
(2013) 02 DEL CK 0005

In the Delhi High Court

Case No : CS (OS) No's. 2395 of 2009, 2396 of 2009, 2397 of 2009, I.A. No's. 7244 of 2009, 7245 of 2009, 7246 of 2009, 7656 of 2009, 8984 of 2009, 12521/ 2009, 12538 of 2009, 16941 of 2009, 16942 of 2009, 16943 of 2009, 2375 of 2010, 5394 of 2010, 9104 of 2010, 1

Narinder Pal Kaur Chawla (Mrs.)

APPELLANT

Vs

Mrs. Joginder Kaur Chawla and Others

RESPONDENT

Date of Decision : 15-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 33 Rule 1, 151
Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Adoptions and Maintenance Act, 1956 — Section 18, 20
Penal Code, 1860 (IPC) — Section 494, 495

Citation : (2013) 3 AD 29 : (2013) 198 DLT 51 : (2013) 1 DMC 811 : (2013) 134 DRJ 727

Hon'ble Judges : S. Ravindra Bhat, J;Manmohan Singh, J;Hima Kohli, J

Bench : Full Bench

Advocate : R.M. Bagai, for D-5, Mr. Rajat Navet, with Mr. Jitender Ratta and Mr. Ruchir Mishra, Mr. Mukesh Kumar Tiwari, for D-1 to D-4, Mr. R.M. Bagai, for D-8, Mr. Rajat Navet, with Mr. Jitender Ratta, for the Respondent

Judgement

Manmohan Singh, J.—This Special Full Bench has been constituted in terms of the order dated 14th September, 2012 passed by the learned Single Judge. The said order was passed in the application u/s 151 CPC being I.A. No. 17007/2012 filed by the plaintiff in CS(OS) No. 2395/2009 inter-alia praying that CS(OS) No. 2395/2009 along with two other suits being CS(OS) No. 2396/2009 & 2397/2009 be placed for a decision before a Full Bench as legal points had been raised by her. After obtaining the orders from Hon"ble the Acting Chief Justice, the aforesaid three suits along with pending application are listed before us. These three suits have been filed by the plaintiff seeking different reliefs detailed as follows:-

(i) CS(OS) No. 2395/2009: This suit has been filed by the plaintiff against six defendants, namely, (i) Smt. Joginder Kaur Chawla, (ii) Sh. Manjit Singh Chawla,

(iii) Smt. Meenu Suri, (iv) Smt. Indu Vohra, (v) M/s Setia Buildwell Pvt. Ltd., and (vi) Sub-Registrar, New Delhi, seeking declaration that the sale deed dated 16th May, 2007 executed by the defendant No. 1 in favour of defendant No. 5 is null and void and the same be cancelled. The plaintiff has averred in the plaint that defendant No. 1 is her mother-in-law, the defendant No. 2 is her husband, defendants No. 3 and 4 are the daughters of the defendant No. 2 from the first wedlock. Defendant No. 5 is a builder, who has purchased the suit property from the defendants by virtue of a sale deed which was registered by the defendant No. 6.

(ii) CS(OS) No. 2396/2009: Earlier, a petition registered being IPA No. 6/2009 was filed by the plaintiff/appellant against her husband Manjit Singh Chawla, under Order XXXIII, Rule 1 CPC for leave to sue in Forma Pauperis for granting right to her through the Will dated 20th April, 1973 executed by the father of the defendant, leave was granted and IPA No. 6/2009 was registered as the present suit

(iii) CS(OS) No. 2397/2009: This suit has been filed by the same plaintiff against 10 defendants seeking declaration to the effect that the letter No. L& DO/PS-III/2301 dated 20th December, 2006, whereby mutation of the suit property had taken place in favour of the defendant No. 1 who had later on sold the same to the defendant No. 5 by registered sale deed, be cancelled and treated as null and void.

2. We have gathered certain facts from the pleading of the parties as well as the earlier orders passed. Some relevant facts are that the plaintiff claims to be the second wife of Manjit Singh Chawla, a marriage stated to have been solemnized on 11th December, 1977 by a misrepresentation made by him that he was a bachelor whereas he was already married. From the wedlock, two daughters, namely Shifali Chawla and Priya Chawla were born in 1981 and 1983 respectively. Both the daughters are married and settled in their matrimonial homes.

