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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **RSA 196/2019 & CM APPL. 42921/2019**

Between: -

SHRI BIRBAL SAINI
S/O SH.BHARAT SAINI
R/O H.NO. 581, 1ST FLOOR
NEAR SAINI CHOPAL,
VILLAGE MUNDKA, DELHL .....APPELLANT

(Through: Mr. Ashok Gurnani, Dr. Manish Aggarwal, Ms. Barnali Paul, Ms. Hardikaa Kalia and Mr. Abhishek Singh, Advs.)

AND

SMT. SATYWATI
D/O SH.BHARAT SINGH
R/O H.NO. 581, GROUND FLOOR
NEAR SAINI CHOPAL,
VILLAGE MUNDKA DELHI. .....RESPONDENT

(Through: Mr. Rajendra Kumar, Adv.)

% Reserved on: 19.11.2024
Pronounced on: 24.12.2024

J U D G M E N T

The instant appeal is preferred against the judgment and decree dated 19.08.2019 in RCA No. 60818/16, passed by the Court of ADJ-1, West, Tis Hazari Courts, Delhi, whereby, judgment and decree dated 06.06.2015 in suit No. 333/2009, passed by the Trial Court, decreeing the suit for recovery of possession, mandatory and permanent injunction and recovery of damages/mesne profits, has been affirmed.

2. The case concerns the respondent/plaintiff and appellant/defendant, who are real brothers and sisters. The respondent/plaintiff is a widow and resides with her father and son at House No. 581, near Saini Chaupal village, Mundka, Delhi (*hereinafter referred to as the suit property*). Sh. Bharat Singh (father) had allocated 161 sq. yds. plots to each of his four sons, including the appellant/defendant, where they constructed their houses and lived with their families. The suit property had devolved on Sh. Surjan Singh, grandfather of the contesting parties based on a family settlement that took place between him and his brother. Therefore, the same became a separate property owned by him which later, on his death, was inherited by the father of the contesting parties namely, Sh. Bharat Singh.

3. Due to being neglected by his sons, the father, Sh. Bharat Singh moved into the suit property with the respondent/plaintiff and her son and it is, thereafter, that he sold the suit property to the

respondent/plaintiff through a GPA, Agreement-to-Sell, Affidavit, Receipt, Letter of Possession, and Will dated 03.04.2009.

4. The respondent/plaintiff alleged that the appellant/defendant is an alcoholic who created disturbances and threatened to commit suicide. Numerous police complaints were lodged against him. The respondent/plaintiff also received threats from the appellant/defendant's brother, Sh. Subhash, and his wife, Smt. Yashoda Devi. The respondent/plaintiff asserted that after distributing plots to his sons, the father retained the suit property for himself, which he later sold to the respondent/plaintiff. In the plaint, certain averments regarding the fabrication of documents in the father's name and the filing of frivolous lawsuits against the respondent/plaintiff were also made. The respondent/plaintiff drew attention to a particular event that occurred on 26.02.2009, wherein, the appellant/defendant unlawfully placed his locks on two inter-connected rooms on the first floor and dumped his rusty belongings there, forcibly removing the respondent/plaintiff's possessions during the night. The respondent/plaintiff requested the appellant/defendant to remove his articles and restore the possession of rooms to her, but he refused, despite her being the rightful owner of the suit property.

5. Thereby, being dispossessed, the plaintiff preferred the suit for recovery of possession.

6. The appellant/defendant refutes the respondent's/plaintiff's claim in the written statement filed by him, asserting that she was

never in possession of the suit property. It was submitted that in the guise of mandatory injunction, the respondent/plaintiff cannot covertly seek possession when no specific prayer for possession has been made. The appellant/defendant contended that the suit was itself invalid on procedural grounds, inasmuch as, the notice for damages remained unserved and the other co-owner brothers were also not arrayed as necessary parties. Additionally, the appellant/defendant emphasized the property's ancestral nature, asserting that the married respondent/plaintiff received no share in the property. Finally, they challenge the legal right of the father, Sh. Bharat Singh's to sell the property to the respondent/plaintiff, asserting a complex interplay of family dynamics and inheritance law.

