IN THE COURT OF VIKAS GARG, DJ-05 (EAST),
KARKARDOOMA COURTS, DELHI.

Suit No. 177/18
CNR No. DLET01-001399-2018

SH. ANOOP LAL VYAS,
S/O LATE SH. RATAN DAS VYAS,
R/O B-25, GYANDEEP APARTMENTS,
MAYUR VIHAR, PHASE -I, DELHI-110091.

…........Plaintiff

Versus

1. SH. RAJ KUMAR VYAS,
S/O LATE SH. RATAN DAS VYAS,
82, SOUTH ANARKALI EXTENSION,
NEAR BALDEV PARK MANDIR,
DELHI-110051.

2. SMT. CHANDER LEKHA
D/O LATE SH. RATAN DAS VYAS
W/O SH. HARBAN SINGH
R/O FLAT NO. 1401, CAPITAL TOWER, OMEX HILLS-II, SECTOR-43
FARIDABAD HARYANA-121010.

3. MS. MANJU SINGH, D/O LATE SH. RATAN DAS VYAS, W/O SH. V.P. SINGH, R/O 36, DEV LOK COLONY, SHIMLA BYE PASS MAJHARA DEHRADUN, UTTARAKHAND.

4. MS. LAXMI VYAS,
D/O LATE SH. RATAN DAS VYAS,
82, SOUTH ANARKALI EXTENSION,

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NEAR BALDEV PARK MANDIR,
DELHI-110051.

5. SMT. SOMOTI DEVI, (DELETED AS DECEASED),
W/O LATE SH. RATAN DAS VYAS,
(FOR SELF AND LEGAL HEIR OF DECEASED SONS
BEING 6(D), 7(D) & 8(A) 82,
SOUTH ANARKALI EXTENSION,
NEAR BALDEV PARK MANDIR,
DELHI-110051.

6. SH. SHIV CHARAN VYAS,
S/O LATE RATAN DAS VYAS,
SINCE DECEASED,
THEREFORE THROUGH LEGAL HEIRS:-

A. SMT. ARUNA VYAS,
W/O LATE SH. SHIV CHARAN VYAS,

B. SH. TARUN KUMAR VYAS,
S/O LATE SH. SHIV CHARAN VYAS,

C. SH MANUJ KUMAR VYAS, W/O LATE SH. SHIV
CHARAN VYAS,

ALL 6(A) to 6(C) RESIDENT OF:-
11-A, KUDESIA ENCLAVE, BARELI, U.P.-243001
(Proceeded ex-parte vide order dated 28.11.2018)

D. SMT. SOMOTI DEVI, (DELETED AS DECEASED)
(THE DEFENDANT NO.5, ABOVE),
W/O LATE SH. RATAN DAS VYAS 82, SOUTH
ANARKALI EXTENSION, NEAR BALDEV PARK,
MANDIR, DELHI-110051.

7. SH. SUSHIL KUMAR VYAS,
S/O LATE SH. RATAN DAS VYAS, SINCE DIED,
THEREFORE THROUGH HIS LEGAL HEIRS:-

A. SMT. REKHA VYAS,
W/O LATE SH. SUSHIL KUMAR VYAS,

B. MS. SURUCHI VYAS,
D/O LATE SH. SUSHIL KUMAR VYAS,

C. SH. VASU VYAS,
S/O LATE SH. SUSHIL KUMAR VYAS,
BEING MINOR THROUGH HIS MOTHER
AS NATURALGUARDIAN BEING ALREADY
IMPLEADED AS DEFENDANT NO. 7(A),

<u>ALL 7(A) TO 7(C) RESIDENT OF :-</u>
489/6/3 MANGAL PANDAY NAGAR, MEERUT.

D. SMT. SOMOTI DEVI, (DELETED AS DECEASED)
(THE DEFENDANT NO.5, ABOVE),
W/O LATE SH. RATAN DAS VYAS,
82, SOUTH ANARKALI EXTENSION,
NEAR BALDEV PARK MANDIR, DELHI-110051.

8. SH. SUNIL KUMAR VYAS,
S/O LATE SH RATAN DAS VYAS, SINCE DECEASED,
THEREFORE THROUGH LEGAL HEIRS:-

A. SMT. SOMOTI DEVI, (DELETED AS DECEASED)
(THE DEFENDANT NO.5, ABOVE) W/O LATE SH.
RATAN DAS VYAS 82, SOUTH ANARKALI
EXTENSION, NEAR BALDEV PARK MANDIR, DELHI-110051.

...........Defendants

Date of Institution	: 01.03.2018
Date of final arguments	: 03.09.2024
Date of decision	: 04.09.2024
Final decision	: Preliminary Decree

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SUIT FOR PARTITION AND PERMANENT INJUNCTION.

