

CASE NO.:
Appeal (civil) 1921 of 2007

PETITIONER:
BEGUM SABIHA SULTAN

RESPONDENT:
NAWAB MOHD. MANSUR ALI KHAN & ORS

DATE OF JUDGMENT: 12/04/2007

BENCH:
TARUN CHATTERJEE & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 1921 OF 2007
(Arising out of SLP(C) No.4586 of 2006)

P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. The appellant, hereinafter referred to as the plaintiff, is the daughter of Nawab Iftikar Ali Khan and Mehar Taj Sajeda Sultan. Defendants 1 and 2, who are respondents 1 and 2 herein, are her siblings. Defendant No.3 is her niece, being the daughter of her brother, Defendant No.1. Defendant Nos.4 and 5 are assignees from Defendant No.2.

3. The plaintiff filed a suit C.S. (OS) No.495 of 2004 on the original side of the High Court of Delhi praying for the following reliefs:

"(a) Pass a decree of declaration declaring the oral Will dated 1.1.1995 allegedly made by Her Highness Begum Mehar Taj Sajida Sultan was never made, further declare that the Sale deed purported to have been executed on behalf of Defendant No.2 in favour of Defendant No.4 and 5 as null and void;

(b) to pass a decree of partition in favour of the plaintiff in respect of her entitled share in view of the Islamic Personal Law i.e. < of total properties/estates, out of 180 Kanals and 12 Morlas situated at Village Pataudi, Gurgaon left behind by above mentioned Her Highness Mehar Taj Sajida Sultan;

(c) Pass a decree of rendition of account in respect of the earnings of the above mentioned properties w.e.f. June, 2000 uptill filing of the present suit;

(d) Pass a decree of permanent injunction restraining the Defendants, their employees, servants whosoever acting on their behalf from using, alienating, parting with possession and/or dealing with in any manner whatsoever in respect of the respective shares of the plaintiff;

- (e) Pass an order for cost of the suit; and
- (f) Pass any other and further orders as this Hon'ble Court may deem fit, just and proper."

4. The immovable properties that were sought to be partitioned and alienation in respect of which was sought to be declared void, were admittedly situate in Village Pataudi, Gurgaon in the State of Haryana, outside the jurisdiction of the Court in which the suit was instituted. The suit was filed in the Court at Delhi on the basis of the following averments in the plaint:

"The cause of action for filing the present suit arose on 1.1.1995 when the alleged oral Will was made by Her Highness Mehar Taj Begum Sajida Sultan at New Delhi, the cause of action arose on 25.9.1995 when Defendant No.1 organised a meeting. It again arose somewhere in March/April when the plaintiff got knowledge and on 22.10.2002 when the plaintiff issued legal notice. It further arose on 28.11.2002 and 30.11.2002 when the notices were replied and the same still subsists.

That Defendant No.1 and 2 reside at Delhi. The cause of action arose at Delhi, as according to Defendants themselves alleged oral Will was made at New Delhi; threats of parting with the possession was also issued at Delhi hence this Hon'ble court has jurisdiction to entertain and try the present suit."

5. The defendants raised an objection to the jurisdiction of the trial court. They pleaded that the main relief sought in the plaint was for partition of the properties situate in Gurgaon, not falling within the jurisdiction of Delhi court and the declarations sought for are also related to the said properties and in the light of Section 16(b) and (d) of the Code of Civil Procedure (for short 'the Code'), the jurisdiction to entertain the suit was with the concerned court in the State of Haryana and hence the plaint was liable to be rejected. On their behalf, the following averment in paragraph 3(d) of the plaint was emphasised.

"Present suit is being confined to the properties situate at Village Patudi, Gurgaon (Haryana), left behind by the mother who had purchased these properties. So far as the other properties either left behind by their mother, father or other relatives are concerned, the Plaintiff is reserving her valuable rights to claim in due course, if need be."

The description of the suit properties set out in paragraph 3(h) was also relied on.

