
(1995) 02 DEL CK 0029
In the Delhi High Court
Case No : F.A.O. (OS) 23 of 1995

Shri Vinod Gupta and others

APPELLANT

Vs

Shri Braham Vira Gupta and others

RESPONDENT

Date of Decision : 10-02-1995

Acts Referred:

Citation : AIR 1996 Delhi 102 : (1995) 2 CivCC 164 : (1995) 59 DLT 383

Hon'ble Judges : M. Jagannadha Rao, J;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. L.D. Adlakha and Ripu Adlakha, for the Appellant; Nemo, for the Respondent

Judgement

D. K. Jain, J.—This appeal under S. 10 of the Delhi High Court Act, 1966 (for short the Act) is preferred by defendants Nos. 1 to 4, in the suit, against the order of the learned Single Judge dated 28th September 1994 whereby appellants application, is 331/94 (wrongly noted as is 313/93) in Suit No. 3626/92, under O. 6, R. 5 and O. 11, R. 14 read with S. 151 of the C.P.C. seeking a direction to respondent No. 1/plaintiff to supply copies of the documents mentioned in the application and furnish better particulars was dismissed.

2. In the suit defendants Nos. 1 and 5 are the sons of the plaintiff. Defendants 2 to 4 are the wife and two minor sons of defendant No. 1, defendants Nos. 6 and 7 are the wife and minor son of defendant No. 5 and defendant No. 8 is the unmarried daughter of the plaintiff. plaintiff's case is that he started publishing business in the year 1946; all that he earned was his individual acquisition; with a view to provide his progeny aforesaid and to reduce the taxation burden, he constituted Hindu Undivided Family (HUF) in the name of Braham Vira Gupta and Sons and to provide nucleus for it, threw money in it; purchased a plot No. E-93, Greater Kailash-II, New Delhi, later sold it and purchased plot No. E-550, Greater Kailash-II, New Delhi, by throwing further money into the family hotchpot, constructed a house thereon, which is an HUF property. Besides he has. self-

acquired property also as mentioned in the plaint. Defendant No. 5, one of the members of the HUF, vide his registered letter dated 11 April 1991 (Annexure A to the plaint), demanded partition of the HUF property. Whereupon, the plaintiff as Karta of the family effected partition and informed defendant No. 5. vide his letter dated 20th April, 1991 (Annexure B to the plaint), copies endorsed to defendants Nos. 1 and 8, enclosing a proposed plan, earmarking the portions allotted to the share of each member of the HUF in the questioned house, thus, dividing it by metes and bounds. where after letter dated 23 April 1991 was received by the plaintiff from defendant No. 1 challenging the plaintiffs right to effect partition and describing the partition made as unfair, resultant whereto, the plaintiff claiming to have a right to effect partition of the HUF assets and properties, amongst the members of the family, filed the suit for ; (i) declaration that the partition of the property in question as effected by him in his capacity as father and Karta Manager of the HUF and recorded in the partition plan of the property is final and binding on all the members/parties to the suit; (ii) restraining defendant No. 1 from attempting to take possession or trespassing into, any portion of the suit property, which has not been specifically allotted to him by partition dated 20 April 1991 and evidenced by the partition plan; and (iii) in case prayers (i) and (ii), as above, are not granted, for partition of the suit property by discharging HUF liabilities for the funds provided, with interest.

3. On being served, the appellants did not file the written statement but instead moved the affronted application seeking better particulars and production of documents to enable them to file a proper written statement. It was averred that the plaint is vague inasmuch as the relevant documents in support of plaintiffs claim relating to the creation of the HUF, his putting some money into the family hotchpot, particulars of the persons Constituting the HUF, the alleged disruption of the HUF, cost of construction of the property and utilisation of the HUF funds had neither been filed with the plaint nor their copies supplied to the appellants. The application was resisted by the plaintiff. The learned single Judge observed that appellant No. 1, if at all has any share in the property is on account of averments made in the plaint of the plaintiff that the property in dispute is a joint HUF property and his right to have a share in the property is on the basis of the said averment in the plaint and filing of the application by the appellants tantamounts to indulging in roving and fishing enquiry with a view to delay the proceedings. Observing further that whatever objection the appellants have in relation to the documents, the same can be taken in the written statement; issues have to be framed on the basis of the pleadings and if onus is not discharged by the party on whom such onus lies, no relief can be granted to the said party, the learned Judge found no merit in the application and accordingly dismissed the same. Hence the present appeal.

