
(2019) 12 DEL CK 0093

In the Delhi High Court

Case No : Civil Suits (OS) No. 405 Of 2016, Miscellaneous Application No. 9889 Of 2016, 11579, 12536 Of 2018

Veronica (Minor) Through: Mother Neetu Sodhi

APPELLANT

Vs

Jitendra Pal Singh Sodhi & Ors

RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Citation : (2019) 12 DEL CK 0093

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Deepak Verma, Siddharth Sharma

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J

1. The plaintiff No.1 Ms. Veronica (Minor), acting through her mother plaintiff No.2 Neetu Sodhi, has instituted this suit for (i) declaration that the plaintiff No.1, being a coparcener and Class I heir, is entitled to a share of 1/18th + 1/72th of properties (a) B-10/329, Sunder Vihar, New Delhi, (b) Plot No.418, measuring 249.51 sq. yards, situated in the Hindustan Corporate House Building Society Limited, In Guruharkishan Nagar, Paschim Vihar, New Delhi, (c) land bearing Khasra Nos.21/1, 2/1, 20/2, 5/2, 14/21, 33/1, 15/14, 20 & 24 viz standard area 32 Karnal & 9 Marlas and total area with cost 41 Karnal 19 Marlas situated at P.O. & Village Jallupurkhara Tehsil & Distt. Amritsar, (d) land bearing Khasra Nos.45/3, 39/23 & 24/2 viz 3 Karnal 19 Marlas. No had Basta 16 situated at P.O. & Village Jallupurkhara Tehsil & Distt. Amritsar, (e) Two plots for houses (one near Late Sodhi Kashmira Singh's House and another plot in front of it); complete particulars of which are pleaded to be not available with the plaintiff at present, (f) One open Havelli, and one House near Late Sodhi Mela Singh situated at P.O. & Village Jallupurkhara Tehsil & Distt. Amritsar, (g) Plot No.3, Block-A, Ballabgarh, Gurgaon, Haryana and (h) Schemes of Unit Trust of India dated 03.02.1992 and other dates; (ii) directions to the defendants specially the

defendant No.1 Jitendra Pal Singh Sodhi, to give details of the entire ancestral properties, to enable the plaintiffs to claim their share in other properties; (iii) partition; and, (iv) permanent injunction restraining the defendants from dealing with the properties.

2. The pleaded case of the plaintiffs is, (I) that the plaintiffs and the defendants No.1 to 4 are members of Joint Hindu Family; (II) that the defendants No.1 & 2 Jitendra Pal Singh Sodhi & Bhartinder Kaur Sodhi are the paternal grandparents of plaintiff No.1 and father and mother-in-law of plaintiff No.2; (III) that the defendant No.3 Harpreet Sabharwal is the paternal aunt of the plaintiff No.1 and sister-in-law of plaintiff No.2 Neetu Sodhi ; (IV) that the plaintiff No.1 and defendant No.4 Ayesha Sodhi are sisters by half blood, having common father; (V) that the father of the plaintiff No.1 and husband of the plaintiff No.2 namely Jaspreet Singh Sodhi died on 16th February, 2015; (VI) that the defendant No.1, being the grandfather of the plaintiff No.1, is Karta of Joint Hindu Family; (VII) that the entire properties devolved upon defendant No.1 and his brother Parvinder Pal Singh Sodhi from their father late Trilok Chand Sodhi; (VIII) that the defendant No.1 is the Karta and the plaintiff No.1 and defendants No.3, 4 and 5 are coparceners; (IX) that on the death of Jaspreet Singh Sodhi, who was the father of the plaintiff No.1, a notional partition would take place and whereunder the defendant No.1 and his brother Parvinder Pal Singh Sodhi will get half share each; (X) that the said half share of defendant No.1 will further get divided between deceased Jaspreet Singh Sodhi, defendant No.1 and defendant No.3, as all of them are coparceners; (XI) thus, defendant No.1, Jaspreet Singh Sodhi and defendant No.3 will get 1/6th share each; (XII) that the said 1/6th share of deceased Jaspreet Singh Sodhi will get divided between Jaspreet Singh Sodhi, plaintiff No.1 and defendant No.4, who are coparceners; and, (XIII) that the 1/8th share of deceased Jaspreet Singh Sodhi would further devolve by way of succession upon plaintiff no.1, plaintiff no.2, defendant no.3 and defendant no.4 in equal parts, as Class I heirs.