6. On behalf of the plaintiff, this plea was resisted by contending that the first declaration regarding the alleged oral Will of the mother wholly arose within the jurisdiction of the court at Delhi and since that part of the prayer fell within the jurisdiction of the court at Delhi, the court at Delhi had jurisdiction to entertain the suit. It was contended that the cause of action regarding the will and the declaration sought

in respect thereof, wholly arose in Delhi and that even otherwise, three of the defendants were residing in Delhi, within the jurisdiction of the court at Delhi and, in any event, on that ground and on the ground that a part of the cause of action arose in Delhi, the suit could be entertained in the court at Delhi in terms of Section 20 of the Code.

7. The learned Single Judge, the trial Judge, on a reading of the plaint, came to the conclusion that the reliefs claimed in the plaint fell within the purview of Section 16(b) and (d) of the Code and that the proviso to Section 16 had no application. Section 20 could not be resorted to, since Section 16 had application and Section 20 applied only if Section 16 had no application. Overruling the contention that the first part of the declaratory relief was rightly claimed in the court at Delhi, he held that the said declaration was also related to the properties situated in village Pataudi, outside the jurisdiction of the court at Delhi and hence the court at Delhi had no jurisdiction to entertain the suit. The trial judge, therefore, directed the return of the plaint to the plaintiff for being presented to the court having jurisdiction. An offer made to the plaintiff to pass an order in terms of Rule 10A of Order VII of the Code was not accepted by the plaintiff. Thus, the plaint was returned to the plaintiff for being presented to the proper court.

8. The plaintiff filed an appeal against the order before the Division Bench of the High Court. The Division Bench, on advertng to Section 16 of Code and the approach of the trial judge to the question, agreed with the trial judge and dismissed the appeal. The Division Bench reiterated that the suit was essentially and in substance for partition and since the property lay beyond the jurisdiction of the trial court, the suit could not be brought within the jurisdiction of the trial court by exhibiting some ingenuity in introducing a plea regarding an alleged oral Will said to have been brought into existence in Delhi, within the jurisdiction of the court. The plaint had to be scrutinised for the real relief sought for therein and so viewed, the trial judge was right in returning the plaint for presentation to the proper court. This decision of the Division Bench is in challenge before us.

9. Learned counsel for the appellant contended that the substantial prayer in the plaint was for a declaration that the oral Will dated 1.1.1995 allegedly made by the mother Sajida Sultan was never made and the cause of action for that relief wholly arose in Delhi within the jurisdiction of the trial court. He submitted that the other reliefs of partition, accounting and declaration of invalidity of the sale executed by Defendant No.2 were all reliefs that would flow only if the relief regarding the declaration of Will was granted to the plaintiff and consequently, those reliefs could be perceived to be only consequential reliefs. Counsel also pointed out that even if Section 16(a) and (d) of the Code had application, it was a case to which the proviso to Section 16 of the Code applied, especially in the context of the fact that at least three of the defendants were residing within the jurisdiction of the trial court. It was, therefore, contended that the decision to return the plaint was unsustainable in law. Counsel for the defendants, on the other hand, contended that in pith and substance, the plaint was for partition of the properties situate in village Pataudi in Gurgaon that lay outside the territorial jurisdiction of the court at Delhi and when that is so, the suit had to be instituted only in the court having jurisdiction over the property in question and the High Court was right in

holding that Section 16(b) and (d) of the Code squarely applied to the case on hand in the light of the reliefs claimed. Counsel further submitted that the proviso to Section 16 of the Code had no application, since this was not a case where mere personal obedience to the decree would result in an effective decree. He further pointed out that Section 20 of the Code will have no application in a case where Section 16 squarely applies, since Section 20 was only a residuary provision. He ultimately submitted that the High Court has understood the plaint in a particular manner and since an effective decree for partition, which is the main relief claimed in the plaint, could more conveniently be passed by the court having jurisdiction over the properties in question, it was not a fit case where this Court ought to exercise its jurisdiction under Article 136 of the Constitution of India, since having the suit tried at Delhi would only create complications and prolong the proceedings, even assuming that this Court saw some merit in the contention that the first part of prayer (a) might come within the purview of the court at Delhi. He therefore submitted that no interference be made with the order now passed.

