THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : 24.09.2007

CS(OS) 944/2004

MASTER GAURAV SIKRI & ANR. .....Plaintiffs

- versus -

SMT. KAUSHALYA SIKRI & ORS. .....Defendants

Advocates who appeared in this case:
For the Plaintiffs : Mr Viraj R. Datar with Mr Aditya Jhanji
For the Defendants : Mr Pawan Kumar Aggarwal

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J (ORAL)

1. A serious objection to the maintainability of the suit was taken by the learned counsel for the defendants. This was also noted in the order dated 15.12.2006 wherein it was pointed out to the Court that the suit has been filed by the grandchildren of late Sh. Vilayati Ram Sikri in the life time of their father. The matter was thereafter adjourned for arguments on this aspect. The same has been argued today by the counsel for the plaintiffs as well as by the counsel for the defendants.

2. The short point taken by the learned counsel for the defendants is that if all the averments made in the plaint are taken to be correct, it would not disclose a cause of action and, therefore, the plaint has to be rejected. He submitted that as per averments made in the plaint late Sh. Vilayati Ram Sikri was the owner of the suit properties detailed in paragraph 3 of the plaint. It is an admitted position between the parties that late Sh. Vilayati Ram Sikri passed away on 11.12.2001 and that he died *intestate*. As per paragraph 3 of the plaint it is stated that late Sh. Vilayati Ram Sikri was the owner and/ or had ownership interest in the suit properties detailed therein. In paragraph 4 of the plaint it is stated that late Sh. Vilayati Ram Sikri died *intestate* at Delhi on 11.12.2001 leaving behind the following heirs:-

(a) Smt. Kaushalya Sikri (Widow) (defendant No.1)
(b) Sh. Rajesh Sikri (Son) (defendant No.2)
(c) Sh. Pradeep Sikri (Son) (defendant No.3)
(d) Sh. Pawan Sikri (Son) (defendant No.4)
(e) Smt. Anjana Rani (Married daughter) (defendant No.5)

3. In paragraph 5 of the plaint, it is alleged that a registered release deed has been executed by defendant Nos. 2 to 5 on 24.12.2001 in favour of their mother (defendant No.1) whereby they have relinquished all their rights, title, interest in whole of the estate of late Sh. Vilayati Ram Sikri including the properties mentioned in paragraph 3 of the plaint. It is further stated in the plaint that by this action, the defendant No.1 (Smt. Kaushalya Sikri) has become the absolute and exclusive owner of the suit properties. It is further

stated in paragraph 6 of the plaint that after the death of late Sh. Vilayati Ram Sikri, as per law of succession, his estate has devolved upon the plaintiffs and the defendants, namely, defendant Nos. 1 to 5 in equal shares.

4. The present suit has been filed by Gaurav Sikri and Khushal Sikri, who are both minor sons of the defendant No.2. The suit has been filed through their mother Smt. Neha Sikri. It is relevant to point out that the defendant No.2 and Smt. Neha Sikri are separated and the two minor plaintiffs are residing with their mother (Smt. Neha Sikri). Suits for maintenance had been filed on behalf of the plaintiffs as well as their mother and the same has ultimately been disposed of by a Division Bench of this Court in an appeal by awarding a sum of Rs 7,000/- per month for the maintenance of the plaintiffs as well as their mother Smt. Neha Sikri.

5. The learned counsel for the defendants submitted that in the background of the averments made in the plaint, the suit would not be maintainable as no cause of action has been disclosed. He says that as per the averments made in the plaint late Sh. Vilayati Ram Sikri was the owner of the suit properties. He further submitted that on the death of late Sh. Vilayati Ram Sikri his heirs succeeded to the same as per the law of succession. In view of the Hindu Succession Act, 1956, the plaintiffs would not fall in the category of Class I heirs and only their father (defendant No.2) would be entitled to inherit

along with his brothers, sister and mother. He submits that under the Hindu Succession Act, 1956 the plaintiffs are excluded from the purview of succession insofar as the properties of late Sh. Vilayati Ram Sikri are concerned. The learned counsel for the defendants placed reliance on a decision of the Supreme Court in the case of ***Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. : AIR1986SC1753.*** One of the questions that arose for consideration before the Supreme Court was— when the son, as a Class I heir under the Schedule to the Hindu Succession Act, 1956, inherits property, does he do so in his individual capacity or does he do so as karta of his own undivided family? This aspect was gone into in great detail by the Supreme Court and after considering decisions of Gujarat High Court, Andhra Pradesh High Court and other High Courts, the Supreme Court arrived at the following conclusions:-

> "19. It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.
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> 20. In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs 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 Section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under Section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme

