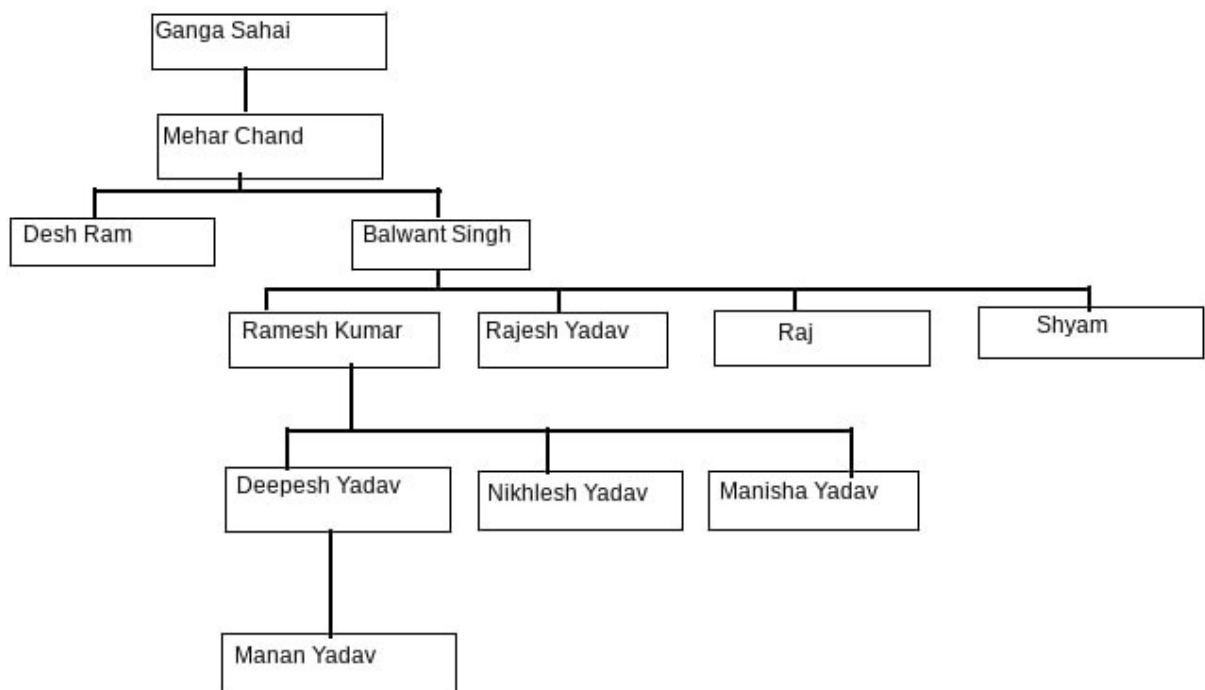


25.01.2024

ORDER

1. Vide this order, I shall decide the applications u/o VII Rule 11 CPC filed by defendant no 1 and application u/o VII Rule 11 CPC filed by defendant no 2 to 5. Considering the nature and contents of the applications, both the applications are being taken up together for the sake of brevity and clarity.

2. Brief facts of the case are that as per the averments of the plaintiff, the family chart described by the plaintiff is as below :-



2.1 The plaintiff has mentioned nine properties as suit properties. The list of properties is mentioned as hereunder:-

S.No.	Property Details	Details
1	HU 79 (PLOT PITAMPURA)250 yards sq Para No.9 of the suit i.e. suit property No.1 shown in site plan No.1.	 Suit property No.1
2	HU 80 (PLOT PITAMPURA) 250 sq yards Para No.11 of the suit i.e. suit property No.2 shown in site plan No.2	 Suit property No.2
3	Plot No. 71 measuring 153 Sq.meter Para No.12 of the suit i.e. suit property No.3 shown in photograph No.3	 Suit property No.3
4	Plot No.81, HU-Block Para No.13 of the suit i.e. suit property No.4 shown in photograph No.4	 Suit property No.4
5	GODOWN BHALASWA 1000 SQ YARDS Para No.14 of the suit i.e. suit property No.5 shown in site plan No.5	 Suit property No.5
6	GODOWN BHALASWA 1100 SQ YARDS 300 SQ YARDS 200 SQ YARDS Para No.14 of the suit i.e. suit property No.6 shown in site plan No.6	 Suit property No.6
7	SARAI PEEPAL THALA100 SQ YARDS Para No.15 of the suit i.e. suit property No.7 shown in photograph	 Suit property No.7
8	QUADIPUR VILLAGE4 ACRE Para No.16of the suit	 Suit property No.8
9	BHALASWA JAHANGIRPUR Para No.17 of the suit	 Suit property No.9

