In the court of Barinder Singh Ramana,
Additional District Judge, Ludhiana
(UID No. PB-0161)

Civil Misc appeal no.438/2024
CNR no.PBLD010274162024
Date of decision: 17.07.2026

Dinesh Karwa aged 58 years S/o Hans Ram Karwa, R/o House no. 173-I, Sarabha Nagar, Ludhiana.

....Defendant no. 1/appellant

Versus

1. Lalit Karwa S/o Late Hans Ram Karwa

2. Krishna Karwa W/o Late Hans Ram Karwa,
both residents of 173-I, Sarabha Nagar, Ludhiana, at present R/o 10-Victoria Enclave, Near South City, Ludhiana.

3. Mamta Goel W/o Manoj Goel, R/o W-10/43, Sainik Farm, New Delhi.

…….Plaintiffs/respondents

4. Varinder Karwa S/o Faqir Chand Karwa

5. Saroj Karwa W/o Varinder Karwa

6. Bharat Karwa S/o Varinder Karwa
all residents of 173-I, Sarabha Nagar, Ludhiana.

…….Defendants no. 2 to 4/respondents

Appeal against the order dated 18.10.2024 passed by the Court of Ms. Preeti Sukhija, learned Civil Judge (Senior Division) Ludhiana, vide which the application filed by the plaintiffs U/o 39 Rule 1 & 2 CPC was disposed off with the directions to maintain status-quo regarding the suit properties.

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Claim in Appeal

1. To set aside the impugned order dated 18.10.2024 and dismiss the application U/o 39 Rule 1 & 2 CPC.

Present:- Shri Stevon Soni, Advocate, counsel for the appellant.
Shri A.C. Gupta, Advocate, Counsel for the respondents no. 1 & 2.
Shri J.K. Kapila, Advocate, Counsel for the respondents no. 4 to 6.
Respondent no. 3 exparte.

ORDER

This order of mine shall dispose off a civil miscellaneous appeal filed by defendant no. 1/appellant Dinesh Karwa against the order dated 18.10.2024 passed by the Court of Ms. Preeti Sukhija, learned Civil Judge (Senior Division) Ludhiana, vide which the Ld. Trial Court has disposed off the application Order 39 Rule 1 & 2 CPC filed by the plaintiffs with direction to maintain status quo regarding the suit properties as detailed in the head note of the plaint till the final disposal of the suit and it will amount to irreparable loss and multiplicity of proceedings, if properties are sold during the pendency of the suit by the defendants and further in a suit for partition of immovable properties, normal practice is to preserve the properties as it is, so that at the time of final decision of the suit it may not result in complications.

2. The plaintiffs/respondents Lalit Karwa, Krishna Karwa and Mamta Goel had filed an application under Order 39 Rules 1 & 2 CPC for issuance of ad-interim injunction restraining the defendants/respondents from alienating, mortgaging, changing the nature or creating charge upon the suit properties, as detailed in the head note of plaint, in any manner till the partition of the suit properties by metes and bounds and further for restraining the defendants from interfering in the business and possession

of plaintiffs in the suit property bearing no.B-II-1761, Nigar Mandi, Ludhiana as detailed in the headnote of plaint, till the final disposal of the suit.

3. Brief facts are that the plaintiffs/respondents had filed an application U/o 39 Rule 1 & 2 CPC by submitting that Hans Ram Karwa was father of the plaintiff no.1 and 3, defendant no.1 and husband of plaintiff no.2, who constituted HUF under the name Hans Ram Karwa HUF in 1960. Hans Ram alongwith plaintiffs and defendant no.1 were the members of the said HUF and Hans Ram was the Karta of the said HUF. The entire family was joint in mess, residence, worship and business. The said HUF had invested various amounts in shares, dividends etc. Hans Ram Karwa HUF through its Karta Hans Ram Karwa was partner in the firm M/s Seth Faqir Chand & Sons to the extent of 50%. Later on plaintiff no.1 Lalit Karwa was inducted as a partner in the said firm vide partnership deed dated 01.04.1978 to the extent of 20% share. There was corpus of the said HUF. The said Hans Ram Karwa HUF purchased various properties in the name of its members/coparceners and the said properties were put in the common hotchpotch of Hans Ram Karwa HUF. The suit properties i.e. property bearing no.B-II-1761, measuring 76.68 sq. yards out of property measuring 153-1/9 sq. yards, situated at Nigar Mandi, Ludhiana was purchased vide sale deed bearing wasika no.553 dated 25/04/1979 and property bearing no.B-II-1555, measuring 1174 sq. yards out of total area measuring 2344 sq. yards, situated at Kucha Seth Sant Das, Ghanta Ghar, Ludhiana was purchased wasika no. vide sale