JUDGMENT

1. This judgment will adjudicate the plaintiff's suit for partition and permanent injunction.

CASE OF THE PLAINTIFF AS PER PLAINT

Briefly, the essential facts required for a fair adjudication of the present suit, as presented in the plaint, are as follows:

2. The plaintiff, a senior citizen, has filed a suit for partition against his real brothers, sisters, and mother, who are also senior citizens, as well as the legal heirs of his deceased brothers. The parties are the surviving legal heirs of the late Shri Ratan Das Vyas, who passed away intestate on 29.08.2010. He left behind two immovable properties:

1. Property No. I: A built-up plot (No. 82) measuring 226.66 sq. yds., located in South Anarkali Extension, Near Baldev Park Mandir, Delhi-110051. The plot is bounded by a 15 ft. wide Gali on the North, a 30 ft. road on the South, a 25 ft. road on the East, and Plot No. 81 on the West. This property consists of a ground floor and part of the first floor, and is occupied by the plaintiff and Defendants No. 1, 4, 5, and 7,

in portions shown in the site plan. Specifically, the plaintiff occupies the portion marked in blue, Defendant No. 1 in orange, Defendant No. 4 in green, Defendant No. 5 in yellow, and Defendant No. 7 in pink. These portions are not of equal share, leading to frequent disputes and disturbances. Defendants No. 2, 3, and the legal heirs of Defendants No. 6 (Defendants No. 6A, 6B, and 6C) and No. 7 (Defendants No. 7A, 7B, and 7C) do not occupy any portion of this property.

2. Property No. II: A half share in an undivided vacant plot (No. 52) measuring 309.33 sq. yds., located in Devlok Colony, Shimla Bypass Road, Majara, Dehradun. This plot was jointly owned by the father and mother (Defendant No. 5), with each holding a half share as per the sale deed. The plot is bounded by a 9 mtr. wide road on the North and West, Plot No. 53 on the South, and Plot No. 51 on the East.

Upon the death of Shri Ratan Das Vyas, his nine Class-I legal heirs, including the plaintiff, each acquired a 1/9th share (11.11%) in both properties. However, one unmarried son, Shri Sunil Kumar Vyas, has since passed away, and his 1/9th share has been inherited by his class-I legal heir, Defendant No. 8(A). Furthermore, Defendant No. 5 (the mother) inherited 1/4th proportionate shares from her two other deceased sons, Defendants No. 6 and 7, in addition to her own 1/9th share, bringing her total share to approximately 27.7%. The legal heirs of Defendants No. 6 and 7 collectively inherit 8.33% (with each set inheriting 2.777%).

Due to unequal occupation of Property No. I and differing views among the parties, disputes and quarrels frequently arise, preventing peaceful coexistence. The plaintiff has made several attempts to reach an amicable partition, either by division of the properties by metes and bounds or by sale to a third party, but no agreement has been reached.

The plaintiff seeks the following reliefs:

a. Partition Decree: A decree of partition to grant him his 1/9th share (11.11%) in both properties.

b. Local Commissioner/Receiver: The appointment of a local commissioner/receiver to explore the possibility of partitioning the properties by metes and bounds according to each party's respective share.

c. Permanent Injunction (Third-Party Rights): A permanent injunction restraining the defendants from creating any third-party rights or interests in the suit properties.

d. Permanent Injunction (Possession): A permanent injunction restraining Defendants No. 1, 4, 5, and 7 from creating any hindrance or interruption in the plaintiff's

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exclusive possession of his portion marked in blue in Property No. I.

e. Other Reliefs: Any other relief the court deems fit and proper under the circumstances.

The suit is valued at less than Rs. 2.00 crores, and the requisite court fees have been paid, with an undertaking to pay any deficit court fees as directed by the court. The plaintiff also seeks to keep the status quo regarding the title of the properties and restrain the defendants from making any alterations or constructions that might complicate the matter further.

CASE OF THE DEFENDANT No. 1 to 5 AS PER WRITTEN STATEMENT:-

Briefly, the essential facts required for a fair adjudication of the present suit, as presented in the Written Statement, are as follows:

3. In their written statements, defendants No. 1 through 5 acknowledge the correctness of the plaint and express their entitlement to their respective shares as specified. They all agree to the partition of the properties, provided it is feasible by metes and bounds, or otherwise by the sale of the properties or alternative amicable arrangements. Defendant

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No. 1 requests that his current possession, which he has maintained for 30 years, be considered in the partition, emphasizing his desire for a fair distribution in line with his existing portion. Similarly, defendants No. 2 and No. 3 seek their proportionate shares in both property No. 1 and property No. 2, while also accepting alternative arrangements if a physical division is not possible. Defendant No. 4 also insists that the portion she occupies be accounted for in the division, alongside her other share. Defendant No. 5 notes a discrepancy in the site plan regarding the portion in her possession and provides an annexure to clarify her exclusive possession of an additional adjoining portion. All defendants agree that any further orders deemed fit by the Court should be made to ensure a fair resolution and maintain cordial relations among the family members.

CASE OF THE DEFENDANT No. 7(A),7(B) 7C AS PER WRITTEN STATEMENT:-

Briefly, the essential facts required for a fair adjudication of the present suit, as presented in the Written Statement, are as follows:

4. The written statement of defendants No. 7(A) and 7(B) challenges the plaintiff's claims on several grounds. They

find the pleadings in para 1 of the plaint vague and only partly admit them, noting the omission of the dates of deaths of defendants No. 6 to 8, which are crucial for the case. In para 2, while they admit that late Shri Ratan Das Vyas died intestate, they deny and do not admit the claims regarding the ownership of properties No. 1 and No. 2.