10. There is no doubt that at the stage of consideration of the return of the plaint under Order VII Rule 10 of the Code, what is to be looked into is the plaint and the averments therein. At the same time, it is also necessary to read the plaint in a meaningful manner to find out the real intention behind the suit. In *Messrs Moolji Jaitha & Co. Vs. The Khandesh Spinning & Weaving Mills Co. Ltd.* [A.I.R. 1950 Federal Court 83], the Federal Court observed that: "The nature of the suit and its purpose have to be determined by reading the plaint as a whole."

It was further observed:

"The inclusion or absence of a prayer is not decisive of the true nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The substance or object of the suit has to be gathered from the averments made in the plaint and on which the reliefs asked in the prayers are based."

It was further observed:

"It must be borne in mind that the function of a pleading is only to state material facts and it is for the court to determine the legal result of those facts and to mould the relief in accordance with that result."

This position was reiterated by this Court in *T. Arivandam Vs. T.V. Satyapal & Anr.* [(1978) 1 S.C.R. 742] by stating that what was called for was a meaningful --- not formal --- reading of the plaint and any illusion created by clever drafting of the plaint should be buried then and there. In *Official Trustee, West Bengal & Ors. Vs. Sachindra Nath Chatterjee & Anr.* [(1969) 3 S.C.R. 92], this Court approving the statement of the law by Mukherjee Acting Chief Justice in *Hirday Nath Roy Vs. Ramchandra Barna Sarma*, [I.L.R. 48 Calcutta 138 F.B.] held:

"Before a court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-

matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties."

11. Reading the plaint as a whole in this case, there cannot be much doubt that the suit is essentially in relation to the relief of partition and declaration in respect of the properties situate in Village Pataudi, Gurgaon, outside the jurisdiction of court at Delhi. It is no doubt true that there is an averment that an alleged oral will said to have been made at Delhi by the deceased mother and presumably relied on by defendants 1 and 2 was never made. But on our part, we fail to understand the need for claiming such a negative declaration. After all, the plaintiff can sue for partition, rendition of accounts and for setting aside the alienation effected by defendant No. 2 without the junction of the plaintiff on a claim that the plaintiff is also one of the heirs of the deceased mother. If in such a suit, the defendants propound any oral will as excluding the plaintiff from inheritance, the burden would be on them to establish the making of such an oral will and the validity thereof. The negative declaration sought for by the plaintiff appears to us to be totally superfluous and unnecessary in the circumstances of the case. It may be noted that it is not the case of the plaintiff that an oral will was made at Delhi. It is the case of the plaintiff that no oral will was made at Delhi. It is debatable whether in such a situation it can be said that any cause of action arose at all within the jurisdiction of the court at Delhi. On a reading of the plaint, the trial judge and the Division Bench have come to the conclusion that in substance the suit was one relating to immovable property situate outside the jurisdiction of the trial court in Delhi and hence the plaint had been presented in a court having no jurisdiction to entertain the suit. We are inclined to agree with the said understanding of the plaint by the trial judge and Division Bench, on a reading of the plaint as a whole.

12. On a reading of the plaint as a whole, it is clear, as we have indicated above, that the suit is one which comes within the purview of Section 16(b) and (d) of the Code. If a suit comes within Section 16 of the Code, it has been held by this Court in Harshad Chiman Lal Modi Vs. DLF Universal Ltd. & Anr. [(2005) 7 S.C.C. 791] that Section 20 of the Code cannot have application in view of the opening words of Section 20 "subject to the limitations aforesaid". This Court has also held that the proviso to Section 16 would apply only if the relief sought could entirely be obtained by personal obedience of the defendant. The relief of partition, accounting and declaration of invalidity of the sale executed in respect of immovable property situate in Village Pataudi, Gurgaon, could not entirely be obtained by a personal obedience to the decree by the defendants in the suit. We are in respectful agreement with the view expressed in the above decision. Applying the test laid down therein, it is clear that the present suit could not be brought within the purview of the proviso to Section 16 of the Code or entertained relying on Section 20 of the Code on the basis that three out of the five defendants are residing within the jurisdiction of the court at Delhi.

13. Thus, on the whole, we are satisfied that the trial court was right in returning the plaint to the plaintiff for being presented to the proper court. We therefore affirm the order returning the plaint and dismiss this appeal. In the

circumstances, we make no order as to costs.

JUDIS