

CS DJ 508/22
SAVITA GARG Vs. SWETA JAIN AND ORS

11.05.2023

Present: Sh A K Singh, ld. counsel for plaintiff with plaintiff
in person.

Sh Tarun Aggarwal, ld. counsel for defendants.

Heard. Perused.

Reply to application u/s 7(1)(d) and Section 8 of
Family Courts Act filed. Same is taken on record.

Arguments heard on aforesaid application.

It is stated by counsel for defendant that plaintiff is mother in law of defendant no.1 and grandmother of defendant no.2 and the dispute in the present suit is arising out of marital relationship as plaintiff is claiming 1/3 share of her younger son i.e. late Sh Vijay Kumar Jain who died on April, 2021, in the suit property. It is further stated that this court has no jurisdiction to try this suit as same is barred u/s 7(1)(d) of Family Courts Act and cannot be entertained by this court. He relied upon section 7(1)(d) of Family Courts Act alongwith judgment dt 01.06.2022 of Hon'ble High Court of Delhi titled as *Avneet Kaur v Sadhu Singh and Anr.* (CM (M) 69/2020). It is further stated that present application may kindly be allowed and present suit may kindly be transferred to Family Court.

On the other hand, ld counsel for the plaintiff stated that present suit is not arising out of marital relationship. It is further stated that the present suit is not barred u/s 7(1)(d) of the Family Courts Act and the judgment relied upon by the defendant is not applicable to the facts of the present suit. It is further prayed that present application is devoid of merits and is filed

just to linger on the matter and to harass the senior citizen who is suffering from old age illness. It is prayed that the present application may kindly be dismissed with exemplary cost.

Submissions heard. Record Perused.

The section 7(1)(d) of Family Courts Act reads as under :-

“7. Jurisdiction---(1) Subject to the other provisions of this Act, a Family Court shall...

(a) have and exercise all the jurisdiction exercisable by any district court ...

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court,...

Explanation: The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:--

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(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship.”

Para no. 22 of the judgment relied upon by the defendants reads as under:-

“.....*The test is not whether the cause of action*, forming the basis of the prayer for injunction, *arises out of a marital relationship or whether the marital relationship is the reason for the grievance ventilated by the plaintiff. All that has to be seen are the circumstances in which the injunction is sought. Once the court identifies the circumstances, if those circumstances arise out of a marital relationship, clause (d) of the Explanation to Section 7(1) of the Family Courts Act would ipso facto be attracted.*”

After considering the aforesaid section 7(1) Explanation (d) of the Family Courts and the above relevant para of the judgment, I am of the considered opinion that in the

present suit the plaintiff is seeking the relief of partition and injunction in consequences of the untimely death of his son. The plaintiff has right in the property of his deceased son in terms of Schedule of Hindu Succession Act being the Class-I Legal Heir. The aforesaid circumstances are not arises out of a marital relationship rather they arise due to the untimely death of the her deceased son.

Accordingly, the **present application is devoid of merits and is hereby dismissed.**

Put up for PE on **20.05.2023.**

Steps be taken accordingly for PE.

(Surender Mohit Singh)
ADJ-04, North, Rohini Courts,
Delhi/11.05.2023