SHAILNDRA KUMAR JAIN AND OTHERS

v.

MAYA PRAKASH JAIN AND OTHERS

(Civil Appeal No. 3587 of 2019)

APRIL 09, 2019

[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

Code of Civil Procedure, 1908 – Or.1, r.10 – Suit filed in 1966 by one of the son against his parents, three brothers (defendant nos.1 to 5) and four sisters (defendant nos.6 to 9), seeking declaration that certain properties had fallen to his share after partition between the parents and three brothers – Suit decreed vide order dtd. 23.02.1966 – 'MP', defendant no.5 in the 1966 suit thereafter filed suit in 2006 submitting inter alia *that after the decree dtd 23.02.1966, there was a further family settlement arrived at between all the brothers in pursuance whereof said 'MP' was exclusive owner of certain properties mentioned in the schedule to the plaint in the 2006 suit – Application filed by 'SJ', defendant no.8 (in the 1966 Suit) seeking impleadment as one of the defendants in the 2006 suit – During the pendency of the application, 'SJ' expired and the appellants, her legal heirs were substituted – Application dismissed – Revision in the High Court – Dismissed – On appeal, held: In the 1966 suit, in terms of compromise entered into between the plaintiff, the parents and three brothers, the properties were mutually divided amongst said six persons – Since the parents were alive, the proper parties in an action seeking relief of partition of joint family estate, going by the then prevailing principles of Hindu Law, were only the husband, wife and their sons – Defendant nos.6 to 9 could not, as a matter of right, claim any share if the joint family properties were to be partitioned – However, on the death of the parents, if they died intestate, then under the principles of the 1956 Act, every Class I heir including the daughters, would be entitled to a share in the property left behind by their parents – It is on this count that the applicant 'SJ' claims entitled to have share in the properties allocated to the parents – Partition effected pursuant to decree in 1966 suit cannot, in any way, disentitle 'SJ' from claiming a share in the properties of her*

A *parents – 'SJ' was definitely a necessary and proper party to be impleaded in the subsequent suit filed by 'MP' – Due execution of the Wills, allegedly executed by the parents, is yet to the proved by the respondents – If the Wills are not proved, the daughters would be entitled to a share in the properties, being Class-I heirs – Order passed by the courts below set aside – Application filed u/Or.1 r.10,*
B *CPC by SJ', allowed – Hindu Succession Act, 1956.*

Disposing of the appeal, the Court

HELD: 1.1 The earlier suit was filed by a son against his parents, three brothers and four sisters. In terms of compromise
C **entered into between the Plaintiff, the parents and three brothers, the properties were mutually divided amongst said six persons. Since 'AP' and 'DJ' were alive, the proper parties in an action seeking relief of partition of joint family estate, going by the then prevailing principles of Hindu Law, were only the husband, wife and their sons. The daughters in the family, namely, Defendant**
D **Nos.6 to 9 could not, as a matter of right, claim any share if the joint family properties were to be partitioned. However, if a partition takes place between her husband and sons, a wife is entitled (except in Southern India) to receive a share equal to that of a son and enjoy that share separately even from her**
E **husband. Therefore, if the compromise was entered into between the Plaintiff and Defendant Nos.1 to 5, there was nothing improper about it. In the circumstances, the absence of any challenge to the decree in 1966 Suit was irrelevant. As a matter of fact, the applicant 'SJ' could not have challenged the decree in 1966 Suit. [Para 10][635-F-H; 636-A-C]**

F **1.2 On the death of the father and mother, if they died intestate, then under the principles of the Hindu Succession Act, every Class I heir including the daughters, would be entitled to a share in the property left behind by their parents. It is precisely on this count that the applicant 'SJ' claims to be entitled to have**
G **a share in the properties which were allocated to her parents. The partition effected pursuant to decree in 1966 Suit cannot, in any way, disentitle her from claiming a share in the properties of her father and mother. In the aforesaid premises, 'SJ' was definitely a necessary and proper party to be impleaded in the**
H **subsequent suit which was filed by 'MP'. [Para 11][636-C-E]**

