

## Surender Kumar vs Dhani Ram & Ors on 2 March, 2020

**Author: Rajiv Sahai Endlaw**

**Bench: Rajiv Sahai Endlaw**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 418/2016, IA No.10116/2016 (u/O XXXIX R-1&2 CPC), IA No.1037/2017 (for consolidation of suit), IA No.8834/2018 (u/O VII R-II CPC), IA No.8835/2018 (u/S 10 CPC), IA No.14062/2018 (u/O VII R-11 CPC) & IA No.2912/2020 (u/O VI R-17 CPC)

SURENDER KUMAR

..... Plaintiff

Through: Ms. Upasana Chandrashekar, Ms.  
Anu Shrivastav & Ms. Pragati Banka,  
Advs.

Versus

DHANI RAM & ORS

..... Defendants

Through: Mr. N.S. Dalal, Adv. for D-1&8.  
Mr. Swapnil Aeron & Mr. Avinash  
Das, Advs. for D-2&3.  
Mr. Raj Singh, Adv. for D-9.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 02.03.2020

1. The plaintiff instituted this suit seeking, [A] preliminary decree for partition with respect to (a) plot No.711, ad-measuring 771 sq. yds. as shown in the site plan annexed with the plaint, and (b) plot No.715, ad-measuring 1176 sq. yds. situated in the extended abadi of Mundka, Delhi, also known as Saini Vihar, which is in possession of the plaintiff and declaration that the same is owned by the plaintiff; [B] final decree for partition with respect to (i) agricultural land comprised in Khasra No.125/1 (4-12), 10(4-16), 21(4-16), 22 (4-12), (18 bighas and 16 Biswas) and Khasra No.711 (1-14), 715 (4-2) situated in Revenue Estate of village Mundka, Delhi in equal 1/7th share; (ii) plot No.715, ad-measuring 6365 sq. yds. situated in extended abadi in village Mundka, also known as Saini Vihar, out of which 1176 sq. yds. in Khasra No.715 is in possession of plaintiff; and,

(iii) property No.603, ad-measuring 214 sq. yds. forming part of Khasra No.370, situated in Old Lal Dora of village Mundka, Delhi as per the site plan annexed with the plaint; [C] declaration as null and void of (i) the Sale Deed dated 19th March, 2008 executed by defendant no.1 in favour of defendant no.8 of house ad-measuring 190 sq. yds. of Khasra No.715 in New Lal Dora abadi of village Mundka, Delhi; (ii) Sale Deed dated 7th October, 2011 executed by the defendant no.1 in favour of defendant no.7 of plot Khasra No.711 admeasuring 771 sq. yds. at New Lal Dora Abadi village Mundka, Delhi; and, (iii) Sale Deed dated 18th April, 2011 executed by the defendant no.2 in favour of undisclosed vendee of house No.603 at Old Lal Dora Abadi of village Mundka, Delhi admeasuring 197 sq. yds.; [D] permanent injunction against the defendants restraining them from

dealing in the aforesaid properties; and, [E] possession in favour of the plaintiff with regard to (i) house No.603, situated in Old Lal Dora Abadi,village Mundka, Delhi admeasuring 197 sq. yds; (ii) plot no.711 situated at New Lal Dora Abadi village Mundka, Delhi admeasuring 771 sq. yds.; and, (iii) Khasra No.715, situated in New Lal Dora Abadi of village Mundka, Delhi admeasuring 190 sq.yds.

2. It was the case of the plaintiff in the plaint, that (i) the plaintiff is the grandson of Jage Ram and the son of defendant no.1; (ii) the plaintiff's father defendant no.1 and his brothers defendants no.2 and 3 formed a Joint Hindu Family with the grandfather of the plaintiff and which was in existence at the time of birth of the plaintiff on 18 th July, 1967; (iii) the grandfather of the plaintiff Jage Ram had inherited property from his own father and who in turn had inherited property from his ancestors, with the father of the paternal grandfather of the plaintiff having died in the year 1935; (iv) Jage Ram died intestate on 03.05.1980, leaving behind huge estate, agricultural land and other immovable properties in the form of plots;

(v) that the aforesaid immovable properties remained as exclusive holding of Jage Ram together with properties in residential and non-residential abadi and old abadi area in use and occupation of joint family members of Jage Ram, wherein the HUF continued and all the family members were permitted to enjoy, use and reside in the property for their benefits; (vi) not even an inch of land was purchased by defendants no.1 to 5 during the lifetime of Jage Ram or after the demise of Jage Ram on 30th May, 1980; and, (vii) Jage Ram never partitioned his properties.

3. The plaintiff prior to instituting the present suit had filed CS(OS) No.1737/2012, the plaint wherein was rejected for the reason of the plaintiff having not pleaded a case of existence of coparcenary and in terms of order dated 18th January, 2016 therein.

4. RFA(OS) No.29/2016 preferred by the plaintiff thereagainst was also dismissed as withdrawn on 30th May, 2016 with liberty to apply for review.

