
(1989) 02 DEL CK 0015

In the Delhi High Court

Case No : I.A. No. 1231 of 1985 in Suit No. 364 of 1983

State Bank of India

APPELLANT

Vs

Indian Apparel Industries and others

RESPONDENT

Date of Decision : 08-02-1989

Acts Referred:

Citation : AIR 1989 Delhi 297 : (1992) 73 CompCas 459 : (1990) 18 DRJ 17

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Judgement

Y.K. Sabharwal, J.—The plaintiff-bank has filed this suit for the recovery of Rs. 10,25,801.02. Defendant No. 1-firm, it is claimed in the plaint, was the sole proprietary concern of Major R. S. Chadha, since deceased. Major Chadha who died before institution of the suit, according to the plaintiff, had taken from it certain loans. Defendant No. 2(a) is the daughter of Major R. S. Chadha; defendant No. 2(b) is his mother; defendant No. 3 is his father and defendant No. 4 is his brother. Defendants Nos. 2(a) and (b) have been impleaded as surviving class I legal heirs of the deceased major R. S. Chadha. Defendants Nos. 3 and 4 have been impleaded by the plaintiff alleging that the said defendants are intermeddling with the estate and are functioning as de facto administrators of the estate of the late Major R. S. Chadha who expired on December 23, 1982, and that the plaintiff understands that they are in possession of his estate. Paras 3 and 4 of the plaint read as under :

"3. Defendant No. 1, Indian Apparel Industries, was a sole proprietary concern of major R. S. Chadha, since deceased. The first defendant has its offices at 48, Vasant Lok, Vasant Vihar, New Delhi - 110057, as also at 3/16, Shanti Niketan, New Delhi - 110021. It also maintains a godown-cum-office at 401, Munirka, New Delhi. The proprietor of the firm, Major Rajeshwar Singh Chadha, expired recently (December 23, 1982). The said Major R. S. Chadha, was a divorcee and being a Sikh governed by the Hindu Succession Act, his two surviving class I legal heirs entitled to the properties are his minor daughter, defendant No. 2(a),

and his mother, defendant No. 2(b), and failing them his father, Dr. M. S. Chadha, and his brother, Mr. S. M. S. Chadha, being defendants Nos. 3 and 4 hereto, both residents of 3/16, Shanti Niketan, New Delhi-110021. Miss Jagriti Chadha is a minor. She is being sued through her grandfather, defendant No. 3. He is her natural guardian in the absence of her mother (a divorcee). Defendant No. 3 has no adverse interest to that of the minor, defendant No. 2(a).

4. The plaintiff understands that the local guardian of the minor daughter of the deceased, Major R. S. Chadha, is Dr. M. S. Chadha, defendant No. 3, but she has since migrated to Australia and the property and assets of the deceased, Major Chadha, are in the active management and control of Dr. M. S. Chadha, defendant No. 3 herein and defendant No. 4 herein, who are intermeddling with the estate and are functioning as de facto administrators of the estate of the late Major R. S. Chadha who expired on December 23, 1982, and the plaintiff understands that they are in possession of his estate. Defendants Nos. 3 and 4 are being sued to recover the properties and dues of the plaintiff due and owing from Major R. S. Chadha to the plaintiff."

2. Defendants Nos. 2(b), 3 and 4 are the applicants and seek dismissal of the suit or striking out their names from the suit.

3. For deciding this application, the averments made in the plaint are to be taken as correct in its manner and form. It may be noticed that although in some paragraphs of the plaint there is some ambiguity, learned counsel for the plaintiff conceded during the cause of arguments that the defendants are being sued only in their capacity as legal representatives of Major R. S. Chadha and not in their individual capacity and their liability would be only to the extent of the estate inherited by the said defendants or in their capacity as intermeddlers.

4. Learned counsel for the applicants has submitted that the plaint does not disclose any cause of action against the said defendants even on the averments made in the plaint. He submits that assuming that Major R. S. Chadha was governed by the Hindu Succession Act, without prejudice to the contentions of the applicants that he was a Christian at the time of his death, his father (defendant No. 3) and brother (defendant No. 4) cannot be impleaded in the presence of class I heirs. According to the plaint, defendants Nos. 2(a) and (b) are class I heirs.

5. The case set up against defendants Nos. 3 and 4 in the plaint is not that they are legal heirs under the provisions of the Hindu Succession Act. The case of the plaintiff is that the said defendants are intermeddling with the estate and functioning as de facto administrators of the estate of the late Major R. S. Chadha and the plaintiff understands that they are in possession of his estate.