2.2 It is the case of the plaintiff that the suit property no. 1 was allotted after acquisition of the ancestral land situated in Jahangirpuri and that the same was fraudulently transferred by

defendant no. 3 in her own name. That suit property no. 2, 3 & 8 were purchased by Sh. Balwant Singh (Great Grand father of plaintiff) and defendant no. 2 with the compensation amount received upon acquisition of the ancestral properties. That as far as suit property no. 5 & 6 are concerned, defendant no. 2 and his brother have separated their shares in the said properties and defendant no. 2 became a Karta of the said suit properties qua his male descendants. It is averred that remaining suit properties are also part of ancestral properties and that the plaintiff being one of the co-parcners has right/title/interest in the suit properties. The plaintiff apprehends that the defendants want to dispose off the suit properties without giving the plaintiff his due share. Hence the present suit.

3. Defendant no. 1 and defendant no. 2 to 5 have filed applications u/o VII Rule 11 CPC praying for rejection of plaint on the same grounds that the plaint does not disclose cause of action, that the suit is barred by Delhi Land Reforms Act, that the suit is liable to be dismissed on the ground of misjoinder of cause of action and misjoinder of parties, the non joinder of necessary parties and on the ground of improper valuation of the suit.

3.1 The plaintiff has filed reply to the application filed by defendant no. 1 wherein the contents of the application have been denied and it is accordingly prayed that the application be dismissed.

4. Arguments heard. Record perused.

5. At the outset, it is important to observe that the grounds for rejection of plaint very limited. It is a settled law that for the purpose of decision of an application u/o VII Rule 11 CPC, the Court should only consider the plaint and the documents accompanying the plaint and nothing else. The averments of the plaint, without addition or subtraction, without any compartmentalization or dissection, must show that the provisions of Order VII Rule 11 CPC are attracted. The defence of the defendants is not to be considered. While rejecting the plaint on the ground that the plaint does not disclose a cause of action the plaint must be taken to admit, for the sake of arguments, that the allegations of the plaintiff are true in manner and form. Reference may be made to the judgments titled ***Popat and Kotecha Properties V/s. State Bank of India Staff Association, 2005 (7) SCC 510; Inspiration Clothes v/s/ M/s. Colby International Ltd., 88 (2000) DLT 769 (DB); Liverpool & London S.P. & I Assn. Ltd. V/s. M.V. Sea Success 2004 (9) SCC 512, Sopan Sukhdeo Sable V/s. Assistant Charity Commissioner, 2004 (3) SCC 137.***

5.1 Hon'ble Supreme Court of India in ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (D) thr. L.Rs. and Ors. (2020) 7 SCC 366*** has reiterated the test for exercising the power under Order 7 Rule 11 which is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in ***Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea***

Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512]

5.2 Order VII Rule 11(a) CPC deals with a situation where the plaint does not disclose a cause of action. What is a cause of action has been defined in **Swamy Atmananda Vs. Sri Ramakrishna Tapovanam (2005) 10 SCC 51** and has been reiterated in **Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust (2012) 8 SCC 706**, as being a bundle of facts that are material and relevant for the decision of the case and which are required to be proved by the plaintiff to be entitled for reliefs claimed in the suit. The word used in Order 7 Rule 11 (a) is “**disclose**”. Thus, while considering an application of Order 7 Rule 11, it has to be only seen whether plaint along with documents annexed “discloses” a cause of action. Proof or disproof of the same is a matter of trial and cannot be considered at this stage.

6. Having discussed the settled principles on order 7 Rule 11, it is important to take note of the following judgements which have settled the law on coparcenery/ancestral property after the passing of the Hindu Succession Act, 1956.