deed bearing 3822 dated 5/1/1979 by Hans Ram Karwa HUF in the name of defendant no.1, who was minor at that time, as the date of birth of defendant no.1 is 10/12/1967. The defendant no.1 did not have independent source of income. The properties were being purchased in the individual names of the members of Hans Ram Karwa HUF and these properties were held for the benefit of the HUF and its members/coparceners. The remaining half share in the property situated at Kucha Seth Sant Das, Ludhiana is in the name of defendant no.3 Saroj Karwa and half share in the property situated at Nigar Mandi, Ludhiana is in the name of Bharat Kumar Karwa. The property bearing no.173-1, Sarabha Nagar, Ludhiana measuring 797.50 sq. yards was purchased vide sale deed bearing wasika no.5199 dated 26/06/1961 with the funds of Hans Ram Karwa HUF in the name of Hans Ram Karwa to the extent of 1/2 share and the remaining half share is the name of defendant no.2 Varinder Karwa. Similarly, the property bearing no.MC-318, situated at Gujjar Mal Street, Near Arya Samaj Adda Hoshiarpur, Jalandhar was also purchased with the funds of HUF in the name of Hans Ram Karwa to the extent of 1/2 share and the remaining 1/2 share was purchased by Varinder Kumar Karwa defendant no.2. All these properties were treated as the properties of Hans Ram Karwa HUF for all intents and purposes and are the collective ownership of the plaintiffs and defendant no.1 and for the benefit of its members. There were three partners in the firm M/s Seth Faqir Chand & Sons w.e.f. 01.04.1978 when plaintiff no.1 was inducted as a partner in the said firm to the extent of 20% share alongwith continuing partners Sh. Han Ram Karwa being Karta of Hans Ram Karwa HUF and Sh. Varinder Kumar Karwa defendant no.2. There is one property bearing no.B-II-244 (old) & B-IV-561(New), measuring 48 sq. yards, situated at Bazaar Kharadian, Ludhiana, which was purchased by the firm M/s Seth Faqir Chand & Sons vide registered sale deed dated 5/10/1978 bearing wasika no. 2651. The said firm stood dissolved after the death of Sh. Hans Ram Karwa, as per section 42 of Indian Partnership Act. The separate proceedings for winding up of the firm are required to be initiated. The value of the said property is to be assessed and the final distribution is to be made as per the shares described in the partnership deed dated 01/04/1978 i.e. 40% to the members of Hans Ram Karwa HUF, 40% to defendant no.2 and 20% to the plaintiff no.1. The said partnership deed was carrying on business under the name and style of M/s Seth Faqir Chand & Sons and M/s Royal Furniture Mart. Sh. Hans Ram died on 05.05.1998. He was survived by the plaintiffs and defendant no.1. After the death of Hans Ram Karwa, the plaintiff became Karta of Hans Ram Karwa HUF being eldest male member of the family. The plaintiff no.1 continued to discharge his duty being Karta of said HUF and is filing the income tax returns of Hans Ram Karwa HUF till date. The plaintiffs and defendants alongwith their families have been putting up their residence in the property bearing no.173-1, Sarabha Nagar, Ludhiana from the very beginning until the year 2016. The plaintiffs shifted to house no.10, Victoria Enclave, Near South City, Ludhiana in the year 2016. The plaintiffs are in possession of the two rooms on the ground floor of the house no.173-I, which is under their lock and key. The remaining portions lobby, porch are the common portion. On the first floor and the second floor of the house no.173-I, the family of defendant no.2 to 4 are residing. All the properties are jointly owned and jointly possessed by the parties. The plaintiffs alongwith defendant no.1 have 1/4th share in the suit properties of Hans Ram Karwa HUF. The plaintiff Lalit Karwa and his sons are doing business in property no. B-II-1761, Nigar Mandi, Ludhiana in the basement and the ground floor of the said property, where they are running their company Karwa Consolidated Marketing Limited for the last many decades. The defendant no.1 is doing business on the first floor of this property. The defendant no.1 alongwith defendant no.2 is in process of alienating the abovesaid suit properties of Hans Ram Karwa HUF situated at Nigar Mandi, Ludhiana and at Kucha Seth Sant Das, Ghanta Ghar, Ludhiana by taking undue advantage of the fact that the sale deeds are in name of defendant no.1 to which defendants have no right until and unless the same are partitioned by metes and bounds as the plaintiffs have 3/4th share in all the properties. But the defendants have refused to admit the share of the plaintiffs in the said HUF properties. The property bearing municipal no. B- VII-1097/5, Built on plot no.8, situated at Vikas Nagar, Ludhiana is in the name of the plaintiff no.2 Krishna Karwa and plaintiff no.1 Lalit Karwa to the extent of 1/3rd share each as per the sale deed dated 6/11/1979. In the said property, the defendant no.3 Saroj Karwa is having 1/3rd share purchased by her vide separate sale deed. The said property is liable to be partitioned by metes and bounds between the plaintiff no.1 and 2 and defendnat no.3. The other defendants no.1,2 and 4 have no concern or connection with the said property. The defendants threatened to alienate and to create third party interest in the suit properties without partition, and in case, the defendants succeed in their illegal designs, then the plaintiffs shall suffer irreparable loss and injury. The plaintiffs have strong prima facie case and the balance of convenience also lies in favour of the plaintiffs. Hence, the present application was filed.

