

**07.04.2016**  
item no.10

**C.O. 1720 of 2013**

**Re : Praneet Kumar Bajpaie .. Petitioner.**

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**Mr. Ahin Chowdhury**

**Mr. P. Kar**

**Mr. A. Sinha**

**... for the petitioner.**

**Mr. Raja Basu Mallick**

**..for the opposite party..**

This is an application under Article 227 of the Constitution of India in which the order dated 12<sup>th</sup> March, 2013 as passed by the learned Civil Judge (Senior Division), 2<sup>nd</sup> Court, South 24-Parganas at Alipore passed in Title Suit No. 64 of 1979 has been assailed before this court. In that order, the petition filed by Pradosh Kumar Bajpaie, who prayed for his appointment to proceed with the litigation being the Karta of the Hindu Undivided Family (hereinafter called as HUF) was disposed of.

It is submitted by Mr. Chowdhury, the learned Advocate, appearing on behalf of the petitioner that as per the petition filed on 18<sup>th</sup> December, 2012, it was claimed that the original Karta of that HUF being Pradosh Kumar Bajpaie died in the year 2003 leaving

behind two male members of that HUF being the two sons, namely, Tapas Kumar Bajpaie and Manas Kumar Bajpaie. It was the further case of the petitioner that Tapas Kumar Bajpaie died in 2010 and Manas Kumar Bajpaiej was declared as insane as per the order of the learned District Judge, South 24-Parganas as passed in Misc. Case No. 208 of 2004. On the aforesaid circumstances, the present petitioner before this court as well as before the learned trial court prayed for an order so that the Title Suit No. 64 of 1979 may be continued and Praneet Kumar Bajpaie may be allowed to act as Karta being the eldest male member of that HUF.

Learned Advocate argued that when Pradosh Kumar Bajpaie died in 2003, the succession of HUF opened and that succession opened only for once. He further submitted that at that point of time, there was no amendment to Section 6 of Hindu Succession Act, 1956 which came into force with effect from 09-09-2005. Learned Advocate further argued by taking me to the decision of the Apex Court as reported in **(2016) 2 Supreme Court Cases 36 (Prakash And Others Vs. Phulavati And Others)** that the said amendment act, 2005 did not give any retrospective effect in operation and as such, it will apply only when both the Coparcener and his daughter were alive on the

date of the commencement of the said amendment act, i.e., 09-09-2005 irrespective of the date of birth of the daughter and the coparcener who died thereafter. Thus, he contended that when Pradosh Kumar Bajpaie died in 2003, there was no amendment to Section 6 and as such, the previous proposition of Section 6 will apply in this case and not the amended version. He further submitted by taking me to the impugned order that the said order is silent how the learned trial court arrived at a decision to reject the prayer of Praneet Kumar Bajpaie to his appointment as Karta of the said HUF.

It is submitted by Mr. Basu Mallick, learned Advocate, appearing on behalf of the opposite party/tenant by taking me to the amended portion of Section 6 of the Hindu Succession Act, 1956 that even a daughter of coparcener has every right to the estate of HUF and only the disposition or alienation including any partitioning or testamentary disposition which took place before 20<sup>th</sup> day of December, 2004 is only protected. He further submitted that when Pradosh Kumar Bajpaie died in 2003, his daughter Susmita Basu was already born and as such, in view of the amendment made to Section 6 that Susmita Basu will have interest over the property. He further submitted by taking me to the decision of the Apex Court

reported in **Prakash And Others (Supra)** that the said decision will not apply in the present case as in the present case before this court, there was no partition, alienation or disposition of the property and as such, the amendment to Section 6 of the HUF will definitely apply in the present case which means that Susmita Basu has acquired interest over the property and as such, the said property cannot be managed only by male coparcener. He further submitted by taking me to the decision of this court as passed in C.O. 2164 of 2013 wherein this court refused to acknowledge that Susmita Basu did not acquire any interest over the property. Learned Advocate also took me to that he decision of the Apex Court as reported in **(2011)6 SCC 462 (Prema Vs. Nanji Gowda & Ors.)** wherein the Apex Court held in paragraph nos. 15, 16 and 17 that the right of the parties is not extinguished as soon as the preliminary decree is passed but the said right remains dormant till the final decree proceeding is complete and the court will consider any amendment act which may come into force in the meantime, i.e., in between the preliminary decree and the final decree.

He further submitted that in this revisional application, this issue cannot be decided as to whether the amendment to Section 6 of

the Hindu Succession Act will apply in the present case or not and this court also cannot decide it in the absence of Susmita Basu, the daughter of Pradosh Kumar Bajpaie. Learned Advocate also took me to the decision of **Prakash And Ors (Supra)** in paragraph 22 wherein the Apex Court held *“Main provision of the amendment in Sections 6(1) and (3) is not in any manner intended to be affected but strengthened in this way’*. He also refers to paragraph 23 of the said judgement wherein the Apex Court held - *“Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20-12-2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation”*.

He further submitted that as in the instant case before this court, no partition was effected in respect of the suit property, this judgement of the Apex Court will not apply in the present case.