The defendants admit the pedigree and the deaths mentioned in para 3 but deny the rest, emphasizing that the dates of deaths of defendants No. 6 to 8 are relevant and have been concealed, as have the facts surrounding the death of defendant No. 6. In para 4, they deny the plaintiff's claims about the portions of property No. 1, clarifying that the northern ground floor portion was exclusively used and occupied by defendant No. 1, while the southern portion, including the first floor, was used jointly by defendants No. 4, 5, and 7(A-C), with one joint and exclusive kitchen. They assert that the plaintiff never lived in property No. 1 and has always resided separately, first at the IIT Campus and now in his own house in Mayur Vihar, without ever possessing any part of property No. 1.

In para 5, they partly admit the statement about possession not being in equal shares but deny and do not admit the rest. In para 6, they deny the plaintiff's claims about the shares of the parties, stating that the shares have been incorrectly mentioned. They deny the need for partition as alleged by the plaintiff in para 7 but do not deny the need for a peaceful partition. In para 8, they reject the plaintiff's claims about apprehension, calling it self-created and ornamental. They repeat their denial of the plaintiff's claims about partition in para 9, while not denying the need for peaceful partition.

The defendants deny and do not admit the plaintiff's assertions in para 10, describing them as vague, false, and ornamental, and deny that any meeting was called or held regarding partition. They claim in para 11 that the plaintiff's allegations are entirely false and artificial, asserting that there were no talks, meetings, or disputes about partition, and that the suit is without a valid cause of action and time-barred. In para 12, they argue that the suit is improperly valued, undervalued, and that the court fees paid are insufficient. They admit some parts of the plaintiff's claims in para 13 but deny the prayers sought in the plaint.

In the additional pleadings, the defendants describe late Shri R.D. Vyas as a disciplined man who maintained records and acquired property No. 1 from ancestral funds, acting as the KARTA of the Joint Hindu Undivided Family (HUF). After his death, the plaintiff was made the KARTA in a ritual

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turban ceremony and received all documents and assets. They allege that after the death of defendant No. 6, the plaintiff ordered a post-mortem, which caused bitter relations with defendants No. 6(A-C), leading to no further communication. They argue that the lack of current addresses for defendants No. 6(A-C) makes the suit unsustainable.

They also claim that the plaintiff failed to include the correct details of the children of late Shri Sushil Kumar Vyas in the plaint and argue that Ms. Shalu Vyas (defendant No. 7(B)) does not exist, necessitating a correction in the plaint. They assert that the suit against defendant No. 7(C) is not maintainable without a guardian ad litem and that the children are coparceners in the Joint Hindu Undivided Family property No. 1. They state that late Shri R.D. Vyas was the sole purchaser of property No. 2 in Dehradun and that the name of defendant No. 5 on the property was benami. They argue that the entire property should be considered in the partition suit, making the current suit a partial partition and thus not maintainable.

The defendants further dispute the shares mentioned in the plaint, asserting that the shares of defendants No. 7(A-C) in property No. 1 are 34/132 and argue that the plaintiff has concealed facts about other movable properties and accounts left by late Shri R.D. Vyas. They emphasize that the plaintiff and other defendants No. 2, 3, and 6 were only occasional visitors to property No. 1, living separately in their respective locations. They assert that the suit lacks a specific date of cause of action, is barred by the Limitation Act and Specific Relief Act, and is improperly valued for court fees and jurisdiction. They also allege that the plaintiff has concealed relevant facts, making the suit liable for dismissal with special costs.

In conclusion, the defendants pray for the suit to be dismissed with heavy costs, arguing that the plaintiff is not entitled to any relief as claimed in the plaint.

In the written statement of defendant No. 7(C), several additional details are provided that were not covered by defendants No. 7(A) and 7(B). Defendant No. 7(C) admits the intestate death of late Shri Ratan Das Vyas but disputes the ownership claims of properties No. 1 and No. 2, offering detailed insights into the usage of property No. 1: the northern ground floor was exclusively used by defendant No. 1, while the southern portion and first floor were jointly used by defendants No. 4, 5, and 7(A-C). It is asserted that the plaintiff never resided in property No. 1, having lived elsewhere, and lacked a ration card for that address. The statement also describes a dispute related to the post-mortem of defendant No. 6, which led to strained relations with other family members, and outlines the ceremonial appointment of the plaintiff as Karta of the Joint Hindu Undivided Family (HUF) after the death of late Shri R.D. Vyas. Defendant No. 7(C) argues that property No. 2 at Dehradun, entirely purchased by late Shri R.D. Vyas, should be included in the partition suit, and disputes the shares mentioned in the plaint. The statement also accuses the plaintiff of concealing facts about movable properties and financial details, notes that the plaintiff has additional residential properties, and provides specific legal grounds for the dismissal of the suit, including issues with limitation, court fee valuation, and concealment of relevant facts. The prayer requests dismissal of the suit with heavy costs, asserting that the claims are based on false and frivolous grounds and that the plaintiff is not entitled to any relief.