4. By filing reply to the said application, defendant no. 1 through his counsel has contested the application and submitted that the present suit as well as application is not maintainable as the suit properties are not the Hindu Undivided Family Properties. The suit properties except the property no.1097 are self acquired properties of defendant no.1. With regard to the property bearing no. B-II-1761, measuring 76.68 sq. yards, out of property measuring 153-1/9 sq.yards, situate at Nigar Mandi, Ludhiana, on 01.04.1979, an unsecured load amount of Rs.1,06,305.77 of defendant no.1 Dinesh Karwa was with M/s Seth Faqir Chand Karwa and Sons and interest used to accrue on this loan amount being its creditor, which was also shown as credit amount of defendant no.1 in the account books of M/s Seth Faqir Chand Karwa and Sons. Abovesaid property was purchased with the funds of defendant no.1, which were withdrawn from the account of defendant no.1 standing in the books of M/s Seth Faqir Chand Karwa and Sons. The defendant no.1 Dinesh Karwa had also withdrawn an amount of Rs.1500/- on 20.04.1979 for the purchase of

stamp paper and Rs.12,500/- vide draft no.731194, PNB, dated 21.04.1979 for payment of sale price of this property to the seller Bhandari Brothers, Ludhiana. In this way, the defendant no.1 purchased area measuring 76.68 sq. yards being share of this property no. B-II-1761. The sale deed of this property measuring 76.68 sq. yards was duly executed by the sellers on 21.04.1979 in the name of defendant no.1. The remaining share of this property was purchased by Sh. Bharat Karwa son of Sh.Virender Kumar Karwa under the same sale deed dated 21.04.1979. The amount of sale price spent by defendant no.1 on this property was his personal amount, which was also disclosed before the Income Tax Authorities as his personal amount, which is clear from the copy of order dated 11.10.1979 passed by the Department of Income Tax, Ludhiana. So it is self acquired property of defendant no.1. It is further submitted that on 01.04.1978, an unsecured loan amount of Rs.1,56,304.35 of defendant no.1 Dinesh Karwa was with M/s Seth Faqir Chand Karwa and Sons as his loan amount, on which, the said firm used to give interest amount to defendant no.1, being its creditor, which was also duly incorporated in the account books of the said firm and it was the personal/individual amount of defendant no.1. In order to purchase property no.B-II-1555 measuring 117-1/4 sq. yards out of total area measuring 234-1/2 sq yards situated in Kucha Seth Sant Dass, Ghanta Ghar, Ludhiana, the defendant no.1 Dinesh Karwa had withdrawn an amount of Rs.6,000/- on 03.01.1979 for the purchase of stamp paper. Rs.55,000/- was withdrawn vide draft no.364930 for the stamp and sale consideration towards the purchase of the ½ share of the property by Dinesh Karwa from Krishan Kumar Saggar. Rs.606.25 was also withdrawn from the account no.1 as registration fee registration of the sale deed dated 05.01.1979. The remaining share of this property was purchased by Smt.Saroj Karwa wife of Sh.Virender Kumar Karwa vide same