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VIDYAWATI

v.

MAN MOHAN AND OTHERS

MAY 1, 1995

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[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Code of Civil Procedure, 1908 :

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Order 22 Rule 4(2)/Order 1 Rule 10—Impleadment of party defendant—All rights and defences available to the deceased defendant will be available—Such party could either implead in independent capacity or file independent suit asserting his/her own right.

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The respondents-plaintiffs laid a suit for possession of the suit property against the first defendant, the deceased husband of the petitioner-second defendant. Respondent No. 1 had been impleaded to represent the said estate. When they sought to file additional written statement claiming title in the property under a will, the trial court dismissed the application, holding that if a legal representative wanted to raise any individual point which the deceased party could not have raised, he must get himself impleaded in his personal capacity or he must challenge the decree in a separate suit. A revision was filed in the High Court and it was dismissed. Hence this Special Leave Petition.

Dismissing the petition, this Court

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HELD : 1. It is open the petitioner to implead herself in her independent capacity under Order 1 Rule 10 or retain the right to file independent suit asserting her own right. There is no error of jurisdiction or material irregularity committed in the exercise of jurisdiction by the court below warranting interference. [959-C]

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2. It is seen that the petitioners' claim of right, title and interest entirely rest on the will said to have been executed by one C in favour of the first defendant and herself. Admittedly the first defendant had life interest created under the will. Therefore, the said interest is co-terminus with his demise. Whether the petitioner had independent right, title and interest *de hors* the claim of the first defendant was a matter to be gone

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into at a later proceedings. It is true that when the petitioner was impleaded as a party-defendant, all rights under Order 22 Rule 4(2) and defences available to the deceased defendant became available to her. In addition, if the petitioner had any independent right, title or interest in the property then she had to get herself impleaded in the suit as a party defendant in which event she could set up her own independent right, title and interest, to resist the claim made by the plaintiff or challenge the decree that may be passed in the suit. [958-C to E]

Bal Kishan v. Om Parkash & Anr., AIR (1986) SC 1952 and *Jagdish Chander Chatterjee & Ors. v. Sri Kishan & Anr.*, [1973] 1 SCR 850, relied on.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 9356 of 1995.

From the Judgment and Order dated 10.11.94 of the Delhi High Court in C.R.No. 953 of 1994.

B.D. Sharma for the Petitioner.

The following Order of the Court was delivered :

The respondents - plaintiffs laid a suit on June 5, 1984 in the Court of Senior Subordinate Judge, Delhi for possession of the suit property against first defendant Brijmohan Kapoor, deceased husband of the petitioner - second defendant. Shri Man Mohan s/o Jagmohan Kapoor has now been impleaded to represent the estate of Brij Mohan Kapoor. When they sought to file additional written statement claiming title to and interest in the property under a will said to have been executed by Smt. Champawati, the petition was dismissed by the trial court in suit No. 418/84 by order dated August 6, 1994 holding that "it is not open to the present appellant to assert her own individual or hostile title to the suit." It was held that if a legal representative wants to raise any individual point which the deceased party could not have raised, he must get himself impleaded in his personal capacity or he must challenge the decree in a separate suit. In that view she was not permitted to file the additional written statement. Challenging the order, revision was filed in the High Court. Learned single Judge of the High Court in Civil Revision No. 953/94 dated November 11, 1994 dismissed the revision.

A It is contended for the petitioner that both the plaintiff - first defendant and the petitioners' claims are founded on the will executed by Champawati, where the first defendant had right and interest for life and the petitioner had right thereafter and as such she could raise the plea which Brijmohan Kapoor could have raised in his written statement. The courts below were not right in refusing to permit the petitioner to file additional written statement. In support thereof, the petitioner placed strong reliance on the judgment of this Court in *Bal Kishan v. Om Parkash & Anr.*, AIR (1986) SC p.1952.

C It is seen that the petitioners' claim of right, title and interest entirely rest on the will said to have been executed by Champawati in favour of the first defendant and herself. It is now admitted across the Bar that the first defendant had life interest created under the will executed by Champawati. Therefore, the said interest is co-terminus with his demise. Whether the petitioner has independent right, title and interest de hors the claim of the first defendant is a matter to be gone into at a latter proceedings. It is true that when the petitioner was impleaded as a party-defendant, all right under Order 22 Rule 4(2), and defences available to the deceased defendant become available to her. In addition, if the petitioner had any independent right, title or interest in the property then she had to get herself impleaded in the suit as a party defendant in which event she could set up her own independent right, title and interest, to resist the claim made by the plaintiff or challenge the decree that may be passed in the suit. This is the view the court below has taken rightly.

F This Court in *Bal Kishan v. Om Parkash & Anr.*, AIR (1986) SC 1952 has said thus :

G "The sub-rule (2) of Rule of Order 22 authorised the legal representative of a deceased defendant to file an additional written statement or statement of objections raising all pleas which the deceased-defendant had or could have raised except those which were personal to the deceased-defendant or respondent."

The same view was expressed in *Jagdish Chander Chatterjee & Ors. v. Sri Kishan & Anr.*, [1973] 1 SCR 850 wherein this Court said :

H "The legal representative of the deceased respondent was entitled to make any defence appropriate to his character as legal

representative of the deceased respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representative from setting up also their own independent title, in which case there could be no objection to the court impleading them not merely as the Lrs. of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the title." A B

This being the position in law, the view of the court below is perfectly legal. It is open to the petitioner to implead herself in her independent capacity under Order 1 Rule 10 or retain the right to file independent suit asserting her own right. We do not find any error of jurisdiction or material irregularity committed in the exercise of jurisdiction by the court below warranting our interference. The SLP is, accordingly, dismissed. C

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Petition dismissed.