7. The Court of First Instance, in view of the submissions made before it, and on examining the evidence adduced on record, *vide* order dated 20.10.2012, framed the following issues:-

> *" 1. Whether the plaintiff is entitled to the decree of mandatory injunction as prayed for ? OPP*
> *2. Whether the plaintiff is entitled to damages Rs.2.500- p.m. OPP*
> *3. Whether the plaintiff is entitled to the decree of permanent injunction as prayed for ? OPP*
> *4. Whether the plaintiff is entitled to interest, ifany at what rate and for what period ? OPP*
> *5. Whether the suit of the plaintiff is bad for misjoinder of parties ? OPD*
> *6. Whether the plaintiff has no locus standi to file the present suit? OPD*
> *7. Relief."*

8. An additional issue came to be framed *vide* order dated 31.03.2014, which reads as below:-

> *"Whether the plaintiff is entitled to the decree of recovery of possession of the suit."*

9. The Trial Court had decided the additional issues, issue nos. 1, 2, and 4 in favour of the respondent/plaintiff and issue no. 3 in favour of the appellant/defendant and against the respondent/plaintiff.

10. On the issue of the nature of the suit property being an ancestral property, the findings of the Trial court are extracted below:-

> *"22. However, it is also pertinent to mention here that all these witnesses have further deposed that there were two properties bearing no. 580 and 581 (the suit property herein)that were jointly owned by Sh. Surjan Singh (grandfather of plaintiff and defendant) and his brother Sh. Sri Ram. Thereafter both brothers started living separately and Sh. Surjan Singh became owner of the suit property herein and other house went in the share of Sh. Sri Ram, as per the settlement between them.* ***From the above fact, it is clearly apparent that the suit property was the separate property owned by Sh. Surjan Singh in his own right as an owner. Now as per Section 8 of the Hindu Succession Act, a grandson does not have a right in the separate property of his grandfather in the presence of his father and only if the father of grandson had predeceased, only in those circumstances, the grandson can inherit property of hisgrandfather.*** *The above view is supported by the landmark judgment of Hon'ble Supreme Court in Commissioner of Wealth Tax, Kanpur, etc. vs Chander Sen (1986) 3 see 567 and also in Bhanwar Singh vs Puran & Ors. (2008) 3 SCC 87 and also thejudgment of Hon'ble Delhi High Court in Neelam &Anr. Vs Sada Ram & Ors. CS (OS) No. 823/2010 decided on 30.01.2013, which is being relied by the plaintiff.*
> *23. In the suit herein, there is no evidence on record that the suit property was a coparcenary property as Sh. Surjan Singh was the exclusive owner of the same. Further it has also come on record from the evidence of DW-8 that father of plaintiff Sh. Bharat Singh, became the owner of the suit property, after the death of the*

grandfather of the plaintiff. This fact also proves that Sh. Bharat Singh was not the coparcener in the suit property but rather he inherited the property from his father.

*24. Further from the evidence of DW-8 it has also come to the notice that the suit property came in the share of plaintiffs father vide family settlement between him and his brother. Hence if the suit property had been a coparcenary property, in such circumstances, if there had been any division of the property as. per family settlement during the life time of plaintiffs grandfather, in that eventuality plaintiff'sgrandfather would have also retained a share for himself but this is not so. Since no share was reserved for plaintiffs grandfather, as no evidence has come on record regarding this fact, this implies that the family settlement must have taken place after the death of plaintiffs grandfather. This further supports the contention that the suit property alongwith other properties were inherited by plaintiffs father and his brother Sh. Ishwar Singh, who later on dividedthe same by way of family settlement and the suit property came in the share of plaintiff**. From the above fact, it is clear that the suit property has been inherited by the plaintiffs father and the same is not a coparcenary property. Thus, being an inherited property, the status of the suit property is that of separate property of plaintiffs father which he can dispose off as per his wish. Hence in my considered opinion, plaintiffs father had full authority to dispose off the property in any manner he liked, as per law."***

11. The Trial Court concluded that the suit property was not a coparcenary property. Consequently, it ruled in favour of the respondent/plaintiff, validating the sale deed executed by her father, Sh. Bharat Singh, transferring the property to her.

12. Aggrieved by the decision of the Court of first instance, the appellant/defendant preferred an appeal. The first Appellate Court while appreciating the findings of the Trial Court, upheld its decision and has held as under:-

"61. I have carefully perused the testimony of witnesses of

appellant and in their testimony, it has come on record that suit property was owned originally by Sh.Surjan Singh, grandfather of respondent/plaintiff and it has come in the cross examination of DW8 that after the death of grandfather of respondent/plaintiff, father of respondent i.e. Sh.Bharat Singh became the owner of the suit property.

