

(2011) 12 DEL CK 0195
In the Delhi High Court
Case No : FAO (OS) No. 569 of 2011

Narinder Pal Kaur Chawla

APPELLANT

Vs

Joginder Kaur Chawla and Others

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Adoptions and Maintenance Act, 1956 — Section 18, 20
Penal Code, 1860 (IPC) — Section 494, 495

Citation : (2011) 12 DEL CK 0195

Hon'ble Judges : Sanjay Kishan Kaul, J;Rajiv Shaktiher, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The appellant claims to be the second wife of respondent No. 2, a marriage stated to have been solemnized on

11.12.1977 by a misrepresentation of respondent No2 that he was a bachelor while, in fact, he was already married. From the wedlock two

daughters were born in 1981 and 1983, who are married and settled in their matrimonial home and have no interest in the litigation.

2. The appellant lodged a criminal complaint only in October, 1993, before a Metropolitan Magistrate, Patiala House Courts, New Delhi against

respondent No. 2 for committing offences under Sections 494 & 495 IPC, where after the framing of charges he was convicted vide judgement

dated 17.9.2002 and was sentenced to undergo rigorous imprisonment (for short "RI") for three (3) years and fine of Rs. 5,000.00 was imposed.

However, in appeal filed before the Additional Sessions Judge, New Delhi, the conviction of respondent No. 2 was maintained but the sentence

was reduced to fourteen (14) days RI, which respondent No. 2 had already undergone and the fine was increased from Rs. 5,000.00 to Rs.

1,00,000.00 as per the judgement dated 14.1.2004. The appellant aggrieved by the said order claims to have filed a Criminal Revision No.

238/2004 in the High Court, which is still pending.

3. The endeavour of the appellant for claiming maintenance u/s 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the

Cr.P.C.") from respondent No. 2 was not successful as the application was dismissed on 12.1.1993 as the application was held to be not

maintainable as the appellant was not the lawfully wedded wife of respondent No. 2. The appellant then asserted her claim for maintenance and

shelter u/s 18 read with Section 20 of the Hindu Adoptions & Maintenance Act, 1956 (hereinafter referred to as the "said Act") in forma pauperis

whereby vide order dated 11.1.2002, the appellant was granted interim maintenance of Rs. 400.00 per month, which was enhanced in appeal by

the High Court to Rs. 700.00 vide order dated 25.7.2003. The appellant thereafter approached the Supreme Court by filing an SLP No.

20230/2003 in which the maintenance was enhanced to Rs. 1,500.00 per month.

4. The appellant claimed that respondent No. 2 with his mother and two daughters were living on the first floor of property No. A-447, Defence

Colony, New Delhi while the appellant was living separately from her husband on the second floor of the same property. The SLP was disposed

of on 21.4.2004, a perusal of which order shows that though the Supreme Court refrained from commenting on the legal right of the second wife

for maintenance under the said Act and did not express its views on the merits of the claims and counter claims, the financial position of respondent

No. 2 was found sufficient for him to easily pay a sum of Rs. 1,500.00 per month as interim maintenance without disturbing the right of separate

residence provided to the wife at the second floor of the house. The order made it clear that the grant of interim maintenance is only till the decision

of the main case pending under the said Act on the original side of this Court and the decision on the main case on merits would be uninfluenced by

orders passed for fixing interim maintenance.

5. The appellant initiated CS (OS) No. 2395/2009 claiming right in the aforesaid immovable property predicated on a plea of the appellant that the

Supreme Court had put its seal of imprimatur on the ownership of the appellant in the property. The maintenance claim of the appellant resulted in

the judgement and decree dated 13.7.2007 passed by the trial court dismissing the suit on the ground that the appellant was not the legally wedded

wife and consequently was not entitled to maintenance under the said Act. The appellant was, however, successful before this Court in RFA No.

575/2005 which held vide judgement dated 20.9.2007 that the appellant was entitled to maintenance. Thereafter orders have been passed by the

trial court on 19.4.2008 granting maintenance to the appellant @ Rs. 4,000.00 per month from the date of application, i.e., 11.4.1997 and Rs.

7,000.00 per month from 20.9.2007. Since these maintenance amounts had not been paid, the appellant filed Execution Petition No. 281/2011

seeking attachment, which is pending consideration. The quantification of this amount has been assailed by the appellant by filing RFA No.

