

2022 SCC OnLine Del 2761

In the High Court of Delhi at New Delhi

(BEFORE AMIT BANSAL, J.)

Prabha Bennett (Formerly Sharma) and Others ... Plaintiffs;

Versus

Rohit Sharma and Another ... Defendants.

CS(OS) 154/2021 and I.A. 14213/2022 (O-VIII R-10 of CPC)

Decided on September 5, 2022

Advocates who appeared in this case:

Mr. Rakesh Taneja, Advocate.

None.

The Judgment of the Court was delivered by

AMIT BANSAL, J. (Oral):— The present application has been filed under provisions of Order VIII Rule 10 of the Civil Procedure Code, 1908 (CPC) seeking pronouncement of judgment and decree as prayed for in the suit.

2. The plaintiffs, being the legal heirs of late Sh. Vijay Kumar Sharma, have filed the present suit seeking following reliefs:

"a) *Pass a decree of mandatory injunction in favour of the plaintiffs and against the defendants thus directing the defendants for sharing complete and up-to-date information about the names and branch address of the bank(s), the amounts that the defendants withdrew from the bank account(s) of Late Vijay Kumar Sharma in New Delhi, India and took control of, with an intention to deprive the plaintiffs of their legal rights of inheritance in the estate of Late Vijay Kumar Sharma and remit the money belonging to their shares and to supply to them a copy each of the bank statement(s) of the bank account(s) of Late Vijay Kumar Sharma in New Delhi, India;*

b) *Award cost of litigation in favour of the plaintiffs and against the defendants for having to bring the instant proceedings before this Hon'ble Court for a the reasons attributable to the conduct of the defendants;*

c) *Pass such other order or orders, alternatively or in addition as may be deemed just and proper in the interests of justice and in the facts and circumstances of the case."*

3. Summons in the suit were issued of 9th March, 2021.

4. Counsel for the defendants appeared before the Joint Registrar on 7th April, 2022 and submitted that he had filed written statement and affidavit of admission/denial on 4th April, 2022. However, the written statement and affidavit of admission/denial were not on record and counsel was asked to take steps in this regard. In the order of 7th April, 2022, it was noted that *vakalatnama* has been filed on behalf of the defendants on 4th April, 2022.

5. None appeared on behalf of defendants on the next date of hearing i.e., 30th May, 2022. It was noted that the affidavit of admission and denial of documents has been filed by the defendants. However, right of the defendants to file written statement was closed on 30th May, 2022. On 26th July, 2022, when the matter came up before me, once again, none appeared on behalf of the defendants and therefore, the defendants were proceeded against *ex parte*.

6. Hence, the present application has been filed on behalf of the plaintiff seeking a judgment under the provisions of Order VIII Rule 10 of the CPC.

7. Counsel for the plaintiff has taken me through the pleadings in the plaint as well as the various documents filed along with plaint and the affidavit of admission/denial filed on behalf of the defendants.

8. The case made out in the plaint is that father of the parties, late Sh. Vijay Kumar Sharma expired on 10th September, 2008. The death certificate has been filed along with the plaint. All the parties to the suit are based in the United Kingdom. In December, 2018, the plaintiff came up to know that the defendants have taken control and withdrawn money from the bank accounts of late Sh. Vijay Kumar Sharma, maintained in Delhi.

9. Certain text messages were exchanged between the plaintiff no. 1 and the defendants in January, 2019, which are set out hereinafter:

"Rohit Sharma (Defendant No. 1) wrote - "Your share was and always will be there for you. Whenever you want it let us know and we will arrange for you to have it."

Ms. Bhavna Sharma (Defendant No. 2) wrote - "Don't worry your share will be there for whenever you need it. I wouldn't want you thinking we conned you."