63.Since it has been proved on record that Sh.Bharat Singh, father of respondent/plaintiff had inherited the suit property from Sh.Surjan Singh, grandfather of respondent/plaintiff, therefore, the suit property had become self-acquired property of Sh.Bharat Singh as per judgment of the Hon'ble Supreme Court of India delivered in Commissioner Of Wealth Tax, Kanpur's case (supra) .

64. Ld.Trial Court rightly held that suit property had become self acquired property in the hands of Sh.Bharat Singh as plea of coparcenary or suit property being HUF was never the case set up by appellant/defendant.

65. Further, the judgment relied upon by respondent/plaintiff delivered in Neelam's case (supra) also supports the said reasoning of the Ld.Trial Court.

66. The next contention of Ld.counsel for appellant/defendant that the suit property had fallen into the share of appellant/defendant during the course of family settlement is required to be rejected as it has come in the evidence of PW3 Sh.Bharat Singh, who happens to be father of appellant/defendant that he had given plot to each of his four sons and all are residing in the respective plots since the year 1991."

13. The primary submission made by the appellant/defendant concerns the nature of the suit property. It is contested that by virtue of the very nature of the suit property being an ancestral property, the same could not have been alienated by the execution of a sale deed by the father in favour of the respondent/plaintiff. Therefore, the Courts below have erred in not considering this aspect before deciding the matter.

14. On examination of the aforesaid arguments, it is seen that the Courts below have rightly relied on the decision of the Supreme Court in the case of ***Commissioner of Wealth Tax, Kanpur, etc. vs Chander Sen***[1]to hold that held that the suit property is not ancestral. Therefore, the sale of the suit property by the father in favour of his daughter, the respondent/plaintiff, was legally permissible and binding by law. The relevant extract from the decision of ***Commissioner of Wealth Tax, Kanpur*** reads as under:-

> *"2.1 Under s. 8 of the Hindu Succession Act, 1956, the property of the father who dies intestate devolves on his son in his individual capacity and not as Karta of his own family. Section 8 lays down the scheme of succession to the property of a Hindu dying intestate. The Schedule classified the heirs on whom such property should devolve. Those specified in class I took simultaneously to the exclusion of all other heirs. A son's son was not mentioned as an heir under class I of the Schedule, and, therefore, he could not get any right in the property of his grandfather under the provision.*
>
> *2.2 The right ofa son'sson in his grandfather's property during the lifetime of his father which existed under the Hindu law as in force before the Act, was not saved expressly by the Act, and therefore, the earlier interpretation of Hindu law giving a right by birth in such property "ceased to have effect". So construed, s. 8 of the Act should be taken as a self-contained provision laying down the scheme of devolution of the property of a Hindu dying intestate. Therefore, the property which devolved on a Hindu on the death of his father intestate after the coming into force of the Hindu Succession Act, 1356, did not constitute HUF property consisting of his own branch including his sons.*
>
> *2.3 The Preamble to the Act states that it was an Act to amend and codify the law relating to intestate succession among Hindus. Therefore, it is not possible when the Schedule indicates heirs*

[1]1986 SCR (3) 254

in class I and only includes son and does not include son's son but does include son of a predeceased-son, to say that when son inherits the property in the situation contemplated by s. 8, he takes it as Karta of his own undivided family.

2.4 The Act makes it clear by s. 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today that the property which devolved on a Hindu under s. X of the Act would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis sons and female heirs with respect to whom no such concept could be applied or contemplated.

2.5 ***Underthe Hindu law, the property of a male Hindu devolved on his death on his sons and the grandsons as the grandsons also have an interest in the property. However, by reason of s. 8 of the Act, the son's son gets excluded and the son alone inherits the properly to the exclusion of his son****. As the effect of s. 8 was directly derogatory of the law established according to Hindu law, the statutory provisions must prevail in view of the unequivocal intention in the statute itself, expressed in s. 4(1) which says that to the extent to which provisions have been made in the Act, those provisions shall override the established provisions in the texts of Hindu Law.*

2.6 The intention to depart from the pre-existing Hindu law was again made clear by s. 19 of the Hindu Succession Act which stated that if twoor more heirs succeed together to the property of an intestate, theyshould take the property as tenants-in-common and not as joint tenants and according to the Hindu law as obtained prior to Hindu Succession Act two or more sons succeedingto their father's property took a joint tenants and not tenants-in-common. ***The Act, however, has chosento provide expressly that they should take as tenants-in-common. Accordingly the property which devolved upon heirs mentioned in class I of the Schedule under s. 8 constituted the absolute properties and his sons have no right by birth in such properties."***

15. The primary controversy appears to be about the ancestral nature of the suit property which warrants a brief discussion to understand the characteristics of an ancestral property and how it is distinguishable from inherited property.

