

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 8263 OF 2019
(ARISING OUT OF SLP (C) NO(S). 22118 OF 2018)

LT. COL. PARAMJIT SINGH DHILLONAPPELLANT(S)

VERSUS

HARINDER SINGH GHUMANRESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 8264 OF 2019
(ARISING OUT OF SLP (C) NO(s). 20655 OF 2019)
(Dy. NO. 28401/2018)

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. Both the appeals although arise from separate orders passed in the independent proceedings instituted but relates to partition of the estate of late Col. Kultar Singh Dhillon (for short K.S. Dhillon) who expired on 6th January, 2012 leaving behind

two legal heirs, i.e. son Lt. Col. Paramjit Singh Dhillon and daughter Smt. Harinder Singh Ghuman.

3. Smt. Harinder Singh Ghuman filed a suit for partition in the High Court of Delhi on 14th February, 2012. At a later point of time, i.e. on 5th May, 2012, Lt. Col. Paramjit Singh Dhillon filed a suit in the Court of Civil Judge, SBS Nagar, Punjab on the basis of will of late Shri K.S. Dhillon. With the consent of parties, both the appeals are decided by a common judgment.

4. The brief facts are that late Shri K.S. Dhillon died on 6th January, 2012 leaving behind two legal heirs, i.e. son Lt. Col. Paramjit Singh Dhillon and daughter Smt. Harinder Singh Ghuman. Their mother and wife of late Shri K.S. Dhillon, Smt. Jatinder Kaur passed away on 1st June, 2004. There are no other legal heirs except the two siblings, namely, Smt. Harinder Singh Ghuman and Lt. Col. Paramjit Singh Dhillon who are senior citizens and are aged 69 years and 67 years.

5. It is unfortunate that despite the matter sent for mediation on two-three occasions having an opportunity to the parties to sit across the table and resolve their inter se disputes in

reference to the property/estate of late Shri K.S. Dhillon but unfortunately the process of mediation could not succeed.

6. Even after the matter was instituted in this Court, the parties were asked to settle through the process of mediation under the belief that both are senior citizens and will think with positivity in restoring their relations ruling out the bitterness intervened in their families, but unfortunately the mediation could not succeed. But we are still hopeful that both of them may sit together to resolve their inter se dispute and will not leave behind litigation in legacy to their children.

7. Both the parties jointly made a request to decide the appeals on merits.

Facts of Civil Appeal @ SLP (C) No(s). 22118 of 2018

8. The suit for partition bearing CS(OS) No. 373 of 2012 was filed by Smt. Harinder Singh Ghuman on 14th February, 2012 in the original side of the Delhi High Court. Lt. Col. Paramjit Singh Dhillon (defendant) appeared on 15th February, 2012 and the

parties were directed to maintain status quo with regard to the estate left behind by their father late Shri K.S. Dhillon. The defendant in the suit Lt. Col. Paramjit Singh Dhillon filed his written statement and on the basis of the pleadings of the parties, issues were framed on 30th January, 2015, the matter was proceeded for recording of evidence before the local Commissioner.

9. At this stage, the defendant- Lt. Col. Paramjit Singh Dhillon filed an application under Order 7 Rule 11 Code of Civil Procedure, 1908 for rejection of the suit plaint on the ground that out of the properties of which partition is being sought, the property which is situated in Delhi is governed by the Delhi Land Reforms Act, 1954, and hence it is barred under Section 185 of the Delhi Land Reforms Act, 1954. With respect to the other properties which are agricultural lands in Punjab, a similar provision in the Punjab Land Revenue Act, 1887 is relied upon. It was further pleaded in the application that as per Section 16 of Code of Civil Procedure, 1908, a suit for immovable property which is not situated in the territorial jurisdiction of Delhi will not lie in Delhi. It was also pleaded by the defendant that the

suit against the plaintiff Smt. Harinder Singh Ghuman has been filed in the competent Court in the State of Punjab, hence the instant suit cannot continue.

10. The Single Judge took note of the rival submissions made by the parties but did not find any substance in the application filed under Order 7 Rule 11 of Code of Civil Procedure and dismissed the application vide order dated 27th January, 2016.

