; such act on the part of the Defendants would give rise to multiplicity of suits in between the parties. Apart from the above, it would be relevant to note here the observations made by the Apex Court in *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, , that:

The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. A person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A judgment or decree obtained by playing fraud on the Court is a nullity and non-est in the eyes of law. Such a judgment/decreed by the first court or by the highest court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.

18. The contention, with respect to the jurisdiction of this Court, raised by the learned Counsel for the contesting Defendants, appear to be fallacious inasmuch as, some of the disputed property is located in Shimla, within the jurisdiction of this Court. It is well settled that a litigant is entitled to initiate proceedings in a Court where a cause of action or part thereof arises. Dispute with respect to the Shimla property, is also a part of the disputed subject-matter in the present litigation. In that view of the matter, there exists sufficient material to dispel the jurisdictional point, raised by the learned Counsel.

19. AnOrs. point raised by Sh. A. K. Goel, learned Counsel for the contesting Defendants, that Plaintiff's interest has already been safeguarded vide the order of the High Court of Punjab and Haryana, and he can even after the passing of the final decree, file an application, seeking stay of dispossession, is also meritless. No doubt, the Plaintiff has a right to intervene in the proceedings

pending before the concerned court after seeking leave therefrom, however, he has also alternative remedy and in case such remedies exist, it is for the Plaintiff to choose his remedy in a particular forum. He cannot be compelled to choose a particular forum. He is the best person to see his interests. Apart from this, even in case collateral proceedings by way of civil suit are filed before the Court at Jalandhar or in the High Court of Punjab and Haryana, either of the Court will have to consider the matter in issue, involved in the present case on merits and not Ors. wise. Thus, this point has no force.

20. The last contention that the litigation in question is being prosecuted by the Plaintiff at the behest of and for the benefit of Defendants 1 and 5, is also not available to the contesting Defendants, inasmuch as, as already observed, the Plaintiff has not filed the instant litigation on the basis of title derived from either of the Defendants 1 or 5, but he has filed the instant suit independently in his own right, being a coparcener with late Raja Charanjit Singh and the subject-matter of the suit, according to him, is a coparcenary property which remained in the hands of late Raja Charanjit Singh. Thus, this point is also misconceived.

21. The result of the above discussion is that the interim relief granted in OMP 508 of 1991 on 2-12-1991 by this Court, is made absolute till the final disposal of the suit. Resultantly, OMP 5 of 1993 is dismissed. However, it may be clarified that any expression used or opinion expressed in the disposal of these applications, shall not have any effect on the decision of the main case on merits.