3. In October, 1993, the plaintiff had lodged a criminal complaint before a Metropolitan Magistrate, Patiala House Courts, New Delhi against the defendant No. 2 alleging that he committed offences under Sections 494 & 495 IPC; charges were framed against him on 30th June, 1997 and he was finally convicted by judgment dated 17th September, 2002. He was sentenced to undergo rigorous imprisonment for three years and a fine of Rs. 5,000/- him. However, an appeal was filed by the defendant No. 2 against the aforesaid judgment. In the judgment dated 14th January, 2004 of the Additional Sessions Judge, New Delhi, the Appellate Court maintained the conviction of defendant No. 2 but the sentence imposed on him was reduced to 14 days RI, which period he had already undergone and the fine was increased from Rs. 5,000/- to Rs. 1,00,000/-. Aggrieved by the said order, the plaintiff's Criminal Revision No. 238/2004 is pending consideration before the High Court.

4. The plaintiff had also claimed maintenance u/s 125 Cr.P.C. from her husband, i.e. defendant No. 2. Her application was dismissed on 12th January, 1993 with the finding that the same was not maintainable as the plaintiff was not the lawfully wedded wife the defendant No. 2. Thereafter, she filed her claim for maintenance u/s 18 read with Section 20 of the Hindu Adoptions & Maintenance Act, 1956 wherein by order dated 11th January, 2002, the plaintiff was granted interim maintenance @ Rs. 400/- per month, which was enhanced in appeal by this Court to Rs. 700/- p.m. vide order dated 25th July, 2003. The plaintiff thereafter approached the Supreme Court by filing an SLP No. 20230/ 2003 wherein the maintenance was enhanced to Rs. 1500/- per month. The said SLP was disposed of on 21st April, 2004. While disposing of the SLP filed by the plaintiff, the Supreme Court did not make any observation on the legal rights of the second wife for maintenance under the said Act and also did not express its views on the merits of the claim and counterclaim.

5. The plaintiff submits that her husband, mother-in-law and two sisters-in-law were residing on the first floor of suit property bearing No. A-447, Defence Colony, New Delhi while she is living separately from her husband on the second floor of the same property.

6. In the suit being CS(OS) No. 2395/2009, the plaintiff claimed a right in the aforesaid immovable property i.e. the suit property predicated on a plea made by her that the Supreme Court had put its imprimatur on the ownership of the plaintiff in the said property. The maintenance claim of the plaintiff was dismissed by the Trial Court by judgment and decree dated 13th July, 2007 on the ground that she was not the legally wedded wife and, therefore, she was not entitled to maintenance under the said Act. But, in RFA No. 575/2005 vide judgment dated 20th September, 2007 it was held that the plaintiff was entitled to maintenance. Thereafter, an order was made by the Trial Court on 19th April, 2008 granting maintenance to her @ Rs. 4,000/- per month from the date of application, i.e. 11th April, 1997 and @ " 7,000/- per month from 20th September, 2007. Since these maintenance amounts had not been paid, the plaintiff filed Execution Petition No. 281/2011 seeking attachment, which is also pending. The plaintiff also challenged the quantification of amount fixed by the Court by order dated 19th April, 2008 by filing RFA No. 511/2009, which is pending disposal in the High Court. In the interim application filed along with the appeal, by order dated 30th May, 2011 the claim of the defendant No. 2 expressing his inability to pay the maintenance, was rejected.

7. The suit property was originally owned by late Sh. Gurbachan Singh Chawla, father of the defendant No. 2, who expired on 30th June, 1995, leaving behind his legal heirs being his widow, his son and his two daughters. This property is the bone of contention in all the three suits.

8. One of the daughters, Smt. Indu Vohra (defendant No. 4) filed a Civil Suit No. 37/1999 in the Court of Senior Judge, Delhi seeking a decree for restraining defendants No. 1 & 2 from selling or disposing of the property No. A-447,

Defence Colony, New Delhi i.e. the suit property. In the said suit, a written statement was filed by the defendants No. 1 & 2 disclosing that late Sh. Gurbachan Singh Chawla had executed a registered Will dated 30th April, 1973. The application of the plaintiff for impleadment in the said suit was allowed in the year 1999 and she was arrayed in the memo of parties as defendant No. 3.