1.3 The due execution of the Wills is yet to the proved by the Respondents. If the Wills are not proved, the daughters would be entitled to a share in the properties, being Class-I heirs. The daughters are, therefore, necessary parties to the proceedings. In the present case, if the Wills so propounded are proved, they will chart a course of succession other than the normal mode of succession and to the prejudice of the daughters. In such an action or proceeding, the daughters being Class I heirs are necessary and proper parties and are required to be impleaded. 'SJ's' application to be impleaded as one of the defendants in the suit, was erroneously rejected by the courts below. The order passed by the courts below, set aside and the application filed under Order 1 Rule 10 CPC by the applicant 'SJ' is allowed. [Paras 12, 13][636-F-G; 637-A-B]

Lakshmi Chand Khajuria and Ors. v. Ishroo Devi **(1977) 2 SCC 501 : [1977] 3 SCR 400 – referred to.**

Mulla on Hindu Law **22nd Edition – referred to.**

Case Law Reference

[1977] 3 SCR 400	**referred to**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3587 of 2019.

From the Judgment and Order dated 19.07.2018 of the High Court of Judicature at Allahabad in Civil Revision No. 156 of 2016.

Dinesh K. Garg, Abhishek Garg, Dhananjay Garg, Deepak Mishra, Advs. for the Appellants.

Jitendra Mohan Sharma, Sr. Adv., Ajit Sharma, Adnan Siddiqui, Sandeep Singh, Pranshu Kaushal, Sudhir Kumar Gupta, Manish Gupta, Advs. for the Respondents.

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J. 1. Leave granted.

2. This appeal challenges the correctness of the decision dated 19.07.2018 passed by the High Court of Judicature of Allahabad in Civil Revision No.156 of 2016.

A 3. One Vinay Prakash Jain filed Suit No.92 of 1966 ("1966 Suit", for short) in the Court of Sub-Judge, First Class, Delhi seeking declaration that certain properties had fallen to his share after a partition between his father Amba Prasad, his mother Smt. Devi Jain and three brothers, all of whom were arrayed as Defendant Nos.1 to 5. In the suit four sisters, including Smt Srikanta Jain were also arrayed as Defendant Nos.6 B to 9.

4. An order was passed by the trial court on 23.02.1966 in 1966 Suit recording a compromise amongst the parties pursuant to which the suit was decreed. Relevant portion of the order was as under:

C "The plaintiff has prayed that a declaration be made that he is the owner of the properties in the plaint of the suit (illegible). The said properties had fallen in his share in (illegible) between the plaintiff and defendant Nos.1 to 5. The defendants have today through their counsel Shri Vijay Kishan, Advocate filed written statement admitting the claim of the plaintiff. The counsel for the D defendants has also made a statement in the Court that decree be passed as prayed for.

In the result, I pass a decree for declaration to the effect that the plaintiff is the owner and in possession of the properties mentioned in clause (a) of para No.11 of the plaint. The parties E be bear their own costs of the suit.

Pronounced."

5. Defendant No.5 in 1966 Suit i.e. Maya Prakash thereafter filed Suit No.464 of 2006 in the Court of Civil Judge (Senior Division), Meerut, F submitting inter alia that after the aforesaid decree dated 23.02.1966, there was a further family settlement arrived at between all sons of said Amba Prasad Jain on 05.11.2005 regarding division of house and other joint properties. This settlement was said to have been arrived at in the presence of Smt. Chandrakanta Jain, Shri D.P. Jain, Smt. Padamkanta Jain and Shri Akhilesh Jain. It was claimed that the parties were bound G by said settlement dated 05.11.2005 and that in pursuance thereof said Maya Prakash Jain was exclusive owner of certain properties mentioned in the schedule to the plaint in said suit of 2006.

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6. An application Ex.92 Ka was preferred by original Defendant No.8 in 1966 Suit i.e. Srikanta Jain seeking her impleadment as one of the defendants in aforesaid Suit No.464 of 2006. It was submitted that after the death of her parents i.e. Amba Prasad Jain, and Smt. Devi Jain, the applicant was entitled to the property which was left behind by the parents and the applicant being a necessary party she ought to be impleaded as one of the defendants in Suit No.464 of 2006. During the pendency of the application, Smt. Srikanta Jain expired and the appellants, i.e. her legal heirs were substituted in her place.