> outlined in Section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by Section 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 the property which devolved on a Hindu under Section 8 of the Hindu Succession 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 son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son etc.
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> 21. Before we conclude we may state that we have noted the observations of Mulla's Commentary on Hindu Law, 15th Edn. dealing with Section 6 of the Hindu Succession Act at page 924-26 as well as Mayne's on Hindu Law, 12th Edition, pages 918-919.
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> 22. The express words of Section 8 of The Hindu Succession Act, 1956 cannot be ignored and must prevail. The preamble to the Act reiterates that the Act is, *inter alia*, to 'amend' the law, with that background the express language which excludes son's son but included son of a predeceased son cannot be ignored.
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> 23. In the aforesaid light the views expressed by the Allahabad High Court, the Madras High Court, Madhya Pradesh High Court, and the Andhra Pradesh High Court, appear to us to be correct. With respect we are unable to agree with the views of the Gujarat High Court noted hereinbefore."

The above decision makes it clear that a son's son during the life time of the son, would not inherit from the grandfather. This is so because only the son of a predeceased son has been shown as an heir in Class I of the Schedule. In the

said decision, the Supreme Court has categorically observed that the express words of Section 8 of The Hindu Succession Act, 1956 cannot be ignored and must prevail. In this background, I am of the view that the submission made by the learned counsel for the defendants, that the plaintiffs would not have any entitlement during the life time of the defendant No.2, is well founded.

6. On the other hand, the learned counsel for the plaintiffs submitted that there are decisions of this Court, both of a Single Judge as well as of a Division Bench, which would indicate otherwise. First of all, the learned counsel for the plaintiff referred to the decision of a learned Single Judge in the case of ***Rajinder Kumar Khanna & Ors. v. R. K. Bajaj & Ors.: 1993 (3) Current Civil Cases 127.*** He referred to paragraph 14 of the said decision which, *inter alia,* reads as under:-

> "14. The contention of Mr. Lekhi that the son cannot claim partition during the life time of his father has no force in view of the decision of this court in the case of *Nanak Chand and others v. Chander Kishore*, AIR 1982 Delhi 520, wherein a Division Bench of this court held in Delhi a son can ask for partition of the Joint Hindu Family property from the father during his life time....."

He also referred to the Division Bench decision in the case of ***Nanak Chand & Ors v. Chander Kishore: AIR 1982 Delhi 520***. Paragraph 14 of this decision was relied upon and the same reads as under:-

> "14. The other contention that came up for consideration was whether in the life time of the father, the

> sons could ask for partition or not. At one time a view was prevalent that in Delhi like Punjab they could not do so. It was based upon some custom, vide Hari Kishan v. Chander Lal & others, AIR 1918 Lah 291(FB) and Sri Ram v. Collector, AIR 1942 Lah 173. But since the decision of this court of 26-10-1967 in Khushwant Rai v. Dr. Jagmohar Lal, RFA 1-D/59 and 24-D of 1959, it is now no more in controversy that the son can ask for partition from the father during his life time. We do not, therefore, propose to dilate any more on this issue."

In the light of these decisions the learned counsel for the plaintiffs submitted that the plaint cannot be thrown out at this stage and he ought to be permitted to lead evidence.

7. The question that arises is that the decisions which were relied upon by the learned counsel for the plaintiffs were based on the presumption that there was a Joint Hindu Family and that the properties were part of the Joint Hindu Family properties. Had that been the case, there is no doubt that the plaintiffs' arguments would be plausible. But fact of the matter is that as per the averments contained in the plaint, the properties in question have not been pleaded to be joint family properties. As indicated above, the plaint makes specific averments that late Sh. Vilayati Ram Sikri was the owner of the suit properties and that after his death the same were inherited by his heirs as per the law of succession. This is entirely different to saying that the properties in question were joint family properties in which late Sh. Vilayati Ram Sikri, his children and his grandsons had an undivided interest even during his life time. There is not a single averment in the plaint to the effect that the

properties in question were joint family properties. Therefore, taking the averments as set out in the plaint, the impression is clear that late Sh. Vilayati Ram Sikri was the owner of the suit properties and that upon his death the same were inherited by his legal heirs. That being the case, the decision of the Supreme Court in the case of ***Wealth Tax Commissioner v. Chander Sen*** *(supra)* would be clearly applicable and, therefore, the plaintiffs being the grandsons would not have any share in the property left by late Sh. Vilayati Ram Sikri during the life time of the defendant No.2 (Rajesh Sikri). Consequently, the plaint, on the basis of the averments made therein, does not disclose any cause of action and the same is accordingly rejected.

BADAR DURREZ AHMED
(JUDGE)

September 24, 2007
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