Replications:-

5. The plaintiff has filed the replications to the defendants 7A, 7B and 7C' written statements, wherein he refutes the assertions made by the defendants and reaffirms and reiterates the allegations and claims set forth in the original plaint

Issues:-

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6. Upon the completion of pleadings, the court on 01.10.2022 framed the following issues for trial:-

1. Whether the plaintiff is entitled for a decree of partition concerning the suit properties as prayed for? OPP

2. Whether the plaintiff is entitled for a decree of permanent injunction against the defendants restraining them not to create any third party right and interest in the suit properties? OPP

3. Whether the defendants prove that late Shri R. D. Vyas was the owner of all the suit properties? OPD7A, D7B and D7C.

4. Relief.

Plaintiff Evidence:-

7. To establish his case, the plaintiff, Mr. Anoop Lal Vyas, testified as PW-1 and submitted his evidentiary affidavit, Ex. PW1/A, during his examination-in-chief, in which he reiterated the contents of her plaint. He also relied upon the following documents:-

1 Ex. PW-I/I as the copy of death certificate of defendant No.5 (OSR).

2 Ex. PW-1/2 is the death certificate of his father Ratan Das Viyas. (Ex. PW. 1/2 is de-exhibited as the same is not on

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record but admitted by all the parties.)

3 Ex. PW-1/3 as the site plan of property No.1 ie. built up plot no. 82, measuring 226.66 sq. yds. South Anarkali Extn. Near Baldev Park Mandir, Delhi-51.

4 Ex. PW-1/4 as the site plan of property No.Il i.e. half of undivided vacant plot no. 52, measuring 309.33 sq.yds Devlok Colony, Shimla Bypass Road, Majara Dehradun,.

5 Ex. PW-1/5 as the photocopy of sale deed of property No.1 (OSR)

6 Ex. PW-1/6 as the photocopy of sale deed of property No. II(OSR)

PW-1 was cross-examined at length by Ld. Counsel for defendants no. 7A to 7C. He was also cross examined by Ld. Counsel for defendant no. 4.

Defendant Evidence:-

8. To support the case of Defendants 7A, 7B, and 7C, Defendant No. 7A testified as DW-1 and submitted her evidentiary affidavit, Ex. DW1/A, during her examination-in-chief, in which she reiterated the contents of her written statement.

DW-1 was cross-examined at length by Ld. Counsels for plaintiff and defendant no. 4.

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Arguments:

9. I have carefully heard the learned counsels for all the parties, thoroughly reviewed the case record, and considered the relevant legal provisions.

The learned counsel for the plaintiff presented arguments in line with the plaint, meticulously reading it line by line. In contrast, counsel for Defendants No. 7A, 7B, and 7C argued that the suit is not maintainable due to the plaintiff's failure to pay the ad-valorem court fee, as the plaintiff is not in possession of the suit property. He further contended that without possession, the plaintiff is not entitled to injunctive relief, and that a claim for partition requires possession. He further argued that the evidence, including the court's order on the application under Order 39, Rules 1 and 2 of the CPC and the plaintiff's cross-examination on March 29, 2023, confirms that the plaintiff has not been in possession of any part of the property. He further argued that the plaintiff admitted to residing in Mayur Vihar since December 2014, and previously at IIT Campus, Delhi.

Furthermore, counsel for Defendants No. 7A, 7B, and 7C argued that the suit for partition of only part of the Dehradun property is not maintainable, as the plaintiff failed to include the other half of the property. He claimed that the mother was not the owner of this half since the father paid the full consideration, as evidenced by bank transactions referenced in the sale deed. He further argued that the plaintiff also admitted that the mother had no bank account. He further argued that even if the other half of the Dehradun property were considered the mother's, Defendants No. 7A to 7C would still be entitled to a 1/7th share, as the plaintiff acknowledged that the mother died intestate. He further stated that the Gift Deed alleged by Defendant No. 4 was neither considered nor proven in this case. Counsel supported their argument by citing the Madras High Court judgment in **V. Ganesan Vs. Ramchandran**.

In response, the learned counsel for the plaintiff cited the Supreme Court decision in **Bhud Ram & Ors. Vs. Bansi & Ors.**, particularly paragraph 20, and referred to paragraphs 8 and 9 of the Delhi High Court judgment in **Sanjeev Kaushal Vs. Rajeev Kaushal & Ors**.

Counsel for Defendant No. 1 argued that when the present suit was filed, nine legal heirs of the deceased Shri R.D. Vyas were alive. However, during the proceedings, two defendants—Defendant No. 5 (Somti Devi) and Defendant No. 8 (Sunil Kumar Vyas)—passed away, which would

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adjust Defendant No. 1's share in both suit properties to 1/7th each. Counsel also pointed out that the plaintiff lived separately throughout his service and was never in physical possession of the suit properties. Defendant No. 1 asserted that Suit Property No. 2 was a benami transaction, fully paid for by Shri R.D. Vyas, indicating that Defendant No. 5 was never the true owner. It is further argued that the Defendant No. 5 executed a gift deed transferring half of Suit Property No. 2 to Defendant No. 4 on October 8, 2013, without notifying other legal heirs or obtaining their consent, allegedly in collusion with the plaintiff and Defendant No. 4. He requested the Court to consider these facts, arguing that the non-inclusion of the entire portion of Suit Property No. 2 in the partition suit affects Defendant No. 1's rightful share. It was also argued that the plaintiff might have concealed funds left by the deceased, which the plaintiff controlled, including after the death of Defendant No. 5.

The learned counsel for Defendant No. 4 contended that the mother's other half share cannot be included in the present partition suit, as no pleadings have been amended nor issues re-framed to address this. He asserted that Defendant No. 4 owns that share by virtue of a gift deed executed by the mother. Counsel referred to an order dated April 20, 2022, and noted that a copy of the gift deed was filed as directed.