16. By definition, an ancestral property is a coparcenary property, where "coparceners" are legal heirs with an inherent interest in the property from birth. Such properties remain undivided within joint families, with legal heirs enjoying their shares. The Supreme Court in the case of ***Matkul v. Mst. Manbhari and Others***[2]elucidates upon the concept of ancestral property in the following terms:-

> *"6. So far as the statement of the customary law itself is concerned, Rattigan's Digest which is regarded as an authority on the subject, does not support the appellant's case. In para 59 of the Digest of Civil Law for the Punjab chiefly based on the cutomary law it is stated that ancestral immovable property is ordinarily inalienable (especially amongst Jats, residing in the Central Districts of the Punjab) except for necessity or with the consent of male descendants or, in the case of a sonless proprietor, of his male collaterals. Provided that the proprietor can alienate ancestral immovable property at pleasure if there is at the date of such alienation neither a male descendant nor a male collateral in existence. Following this statement of the law the learned author proceeds to explain the meaning of ancestral property in these words:* ***"Ancestral property means, as regards sons, property inherited from a direct male lenial ancestor, and as regards collaterals property inherited from a common ancestor". Thus, so far as the customary law in Punjab can be gathered, the statement of Rattigan is clearly against the appellant****."*

[2]1958 SCC OnLine SC 155

17. In ***Rohit Chauhan v. Surinder Singh & Ors***[3], the Supreme Court emphasized that coparcenary properties are typically ancestral and should remain undivided. A coparcener is defined as an heir inheriting common ancestral property alongside others. Only coparceners can claim ownership interests in ancestral property. Non-coparceners have no ownership rights. If a coparcener is the sole surviving heir, they inherit the entire property. In cases with multiple coparceners, each heir receives a proportional share based on the number of coparceners.

18. Conversely, a property obtained through inheritance, whether by way of a will or upon the demise of the property owner, is classified as inherited property. The inheritor holds exclusive ownership over the said property, and is entitled to freely transfer, sell, or dispose of it at their discretion. There are no claims based on birthright, with ownership being governed by the legal owner's directives, will, or the applicable succession laws. The interest of a legal heir in inherited property is not established at birth, as with ancestral property. Rather, it is formally conferred through a testamentary will or agreement. A legal heir can even be disqualified as a successor. The property owner holds absolute authority over

[3]2013 (9) SCC 419

designating their successor and setting the conditions for such succession.

19. It is, thus, clear from the factual background of the case at hand that the suit property could not have been held to be an ancestral property, as the same was received by the erstwhile owner, Sh. Bharat Singh, by way of a family settlement, wherein, the two brothers divided two equally measuring plots between themselves. Hence, the property could not have been said to be delved on the father by virtue of him being a coparcener in that property. The Courts below have rightly laid down the distinct position of the suit property from that of an ancestral property. Therefore, the Court does not find any error in the decisions of the Courts below and refrains from interfering with the same.

20. Section 100 of the CPC confers a limited jurisdiction on the High Court to deal only with any legal error apparent on the face of the record. The Supreme Court has clearly elucidated upon the essentials of a substantial question of law in the case of ***Chandrabhan (Deceased) Through Lrs vs Saraswati***[4] wherein, it was held that:-

> "*31. The proper test for determining whether a question of law raised in the case is substantial would be, whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by this Court. If*

[4]2022 OnLine SC 1273

the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or the question raised is palpably absurd, the question would not be a substantial question of law.

32. To be 'substantial', a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first, a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See: ***Santosh Hazari v. Purushottam Tiwari****)"*

21. Since there arises no substantial question of law to be adjudicated in view of the aforesaid, the appeal stands dismissed alongwith pending application(s). No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 24, 2024
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