

CS No. 57837/16

Inderjit Kaur VS Anand Singh & Anr

26.08.2017

Present: Ld. Counsel Ms. Kawaljit Kochar, Ms. Krishna for
plaintiff no.1 and 3 along with plaintiff no.3

Smt. Jatinder Kaur.

Ld. Counsel Sh. Preet Pal Singh for plaintiff no.4 along
with plaintiff no.4.

Ld. Counsel Sh. Yogesh Kumar Sharma for defendant no.
1 to 4.

Ld. Counsel Ms. Jagriti Ahuja for defendant no.5.

Sh. Arvinder Singh representing plaintiff no.5 and
defendant no. 6 as General Power of Attorney holders. Separate copy
place on record with copy of ID proof.

Court is apprised that the application u/O 22 rule 3 CPC
is moved qua plaintiff no.2. Copy supplied. Court is also apprised that
u/O 22 rule 3 CPC application qua death of plaintiff no.1 is still
subjudice.

Submissions on application u/O 22 rule 3 CPC of plaintiff
no.2 Sh. Kulwant Singh who died on 13.08.2017 heard. He is survived
widow Smt. Ravinderjit Kaur and daughter Smt. Simardeep Kaur.
Copy of the death certificate is also filed. In view of no objection by
all the sides application is allowed. Fresh memo be filed.

Contd...2/-

Further submissions on u/O 22 rule 3 CPC application qua death of plaintiff no.1 Inderjit Kaur heard. Plaintiff no.1 Smt. Inderjit Kaur expired on 12.07.2016. She was survived by her sons Sh. Kulwant Singh, Sh. Amrik Singh, Sh. Anand Singh and daughter Smt. Satinder Kaur and Smt. Jatender Kaur. This application under disposal is moved by deceased's daughter Ms. Jatinder Kaur with the plea that Smt. Inderjeet Kaur has left a Will whereby she has assigned undivided share in suit property to a Trust Sardar Pratap Singh Giani. The original registered Will dated 05.04.2012 has been filed along with the application and copy thereof has been supplied to both the sides. This Will has been objected by the two brothers and one sister.

In so far as decision on objection would entail leading of evidence and this case already in the 12 year of pendency, it would not be appropriate to identify a separate issue on this Will and invite the parties to lead evidence for disposal of u/O 22 rule 3 application. Issues in this case have already been casted on 05.09.2014 and plaintiff's evidence is underway. It is suggested to both the sides that the issue qua legal heirs share of plaintiff no.1 Sh. Inderjit Singh may be left open and decided along with the main suit post the conclusion of evidence.

In as this case is already 10 plus year old and Hon'ble Supreme Court has directed that this case is decided by end of this year, the issue as to who shall be LR of the deceased shall be left open and decided along with main suit. Accordingly, separate additional issue is casted in this regard.

Contd...3/-

ADDITIONAL ISSUE:-

1. Whether Smt. Inderjit Kaur died intestate or she left a Will dated 05.04.2012 whereby she bequeathed her share in the suit property to a Trust? OPP.

On the request of ld counsel of other co-plaintiff and the defendants, ld counsel of Ms. Jatinder Kaur is directed to file affidavit on record view the details of the trust, its office bearers and other activities including trust deed, if any, within 10 days.

Further submission on u/O 6 rule 17 CPC application moved on behalf of plaintiff heard. Filed perused.

Reply to this has already been filed. This plaint was initially filed by plaintiff no. 1, 2 and 4 of seeking partition of suit property of suit property i.e A-16/10, Vasant Vihar, New Delhi. A pleas was taken that this 400 sq yard plot was allotted to Late Sh. Pratap Singh Giani only him. It is pleaded that he died intestate on 10.11.1979. It was inherited by his plaintiff no.1 widow Smt. Inderjit Kaur and her five children outs this wedlock apart from four other children out of Sh. Pratap Singh's earlier wedlock with Smt. Amar Kaur. This suit is being contested by the defendants which include children from both the wives.

A stand was taken by defendant no. 1 to 5 that Late Sh. Pratap Singh Giani was not a sole allottee of the property, in so far as according to the lease deed of DDA available with L&DO, the property was allotted the four persons, namely, Sh. Pratap Singh, his sons Sh. Amrik Singh and Sh. Anand Singh and one daughter Smt.