4. Obviously, the order in appeal is not one covered by O. 43, R. 1, C.P.C. As noted above, the appeal has been filed under S. 10 of the Act and the first question for determination is whether the order in appeal made by the learned Single Judge in exercise of jurisdiction conferred by sub-section (2) of S. 5 of the

Act is a "judgment" from which an appeal lies to a Division Bench of the Court. We are of the opinion that the matter stands concluded by the judgment of the Supreme Court in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, , confirmed later in *Jugal Kishore Paliwal Vs. S. Sat Jit Singh and Another*, . The earlier view taken by the Full Bench of this Court in *University of Delhi and Another Vs. Hafiz Mohd. Said and Others*, , holding that the appeal against the orders of a Single Judge would lie to the Division Bench only against those orders, which are mentioned in S. 104 read with O. 43, R. 1, C.P.C. was not approved by the Supreme Court in *Jugal Kishore Paliwal's* case (supra) and is, Therefore, no longer good law.

5. According to the law laid down by the Supreme Court in *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, (supra), every interlocutory order, not covered by O. 43, R. 1, C.P.C. cannot be regarded as a "judgment" appealable within the meaning of S. 10 of the said Act, but only those, which have the traits or the quality of finality, even when they relate to ancillary proceedings, but decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned are "judgments" within the meaning of S. 10 of the Act and are appealable .The ratio of the decision and the parameters laid in *Shah Babulal Khimji's* case (supra) has been consistently followed and observed by this Court in *Gurmauj Saran Baluja Vs. Mrs. Joyce C. Salim and Others*, , holding that though an order under O. 1, R. 10, C.P.C. is not one of the orders provided under O. 43, C.P.C. but when the Court directs a plaintiff under O. 1, R. 10, C.P.C. to implead a person as a defendant against his wishes, enlarging the scope of the suit, a valuable right is affected and the order amounts to judgment within the meaning of sub-section (1) of Section 10 of the Delhi High Court Act and is appellable : *Select Marble Home v. Arun K. Gupta* 1994 RLR (DB) 454, holding that the order not deciding whether a document is a license or lease but sending the document for adjudication to the Collector of Stamps is not a judgment, appealable under S. 10 of the said Act, as nothing is finally decided thereby; and for the same reason in two other recently decided cases, viz. *Mrs. Nisha Raj and Another v. Mr. Pratap K. Kaula and others*, FAO (OS) 285/84, (decided on 20 December, 1994), holding that the order of the single Judge merely directing notice of application under O. 39, Rr. 1 & 2, C.P.C. being issued is not a "judgment" under S. 10 of the said Act and not appealable and lastly *Hari Singh v. M/s. Kharaiti Lal and Sons*, LPA No. 75/93, (decided on 16 January, 1995), holding that the orders of the Single Judge declining a request to adjourn the case for further cross-examination of a witness on the ground of sufficient opportunity having already been granted, the questions being irrelevant and repetitive; fixing lesser than the demanded time for production of evidence and not promptly deciding the objection of non-sufficiency of stamp on a document already exhibiting but directing it to be heard at the time of final arguments are not judgments under S. 10 of the said Act and an appeal against such orders is incompetent as they do not fall within the parameters for it laid down by the Supreme Court in *Shah Babu Lal Khimji's*

case.

6. Referring to O. 6, R. 5, C.P.C. Mr. Adlakha, learned counsel for the appellants strenuously urged that a valuable right to ask for better particulars having been conferred on the appellants denial of it to the appellants has resulted in serious miscarriage of justice to them and, Therefore, the order in appeal tantamounts to judgment falling within the ambit of S. 10 of the Act. We do not agree. The appellants have no vested right. No vital or valuable rights of the appellants are affected by the dismissal of their application.

7. The learned Single Judge, in the light of the facts averred in the plaint and the documents, already placed on record, for reasons recorded, found it unnecessary to call upon the plaintiff to comply with the appellants request for better particulars or to produce the documents asked for at that stage.

8. Having gone through the plaint, the appellants application, the documents already placed on record along with the plaint and the impugned order, we are of the view that on the facts of the instant case no vital or valuable rights of the appellants are affected by the impugned order nor is any serious injustice caused thereby to them. In our opinion, Therefore, the impugned order does not fall within the ambit of "judgment" appealable under S. 10 of the Act.

9. We are, Therefore, of the view that for all these reasons the appeal is not maintainable and is accordingly dismissed.

10. However, in the interest of justice we are inclined to grant one more opportunity to the appellants to file their written statements within four weeks from today.

11. Appeal dismissed.