sale deed dt. 05.01.1979. The said amount of Rs.6,000/-, Rs.55,000/- and Rs.5,015/- withdrawn by the defendant no.1 from the firm is duly mentioned in the copy of the order dated 12.06.1979 passed by the Department of Income Tax, Ludhiana. As such, the ½ share of the said property is the self acquired property of the defendant no.1. The property bearing no.173-1 measuring 398.75 sq. yards out of property measuring 797.50 sq yards situated at Sarabha Nagar, Ludhiana, was purchased vide sale deed dated 25.06.1981 by Sh. Hans Ram Karwa and Sh. Virender Kumar in equal shares in their individual capacity. The same is not HUF property. Sh.Hans Ram Karwa died on 05.04.1998 and the defendant no.1 is entitled to succeed to the property being the legal heir of Sh.Hans Ram Karwa. The property no. NC-318, Gujjar Mal Street, Near Arya Mandir Samaj, Aada Hoshiarpur, Jalandhar was purchased vide sale deed dated 13.07.1973 by Sh. Hans Ram Karwa and Sh.Virender Kumar in equal shares in their individual capacity and the same is not the HUF property and after death of Sh.Hans Ram Karwa, the defendant no.1 is entitled to succeed to the said property being the legal heir of Sh.Hans Ram Karwa. The plaintiffs by withdrawing the funds from the loan account in their names from the books of M/s Seth Faqir Chand Karwa and sons, had also purchased properties in their individual names and one of the said property/Double story Kothi is built on plot no.8, Vikas Nagar, Ludhiana bearing MC No. B- 7-1097/5. The plaintiffs did not disclose this property in the original plaint, nor any partition regarding same was sought. In fact, the same is the self-acquired property of Krishan Karwa, Lalit Karwa and Saroj Karwa, in whose name the same stands. The plaintiff no.2 and 3 are not the members of said HUF, as such, they have no concern or right in firm M/s Seth Faqir Chand Karwa and sons. Infact, it is the share of plaintiff no.1 alongwith defendant no.1 in the same being members of Hans Ram Karwa HUF. M/s Seth Faquir Chand Karwa and sons has been unilaterally dissolved by the plaintiff no.1 and the defendant no.2 in the year 2016. The plaintiff no.1 has usurped and misappropriated the funds/capital of the said firm and the entire amount of the share of defendant no.1 in the year 2016. Similarly, the plaintiff no.2 and 3 have no concern with the property i.e. property bearing no.B-11-244 (old) and B IV-561 (New) measuring 48 sq. yards of Bazaar Kharadian, Ludhiana, which is in the name of firm M/s Seth Faqir Chand Karwa and sons, which is liable to be partitioned between plaintiff no.1 and defendant no.1, on one side and the defendant no.2 Virender Kumar and his son Bharat Karwa on the other side. The plaintiffs have not filed the present suit for partition of business of M/s Royal Furniture Mart and other properties and has sought partial partition of joint properties, which is not permissible under law. The plaintiffs have no concern with the properties exclusively owned by defendant no.1. By denying the remaining averments of the application, prayer has been made for dismissal of the application.