11. Aggrieved by the order of the Single Judge of High Court of Delhi dismissing the application for rejection of the suit plaint, appeal came to be preferred by the defendant that also came to be dismissed vide detailed judgment dated 19th July, 2018 noticing the fact that the territorial jurisdiction in reference to the properties in Punjab appears to be misconceived for the reason that Section 17 of the Code of Civil Procedure states that where more than one court has jurisdiction, a suit can be filed at any Court where any of the immovable property is situated and that apart so far as the property situated in Delhi and in Punjab is concerned, the same will not result in complete rejection of the suit plaint in view

of the issues which are framed in the pending proceedings and the order passed of the Division Bench of the High Court dated 19th July, 2018 rejecting the application for dismissal of rejection of the suit plaint filed at the instance of Smt. Harinder Singh Ghuman came to be challenged in Civil Appeal arising out of SLP(C) No. 22118 of 2018 by Lt. Col. Paramjit Singh Dhillon (defendant in the suit).

Facts of Civil Appeal @ SLP(C) No. 20655 of 2019

12. The respondent(plaintiff) Lt. Col. Paramjit Singh Dhillon filed a suit in the Court of Civil Judge, Senior Division, SBS Nagar, Punjab seeking declaration that the respondent-plaintiff is the absolute owner and possession of the properties indicated in the suit plaint on the basis of the will of late Shri K.S. Dhillon. The suit filed at the instance of the respondent-plaintiff in Punjab includes the estate of late Shri K.S. Dhillon and to give jurisdiction to the Civil Judge in SBS Nagar, included the property which is situated in the territorial jurisdiction of Civil Judge, SBS Nagar which in fact as alleged belongs to late

Smt. Jatinder Kaur (their mother). That late Smt. Jatinder Kaur succeeded to the property from her maternal side.

13. Although there is a dispute that their late father Shri K.S. Dhillon also have 1/3rd share in the estate of his wife late Smt. Jatinder Kaur. The plea of Smt. Harinder Singh Ghuman is that the property at SBS Nagar was of late Smt. Kulbhagwant Kaur devolved upon her eight children including their mother Late Smt. Jatinder Kaur, leaving behind Smt. Harinder Singh Ghuman and Lt. Col. Paramjit Singh Dhillon in equal shares by natural course of succession. At the same time, the claim of the defendant Lt. Col. Paramjit Singh Dhillon is that it has devolved 1/3rd share in favour of each after her death on 1st June, 2004 and 1/3rd share of estate of late Smt. Jatinder Kaur succeeded by their father late Shri K.S. Dhillon who expired on 6th January, 2012. We are not supposed to dwell on the question at this stage and it has to be examined in the pending proceedings before the competent Court of jurisdiction.

14. Smt. Harinder Singh Ghuman as defendant in the proceedings in the civil suit filed in the Court of Civil Judge, SBS

Nagar, Punjab also filed her written statement and on the pleadings of the parties, issues were framed. It reveals from the record that she also moved as number of miscellaneous applications, as may be possible, to defer the proceedings for one or the other reason. Her application for rejection of plaint under Order 7 Rule 11 Code of Civil Procedure, 1908 was dismissed on 3rd September, 2016 and additional issues 3A and 3B were later on framed vide order dated 26th September, 2016 which are reproduced as under:-

“3A Whether Kultar Singh had inherited the suit property situated at Nawanshahara from Jatinder Kaur his wife? OPD

3B. Whether Kultar Singh had inheritable right in the property of Jatinder Kaur his wife inherited from her from her parents? OPD”

15. At this stage, application was filed by Smt. Harinder Singh Ghuman as a defendant under Order 14 Rule 2(1) of Code of Civil Procedure, 1908 for deciding the additional issues, i.e. 3A and 3B, as a preliminary issue.

16. After the matter being heard at length, the trial Judge dismissed the application assigning cogent reasons as to why it

is not in the interest of the parties for deciding additional issues as preliminary issues as prayed for vide order dated 15th April, 2017 that came to be challenged in the writ petition under Article 227 of the Constitution of India filed at the instance of the defendant Smt. Harinder Singh Ghuman which also came to be dismissed after assigning cogent and valid reasons under Order dated 4th April, 2018.

17. Both the learned counsels have supported their respective pleas and so far as the application filed in the pending suit in the Delhi High Court under Order 7 Rule 11 CPC is concerned, learned counsel for Smt. Harinder Singh Ghuman submits that Section 185 of the Delhi Land Reforms Act is not applicable as the area where the subject property is situated has been “urbanised” under the Delhi Municipal Corporation Act, 1957. The Delhi Land Reforms Act would only be applicable to the lands which are rural in nature and after issuance of a notification under Section 507(a) of the Delhi Municipal Corporation Act, 1957 dated 23rd May, 1963, the subject land ceased to be rural land and has been declared “urbanised” which is not under the jurisdiction of the Land Reforms Act.

