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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 14.02.2023

\+ **CS(OS) 3443/2015**

ARUNA BAKSHI ..... Plaintiff
Through: Mr.Shrey Chathly, Adv.

versus

DEVENDER KUMAR AND OTHERS ..... Defendants
Through: Mr.R.D.Chauhan & Mr.Arun K Chauhan, Advs. for LRs of D-1.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This suit has been filed by the plaintiff *inter alia* praying for the partition of the property bearing No.12-D, Old Gupta Colony, Delhi (hereinafter referred to as the "suit property").

2. It is the case of the plaintiff that the suit property was the self-acquired property of the father of the plaintiff Late Sh. Mohan Lal Oberoi, who passed away intestate on 28.11.2004 at Delhi, leaving behind his legal heirs, that is, his wife Smt. Pushpa Rani, the plaintiff, the defendant nos.1 to 3, and the defendant nos.4 to 6 (who in turn are the legal heirs of Smt. Veena Grover, the deceased daughter of Late Sh. Mohan Lal Oberoi and Smt.

Pushpa Rani). Smt. Pushpa Rani also passed away intestate on 19.10.2014 at Delhi.

3. The plaintiff asserts that the said property was purchased by Late Sh. Mohan Lal Oberoi by way of registered Sale Deed dated 20.08.1957. The construction over the said property was also done by Late Sh. Mohan Lal Oberoi. In view of the above, the plaintiff claimed 1/5th share in the suit property.

4. In the written statement filed by the defendant no.1, the defendant no.1 has set up a case that Mr.Malik Shah, the grandfather of the plaintiff and the defendant nos.1 to 3, was a resident of Punjab in Pakistan and was possessed of joint family property in shape of a house and agricultural land in Pakistan. He was allotted 20 acres of land at Ambala and a Haveli against the claim of the property left behind in Pakistan. He sold the agricultural land and purchased the property at Ajmere Gate, Delhi, for which the amount was paid from the fund of Malik Shah HUF. It is further asserted that the suit property was purchased by Mr. Malik Shah, being *Karta* of the HUF, in the name of Late Sh. Mohan Lal Oberoi. The defendant no.1 further pleaded that the said HUF remained in existence, and on 05.12.2004, there was a partition of the properties of the HUF whereunder the suit property fell to the exclusive share of the defendant no.1.

5. On 18.07.2019, on hearing the parties, this Court was pleased to pass the following order:

"2. The case of Defendant No.1 is that the property is a HUF property. This plea is taken in the written statement in the brief facts. However, there is no document which ld. counsel for Defendant No.1 is able to show that there ever existed an HUF, or whether there was any intention of the parties to form an HUF. Further, in view of the recent judgments of this Court in ***Neel Dayal v. Someshwar Dayal, and Ors. [CS (OS) 168/2016, decided on 22nd March, 2017], Aarshiya Gulati and Ors. v. Kuldeep Singh Gulati and Ors., [CS (OS) 2223/2013, decided on 4th February, 2019], and Sunita Aggarwal and Anr. v. Tej Ram Aggarwal and Ors., [CS(OS) 11/17 decided on 12th March, 2019],*** *until and unless there is clear documentary evidence showing that the property has been treated and accepted by the family as an HUF property, the plea of Defendant No.1 would not be liable to be accepted. If there is no document showing the suit property to be an HUF property, then a partition decree would, in fact, be liable to be passed in this case.*

3. At this stage, ld. counsel for Defendant No.1 seeks a last opportunity to produce some documents to show that the property is a HUF property as Defendant No.1 is unwell and has undergone dialysis. Ld. counsel for the Plaintiff submits that no opportunity should be granted as there is no document being relied upon by Defendant No.1 in the written statement to support the plea of HUF. In view of the medical condition of Defendant No.1, this Court is inclined to give a last opportunity to Defendant No.1 for producing any document, failing which a partition decree would be liable to be passed. Needless to add, the documents ought to have been filed prior to the stage of framing of issues. No adjournment shall be granted on the next date."

6. Based on the liberty granted, the defendant no.1 filed certain additional documents. The same were considered by this Court and the following order was passed on 22.10.2019:

> *"2. It is submitted by learned counsel for the plaintiff that these documents do not demonstrate that the property has been treated and accepted by the family as HUF property, as required by the order dated 18.07.2019. This submission appears prima facie to be merited.*
>
> *3. Learned counsel for the defendant No.1 states that he has been recently engaged, and seeks time to satisfy the Court in this respect. In view of the fact that defendant No.1 has already been granted indulgence in view of his medical condition, and last opportunity to file documents was granted by the aforesaid two orders, the adjournment cannot be granted without payment of costs. Consequently, defendant No.1 is directed to pay costs of Rs.10,000/- to learned counsel for the plaintiff within two weeks.*
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> *xxx*
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> *5. In the meanwhile, defendant No. 1 will file an affidavit with regard to the above aspect. The affidavit be filed within two weeks. Learned counsel for the plaintiff may file an affidavit in response thereto within two weeks thereafter."*

7. In compliance with the said order, an affidavit was filed by Ms.Lisha, daughter of the defendant no.1, reiterating the submissions that had been made in the written statement.

8. The learned counsel for the defendant no.1, placing reliance on the *Jamabandi* for the land at Ambala, states that the said land belonged to the grandfather of the plaintiff and the defendant nos.1 to 3. He also draws my attention to the copy of a Sale Deed registered on 23.10.1962 and executed by Mr. Manak Chand purportedly selling the land at Ambala.