10. Thereafter, upon the failure of the defendants to give the share of the plaintiffs to them, communication dated 4th November, 2019 was sent on behalf of the plaintiffs through their UK solicitors to the defendants. In the reply dated 14th November, 2019 sent by the UK solicitors of the defendants to the solicitors of the plaintiffs, it was stated the defendant no. 1 was added as a joint account holder in the said bank account by late Sh. Vijay Kumar Sharma on 4th August, 2007. It is further stated that it was the intention of the deceased late Sh. Vijay Kumar Sharma that the defendant no. 1 would be solely entitled to the amounts in the bank accounts in India. This was reiterated in the communication dated 6th December, 2019 by the defendants solicitors.

11. In the reply dated 29th July, 2020 to the legal notice dated 19th July, 2020 of the plaintiff, it has been stated that the claim of the plaintiffs is time barred.

12. Counsel appearing on behalf of the plaintiffs submits that the claim under the present suit is not time barred. He further submits that the money in the joint account belonged to and was left behind by late Sh. Vijay Kumar Sharma, who died *intestate*. Therefore, all his legal heirs are eligible to inherit the same under the Hindu Succession Act, 1956 and the defendants alone cannot take control of the monies under the said accounts.

13. I have heard the counsel for the plaintiff.

14. In *Indranarayan v. Roop Narayan*, (1971) 2 SCC 438, the Supreme Court has held that if an amount is held by a sole account/deposit holder in his bank account and subsequently, the name of another person is added as a joint account holder therein, it will be on the subsequently added holder to prove that it was the intention of the first holder to make the subsequently added holder the exclusive owner of the amounts lying in the account after the death of the first holder. There is no presumption of an intended advancement and proving the intention of the sole account/deposit holder is pivotal to claim exclusive ownership of the amounts. The aforesaid judgment of the Supreme Court has been followed by a Coordinate Bench of this Court in *Prabha Kaul v. Chandra Kaul Muthoo*, 2013 SCC OnLine Del 3027. Relying on the judgments of the Privy Council in *Guran Ditta v. T. Ram Ditta*, AIR 1928 PC 172 and *Pandit Shambhu Nath Shivpuri v. Pandit Pushkar Nath*, AIR 1945 PC 10, it was held that in a joint bank account, wherein the amount is payable to either of the survivor, if the facts and circumstances do not establish the intention of the first holder to make the survivor, upon his death, the sole owner of the amounts lying in the account, the joint account holder would be authorised to withdraw the amounts but would be accountable to the heirs of the first holder.

15. In the present case, the defendants have failed to file written statement and therefore, have failed to rebut the averments made in the plaint to the effect that the money in the joint account belonged to late Sh. Vijay Kumar Sharma and the defendants were merely added as the joint account holders. Being the joint holders in the bank accounts, they have withdrawn the amounts from the bank accounts, which they were entitled to do. But, they cannot claim to have the sole right over the amounts in the said bank accounts. In view of the fact that late Sh. Vijay Kumar Sharma died *intestate*, the amount in the bank accounts owned by him would be governed by the provisions of Hindu Succession Act, 1956 and would vest with all the Class I legal heirs of late Sh. Vijay Kumar Sharma i.e. the plaintiffs and the defendants.

16. In the text messages exchanged between the parties on 10th January, 2019, the defendants have admitted to the share of the plaintiffs in the aforesaid amounts. However, a contrary stand has been taken in the communications sent by the defendant's solicitors to the solicitors of the plaintiffs.

17. As regards the plea of limitation, it is the case of the plaintiffs that they came to know of the aforesaid bank accounts only in December, 2018 and thereafter, the text messages as well as the communications through solicitors were sent to the defendants. It has further been stated that the defendants in their text message of 10th January, 2019, have admitted to the share of the defendants. Therefore, in light of the admission made by the defendants, it cannot be said that the suit is barred by limitation.

18. In view of the above, the plaintiffs are entitled to a judgment and decree in terms of order VIII Rule 10 of the CPC. Consequently, a decree is passed in terms of prayer A to the suit. The plaintiffs shall also be entitled to costs of the present suit including the Court Fees paid by the plaintiffs.

19. Decree sheet be drawn up accordingly.

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