

Esvinder Singh & Ors vs Chasvinder Singh & Ors on 11 January, 2021

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CS(OS) 232/2017

ESVINDER SINGH & ORS

Through:

..... Plaintiffs

Mr.Chander M. Lall, Sr. Adv. with
Ms.Nancy Roy and Mr.Jatin Sharma,
Advs.

versus

CHASVINDER SINGH & ORS

..... Defendants

Through: Mr.Suwarn Rajan Chauhan with

Mr.Abhilash Gupta, Advs. for D-1

Ms.Savita Malhotra, Adv. for D-5 to

D-7

Mr.Varun Kapur, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER

% 11.01.2021
[VIA VIDEO CONFERENCING]

1. The pleadings in the review application have been completed.
2. Review is sought of the orders dated 8th January, 2018 and 14th May, 2018.
3. In the common order dated 8th January, 2018, in this suit as well as in CS(Comm.) 715/2016 titled Chasvinder Singh vs. Swiss Auto Pvt. Ltd. & Ors, it was inter alia recorded:

(i) that CS(Comm.) 715/2016 had been filed for permanent injunction restraining infringement of trade mark and copyright, and from passing off, and for ancillary reliefs and that CS (OS) 232/2017 had been filed for partition of joint properties and/or for mandatory injunction directing the defendant No. 1 therein Chasvinder Singh to execute the assignments in respect of trademarks and copy rights in favour of plaintiffs No. 1 and 3 therein in terms of family settlement dated 29th September, 2014 between the plaintiff No. 1 Esvinder Singh and the defendant No. 1 Chasvinder Singh;

(ii) that Swiss Auto Pvt. Ltd and defendant No. 4 in CS(Comm.) 715/ 2016 Taruna Auto Pvt. Ltd. are managed and controlled by Esvinder Singh;

(iii) that in CS(OS) 232/2017, besides Esvinder Singh and Chasvinder Singh, their three sisters were also a party but the counsel for the sisters stated that the sisters were not interested in participating in CS(OS) 232/2017 and do not claim any share in any of the properties subject matter of the suit;

(iv) that the other parties in the two suits were wives/sons of Chasvinder Singh, but who also were not claiming independently of Chasvinder Singh and Esvinder Singh;

(v) that though CS(Comm.) 715/2016 was ripe for framing of issues and for hearing of the applications for interim relief, but in CS(OS) 232/2017, the applications of the sisters and wives and sons of Esvinder Singh and Chasvinder Singh for condonation of delay in filing written statement and the applications of Esvinder Singh for interim relief, were for consideration;

(vi) however since the sisters had disclaimed any rights and the wives and sons of Esvinder Singh and Chasvinder Singh were not claiming independently of Esvinder Singh and Chasvinder Singh respectively, CS(OS) 232/2017 could also be immediately dealt with;

(vii) the undisputed facts, including, that Chasvinder Singh and Esvinder Singh jointly held several immovable properties and partition thereof was claimed;

(viii) that Chasvinder Singh and Esvinder Singh or their respective family members, in whose names the said properties stood, were having 50% share each in the said properties;

(ix) that as per the family settlement of 29th September, 2014, Chasvinder Singh and family and Esvinder Singh and family had 50% share each in the immovable properties mentioned therein including in the West Punjabi Bagh property;

(x) that according to Chasvinder Singh, he had not signed any such family settlement and there was no such family settlement and only a draft family settlement was prepared and to clauses pertaining to immovable property whereof only Chasvinder Singh had agreed;

(xi) that thus according to Chasvinder Singh also, a draft family settlement in terms of agreement between Esvinder Singh and Chasvinder Singh was prepared whereunder Chasvinder Singh and Esvinder Singh and their respective branches of family had 50% share each in the said properties, there was no need to frame any issue in CS(OS) 232/2017 to the extent the same sought partition of the said properties and the preliminary decree for partition could immediately be passed;

(xii) however according to the counsel for wife and children of Esvinder Singh, property No. 30-C/78, West Punjabi Bagh, Delhi had also not been settled in terms of the family settlement and the parties were jointly staying in the said property;

(xiii) that the senior counsel for Esvinder Singh admitted to the said error in the plaint and consented to a preliminary decree for partition with respect to property No. 30-C/78, West Punjabi Bagh, Delhi being passed, inasmuch as there was no dispute as to the shares therein; and,

(xiv) as far as disputes with respect to trade mark were concerned, adjudication thereof could proceed.