Contd...4/-

Satinder Kaur. Post filing of this suit the plaintiff were pleaded and issues were casted as detailed supra.

While evidence of the plaintiff was underway, the application in hand has been moved by the plaintiffs with pleas that during the pendency of this suit during inspection of DDA record conducted on 12.10.2015, they came to know by plaintiff no.4 Sh. Amrik Singh, defendant no.1 Sh. Anand Singh and defendant no.5 Sh. Satinder jointly executed a relinquishment deed in favour of their mother Smt. Inderjit Kaur (now deceased). Another letter dated 04.03.1977 was also written by defendant no.5 addressed to the Prime Minister of India acknowledging therein that property was solely owned by Sh. Pratap Singh Giani.

It is argued on behalf of the plaintiff that these documents are necessary for just and proper decision of this suit, in so far as they alter the co-share of the suit property holding of interested parties. The application is opposed by ld counsel for defendants on the ground that the application is being moved post starting of the trial. It is submitted that false plea is made that plaintiffs came to know on the relinquishment deed only in December 2015.

It is submitted that in so far as plaintiff no.4 was himself executor of one of the claimed relinquishment deed and as such it cannot be said that he was not aware of the same. On this score in the amendment application it is mentioned that in so far as this document was of 1980 and the suit was filed in the year 2005 after around 25 years, he had forgotten the same.

Contd...5/-

The first factual preposition put forth by the plaintiffs is that the suit property was solely owned by Late Sh. Pratap Singh. Although names of three children were mentioned in the sub lease, but they were not the co-owners. The second factual preposition is that even if they co-owner a relinquishment deed was executed in favour of their mother Ms. Inderjit Kaur.

In this regard a plea raised by ld counsel for defendant no.5, if amendment is allowed, defendant no.5 would be ousted from inheriting any share in the property.

In this regard separate statements have been recorded on behalf of Lr of plaintiff no.2 of plaintiff no. 3 and 4 in person. Concerns of defendant no. 1 and 5 are addressed to the effect that the plaintiff acknowledge minimum 1/9th share of right to inherit to estate of Sh. Pratap Singh and that the amendment being sought do not ousts the inheritance rights of the defendants all together. This is in addition to the defend taken by defendant no.1 and 5 that they are co lessee and are entitled to 1/4 th share individual capacity in the property instead of 1/9 th inheritance rights.

Considering the fact that these documents are necessary for just decision of this case, amendment application is allowed subject to token cost of Rs. 10,000/- which shall be deposited with National Relief Fund, NDBA.

Contd...6/-

Amendment is also sought to bring on record with another relinquishment deed purportedly executed by defendant no.6 Smt. Avtar Kaur in favour of plaintiff no.1 Smt. Inderjit Kaur (now deceased) on date 01.02.1988. Upon being asked it is accepted that this document was well within knowledge of plaintiff no.1 but it is submitted that in so far as she was a old lady and right at deed at the age of 93 years, she failed to bring this to the notice of the counsel and that it could not be filed on record well in time. This amendment is opposed by the son cum GPA of DE on the ground that the he is not aware of execution of any relinquishment deed. Objection is also raised qua the delay in placing document on record. Considering the ripe off of plaintiff no.1 when suit was filed and other circumstances, this amendment qua this document is also allowed. Although proposed amended plaint is also available on record but admittedly it does not in corporate the facts disclosed in the statement made in the Court today. Plaintiff to file amended plaint within a week. Advance copy be supplied to the defendant so that they can be file WS. Above referred statements made by the plaintiffs are without prejudice to the rights and contentions qua the share of Smt. Avtar Kaur.

An application of plaintiff no.3 seeking to lock the portion of the suit property in possession of deceased plaintiff no.1 is dismissed as not pressed.

Suggestion was put forth by this Court to both the sides for trying to arrive at amicable settlement, in so far as all the stake holder are present today in the Court.

Contd...7/-

Both the parties are directed to appear before Ld. ASJ, Sh. Rakesh Pandit for pre Lok Adalat Sitting on 28.08.2017 at 4.00 pm. Both the sides are advised that the parties should be present in person before Ld. ASJ.

Now to come up completion of pleadings and revisiting the issues on **11.09.2017**.

(Surinder S. Rathi)
ADJ-03/PHC/NEW DELHI.
26.08.2017