511/2009, which is pending consideration before this Court. However, while considering the interim application in that appeal, vide order dated

30.5.2011, the claim of respondent No. 2 of inability to pay maintenance was rejected. It is also relevant to note that while fixing the maintenance

@ Rs. 7,000.00 per month post 20.9.2007, it has been observed that this quantum of maintenance would continue till the appellant continues to

remain in possession of the second floor of the property but in case the appellant was to leave that property by an order of the court or otherwise,

she would be entitled to maintenance @ Rs. 12,000.00 per month.

6. Now coming to the ownership of property No. A-447, Defence Colony, New Delhi. This property was owned by late Shri Gurbachan Singh

Chawla, father of respondent No. 2, who died on 30.6.1995 leaving behind his legal heirs being his widow, arrayed as respondent No. 1 herein;

his son arrayed as respondent No. 2; and his two daughters arrayed as respondents 3 & 4 herein. One of the daughters, Shrimati Indu

Vohra/respondent No. 4 filed a Civil Suit No. 37/1999 in the Court of Senior Judge, Delhi seeking a decree for restraining respondents 1 & 2

from selling or disposing of the property No. A-447, Defence Colony, New Delhi. In that suit, a written statement was filed by respondents 1 & 2

disclosing that late Shri Gurbachan Singh Chawla executed a registered Will dated 30.4.1973. The application of the appellant for impleadment in

that suit was allowed in 1999, she being arrayed as defendant No. 3. This suit was unconditionally withdrawn on 28.8.2000.

7. It is the written statement filed by respondents 1 & 2 in those proceedings which the appellant claims to adopt in CS (OS) No. 2395/2009

arising from the Will dated 30.4.1973. In terms of the Will while making the bequest the testator had provided that respondent No. 1/his wife

would have no right to sell or mortgage any of the immovable properties and bungalow No. A-447, Defence Colony, New Delhi should be

properly managed and maintained by the wife/respondent No. 1 and son/respondent No. 2 from the rental income and the property should not be

sold or mortgaged for any reason but it should be passed on to his grandsons after the marriage of his son/respondent No. 2 and the grandsons

should enjoy and use the immovable property.

8. However, the undisputed position is that respondent No. 2 has no sons.

9. Respondents 2 & 3 executed Relinquishment Deeds dated 16.10.2003, respondent No. 2 executing it for self and as attorney of respondent

No. 4, in favour of their mother/respondent No. 1 in terms whereof all the rights, title and interest in property No. A-447, Defence Colony, New

Delhi, vested with respondent No. 1. The L&DO also carried out the consequent mutation on 20.12.2006. Respondent No. 1 executed a sale

deed in favour of respondent No. 5 on 16.5.2007. However, on a representation being received from the appellant, the mutation is stated to have

been subsequently withdrawn by the L&DO.

10. In CS (OS) No. 2395/2009, the appellant has prayed for an order of cancellation of the sale deed dated 16.5.2007 executed by respondent

No. 1 in favour of respondent No. 5. The suit is resisted by all the respondents except respondent No. 4, who is proceeded exparte. In view of

the nature of the Will dated 30.4.1973, the absence of any son being born to respondent No. 2, the respondents have pleaded that the estate of

late Shri Gurbachan Singh Chawla would have to be treated as a case of intestate succession and, thus, respondents 2 & 3 have validly disclaimed

their rights in the property in favour of respondent No. 1.

11. In CS (OS) No. 2395/2009, the appellant filed IA No. 15270/2011 praying for the proceedings to be adjourned sine die in the suit on

account of her prayer in execution of the decree for maintenance dated

19.4.2008 against respondent No. 2. This application has been dismissed vide impugned order dated 22.9.2011 of the learned single Judge on the ground that the execution for maintenance amount by the appellant would be only against respondent No. 2 and not against other respondents. Further the appellant is not a Class-I legal heir of late Shri Gurbachan Singh Chawla. The learned single Judge has left all the contentious issues to be decided at the stage of final adjudication of the suit while observing that right to shelter of the appellant could also be claimed only against respondent No. 2. This aspect is taken care of vide order dated 30.5.2011 in RFA No. 511/2009 while granting maintenance of Rs. 7,000.00 per month post 20.9.2007 by making a direction that in case the appellant was to leave or compelled to leave the property, the maintenance amount would stand enhanced to Rs. 12,000.00 per month. The plea of the appellant that the order dated 21.4.2004 passed in SLP No. 20230/2003 has given the appellant a right of occupation in the property has been negated as the issue of title of immovable property was never there before the Supreme Court and the appellant could not claim any ownership right in the suit property.