5. Defendants no. 2 to 4 through counsel filed reply to the said application and submitted that suit as well as application is not maintainable. The parties to the suit have been purchasing properties from time to time from out of their own sources and whenever any property was purchased by any of the parties to the suit, the same was purchased by him alone from his own fund/savings and as such every person who is recorded to be owner of his respective property is the full owner of the said property, which has been purchased for consideration by him or her and the plaintiffs cannot claim any part of the suit property as HUF property. The defendants purchased different properties by virtue of sale deeds duly executed in their favour for consideration and are in physical possession of the same. The property bearing No. B-II-1761 measuring 76.68 Sq. Yards i.e. ½ share of the property measuring 153.1/9 Sq. Yards situated at Nigger Mandi Ludhiana was purchased by the defendant No.4 for consideration from its erstwhile owners i.e. M/s Bhandari Property Dealers, Bhandari Street, Ludhiana vide sale deed dt. 21.04.1979 bearing Vasika No. 552 dt. 25.04.1979. Similarly one property measuring 117.1/4 Sq. Yards out of property measuring 234.1/2 sq. yards was purchased by defendant No.3 from its erstwhile owner namely Sh.Krishan Kumar son of Sant Dass, resident of Ghanta Ghar Ludhiana for consideration and sale deed was executed in favour of the defendant No.3 and one Dinesh Kumar to the extent of ½ share each and the sale deed was registered on 5.1.1976. Both the said properties are owned and possessed by defendant

No.4 and defendant no.3 respectively and the plaintiffs have got nothing to do with them. That property situated at Clock Tower, Ludhiana and Niggar Mandi, Ludhiana was purchased by the defendants No.3 and 4 jointly with defendant No.1 vide two separate sale deeds and the plaintiff cannot claim any right in said properties and cannot seek partition of same. It is admitted that the defendant no.2 had purchased share in the property bearing No.173/1 measuring 398.75 Sq. Yards out of property measuring 797 Sq. Yards situated at village Sunet now known as Abadi Sarabha Nagar Ludhiana vide registered sale deed dated 26.6.1981. it is further submitted that the defendants have been falsely involved in the litigation so as to wrongly claim that the said property is still joint. Similarly the property bearing Municipal Corporation No. 318 situated at Gujjar Mal street near Arya Smaj Mandir Adda Hoshiarpur, Jalandhar is also being enjoyed by the answering defendant No.2 to the extent of ½ share so purchased by defendant No.2 vide registered sale deed. The plaintiff Lalit Kumar Karwa and his sons are doing his business in property No. B-II-1761 Niger Mandi Ludhiana in the basement and ground floor of the said property as tenant. Previously they were in occupation of said suit property under ownership of Dinesh Kumar Karwa and defendant No.4 and ultimately after passage of time defendant No.1 started using the first floor portion and terrace of property No. B-II- 1761 Niggar Mandi, Ludhiana exclusively and it was settled between the plaintiff No.1 with defendant No.4 that the company of plaintiff No.1 namely Karwa Consolidated Marketing Limited would start paying rent to defendant No.4 at the market rate of rent and it was settled that from 15.10.2019 the company of plaintiff no.1 shall start paying rent to defendant No.4 @ Rs.1,00,000/- per month. Instead of complying with the terms of said oral settlement regarding payment of rent, the plaintiff No.1 has filed the present suit. The defendant No.4 is separately pursuing his remedy for eviction of Karwa Consolidated Marketing Ltd. from the tenancy premises. The defendants have full right to alienate their shares. By denying the remaining averments of the application, prayer has been made for dismissal of the application.

6. After hearing the learned counsel for the parties, learned Trial Court vide order dated 18.10.2024 has directed the parties to maintain status quo regarding the suit properties as detailed in the head note of the plaint till the final disposal of the suit and it will amount to irreparable loss and multiplicity of proceedings if properties are sold during the pendency of the suit by the defendants. It is further directed that in a suit for partition of immovable properties, normal practice is to preserve the properties as it is, so that at the time of final decision of suit it may not result in complications.

7. Aggrieved by this order, defendant no. 1/appellant has filed the present appeal. Upon notice of present appeal, Plaintiffs/Respondents no. 1 & 2 appeared through Counsel Shri A.C. Gupta and defendants/respondents no. 4 to 6 appeared through counsel Sh. J.K. Kapila, Advocate, and contested the appeal. However, the respondent/defendant no. 3 did not appear and was proceeded against

exparte. The record of trial court was requisitioned and was received.

8. I have heard the submissions made by learned counsel for the parties and have also gone through the case file very carefully.