18. Learned counsel further submits that in view of Section 17 of the Code of Civil Procedure, 1908, where more than one court has a jurisdiction, a suit can be filed at any one Court where any one immovable property is situated and further submits that Section 158 of the Punjab Land Revenue Act, 1887 will not have any application from the relief which she has claimed in the suit filed for partition of the estate of late Shri K.S. Dhillon in the High Court of Delhi.

19. So far as the Civil Appeal @ SLP(C) No. 22118 of 2018 preferred by Smt. Harinder Singh Ghuman is concerned, learned counsel submits that the additional issues which were framed as 3A and 3B goes into the root of the matter and if such issues are decided first as the preliminary issue, further issues which are framed may not require any adjudication.

20. Per contra, learned counsel for Lt. Col. Paramjit Singh Dhillon submits that the application which he filed under Order 7 Rule 11 of Code of Civil Procedure, 1908, the High Court of Delhi has exceeded its jurisdiction in taking note of the written

statement. To the contrary, at the stage of Order 7 Rule 11 of Code of Civil Procedure, 1908, it is the plaint which alone is to be looked into as to whether the suit is barred by law but the High Court of Delhi has looked into the written statement to non-suit his claim for rejection of the suit plaint and submits that so far as the objection raised by Smt. Harinder Singh Ghuman to decide additional issues 3A and 3B as the preliminary issues in the first instance, cogent reasons have been assigned by the trial Judge and confirmed by the High Court under the impugned judgment. That apart, the additional issues framed certainly have to be looked into on the basis of the evidence on record and the matter is at its advanced stage, in the given facts and circumstances, confining the additional issues to be answered at the first instance will delay the proceedings and this what the High Court has observed in the order impugned.

21. We have heard the learned counsel for the parties and after going through the records, we are of the view that both the appeals are without substance and deserves to be dismissed for the reason that in the suit for partition filed at the

instance of Smt. Harinder Singh Ghuman in the High Court of Delhi, while examining the application filed by Lt. Col. Paramjit Singh Dhillon under Order 7 Rule 11 CPC, cogent reasons have been assigned by the Single Judge of the High Court in the first instance and confirmed by the Division Bench of the High Court in appeal preferred at the instance of Lt. Col. Paramjit Singh Dhillon and we are in agreement of the view expressed and does not call for our interference.

22. So far as the plea raised by Smt. Harinder Singh Ghuman in the pending suit before the SBS Nagar, Punjab is concerned, the trial Judge has taken note of the facts in detail and arrived to the conclusion that no useful purpose will be served in taking additional issues 3A and 3B as the preliminary issues taking note of the fact that the suit was filed in the year 2012 and proceedings could not have been followed up further because of the interim applications being filed one after the other and there is a direction of the High Court to dispose of the pending suit expeditiously, in the given circumstances, the trial Judge felt it appropriate that the matter be decided along with the other issues pending adjudication and that view has been

confirmed by the High Court in its revisional jurisdiction assigning cogent reasons. We are of the view that the reasons assigned are unassailable.

23. We do not find any substance in the civil appeals on merits but looking into the peculiar facts which has been brought to our notice that for the self-same subject property, suit for partition bearing no. CS(OS) No. 373 of 2012 has been filed by Smt. Harinder Singh Ghuman in the original side of Delhi High Court and at the same time, suit has been filed by Lt. Col. Paramjit Singh Dhillon in the Court of Civil Judge, Senior Division, SBS Nagar, Punjab seeking declaration that plaintiff is the absolute owner and possession of the properties indicated in the suit plaint on the basis of the will of late Shri K.S. Dhillon. The plea on which rights have been claimed by the parties inter se may be different but the subject property being the same and parties are the legal heirs of late Shri K.S. Dhillon, to avoid conflicting views and multiplicity of litigation, it has been considered that both the matters be clubbed and be heard together.

24. Consequently, both the appeals are devoid of merit and accordingly dismissed. It is further directed that Suit C No. 121/12(new no. being C No. 18704 of 2013) filed by Lt. Col. Paramjit Singh Dhillon in the Court of Civil Judge, Senior Division, SBS Nagar, Punjab be transferred alongwith the records and be tagged along with suit for partition bearing CS(OS) No. 373 of 2012 filed by Smt. Harinder Singh Ghuman on the file of the Delhi High Court and be further tried from that stage. Since both the litigating parties are senior citizens and their matters are pending for the last seven years, the High Court of Delhi is requested to decide the matter as expeditiously as possible.

25. Copies of the orders may be sent to the concerned Courts for necessary compliance.

26. Pending application(s), if any, stand disposed of.

.....J.
(N.V. RAMANA)

.....J.
(AJAY RASTOGI)

NEW DELHI
OCTOBER 24, 2019