12. The impugned order dated 22.9.2011 also dismissed another application of the appellant, being IA No. 1956/2011, filed under Order 12 Rule 6 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "said Code") as also IA No. 14457/2011, praying that the written statement filed by respondents 1 to 3 and respondent No. 5 be dismissed.

13. We may note that orders have been passed by the learned single Judge on the aforesaid applications, as the appellant pleaded that issues could not be framed without the decision on the two applications. The learned single Judge has also simultaneously framed issues in the suit.

14. The present appeal seeks to assail the order dated 22.9.2011 on all aspects, i.e., the orders passed on the three applications as well as the framing of issues in the suit. There are multifarious prayers made in the appeal including a claim that a law on the point should be settled, Constitution Bench should be constituted to settle the law, the right of granddaughters under the Will should be decided, etc.

15. We have heard the appellant appearing in person for a better part of half an hour in which the sum and substance of the plea of the appellant is

that she has been contesting various litigations for a number of years to establish her claim and even her daughters are not assisting her for various reasons. The appellant sought to go into the history of various legislations to claim that the exclusion of the right of the second wife was a fraud played by the Parliament (sic). In fact, it is difficult to find any cogency in the submissions of the appellant and we reserved the order to examine the complete records. This is also on account of the fact that in paragraph 66 of the impugned order, the learned single Judge has noticed the obstructionist tactics of the appellant, who seeks to make even allegations against the opposite counsel despite the hearing in the matter going on before the learned single Judge over one and a half hour. She also expressed her intent clearly before the learned single Judge that she was not interested in any dispute resolution but was interested only in the entire property No. A-447, Defence Colony, New Delhi in which respondent No. 2 at best could have 1/4th share which he relinquished in favour of his mother/respondent No. 1. The right of the appellant as second wife for maintenance at best could have been claimed against that share of the property.

16. We find no reason why the prayer of the appellant to adjourn the suit proceedings sine die should have been accepted merely because respondent No. 2 had not paid the maintenance amount to the appellant for which execution proceedings were pending. The property was owned by respondent No. 1 on account of Relinquishment Deeds executed by her children. Even otherwise prima facie in view of the nature of the Will and in view of absence of any son being born to respondent No. 2, the widow of the deceased late Shri Gurbachan Singh Chawla and his three children being one son and two daughters would have got 25 per cent share each. The appellant is not a legal heir of late Shri Gurbachan Singh Chawla and her only right to maintenance claim can be against her husband/respondent No. 2. The property already stands transferred by respondent No. 2 to respondent No. 5. Thus, obviously after having filed the suit challenging the title of respondent No. 5 the appellant wants to somehow keep the lis alive without any final adjudication, which is impermissible.

17. In so far as the second application is concerned filed under Order 12 Rule 6 of the said Code, there was no admission in the pleadings which would have resulted in a decree being passed in favour of the appellant. The

appellant contended before us that she does not want to go through the rigours of the suit and straightaway a decree should be passed in her favour. Such a course, in our opinion, is impermissible.

18. It is during the course of proceedings to determine whether the appellant could be permitted to sue as a *forma pauperis* the testimony was

recorded. In the process of recording the statement of the appellant and the cross-examination of the appellant, the appellant claimed that she was

in possession and control of the first and second floors of the property after her husband and mother-in-law left on 17.5.2007. The appellant, thus,

claims a decree under Order 12 Rule 6 of the said Code based on her own deposition in cross-examination which cannot be the basis of passing a

decree under Order 12 Rule 6 of the said Code and, thus, we cannot find any fault with the said finding of the learned single Judge.

19. The last application relates to a prayer for dismissal of the written statement. There is no such procedure in law prescribed. Further the

appellant sought to really refer to depositions of various proceedings and Will dated 30.4.1973 of late Shri Gurbachan Singh Chawla. The issue of

possession does not even arise in the suit as the prayer is made only for cancellation of the registered sale deed which prayer is being contested by

all the respondents except respondent No. 4, who is *ex parte*. Thus, once again, the finding of the learned single Judge is unexceptionable. The

learned single Judge has rightly framed the issues arising between the parties. The learned single Judge has, once again, rightly noticed that there is

a distinction between a title and ownership of an immovable property from a right to shelter or possession thereof which may be claimed.

20. We, thus, find the appeal meritless and a process of vexatious litigation which ought to be dismissed with costs. We, however, refrain from

imposing costs on account of the appellant appearing in person, absence of the respondents and the appellant suing in *forma pauperis*.

21. Dismissed.