9. Ld. Counsel for the defendant/appellant has submitted that the Ld. Trial Court has granted the status quo order on five properties including the property mentioned at Sr. no. 1 & 2 of the plaint. Infact the plaintiff/respondent has shown individual properties as HUF properties. It has been submitted that there is distinction between the individual property and HUF property. Infact the properties are individual properties of defendant/appellant. The defendant had taken loan, and even the HUF properties have been shown as self acquired properties in the income tax returns. There is no finding that the properties are of HUF. No document has been placed on file to prove that the said property was purchased from the HUF funds. It has been submitted that the properties cannot be said to be HUF properties, even if the consideration of the same has been paid by the father. The firm is in the name of Seth Faqir Chand Karwa and Sons. In the Income Tax Returns of the aforesaid property, the said property in question have not been shown as a property of the HUF. The plaintiff has taken up a vague plea that the properties were put in common hotchpotch. It has been submitted that no date, month and the detailed particulars regarding any agreement have been mentioned as to how and when the properties were allegedly put in the common hotchpotch. The properties have been duly incorporated in the Income Tax Returns of the individual owners. It has further been submitted that there is no documentary proof

to show that the property was purchased from the HUF corpus. There is no document to show any contribution of HUF for purchasing the properties. The HUF concerned is also the partner with the other partners and there is nothing on the file to show that the firm had transferred money in the account of HUF. There is no finding of the Ld. Trial Court to establish that the property falls within the ambit of the HUF. It has further been submitted that in case the property was belongs to HUF, then no explanation has come as to why rent of the property is being directly paid to the defendant/appellant instead of HUF.

10. On the other hand, ld. Counsel for the plaintiffs/respondents has submitted that the status quo order has been rightly passed by the Ld. Trial Court. Both the parties are yet to lead evidence. No prejudice is going to be caused to the defendant. It has further been submitted that there is no need for interference in the status quo order in the appeal as discretion has been property exercised by the Ld. Trial Court. Parties are closely related to each other. Only one set of the defendants have filed the appeal, whereas the other defendants have not filed the appeal. Some of the properties have been purchased from the funds of HUF. The HUF has come into existence in the year 1960. The properties in question was purchased much subsequent thereto. The HUF was having huge income. The defendant no. 1/appellant was a minor at the time when the properties were purchased. So, it is evident that the defendant/appellant was not having the financial capacity to earn. Evidence is required to prove on file that the funds of the HUF was used for the purchase of the properties. The

plaintiffs are in possession of some of the properties, which are not in their name, which further support the case of the plaintiffs that the properties were put in the common hotchpotch. Ld. Counsel for the plaintiffs/respondents has submitted that in the original written statement, it has been admitted by the defendants that some of the properties are of HUF, whereas some are independent and self acquired properties but after the amendment of the plaint, the defendant has made major changes in the written statement without seeking prior permission from the Court. The said changes were made beyond the amendment made in the plaint. It has further been submitted that no interference is required in the order of the Ld. Trial Court nor any prejudice is caused to the defendant/appellant. The properties needs to be preserved in the present form. The prima facie case is made out in favour of the plaintiff and as such, is worth going for trial.

11. In this case, Ld. Counsel for the defendant/appellant has placed reliance upon case titled as ***"Ghanshyam Vs. Shri Bhagwati Prasad Soni and ors." 2022(3) DNJ 1037***, wherein the Hon'ble High Court has held that *the order which has been passed by the Ld. Trial Court is based on non consideration of the material documents and contradictory observations have been made by the Trial Court, then the order seems to be arbitrary and perverse and as such, the order is to be set aside.* Ld. Counsel for the defendant/appellant has further placed reliance upon case titled as ***"Smt. Vimla Devi Vs. Jang Bahadur" 1977 A.I.R. (Raj) 196***, wherein the Hon'ble High Court has held that *the interference with the*