7. The application was dismissed by the trial court vide order dated 10.03.2016. It was observed that the applicant Smt. Srikanta Jain had knowledge of 1966 Suit but no steps were taken to appeal against the decree passed on the basis of oral family partition between her parents and brothers and as such her application was required to be dismissed.

8. The appellants being aggrieved, preferred Civil Revision No.156 of 2016 in the High Court, which revision was dismissed by the High Court vide order dated 19.07.2018. It was observed as under:

> "Since, as noticed above, the suit where from this revision arises basically seeks implementation of an earlier decree in Suit No.92 of 1966, which determined the shares of the parties thereto, upon acceptance of an alleged oral partition between them, and since admittedly the parties to the suit are only those whose shares are to be separated, the Court below has committed no illegality in rejecting the impleadment application, on a finding that revisionist are not necessary parties In the proceedings."

9. We heard Shri D.K. Garg, learned Advocate for the appellants and Shri Jitender Mohan Sharma, learned Senior Advocate for the respondents.

10. The earlier suit was filed by a son against his parents, three brothers and four sisters. In terms of compromise entered into between the Plaintiff, the parents and three brothers, the properties were mutually divided amongst said six persons. Since Amba Prasad Jain and Smt. Devi Jain were alive, the proper parties in an action seeking relief of partition of joint family estate, going by the then prevailing principles of Hindu Law, were only the husband, wife and their sons. The daughters

A in the family, namely, Defendant Nos.6 to 9 could not, as a matter of right, claim any share if the joint family properties were to be partitioned. However, it is well settled[1] that if a partition takes place between her husband and sons, a wife is entitled (except in Southern India) to receive a share equal to that of a son and enjoy that share separately even from her husband[2]. Therefore, if the compromise was entered into between B the Plaintiff and Defendant Nos.1 to 5, there was nothing improper about it. In the circumstances, the absence of any challenge to the decree in 1966 Suit was irrelevant. As a matter of fact, the applicant Srikanta Jain could not have challenged the decree in 1966 Suit.

C 11. On the death of the father and mother, if they died intestate, then under the principles of the Hindu Succession Act, every Class I heir including the daughters, would be entitled to a share in the property left behind by their parents. It is precisely on this count that the applicant Srikanta Jain claims to be entitled to have a share in the properties which were allocated to Amba Prasad Jain and Smt. Devi Jain. The partition D effected pursuant to decree in 1966 Suit cannot, in any way, disentitle her from claiming a share in the properties of her father and mother. In the aforesaid premises, Srikanta Jain was definitely a necessary and proper party to be impleaded in the subsequent suit which was filed by Maya Prakash Jain.

E 12. It was, however, contended by Mr. Jitender Mohan Sharma, learned Senior Advocate appearing for Respondent No.1 that the father and the mother, namely, Amba Prasad Jain and Smt. Devi Jain had left behind Wills under which their properties had devolved upon the sons exclusively. The due execution of the Wills is yet to the proved by the Respondents. If the Wills are not proved, the daughters would be entitled F to a share in the properties, being Class-I heirs. The daughters are, therefore, necessary parties to the proceedings. In the present case, if the Wills so propounded are proved, they will chart a course of succession other than the normal mode of succession and to the prejudice of the daughters. In such an action or proceeding, the daughters being Class I G heirs are necessary and proper parties and are required to be impleaded.

13. Thus, considering the matter from any perspective, the applicant Srikanta Jain was a necessary and proper party. Her application to be

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[1] See: Lakshmi Chand Khajuria and Ors vs. Ishroo Devi – (1977) 2 SCC 501 para 14

H [2] Mulla on Hindu Law – 22

impleaded as one of the defendants in the suit, was erroneously rejected by the courts below. We, therefore, allow this appeal, set aside the order passed by the courts below, and allow the application Ext.92 Ka filed under Order 1 Rule 10 CPC preferred by the applicant Srikanta Jain in Suit No.464 of 2006. No costs.

Divya Pandey Appeal disposed of.