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Additionally, he highlighted that DW-1 admitted during cross-examination to being entitled to a 1/7 share of the Delhi property and a 1/7 share of the Dehradun property.

Analysis and Issue-wise Findings.

10. All the issues are interconnected and intertwined; therefore, they are addressed collectively.

The plaintiff claimed that the built-up property at Plot No. 82, South Anarkali Extension, Near Baldev Park Mandir, Delhi-110051, and half of the vacant Plot No. 52, Devlok Colony, Shimla Bypass Road, Majara, Dehradun, were owned by his late father, Sh. Ratan Das Vyas. According to the plaintiff, these properties were the self-acquired assets of his deceased father.

All the defendants, except Defendant Nos. 7A, 7B, and 7C, admitted the plaintiff's claim. Defendant No. 1 supported the plaintiff's case during the pleadings and trial; however, during arguments, he contended that the entire plot in Dehradun should be partitioned.

On the other hand, Defendant Nos. 7A, 7B, and 7C (the contesting defendants) stated that both properties are part of the Hindu Undivided Family (HUF)/Joint Family Property.

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They further asserted that the other half of the vacant Plot No. 52 in Dehradun, which is registered in the name of their mother, Smt. Somoti Devi, was actually purchased by Sh. Ratan Das Vyas in her name. According to them, the consideration for the entire Dehradun property was paid by Sh. Ratan Das Vyas, and therefore, this portion should also be included in the partition suit.

Property at Delhi:-

The plaintiff stated, and all the defendants except Defendant Nos. 7A, 7B, and 7C admitted that the property in Delhi was purchased by Ratan Lal Vyas through a sale deed dated 20.12.1969. According to them, this property was self-acquired.

Conversely, Defendant Nos. 7A, 7B, and 7C (the contesting defendants) argue that both the Delhi and Dehradun properties were purchased using funds from the Hindu Undivided Family (HUF)/Joint Family Property.

At this juncture, it is pertinent to refer to the decision of the Apex Court in the case of **Bhagwat Sharan vs. Purushottam** (Civil Appeal No. 6875/2008), decided on 03.04.2020, wherein the Apex Court observed:

"10. At the outset we may note that a lot of arguments were addressed and judgments were cited on the attributes of HUF and the manner in which it can be constituted. In view of the facts narrated above, in our view, a large number of these arguments and citations need not be considered. The law is well settled that the burden is on the person who alleges that the property is a joint property of an HUF to prove the same. Reference in this behalf may be made to the judgments of this Court in **Bhagwan Dayal vs. Reoti Devi1**. Both the parties have placed reliance on the this judgment. In this case this Court held that the general principle is that a Hindu family is presumed to be joint unless the contrary 1 AIR 1962 SC 287 is proved. It was further held that where one of the coparceners separated himself from other members of the joint family there was no presumption that the rest of coparceners continued to constitute a joint family. However, it was also held that at the same time there is no presumption that because one member of the family has separated, the rest of the family is no longer a joint family. However, it is important to note that this Court in **Bhagwati Prasad Sah and Ors. vs. Dulhin Rameshwari Kuer and Ors.2**, it held as follows:-

> "…. Except in the case of reunion, the mere fact that separated coparceners chose to live together or act jointly for purposes of business or trade or in their dealings with properties, would not give them the status of coparceners under the Mitakshara law." The Privy Council in Appalaswami v. Suryanarayanamurti3 held as follows:
>
> "The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the

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party alleging self-acquisition to establish affirmatively.

2 (1951) 2 SCR 603 I.L.R. 1948 Mad.440 that the property was acquired without the aid of the joint family property" The aforesaid view was accepted by this Court in Shrinivas Krishnarao Kango v. Narayan Devji Kango and Ors.4 In D.S. Lakshmaiah and Ors. v. L. Balasubramanyam and Ors.5 this Court held as follows:

> "The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available." Similar view was taken in Mst Rukhmabai v. Lala Laxminarayan and Others.6 and Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade7. The law is thus well settled that the burden lies upon the person who alleges the existence of the Hindu Undivided Family to prove the same.
>
> 11. Normally, an HUF can only comprise of all the family members with the head of the family being karta. Some property (1955) 1 SCR 1 (2003) 10 SCC 310 (1960) 2 SCR 253 (2007) 1 SCC 521 has to be the nucleus for this joint family. There is cleavage of opinion as to whether two brothers of a larger group can form a joint family. But assuming that such a joint family could have been formed by Madhav Prashad and Umrao Lal the burden lies heavily on the plaintiff to

> prove that the two of them joined together to form an HUF. To prove this, they will have to not only show jointness of the property but also jointness of family and jointness of living together."

Upon review, it is evident that the burden of proof lies with the party asserting that the property is Joint Family Property. This means that the onus of establishing this claim rests on the contesting defendants. In the present case, no evidence of a nucleus has been provided to support this claim.

The contesting defendants have made general statements in their written submissions, asserting that the late Sh. Budh Das, father of Ratan Das Vyas, who passed away in 1953, owned agricultural land, a grove, a residential house, and other assets in the village of Jalalpur. However, these assertions lack specific details and are overly broad. No precise descriptions, such as the location, identification, area, or property numbers, have been provided. Moreover, no evidence has been presented to substantiate these claims. As a result, no inference can be drawn regarding the existence of joint family property based on these vague assertions.