discretionary order, however, may be justified if the lower court acts arbitrarily or perversely, capriciously or in disregard of sound legal principles or without considering all the relevant records. Ld. Counsel for the defendant/appellant has further placed reliance upon case titled as ***"Kanakaraj Versus Sivaa Kozhundu and others" 2001(92) R.D. 45***, wherein the Hon'ble High Court has held that *no presumption in law that property is a joint family property, unless it is proved by sufficient evidence that joint family owned certain properties which yielded sufficient income to purchase other properties. In present case, both the Courts below have erred in reaching the conclusion that suit properties are joint family properties of the first defendant and his brothers. Evidence on record proved that it is the self acquired property of the first defendant and defendants no. 2 to 4 have no right or share in the same and plaintiff the purchaser does not derive any right either to redeem the mortgage in favour of the fifth defendant or to get a partition of his 3/4th right.* Ld. Counsel for the defendant/appellant has further placed reliance upon case titled as ***"M. Govindasamy Versus S. Sulochana and another" 2013(20) R.C.R. (Civil) 111***, wherein the Hon'ble High Court has held that *jointly family property cannot presumed merely because the property was purchased in the name of a female. The burden is on the person claiming it to be joint family property to prove that it was purchased from joint family funds. In the absence of such evidence, the property would be treated as the separate property of the female. After her death, under Section 15(1) (a) of the Hindu Succession Act, it would devolve equally* *upon her heirs, including her daughters and son.* Ld. Counsel for the defendant/appellant has further placed reliance upon case titled as ***"Suman Vishnu Pathak Versus Usha W/o Prabhakar Rao Koparkar" 2012(34) R.C.R. (Civil) 704***, wherein the Hon'ble High Court has held that *if the property stands in the name of a coparcener of a Hindu Undivided Family, then presumption is that it is his self acquired property, unless it is shown that it is acquired with the aid of nucleus of the joint family property.*

12. On the other hand, ld. Counsel for the plaintiffs/respondents has placed reliance upon case titled as ***"Suresh Kumar Kedia Vs. Nirmal Kumar Kedia and others" 2024(2) PLJR 326***, wherein the Hon'ble High Court has held that *Prima facie does not mean prima facie title but a substantial question raised bona fide requiring adjudication. Injunction should preserve the subject matter of the litigation to prevent irreparable harm and ensure effective adjudication of rights.* Ld. Counsel for the plaintiffs/respondents has further placed reliance upon case titled as ***"Parkash Singh Vs. State of Haryana and Others" 2002(2) R.C.R. (Civil) 653***, wherein the Hon'ble High Court has held that *prima facie case means a case which is not liable to be thrown at the outset. It requires consideration. Contentions raised having merit and not liable to be rejected summarily. It does not mean that plaintiff should have a cent percent case which will in all probability succeed.* Ld. Counsel for the plaintiffs/respondents has further placed reliance upon case titled as ***"Mallappa Girimallappa Betgeri and others Vs. R. Yellappagouda Patil***

and others" 1959 AIR (SC) 906, wherein the Hon'ble Apex Court of India has held that *the property acquired by the Manager of joint family. There was no source of income. The presumption arises that property acquired were properties of joint family*. Ld. Counsel for the plaintiffs/respondents has further placed reliance upon case titled as ***"Maharwal Khewaji Trust (Regd.) Faridkot Vs. Baldev Dass" 2005(1) CivCC 430***, wherein the Hon'ble Apex Court of India has held that *an application for grant of interim injunction restraining the defendant from alienating or changing the nature of suit property must be granted unless an irreparable loss or damage is shown by the defendant to be caused in case the injunction is granted. The change of nature or alienation of suit property may lead to loss or damage being caused to the party who may ultimately succeed and lead to multiplicity of proceedings.* Ld. Counsel for the plaintiffs/respondents has further placed reliance upon case titled as ***"Maman Chand Vs. Kamla" 1996(1) R.R.R. 230***, wherein the Hon'ble High Court has held that *the scope of interference by the appellate Court in the order passed by the trial Court in the matter of grant or non-grant of temporary injunction is very limited only where the order of trial Court suffers from clear violation of law or the findings are perverse and the order has been passed in violation to settled principles of law for appreciation of pleadings and evidence. The mere possibility of different opinion on the basis of fact and evidence is no ground for interference by the appellate Court.*

13. The plaintiffs/respondents in this case have claimed the

property to be the property of the HUF. The HUF came into being in the year 1960, whereas the property in question was purchased subsequent thereto. One of the pleas taken by the plaintiffs/respondents is to the effect that the defendant/appellant was a minor at the time when the property in question was purchased. The HUF was having sufficient income, and the said income was utilized for the purpose of purchasing the property in question. So, considering the fact that the funds of the HUF were utilized for purchasing the property, therefore, the property in question is the property of the HUF. It has further been submitted that the properties were put in the common hotchpotch. So, on this ground as well, the property in question are to be considered as the HUF properties.