In reply, it was submitted by Mr. Chowdhury, learned Advocate appearing on behalf of the petitioner by taking me again to the decision of **Prakash And Others (Supra)** wherein the Supreme Court

in the starting line wrote *“The only issue which has been raised in this batch of matters is whether the Hindu Succession (Amendment) Act, 2005 (the Amendment Act) will have retrospective effect. In the impugned judgement Phulavati v. Prakash, plea of retrospectivity has been upheld in favour of the respondents by which the appellants are aggrieved”*. He further took me to the paragraph 18 of the said decision wherein the Apex Court held *“The contention of the respondents that the amendment should be read as retrospective being a piece of social legislation cannot be accepted”*. He also took me to paragraph 23 of the said decision wherein the Apex Court decided *“Accordingly, we hold that the rights under the amendment are applicable to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born. Disposition or alienation including partitions which may have taken place before 20-12-2004 as per law applicable prior to the said date will remain unaffected. Any transaction of partition effected thereafter will be governed by the Explanation”*.

Thus, he tried to convince this court that the said amendment act of 2005 cannot apply in respect of the said property as on 09-09-2005 the living coparcener was not in existence as Prodosh Kumar Bajpaie

died in the year 2003. I must take into consideration that this is a suit between the landlord and the tenant. This court is in the dark as to whether the tenant claimed in the written statement that the HUF was not in existence and the suit property was a joint family property. In this issue I do not like to seal the fate of Susmita Basu by saying that the said amendment act of 2005 will not be applicable. The matter is to be decided separately.

It may be noted that neither of the parties took endeavour to bring that Susmita Basu on record before the learned trial court.

The order assailed shows that the learned trial court banked upon the order of the learned District Judge passed in Misc. Case no. 208 of 2004 where he was pleased to appoint the present petitioner and Amrita Bajpaie (wife of Manas Kumar Bajpaie) as the legal guardian of the lunatic Manas Kumar Bajpaie. On scrutiny of the supplementary affidavit and photocopy of the death certificate of Amrita Bajpaie shows that Amrita Bajpaie died on 10-7-2015.

Thus, Praneet Kumar Bajpaie is the only surviving guardian of Manas Kumar Bajpaie. If this Praneet Kumar Bajpaie can be treated as guardian, there is no reason why this Praneet Kumar Bajpaie cannot be allowed to proceed with the suit being the Karta of the

family. The word Karta means the eldest surviving male member of the HUF and the said Hindu family as per the claim of the petitioner is guided under the Mitaskhara family of law. This point, i.e., whether the family of Pradosh Kumar Bajpaie was governed under Mitaskhara law has not been disputed.

Thus, this court on hearing the argument of the parties and considering the decisions relied upon by the parties is of the opinion that in this limited jurisdiction of a revisional court, this court is not going to dispose of the claim of the present opposite party that actually the suit property is a joint family property and not a property belonging to HUF. The position as it stands now Praneed Kumar Bajpaie be allowed to proceed with the litigation which is pending since 1979 as the Karta of the family as well as guardian of his father Manas Kumar Bajpaie. I reiterate only this order will be applicable in the litigation before the floor of the learned trial court.

In the supplementary affidavit, one letter dated 16-6-1981 has been annexed wherein the Director of the opposite party company addressed one letter to Pradosh Kumar Bajpaie as the Karta HUF consisting of himself and his major sons, namely, Tapas Kumar Bajpaie and Manas Kumar Bajpaie for renewal of the lease in respect

of the suit premises. Learned trial court will decide as to whether there is any claim made by the defendant/tenant as it is now disputing the right of the landlord. If there is no such claim, the said matter be set at rest here.

This revisional application is thus disposed of and answered in the affirmative.

There will however be no order as to costs.

Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

***(Indrajit Chatterjee, J.)***

19-04-16  
Item No. 1  
AD

**C.O. 1720 of 2013  
(To Be Mentioned)**

In re : **Praneet Kumar Bajpaie ... Petitioner.**

Mr. Pushan Kar,  
Mr. Aniruddha Sinha.

... for the petitioner.

Heard learned Advocate appearing on behalf of the petitioner. He took me to the order dated 07-04-2016 passed in connection with this civil revisional application. He submitted that there are some typographical mistakes in the said order. He took me to Page Nos. 1, 2 and 8 of the said order.

On scrutiny of the said order, let the name of "**Pradosh Kumar Bajpaie**" appearing at page no.1 in 5<sup>th</sup> line of the first paragraph be read as "**Praneet Kumar Bajpaie**".

At page no.2 in 4<sup>th</sup> line the spelling "**Bajpaiej**" has been wrongly typed and it would have been typed as "**Bajpaie**".

At page no.8 in second paragraph of the 6<sup>th</sup> line, the name of "**Praneet**" was wrongly typed as "**Praneed**" and at page no.8 in the same paragraph of the 8<sup>th</sup> line instead of "**The Karta of the family**" it should have been typed as "**The Karta of the Hindu Undivided Family**".

Let the said order stand corrected to the extent as mentioned above.

This order be treated as part of the order dated 07-04-2016. The other portion of the order will remain as it is.

Certified copy, if already issued, be corrected accordingly.

**(Indrajit Chatterjee, J.)**