6.1 The crux of the observations of The Hon’ble High Court of Delhi in **Surender Kumar Vs. Dhani Ram AIR 2016 Delhi 120**, relying on decisions of Hon’ble Apex Court in **Commissioner of Wealth Tax, Kanpur and Ors Vs. Chander Sen and Ors (1986) 3 SCC 567** and **Yudhishter Vs. Ashok**

Kumar (1987) 1SCC 204, while dealing with the position of law after the passing of 1956 Act, can be summarised as follows:

A) In **Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others,(1986) 3 SCC 567** - After passing of the Hindu Succession Act, 1956 the traditional view that on inheritance of an immovable property from paternal ancestors up to three degrees, automatically an HUF came into existence, no longer remained the legal position in view of Section 8 of the Hindu Succession Act, 1956 in view of Section 8 of the Hindu Succession Act, 1956 as Under Section 8 of the Hindu Succession Act, 1956 the property of the father who dies intestate devolves on his son in his individual capacity and not as karta of his own family. A son's son has been expressly excluded from the list of schedule of class 1 legal heirs.

B) In **Yudhishter Vs. Ashok Kumar, (1987) 1 SCC 204** wherein the Supreme Court reiterated the legal position that after coming into force of Section 8 of the Hindu Succession Act, 1956, inheritance of ancestral property after 1956 does not create an HUF property and inheritance of ancestral property after 1956 therefore does not result in creation of an HUF property.

C) Hence, ancestral property can only become an HUF property if inheritance is before 1956, and such HUF property therefore which came into existence before 1956 continues as such even after 1956. In such case, since HUF existed prior to 1956, and continues even after 1956, the status of HUF

properties continue and in such a case the members of HUF would be entitled to the property.

6.2 Similarly, the crux of the observations made by Hon'ble High Court of Delhi which dealing with the same issue in **Sunny (Minor) & Anr. vs. Sh. Raj Singh & Ors., (2015) 225 DLT 211**, is being summarised as follows:

(i) If a person dies after passing of the Hindu Succession Act, 1956 and there is no HUF existing at the time of the death of such a person, inheritance of an immovable property of such a person by his successors-in-interest is no doubt inheritance of an 'ancestral' property but the inheritance is as a self- acquired property in the hands of the successor and not as an HUF property although the successor(s) indeed inherits 'ancestral' property i.e a property belonging to his paternal ancestor.

(ii) The only way in which a Hindu Undivided Family/joint Hindu family can come into existence after 1956 (and when a joint Hindu family did not exist prior to 1956) is if an individual's property is thrown into a common hotchpotch.

(iii) It is not enough to aver a mantra, so to say, in the plaint simply that a joint Hindu family or HUF exists. Detailed facts as required by Order VI Rule 4 CPC as to when and how the HUF properties have become HUF properties must be clearly and categorically averred. Such averments have to be made by factual references qua each property claimed to be an HUF property as

to how the same is an HUF property, and, in law generally bringing in any and every property as HUF property is incorrect as there is known tendency of litigants to include unnecessarily many properties as HUF properties, and which is done for less than honest motives.

(iv) Whereas prior to passing of the Hindu Succession Act, 1956 there was a presumption as to the existence of an HUF and its properties, but after passing of the Hindu Succession Act, 1956 in view of the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhishter (supra) there is no such presumption that inheritance of ancestral property creates an HUF, and therefore, in such a post 1956 scenario a mere ipse dixit statement in the plaint that an HUF and its properties exist is not a sufficient compliance of the legal requirement of creation or existence of HUF properties inasmuch as it is necessary for existence of an HUF and its properties that it must be specifically stated that as to whether the HUF came into existence before 1956 or after 1956 and if so how and in what manner giving all requisite factual details.

6.3. A conjoint reading of the aforesaid pronouncements make it clear that after the coming into force of HSA, the properties inherited by a person from his father would be his personal individual property and the son of the person inheriting would not have any share in the said property since the traditional view that on inheritance of an immovable property from paternal ancestors upto three degrees, automatically an HUF came into

existence, no longer remained the legal position in view of S. 8 of HSA and inheritance of ancestral property after 1956 does not create an HUF property.