3. The suit came up first before this Court on 16th August, 2016, when summons thereof were ordered to be issued, though interim relief sought not granted.

4. The defendants No.1 to 4 have filed a written statement and to which a replication has been filed by the plaintiffs.

5. The suit came up before this Court last on 5th December, 2019, when a short accommodation was sought by the counsel for the plaintiffs. The counsel for the defendants on that date opposed the adjournment, contending that the suit was totally misconceived and the plaintiffs were only interested in keeping the same pending.

6. I have today enquired from the counsel for the plaintiffs, on what basis the plaintiffs claim a share in the properties and partition thereof.

7. The counsel for the plaintiffs states that all the properties have been inherited by defendant No.1, being the grandfather of the plaintiff No.1 and father-in-law

of the plaintiff No.2, from his father Trilok Chand Sodhi.

8. I have further enquired from the counsel for the plaintiffs, the date of demise of Trilok Chand Sodhi.

9. The counsel for the plaintiffs states that Trilok Chand Sodhi died on 23rd July, 1995 i.e. much after the coming into force of the Hindu Succession Act, 1956.

10. I have enquired from the counsel for the plaintiffs, whether not under the Hindu Succession Act, all properties inherited by defendant No.1 Jitendra Pal Singh Sodhi from his own father, Trilok Chand Sodhi, who died in 1995, would be the personal properties of defendant No.1 Jitendra Pal Singh Sodhi and how the father and husband of the plaintiffs namely Jaspreet Singh Sodhi would have a share therein.

11. The counsel for the plaintiffs has no response and only states that in according to him, Jaspreet Singh Sodhi would have a share therein.

12. Attention of the counsel for the plaintiffs is drawn to Commissioner of Wealth Tax, Kanpur Vs. Chander Sen (1986) 3 SCC 567, Yudishter Vs. Ashok Kumar (1987) 1 SCC 204, Harvinder Singh Chadha Vs. Saran Kaur Chadha 2014 SCC OnLine Del 3413 (DB), Neelam Vs. Sada Ram (2013) 197 DLT (CN) 52, Rajat Khanna Vs. R.P. Khanna (2013) 200 DLT 203, Sunny (Minor) Vs. Raj Singh (2015) 225 DLT 211, Surender Kumar Vs. Dhani Ram 2016 SCC OnLine Del 333, Kamlesh Devi Vs. Shyam Sunder Tyagi 2017 SCC OnLine Del 12701, Saurabh Sharma Vs. Omwati (2018) 250 DLT 544, A.N. Kaul Vs. Neerja Kaul 2018 SCC OnLine Del 9597, Bhagat Singh Vs. Paltu Ram 2018 SCC OnLine Del 10012, Aditya Prasad Dube Vs. Shobha Dube 2018 SCC OnLine Del 6567, Meghna Grover Vs. Amit Grover 2019 SCC OnLine Del 11586 & Raj Kumar Vs. Ram Bhaj Bansal 2019 SCC OnLine Del 9658.

13. However, the counsel for the plaintiffs is unaware thereof.

14. By mere use of the words 'Joint Hindu Family', 'coparceners' and 'Karta', a Hindu Undivided Family (HUF) or a coparcenary does not come into existence. There is no plea, of Trilok Chand Sodhi having inherited the properties from any of his ancestors. There is no plea, that any coparcenary was ever in existence or was constituted. Interestingly, though mention is made of Parvinder Pal Singh Sodhi, being the brother of defendant No.1 Jitendra Pal Singh Sodhi but neither he nor his branch of the family have been impleaded. Had there been any coparcenary, Parvinder Pal Singh Sodhi and his branch would also have a share and would be the necessary party. The only response of the counsel for the plaintiffs is that since claim out of the share of defendant no.1 Jitendra Pal Singh Sodhi has been made and no share out of the share of Parvinder Pal Singh Sodhi and his branch of the family has been made, they have not been impleaded. However, it is not the case that there was any earlier partition of the coparcenary, if any of which Jitendra Pal Singh Sodhi and Parvinder Pal Singh Sodhi were coparceners. The same falsifies the claim of coparcenary and HUF.

15. The suit, as other suits mentioned above, has been filed on a misconception of Hindu law and forgetting the Hindu Succession Act. Reiterating, what has been observed in some of the judgments aforesaid, that young lawyers borne after 1956 seem to remember the law of prior to their birth and not the law contemporaneous or applicable at the time of their birth, the suit is dismissed. I refrain from imposing costs on the plaintiffs.

Decree sheet be prepared.