6. Mr. Bhagat, learned counsel for the applicants, submits that while impleading defendants Nos. 3 and 4 alleging them to be intermeddlers, it was necessary, in law, for the plaintiff to further allege that the said defendants had retained the possession of the properties belonging to the estate of major Chadha with the

intention of representing the estate. Absence of these averments, according to learned counsel, is fatal and shows that the plaint does not disclose a cause of action against these defendants. Reliance is placed on Nagendra Nath Roy and Others Vs. Haran Chandra Adhikary, , holding that "it is one of the essential tests with regard to the case of persons who intermeddle with the estate of another before they can be called legal representatives of the deceased persons that they must retain possession of the properties belonging to the estate with the intention of representing the estate." The Calcutta High Court has not held that such an averment is necessary to be made in the plaint or that absence thereof will be fatal to the suit. The reliance on this judgment, at this stage, is misconceived. The plaintiff has made necessary averments in para 4 of the plaint and the question whether defendants Nos. 3 and 4 are in possession of properties of Major Chadha or whether they came into possession of the said properties with the intention of representing the estate or not are questions which are to be determined at the trial of the suit after the parties have led their evidence. It is not necessary for the plaintiff to make an averment that defendants Nos. 3 and 4 had retained the possession of the estate with a view to represent the estate. The plaintiff has specifically averred that defendants Nos. 3 and 4 are intermeddling with the estate and are functioning as de facto administrators. These averments in the plaint, in my opinion, sufficiently disclose cause of action against defendants Nos. 3 and 4.

7. The next submission of learned counsel for the applicants is that in view of the availability of class I legal heirs, the intermeddlers cannot be impleaded as defendants in the suit. The argument is that when a legal heir is available, and intermeddler should not be added as a party to the suit in addition to such legal heirs. Reliance has been placed on Satya Ranjan Roy Choudhry and Another Vs. Sarat Chandra Biswas, , for the proposition that while a legal representative within the primary meaning of the word is in existence, and executor de son tort should not be added as a party to the suit in addition to such legal representative. The term "legal representative" is defined in section 2(11) of the CPC and includes any person who intermeddles with the estate of the deceased besides a person who in law represents the estate of a deceased person. A bare reading of the definition of the word "legal representative" or the provisions of Order 22, rule 4, Code of Civil Procedure, do not place any restriction on the impleading of any legal representative. With respect, I have not been able to understand what exactly the learned judges meant when they said "legal representative within the primary meaning of the word". Probably, they meant that when an heir under the succession law was in existence, a legal representative u/s 2(11), Code of Civil Procedure, should not be impleaded and that appears to be the reason for observing that a widow would be the proper representatives of the deceased man. I do not, however, find any such limitation in the CPC or the Succession Act. If there are more than one legal representatives, one in the capacity of legal heir and other an intermeddler, in my opinion, there is nothing in law to warrant the proposition that only the

former category of legal representatives should be impleaded and not the latter category. Although the High Court of Calcutta in *Satya Ranjan Roy Choudhry and Another Vs. Sarat Chandra Biswas*, , appears to have taken a view to the contrary, there is neither any discussion in the judgment on this question nor any other later judgment has been shown taking that view. I, accordingly, express my respectful disagreement with the views expressed by the learned judges of the Calcutta High Court in *Satya Ranjan Roy Choudhry v. Sarat Chandra* bids was AIR 1926 Cal 825, and I am of the opinion that names of defendants Nos. 3 and 4 cannot be struck out on this ground.

8. The objection of learned counsel to the impleading of defendant No. 2(b) is that the said defendant is not a class I heir as Major Chadha was not a Hindu and was a Christian at the time of his death and as such was not governed by the Hindu Succession Act. In support of the pleas that Major Chadha was a Christian, reliance is placed on the order dated February 9, 1973, passed by the District Judge, Delhi, dissolving the marriage between Major Chadha and Smt. Jogesh Chadha and holding that Mr. Chadha was baptised as a Christian on February 23, 1972. The argument is that the judgment of the District Judge is a judgment in rem and as such it stands established that Major Chadha was a Christian at the time of his death. As already observed, for considering the present application the averments made in the plaint are to be taken as correct in its manner and form. The plaintiff has averred that Major Chadha being a Sikh was governed by the Hindu Succession Act and defendants Nos. 2(a) and (b) are his two surviving class I legal heirs. In view of this averment, it is not possible to reject the plaint against defendant No. 2(b) or strike out her name.

9. The names of the applicant be struck out also in view of the provisions of sections 211, 303 and 304 of the Indian Succession Act. Section 211 provides that the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such. u/s 303, a person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of the executor, while there is no rightful executor administrator in existence, such a person makes himself an executor of his own wrong. Such a person, u/s 304, is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator and payments made in due course of administration.

10. There is no executor. No one has set up a will. It is also not the case of the parties that an administrator has been appointed to administer the estate of Major Chadha. On a combined reading of the aforesaid provisions and the averments made in the plaint that defendants Nos. 3 and 4 are intermeddling with the estate of Major Chadha, it cannot be held at this stage, that the plaint does not disclose any cause of action against the said defendants on a meaningful-not formal reading of the plaint (see *T. Arivandandam Vs. T.V.*

Satyapal and Another, . It is not possible to dismiss the suit at this stage without trial. On the facts and circumstances of the case, to my mind, it cannot be said that the applicants are not necessary parties.

11. For the reasons aforesaid, the application is dismissed leaving the parties to bear their own costs.