5. The Petition filed by the plaintiff for review of the order of rejection of the plaint in CS(OS) No.1737/2012 was also dismissed on 18th July, 2016.

6. This suit came up first before this Court on 22nd August, 2016 when inter alia the following order was passed:

"3. This is a second suit for partition filed by the plaintiff after the plaint in the earlier suit for partition filed by the plaintiff being CS(OS) No.1737/2012 was rejected for the reason of the plaintiff having not pleaded a case of existence of coparcenary and in terms of order dated 18th July, 2016 therein.

4. From a perusal of the plaint, it does not appear that the plaintiff in the present plaint also has made out a case of existence of a coparcenary.

5. The counsel for the plaintiff to on the next date of hearing come prepared with the case law in this respect.

6. The plaintiff in the plaint has also stated that defendant no.5 Sh. Nagender Lakra has filed a suit which is pending in the Court of the Additional District Judge (ADJ), Delhi. However the plaintiff has neither filed pleadings of the said suit nor stated anything with respect thereto.

7. The counsel for the plaintiff on enquiry states that that suit is for partition.

8. It has been enquired from the counsel for the plaintiff as to how a second suit for partition i.e. this suit is maintainable if one suit for partition by another family member is already pending.

9. The counsel for the plaintiff states that that suit is not on the basis of existence of a coparcenary.

10. That is however not the plea of the plaintiff in the plaint and no argument beyond pleadings can be considered. Moreover, even if that suit is not on the basis of existence of a coparcenary as this suit is claimed to be, as per my understanding, it is open to the plaintiff to in that suit only claim partition with respect to other properties also which according to the plaintiff are partible as it is the settled principle of law that there cannot be multiple suits for partition of family property and all properties of the family have to be partitioned in one suit only so that equitable partition can be achieved. Reference if any can be made to Kenchegowda Vs. Siddegowda @ Motegowda (1994) 4 SCC 294 and U.N. Bhardwaj Vs. Y.N. Bhardwaj MANU/DE/3602/2015.

11. The counsel for the plaintiff to file the pleadings of the suit filed by defendant no.5 Nagender Lakra and to on the next date also address on the said aspect.

12. As requested, list on 26th August, 2016."

7. Thereafter the plaintiff sought adjournments on 26th August, 2016, 19th September, 2016, 10th November, 2016, 6th December, 2016, 27th January, 2017 and 16th February, 2017. In the interregnum, the defendant no.1 died and the plaintiff filed application for substitution of his legal heirs and the Joint Registrar on 5th May, 2017, issued notice thereof without considering that the suit had till then not been admitted. The plaintiff thereafter applied for amendment of the plaint which was allowed and summons of the suit with amended plaint ordered to be issued on 5th May, 2018.

8. The counsel for defendants no.1 and 8 and the counsel for defendant no.9 have applied under Order VII Rule 11 of the CPC and which applications have been pending consideration and in which the plaintiff has been seeking adjournments on 22nd July, 2019, 4th September, 2019 and 17th

February, 2020.

9. Today also passover is sought on the ground of non-availability of the arguing counsel.

10. As would be evident from the aforesaid narration of proceedings, the plaintiff, every time when enquired about the merits of the suit, commences the process of adjournments, to defer the evil day of facing the questions with respect to maintainability of the suit. In fact, IA No.2912/2020 has been filed for amendment of the plaint, again in an attempt to ward off today's date. However the amendment sought are only of addition of the properties and to plead that the suit for partition pending in the District Court has been dismissed though RFA No.1031/2019 preferred thereagainst is stated to be pending.

11. I have perused the amended plaint. Though the plaintiff in the amended plaint dated 8th November, 2016 has pleaded that he was borne on 18th July, 1967 in a Hindu Undivided Family (HUF) but the same does not take away from the fact that the plaintiff earlier filed CS(OS) No.1737/2012, claiming a share without pleading coparcenary in the estate inherited by his father from the grandfather of the plaintiff who died as aforesaid on 30 th / 3rd May, 1980 i.e. after coming into force of the Hindu Succession Act, 1956 and under Section 8 whereof, in the property inherited by a son from his father, the grandson has no share, and plaint wherein was rejected and which order has attained finality. The case now sought to be build by the plaintiff, of existence of the HUF, is clearly an afterthought and mala fide.

12. The plaintiff cannot be permitted to successively bring case after case, by twisting the facts. There is no explanation whatsoever in the plaint as to why the plaintiff at the time of instituting CS(OS) No.1737/2012 did not plead the existence of HUF. Once the plaintiff did not plead the existence of any HUF while instituting CS(OS) No.1737/2012 and which plaint was rejected and order wherein has attained finality, the averments in the present plaint do not inspire confidence.

13. There cannot be two suits for partition of the same properties and the plaintiff, admittedly a party to the other suit for partition pending at the time of institution of this suit, could have got his rights adjudicated in the suit pending in the District Court, which though has been dismissed, but appeal whereagainst is stated to be pending and in which plaintiff is also a party.

14. The suit is accordingly not only an afterthought and mala fide but is in abuse of the process of the Court and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

MARCH 02, 2020 'gsr'..