However, two exceptions have been recognized to the aforesaid position of law, i.e., firstly, if the HUF and its properties existed prior to the passing of the 1956 Act and it continued after 1956, in which case, the property inherited by a member of HUF even after 1956 would not be his personal property but HUF property in which his paternal successors-in-interest upto three degrees would have a right, and secondly, if after 1956, a person who owns self acquired property throws the same in a common hotchpotch whereby such properties thrown become HUF property. However, merely averring that a joint HUF exists would not be enough and the detailed facts required by order VI R 4 CPC have to be categorically averred.

7. In light of the abovesaid principles, coming back to the facts of the present case, it is important to observe that the present stage is of adjudication of applications under Order 7 Rule 11 CPC. For the purposes of Order 7 Rule 11 (a), the Court has to only look for 'disclosure' of a cause of action and not for the scope of its proof. In the present case, the plaintiff has made sufficient averments in the pleadings as regards the existence of coparcenery thus disclosing a cause of action. The said averments can be found throughout the plaint and more specifically in Para no 3,9,20 & 27 of the plaint. The existence or non existence of the HUF is a matter of trial. Whether the suit properties were or were not purchased from the compensation amount received

upon acquisition of ancestral properties and whether the coparcenery continued to exist after 1956 can only be decided after evidences are led upon the same. At this stage, we are not concerned with the correctness of the averments, except to state that the Plaintiffs have the carriage of the proceedings, and have to discharge the burden of proving their case. In so far as the application under Order 7 Rule 11 is concerned, the Court has to proceed only that far, to examine whether the plaint discloses a cause of action, and no further. In the present case, as already stated, the plaintiff has made sufficient averments in the pleadings as regards the continuation and existence of coparcenery thus disclosing a cause of action.

7.1 The defendants have stated only in a routine manner that the suit is barred by Delhi Land Reforms Act and Delhi Land Revenue Act and have failed to state as to how the said bar of law applies to the present case. Any such contention can be only dealt with once evidences are led upon the same and therefore cannot be looked into at this of adjudication of applications under Order 7 Rule 11.

7.2 As the suit is premised on the alleged existence of coparcenery and specific averments have been made by the plaintiff that the suit properties were ancestral properties, the contention of the defendants that the suit is bad for misjoinder of cause of action is without any merit.

7.3. It is also the contention of the defendants that the suit is barred for misjoinder of defendant no 4 &5 as no cause of action has been alleged against them. Here it is important to observe the settled principle of law that the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. The relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). Reliance in this regard can be placed upon the judgment of Honble Supreme Court of India in **Madhav Prasad Aggarwal v. Axis Bank Ltd (2019) 7 SCC 158**. It is also the contention of the defendants that the suit is liable to be dismissed on the ground of non-joinder of other coparceners as they are necessary parties in the present suit however, it is noteworthy that the ground taken, namely, non-joinder of necessary party is not covered by any of the Clauses (a) to (d) of Rule 11 of Order VII CPC. This is a matter which will have to be considered at the appropriate stage after framing of issues including the issue on this aspect. After framing of issues, this particular issue can be treated as 'preliminary issue' and if no evidence is required, it can be listed for arguments. Even if it is ultimately held that the party alleged to be a necessary party is found to be one, the suit may not necessarily be dismissed without giving an opportunity to the Plaintiff to amend the plaint by adding the absent party. Reliance in this regard can be placed upon the judgment of **Hon'ble High court of Delhi in SILVERMAPLE HEALTHCARE SERVICES PRIVATE LIMITED Versus DR. TAJINDER BHATTI (2022/DHC/004573)**.

7.4 It is also the contention of the defendants that the plaintiff has failed to value the suit properly for the purposes of Court fee and jurisdiction. As regards the said contention, S. 7 (iv) (c) states that where the suit is to obtain a declaratory decree where consequential relief is prayed for, then the amount of fee payable under the Court fees Act, 1870 shall be according to the amount at which the relief sought is valued in the plaint and in all such suits, the plaintiff shall state the amount at which he values the relief sought. The same has been done by the plaintiff, more specifically, in para no 37 of the plaint. Thus, the contention of the defendants as regards valuation and court fees does not merit at this stage.

7.5 To summarise, the grounds taken by the defendants in their applications under Order 7 Rule 11 do not find any merit and accordingly the applications under Order 7 Rule 11 are dismissed and disposed off.

(Shaina Goyal)
Civil Judge-N/W District
25.01.2024