4. After recording as aforesaid, a preliminary decree for partition was passed, declaring Chasvinder Singh and family to be having 60% share and Esvinder Singh and family to be having 40% share respectively, in properties No. (a) 30-C/78, West Punjabi Bagh, Delhi, (b) Plot No. 185, Sector-4, IMT-Manesar, Haryana, and (c) Factory, Village Kheri, P.O., Trilokpur, Kala-Amb, Tehsil Nahan, District Sirmour - 173030, Himachal Pradesh; and Chasvinder Singh and family and Esvinder Singh and family to be having 50% share each in some other properties; and Chasvinder Singh and family and Esvinder Singh and family to be having exclusive share in some other properties. The suit was adjourned, giving opportunity to the parties to amicably divide the properties amongst themselves.

5. Vide subsequent order dated 14th May, 2018, finding that the parties had been unable to amicably mutually divide the properties qua which preliminary decree for partition was passed on 8th January, 2018, final decree for partition of the properties, by sale thereof and by distribution of sale proceeds as per their shares declared in preliminary decree for partition was passed.

6. Esvinder Singh filed I.A. No. 11382/2018 under Section 152 of the Code of Civil Procedure, 1908 (CPC), for rectification of the order and decree dated 8th January, 2018. It was inter alia stated therein that though elsewhere in the order dated 8th January, 2018, it had been recorded that the share of Esvinder Singh and family and Chasvinder Singh and family was equal in the immovable properties but in the order and decree sheet, inadvertently the shares of Chasvinder Singh and family in the property at West Punjabi Bagh, at IMT-Manesar and at Village Kheri had been recorded as 60% and of Esvinder Singh and family as 40% only and seeking correction of the said inadvertent error.

7. Replies were filed on behalf Chasvinder Singh and his family members to the aforesaid I.A. No. 11382/2018.

8. Vide order dated 15th March, 2019, I.A. No. 11382/2018 was allowed, for the reasons recorded therein and the order dated 8th January, 2018 and the decree consequent thereto, to the extent describing the shares in the West Punjabi Bagh property as 60% of Chasvinder Singh and 40% of Esvinder Singh was corrected and Chasvinder Singh and family and Esvinder Singh and family were held to be having 50% share each in the West Punjabi Bagh property.

9. This application for review has been filed, pleading (i) that RFA (OS) No. 53/2019 was preferred by Chasvinder Singh, impugning the order dated 15th March, 2019, allowing I.A. No. 11382/2018; (ii) that vide order dated 12th March, 2020 in the said appeal, it was noticed that:

"the issue that arises for determination in the present appeal is within a very narrow compass. We are called upon to adjudicate whether the corrections directed to be carried out by the learned Single Judge vide the Order under appeal fall within the scope and ambit of provisions of Section 152 of the Code of Civil Procedure, 1908";

and, that after lengthy arguments, the senior counsel for Esvinder Singh stated that he had no objection if the appeal was allowed and the impugned order dated 15th March, 2019 was set aside subject to Esvinder Singh being granted liberty to assail the orders dated 8th January, 2018 and 14th May, 2018 by way of appropriate proceedings including review; accordingly it was ordered in the appeal:

"with the consent of learned counsel appearing on behalf of the parties, the impugned Judgment and Order dated 15th March, 2019 is set aside whilst reserving liberty to the original plaintiff, as prayed".

10. Thereafter the present application seeking review of the orders dated 8th January, 2018 and 14th May, 2018 has been filed.