14. The plaintiffs/respondents in this case seem to have set up their case based upon presumption. First of all, in this case, the detailed particulars of the properties allegedly put in the common hotchpotch have not been mentioned. The date and the process of putting the property in the common hotchpotch has not been mentioned. The properties which were allegedly put in the common hotchpotch have also not been specified. The written document as to which properties were allegedly put in the common hotchpotch has also not been placed on record. So, in the absence of any such detail particulars, it will not be wise to consider that there were any such decision by all the co-sharer or the family members to put the properties in common hotchpotch with the HUF. Secondly, even if it is to be presumed that the properties were put in the common hotchpotch, there is nothing on the file to establish that income so derived

from the aforesaid properties were being put in the account of the HUF. Rather the property comprised of 1761 is partly owned by defendant/appellant and as per the own Income Tax Returns, the rent of this property is being paid to the defendant/appellant instead of HUF. In case the property was put in common hotchpotch, then there was no requirement to pay the rent to the defendant/appellant. Moreover, there was no requirement to have pay rent to defendant/appellant in case he was not the owner of the property. The said income tax returns of the Karwa Consolidated Marketing Bills, of which the plaintiffs/respondent (Karta of HUF) is a Director shows that the rent is being paid to Dinesh Karwa. No explanation has come on part of the plaintiff/respondent as to why the rent was not being paid to the HUF.

15. The property was purchased in the year 1979. The said property was purchased partly in the name of defendant/appellant and also in the name of other family members. No explanation has come on record as to why no efforts were made to get the property reflected in the account of the HUF or why the property was not purchased in the name of HUF. Since the property was purchased much subsequent to creation of the HUF, therefore, the detailed particulars of putting the properties in the said alleged common hotchpotch was required. So, it becomes more important to disclose the particulars of the alleged common hotchpotch. However, it seems that only mere assertions have been raised with regard to putting the properties in common hotchpotch. The defendant/appellant is receiving the rent. The said rent is being paid by the firm of the plaintiff

who claims himself to be Karta of HUF after the death of their father. Even if the defendant/appellant was minor at the time when the property in question was purchased, it still becomes his exclusive ownership until and unless the sale deed is set aside.

16. The defendant/appellant had also placed on record the documents with regard to the letter issued by the Income Tax department at the time when property bearing no. 1761 was purchased. The said communications are part of the file. As per the said communications, it has come that the property was purchased by the defendant/appellant from his own funds. There is nothing on the file to show that the property in question is part of HUF. The plaintiff/respondent has failed to produce any document to show that the income deprived from these properties has been credited into the account of HUF or the same have been duly reflected in the income tax returns of the HUF. So, in the absence of any such record, no inference can be drawn at this stage that the property in question is the HUF property.

17. The property no. 1761 is jointly owned by the co-sharers. A co-sharer has a right to alienate his share. The plaintiff has also sought the remedy of the partition of the property. In-case, any alienation is made, then the same shall be subject to the decision of this suit.

18. The Ld. Trial Court while deciding the application under Order 39 Rule 1 & 2 CPC has not properly considered the aforesaid facts. So, the impugned order requires interference by the Appellate Court as the plaintiffs have failed to establish a prima facie case in their favour and

have also failed to establish that the balance of convenience lies in their favour.

19. Thus, in view of the aforesaid discussions, the impugned order dated 18.10.2024 vide which the application under Order 39 Rule 1 & 2 CPC was disposed off with directions to maintain status quo, is set aside and the application under Order 39 Rule 1 & 2 CPC is hereby dismissed and the present civil miscellaneous appeal is hereby allowed.

20. However, nothing expressed herein shall have any bearing on the merits of the case. Memo of costs be prepared. Trial court file along with copy of this judgement be sent back and appeal file be consigned to the Record Room.

Pronounced in open Court.
Dated: 17.07.2026

Barinder Singh Ramana,
Additional District Judge,
Ludhiana
(UID No.0161)

Arashdeep Kaur, St.Gr.II