The contesting defendants further claimed that Ratan Das Vyas maintained diaries detailing salaries, pensions, monthly expenses, ceremonial costs, and properties. They argued that Property No. 1 in Delhi was acquired using ancestral funds. They also asserted that the plaintiff, as the eldest son, was appointed as the 'Karta' during the turban ceremony. Additionally, they stated that all registers, diaries, bank passbooks, documents, deeds, and bank papers were handed over to the plaintiff by the late Sh. R. D. Vyas.

However, the contesting defendants have provided no evidence to substantiate these claims. No specific details have been offered, and there is insufficient proof to infer that the property in Delhi was purchased from Joint Family Property.

It is evident that the property in Delhi was purchased through a sale deed dated 20.12.1967. There is nothing in the sale deed (Ex. PW1/6) that indicates the property was acquired using Joint Hindu Family funds.

The contesting defendants have failed to establish that the Delhi property qualifies as Joint Hindu Family Property.

Even if the property in Delhi were to be considered Joint Family Property, it would not significantly impact the relief sought for partition. The distribution of shares among the parties would remain largely unchanged, as the 2005

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amendment to the Hindu Succession Act grants daughters equal rights as coparceners. The Hon'ble Apex Court, in the case of **Vineeta Sharma vs. Rakesh Sharma**, clarified that daughters are entitled to equal shares alongside sons, regardless of whether the coparcener's father was alive in 2005. Consequently, daughters are entitled to their share from birth.

During arguments, the learned counsel for Defendant Nos. 7A, 7B, and 7C contended that the properties in question could be considered self-acquired.

<u>Property at Dehradun:-</u>

The contesting defendants argued that the plaintiff had only sought partition of half of the Dehradun property. They asserted that the entire consideration for the property was paid by Ratan Das Vyas using Joint Family funds. According to them, Ms. Somoti Devi was not the true owner of the other half of the property, which they claim was held as a benami property.

Regarding the issue of Joint Family Property, it has been discussed above that the contesting defendants were required to prove the existence of a nucleus and Joint Family Property/Funds. However, they have failed to meet this burden.

The entire Dehradun property was acquired through a sale deed dated 28.06.1996, signed by Ratan Das Vyas and Somoti Devi. The sale deed indicates that the consideration was paid by the purchasers. It is not clarified whether the entire consideration was paid solely by Sh. Ratan Das Vyas. Even if it is presumed that Sh. Ratan Das Vyas paid the full amount, it does not necessarily negate Somoti Devi's ownership of half of the property.

At this point, it is pertinent to refer to the decision of the Hon'ble Delhi High Court in **Leena Mehta vs. Vijay Mayne & Ors.** (09.11.2009), where the court observed:

> "7. An argument has been raised that the Benami Transactions (Prohibition) Act would not cover this property and the plea raised by the defendant no.4 that the suit was barred under the Benami Transactions (Prohibition) Act was not tenable. It is submitted that the Benami Transactions (Prohibition) Act carves out an exception under Section 3(2)(a) where it is provided as under:
>
> > 3. Prohibition of benami transactions- (1) No person shall enter into any benami transaction.
>
> (2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

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8. It is argued by the plaintiff that purchase of the property in the name of wife benami was permitted and the provisions of the Benami Transactions (Prohibition) Act would not be applicable.

9. A perusal of Section 3(2) of the Act would show that the law presumes that if the property is purchased in the name of wife or unmarried daughter, the property has been purchased for benefit of the wife and unmarried daughter. It only means that if a property is purchased in the name of wife it is for her benefit and she becomes the absolute owner of the property. It does not mean that the property would still remain a benami property of the husband and every other legal heir of the husband would have a share in the property. Section 14 of the Hindu Succession Act, 1956 makes it further abundantly clear that if any property is possessed by a female Hindu whether it is acquired before or after the commencement of Act it shall be held by her as full owner and not as a limited owner unless and until the instrument by which the property has been acquired prescribes a restriction on her ownership of such property. In the present case, the conveyance deed executed by DDA was in the name of defendant no.1, there was no restriction placed in the conveyance deed about the right of ownership of defendant no.1. Defendant no.1 was absolute owner of the property in terms of the title deed in her favour. The property cannot be considered to be either of her husband or of anyone else after 31 years of execution of the title deed in her favour."

The aforementioned ruling has been reaffirmed and endorsed in the case of **Shri Charanjeet Singh vs. Sh. Harvinder Singh** (2023: DHC: 4549).

The contesting defendants have not presented any evidence to demonstrate that the property purchased in the name of Somoti Devi was not intended for her benefit.

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The learned counsel for the Contesting defendants and defendant no.1 argued that even if the other half of the property in Dehradun is considered to belong to the mother, the contesting defendants are still entitled to a 1/7 share of that portion. Therefore, it should be included in the partition along with the other half of the Dehradun property and the property in Delhi.

The contention raised by the contesting defendants lacks merit. The current suit is specifically filed for the partition of the father's properties in Delhi and half of Plot No. 52 at Dehradun. The mother was one of the defendants in the suit, and the pleading by contesting Defendants 7A, 7B, and 7C was that the entire Dehradun property belonged to the father and should be partitioned. Issue No. 3 was framed to address this claim, placing the burden of proof on Defendants 7A, 7B, and 7C.