9. The aforesaid suit was unconditionally withdrawn on 28th August, 2000. The written statement filed by the defendants No. 1 & 2 in the said suit has been referred to by the plaintiff in CS(OS) No. 2395/2009, arising out of the Will dated 30th April; 1973. In terms of the Will, While making the bequest, the testator had provided that defendant No. 1/ his wife would have no right to sell or mortgage any of the immovable properties and bungalow No. A-447, Defiance Colony/ New Delhi and they would be entitled to manage and maintain the same from the rental income but the suit property would not be sold or mortgaged for any reason and it should be passed on to his grandsons after the marriage of his son/defendant No. 2 and the grandsons should enjoy and use the immovable property. Admittedly, defendant No. 2 has no son.

10. It is alleged by the plaintiff that despite the aforesaid Will, the defendants No. 2 & 3 had executed Relinquishment Deeds dated 16th October, 2003 as attorney of the defendant No. 4, in favour of their mother/ defendant No. 1 in terms whereof all the rights, title and interest in the suit property had devolved in favour of the defendant No. 1. On the basis of said Relinquishment Deeds, the L&DO had carried out the consequent mutation of the suit property on 20th December, 2006. In view of the aforesaid relinquishment deeds and the letter issued by the L&DO, on 16th May, 2007, defendant No. 1, mother of defendants No. 2 to 4 had executed a sale deed in favour of the defendant No. 5. In view of the execution of the said sale deed in favour of defendant No. 5 the plaintiff has filed the suit being CS(OS) No. 2396/2009 for cancellation of such deed issued by the L&DO as according to her, the mutation was later on withdrawn by the L&DO.

11. Defendant No. 5 claims rights under a registered sale deed. According to him, the legality and binding nature of the sale deed has to be adjudicated in the substantive claim made by the plaintiff in the present suit. According to defendant No. 5, as the plaintiff is not a Class-I heir of late Sh. Gurbachan Singh Chawla, she is not entitled in law to file the present suit. As regards the other defendants except for the defendant No. 4, defendant No. 5 has alleged that as no son was born to the defendant No. 2, the estate of late Sh. Gurbachan Singh Chawla would have to be treated as a case of intestate succession and thus, the defendants No. 2 & 3 have validly executed relinquishment deeds in favour of their mother i.e. defendant No. 1.

12. It is an admitted position that defendant No. 2 is not paying the plaintiff, the maintenance fixed by the Court, for which execution is pending wherein a prayer for attachment of the suit property which, according to the plaintiff, belongs to the judgment-debtor Sh. Manjit Singh Chawla, i.e. defendant No. 2 alone.

13. We may point out here that the plaintiff's earlier application for passing a decree under Order XII, Rule 6 CPC was dismissed by the learned Single Judge vide order dated 22nd September, 2011 and the appeal against the said Order was also dismissed. Similarly, a second application of the plaintiff under Order XII, Rule 6 CPC being I.A. No. 6855/2012 in CS(OS) No. 2395/2009 was also dismissed as being barred by resjudicata as held by the learned Single Judge in her order dated 14th September, 2012.

14. Having heard all the parties and having gone through their pleadings, we do not find anything in the submission of the plaintiff to the effect that it is a fit case where any question referred for consideration by this Full Bench. A Full Bench is constituted for resolving intra-Court conflict of judgments and proceeds to render its opinion on a specific question of law. In the present case, no question of law has been referred to this Full Bench. In the absence of any reference as mentioned above, the submissions of the plaintiff that legal points have been raised by her cannot be accepted.

15. Whatever are the contentions of the plaintiff in the three suits, the same are to be considered by a learned Single Judge on the original side on their merits and findings rendered. The plaintiff's contention that the suits to which she is a party, are to be decided by this Bench, is without merit; there is no mechanism or procedure under the CPC or Rules of this Court for trial and adjudication of suits by a Full Bench. Under these circumstances, without deciding anything on merits on issues raised by the plaintiff, we return the reference. The matters may be placed before the learned Single Judge to proceed further in accordance with law. List these matters before Roster Bench on 18th February, 2013 for directions.