11. Notice of the review application was issued and replies thereto have been filed.

12. The senior counsel for the review applicant Esvinder Singh and family contends that this Court, in order dated 15th March, 2019 has already given reasons why the orders dated 8th January, 2018 and 14th May, 2018 holding the share of Eswinder Singh and family in the West Punjabi Bagh property as 40% only, is erroneous; however since in appeal preferred against the order dated 15th March, 2019, it was contended that such correction could not have been made in exercise of powers under Section 152 of the CPC, Eswinder Singh, for the sake of expediency, agreed to the order dated 15th March, 2019 being set aside with liberty to seek review and which has been applied.

13. The senior counsel for Chasvinder Singh has opposed the review application on three counts. Firstly, it is stated that review having been sought after 90 days, full Court Fees ought to have been paid, which has not been paid. The second argument is that there is delay in seeking review; though delay from the date of the order of the Division Bench i.e., 12th March, 2020 till 22nd September, 2020 when this review application was filed, is understandable in view of the pandemic and suspension of limitation by the Supreme Court but the delay from 8th January, 2018 and 14th May, 2018 onwards was required to be explained and which has not been explained. Lastly, it is argued that Eswinder Singh and family had filed appeal against the finding in para 25 of the order dated 8th January, 2018 and in the said appeal, did not impugn or challenge the finding therein of Chasvinder Singh having 60% share in the West Punjabi Bagh property and Eswinder Singh having the remaining 40% share only; the said appeal was withdrawn on 7th March, 2018, though with liberty to file review, but no review was filed and only an application under Section 152 of the CPC, being

I.A. No. 11382/2018 was filed.

14. I have considered the aforesaid contentions and do not find any merit therein.

15. I have enquired from the senior counsel for Chasvinder Singh, how much Court Fees was paid on the plaint, for the relief of partition.

16. The senior counsel for Chasvinder Singh states that the properties were valued at Rs.90 crores but pleading joint possession, fixed Court Fees was paid.

17. I have next enquired from the senior counsel for Chasvinder Singh, in such a situation, how much should be the Court Fees payable on the review.

18. The senior counsel for Chasvinder Singh has not pressed the said aspect any further.

19. The argument of delay is also misconceived. The question of Esvinder Singh and family explaining delay from 8th January, 2018 and 14th May, 2018 does not arise inasmuch as vide order dated 15th March, 2019 in I.A. No. 11382/2018, what is now sought by way of review, was granted in favour of Esvinder Singh. However since as aforesaid, the said order was set aside in terms of the order dated 12th March, 2020 in the appeal preferred thereagainst and in terms of which order this review is filed, the delay, if any, is from 12th March, 2020 only and to which, on account of the prevalent pandemic, no objection is raised by the senior counsel for Chasvinder Singh also.

20. As far as the argument, of Esvinder Singh and family being barred from seeking review for the reason of, in the appeal preferred against a part of the order dated 8th January, 2018 having not raised the challenge to what review is sought of, is concerned, in my view merely because Esvinder Singh and family, in appeal preferred against some part of the order dated 8th January, 2018 had not challenged the part of the order where the share of Esvinder Singh and family in the West Punjabi Bagh property was recorded as 40%, would not be a bar to their seeking review of the order to the said extent, especially since the appeal preferred was also withdrawn with liberty to take appropriate remedies and which indeed were taken. There is, thus, no merit in the said contention also.

21. Hence, for the reasons already stated by me in order dated 15th March, 2019, and need to reiterate which verbatim is not felt and which reasons, since the order dated 15th March, 2019, on concession of the review applicant has been set aside in appeal, may be read as part of this order, review is allowed and the obvious error in the order dated 8th January, 2018 in recording the shares in West Punjabi Bagh property of Chasvinder Singh and family as 60% and Esvinder Singh and family as 40% instead of the two families having 50% share each is corrected.

22. The review application is disposed of.

CS(OS) 232/2017

23. The orders dated 8th January, 2018 and 14th May, 2018 and the decree in terms thereof is reviewed and the shares of Chasvinder Singh and family and Esvinder Singh and family in property No. 30-C/78, West Punjabi Bagh, New Delhi be read as 50% each.

24. The amendment be carried out in the decree sheet as well.

RAJIV SAHAI ENDLAW, J JANUARY 11, 2021 SU