During the pendency of the suit, the mother passed away on 27.01.2021. Now, Defendants 7A, 7B, and 7C argue that even if the other half of the Dehradun property is considered to be owned by the mother, they are still entitled to a 1/7 share of that portion. However, Issue No. 3 determined that the contesting defendants failed to prove that all the properties were owned solely by Shri Ratan Das Vyas, and it

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was established that the mother owned a half share of the Dehradun property. No amendment of pleadings or re-framing of issues has occurred to accommodate this new claim. The suit was filed exclusively for the father's properties, and it is unclear whether any additional property was inherited from the mother. Additionally, Defendant No. 4 has claimed that the mother executed a gift deed for the other half of the Dehradun property in her favor. However, the court will not address the validity of this gift deed as it was not part of the issues presented in the current case. Consequently, no trial regarding the mother's property has taken place.

In light of the above, the bare argument and oral request by Defendants 7A, 7B, and 7C and defendant no.1 for a 1/7 share of the whole Dehradun property cannot be entertained. Given the facts and circumstances of the present case, there is no merit to the argument by the contesting defendants that the other half of the Dehradun property should also be included in the partition.

It is clarified that Ms. Somoti Devi's share in the Delhi property and half of the Dehradun property (owned by Sh. R. D. Vyas), which she inherited from her husband and three sons either before or during the pendency of the suit, shall

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remain part of the partition proceedings in the suit, as these properties are the subject matter of the litigation.

Court Fee:-

The learned counsel for Defendants 7A, 7B, and 7C argues that the plaintiff's suit is not maintainable because the plaintiff has not paid the ad-valorem court fee and is not in possession of the suit property. It is pertinent to reference the decision of the Hon'ble Delhi High Court in **Smt. Poonam Bhanot vs. Virender Sharma & Ors.** {CS (OS) 587/2017} dated 15.01.2019, wherein the court observed:

> "7. It is a general principle of law that in case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. Reference in this context may be had to the judgement of the Supreme Court in the case of Neelavathi & Ors. v. N. Natarajan & Ors., AIR 1980 SC 691 wherein it was held as follows:-
>
> "8. Section 37 of the Tamil Nadu Court Fees and Suit Valuation Act relates to Partition Suits. Section 37 provides as follows:
>
>> 37(1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.
>>
>> 37(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common by a plaintiff who is in joint possession of such

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property, fee shall be paid at the rates prescribed.

It will be seen that the court fee is payable under Section 37(1) if the plaintiff is 'excluded from possession of the property. The plaintiffs who are sisters of the defendants, claimed to be members of the Joint Family, and prayed for partition alleging that they are in joint possession. Under the proviso to Section 6 of the Hindu Succession Act, 1956 (Act 30 of 1956) the plaintiffs being the daughters of the male Hindu who died after the commencement of the Act, having at the time of the death an interest in the Mitakshara coparcenary property, acquired an interest by devolution under the Act. It is not in dispute that the plaintiffs are entitled to a share. The property to which the plaintiffs are entitled is undivided, joint family property, though not in the strict sense of the term. The general principle of law is that in the case of co- owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court fee under Section 37(1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been "excluded" from joint possession to which they are entitled in law. The averments in

> the plaint that the plaintiff could not remain in joint possession as he was not given any income from the joint family property would not amount to his exclusion from possession. We are unable to read into the plaint a clear and specific admission that the plaintiff had been excluded from possession"

8. Similarly, the Division Bench of this court in Saroj Salkan v. Sanjeev Singh & Ors., 155 (2008) DLT 300 (DB) held as follows:

> "13. It is settled law that in a suit for partition, the court fees to be paid if joint possession is pleaded by the plaintiff on the basis that he is the co-owner of the property sought to be partitioned, fixed court fees would be payable under Article 17(vi) of Schedule II of the Court Fees Act presuming the joint possession of the plaintiff even if the plaintiff is not in actual possession. It is because of the reason that in the case of co-owners, the possession of one in in law possession of all, unless from the averments in the plaint read as a whole, a clear case of ouster is made and in that situation the plaintiff is liable to pay ad-valorem court fees on the market value of this share as provided under Section 7(iv) (b) of the Court Fees Act notwithstanding the fact that it is also pleaded that the plaintiff was in constructive possession."

9. Learned counsel for the applicant also relies upon judgment of this court in Suresh Kapoor vs. Shashi Krishan Lal Khaona, (supra) which was a case where the court had culled out the legal proposition as follows:-

> "11. Relying on Sathappa Chettiar and Neelavathi, a learned Single Judge of this Court in Sushma Tiehlan Dalal v. Shivraj Singh Tehlan, 2011 (123) DRJ 91, culled out the following proposition of law:-

> "11. The following legal proposition of law emerges from the above-referred decisions:
>
> (i) In order to ascertain whether the suit has been property valued for the purpose of Court fee or not, only the averments made in the plaint have to be seen, without reference to the plea taken by the Defendants;
>
> (ii) If the plaintiff claims to be in joint possession of the suit property, he has to pay a fixed Court fee in terms of Article 17(vi) of Court-fees Act.
>
> (iii) If the averments made in the plaint show that the plaintiff has been completely ousted from possession and is not in possession of any part of the suit property, he is required to claim possession and also pay ad valorem Court fee on the market value of his share in the suit property."

There are no allegations of ouster of the plaintiff from the suit property. Therefore, the plaintiff is not required to pay the ad valorem court fee.

Possession:

The defendant's counsel argues that the plaintiff, being out of possession of the suit property, is therefore not entitled to seek an injunction. They further contend that since the plaintiff has not claimed possession, they are disqualified from seeking relief for partition, which they argue cannot be claimed without asserting possession.

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However, in a partition suit, the primary focus is on dividing joint property among co-owners, rather than on possession. The plaintiff may still have a legal right to a share of the property even if they are not currently in possession. Therefore, lack of possession alone may not necessarily preclude the plaintiff from seeking an injunction if they can establish their co-ownership or entitlement to the property.

The court must assess whether an injunction is needed to protect the plaintiff's rights during the partition proceedings. The counsel's argument may oversimplify the issue by equating lack of possession with lack of rights in a partition suit. While possession is relevant, it is not always decisive in cases involving legal ownership rights. The court will likely examine the merits of the plaintiff's claim to co-ownership, irrespective of their current possession status. If the plaintiff can demonstrate a valid claim to co-ownership, he may still be entitled to seek partition and potentially an injunction to safeguard their interests during the proceedings. This argument may be more pertinent to a simple injunction suit rather than a partition suit, which involves different legal considerations.

Relief:-

11 **(A).** **<u>Determination of Shares for the Preliminary Decree:-</u>**

R. D. Vyas passed away on August 29, 2010, leaving behind the following legal heirs:

1. Anoop Vyas (Son)
2. Raj Kumar Vyas (Son)
3. Smt. Chander Lekha (Daughter)
4. Ms. Manju Singh (Daughter)
5. Ms. Laxmi Vyas (Daughter)
6. Smt. Somoti Devi (Widow)
7. Sh. Shiv Charan Vyas (Son)
8. Sushil Kumar Vyas (Son)
9. Sunil Kumar Vyas (Son)

Succession Process:

1. Upon R. D. Vyas's death on 29.08.2010:
    - The property passed to all children and the widow in equal shares, as per sections 8, 9, and 10 of the Hindu Succession Act, 1956.
    - Each heir received a 1/9 share of the property.

2. After Shiv Charan Vyas's death on 12.04.2011:
    - His 1/9 share passed to his widow, mother (Somoti Devi), and two sons in equal parts.
    - Each received 1/36 of the total estate.

3. After Sunil Kumar Vyas's death on 04.07.2012:
    - His 1/9 share passed to his mother, Somoti Devi.
4. After Sushil Kumar Vyas's death on 12.11.2016:

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- His 1/9 share passed to his widow, mother (Somoti Devi), son, and daughter in equal parts.
- Each received 1/36 of the total estate.

5. After Somoti Devi's death (17.02.2021):
    - Her share, which had grown due to inheritances from her husband and sons, totaled 5/18 of the estate.
    - This 5/18 share then passed to all surviving children and grandchildren of predeceased sons, as per sections 15 and 16 of the Hindu Succession Act, 1956.

The 5/18 share left by Somoti Devi was distributed into 7 parts:

- 5 parts for the 5 surviving children.
- 1 part for Shiv Charan's sons.
- 1 part for Sushil Kumar's son and daughter.

Each of these 7 parts received 1/7 of 5/18, which equals 5/126 of the total estate.

Preliminary Decree:-

A preliminary decree of partition is passed in favour of the surviving members for property at Delhi (A built-up plot bearing no. 82, located in South Anarkali Extension, Near Baldev Park Mandir, Delhi-110051) and for half of property at Dehradun (an undivided vacant plot bearing no. 52, located in Devlok Colony, Shimla Bypass Road, Majara, Dehradun) with their final shares as follows:

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1. Anoop Vyas (Son of R. D. Vyas): 19/126
2. Raj Kumar Vyas (Son of R. D. Vyas): 19/126
3. Smt. Chander Lekha (Daughter of R. D. Vyas): 19/126
4. Ms. Manju Singh (Daughter of R. D. Vyas): 19/126
5. Ms. Laxmi Vyas (Daughter of R. D. Vyas): 19/126
6. Widow of Shiv Charan Vyas (Daughter-in-law of R. D. Vyas): 1/36
7. First Son of Shiv Charan Vyas (Grandson of R. D. Vyas): 6/126
8. Second Son of Shiv Charan Vyas (Grandson of R. D. Vyas): 6/126
9. Widow of Sushil Kumar Vyas (Daughter-in-law of R. D. Vyas): 1/36
10. Son of Sushil Kumar Vyas (Grandson of R. D. Vyas): 6/126
11. Daughter of Sushil Kumar Vyas (Granddaughter of R. D. Vyas): 6/126

Injunction:-

All parties involved in the present case are hereby restrained and prohibited from transferring, selling, mortgaging, leasing, or otherwise disposing of or encumbering the subject property in any way, shape, or form. This order shall remain in full force and effect until the legal proceedings in the current case have reached their final conclusion.

12. Preliminary Decree Sheet be prepared accordingly.

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13. Parties are also directed to suggest ways and means by which suit property could be partitioned by metes and bounds as per share specified in the preliminary decree.

14. Put up further proceedings on **03.10.2024.**

Pronounced in the open court on 04.09.2024

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(Vikas Garg)
District Judge-05 /EAST)
KKD, Delhi/04.09.02024