9. I, however, find that in the said *Jamabandi* and the Sale Deed the name of the owner is depicted as Mr. Manak Chand and not Mr.Malik Shah. In any case, the said *Jamabandi* or the Sale Deed also does not state that the land was in the name of HUF or was sold by the HUF.

10. On the other hand, the plaintiff has placed on record a copy of the Sale Deed dated 20.08.1957, duly registered, by which the father of the plaintiff and the defendant nos.1 to 3, Sh. Mohan Lal Oberoi purchased the suit property.

11. In ***Aarshiya Gulati (Minor) Thr. Next Friend and Others v. Kuldeep Singh Gulati and Others***, 2019 SCC OnLine Del 6867, a learned Single Judge of this Court, in relation to a claim of property being a HUF property, has held as under:-

> *"ORDER 6 RULE 4 CPC IS ATTRACTED TO SUITS WHERE THE PLAINTIFF CLAIMS THAT A COPARCENARY OR HUF EXISTS, AS AFTER COMING INTO FORCE OF THE HINDU SUCCESSION ACT, 1956, THERE IS NO PRESUMPTION AS TO THE EXISTENCE OF AN HUF.*

40. A learned Single Judge of this Court in the case of Surender Kumar v. Dhani Ram, 227 (2016) DLT 217 has held that Order 6 Rule 4 CPC is attracted to suits where the plaintiff claims that a coparcenary or HUF exists, as after coming into force of the Hindu Succession Act, 1956 (hereinafter referred to as 'Act, 1956'), there is no presumption as to the existence of an HUF. Consequently, detailed facts have to be averred. The 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. The relevant portion of the said judgment is reproduced hereinbelow:—

> *"9. I would like to further note that 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 6 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. 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 Yudhister (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. It is only in such circumstances where specific facts are mentioned to clearly plead a cause of action of existence of an HUF and its properties, can a suit then be filed and maintained by a person claiming to be a coparcener for partition of the HUF properties."*
>
> *(emphasis supplied)*

41. A Division Bench of this Court in Sagar Gambhir v. Sukhdev Singh Gambhir, 241 (2017) DLT 98 has endorsed the said view. The relevant portion of the Division Bench's judgment is reproduced hereinbelow:—

> *"5. The defendants filed IA No. 1325/2012 invoking Order VII Rule 11 of the Code of Civil Procedure pleading that the averments in the plaint did not disclose a cause of action.*
>
> *6. Vide impugned order dated May 06, 2016, relying upon the decision of the Supreme Court reported as (1987) 1 SCC 204 Yudhihster v. Ashok Kumar, and two decisions of this Court reported as 225 (2015) DLT 211 Sunny (Minor) v. Sh. Raj Singh and 227 (2016) DLT 217 Surinder Kumar v. Dhani Ram the learned Single Judge has held that the pleadings were illusory and did not disclose a cause of action. The suit has been dismissed, and we treat this to be a misnomer for the reason if a plaint does not disclose a cause of action it has to*

be rejected. Qua challenge to the will, the learned Single Judge has held that this would be a separate cause of action and a separate suit could be filed.

11. …….the Supreme Court laid emphasis that Courts must accord due attention to the pleadings, and in civil cases pertaining to property, must accord the necessary consideration to the admitted documents filed by the parties and highlighted that this care would prevent many a false claims from sailing beyond the stage of issues. In paragraph 73 to 79 of the opinion, the Supreme Court highlighted that suspicious pleadings, incomplete pleadings and pleadings not supported by documents would not even warrant issues to be settled. Thus, the said observations of the Supreme Court would be very relevant in the instant case.

15. The pleadings by the appellant is only to the effect that the property at Rajinder Nagar was purchased by the grandfather of the appellant from out of the funds of the firm M/s. Gian Singh Sukhdev Singh which was set up by the late grandfather of the appellant and that the funds for the business came from the properties left behind in Pakistan. No details or particulars of the properties left behind at Pakistan have been pleaded. We take judicial notice of the fact that post-partition, people who migrated to India from the territories of the newly State of Pakistan were required to file claims before the custodian of evacuee properties and upon proof of properties left behind in Pakistan, compensations were assessed. These people were treated as refugees and either money or an immovable

property was allotted to these refugees by the Ministry of Rehabilitation, Government of India. In the plaint the lack of pleadings to said effect cannot be overlooked. There is thus a bald assertion without any material particulars regarding the firm M/s. Gian Singh Sukhdev Singh being set up by the great grandfather of the appellant. The appellant has himself filed documents, and one of which is an income-tax assessment order for the Assessment Year 1957-58 concerning the income-tax return of the defendant No. 1. The same shows that the business of M/s. Gian Singh Sukhdev Singh was the sole proprietary business of defendant No. 1 and the source of funds to acquire the property in Rajinder Nagar was from the income generated from the firm. This document being filed by the appellant could be looked into by the learned Single Judge and the only error in the impugned order would be one of narrative of fact wherein said document has been referred to as relied upon by the defendants. It is a case where the appellant as well as the defendants relied upon the documents."

(emphasis supplied)"

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THERE IS A PRESUMPTION THAT EVERY HINDU FAMILY WHICH IS JOINT IN FOOD AND WORSHIP IS A HINDU JOINT FAMILY; BUT THERE IS NO PRESUMPTION THAT THE ESTATE IS JOINT OR THE PROPERTY IS THE HINDU JOINT FAMILY PROPERTY. THE PARTY WHO ASSERTS THAT THE PROPERTY IS HINDU JOINT FAMILY PROPERTY HAS TO PROVE IT.

48. In the opinion of this Court, there is a presumption that every Hindu Family which is joint in food and worship is a Joint Family; but there is no presumption that the Estate is joint or that the properties of the family members belong to the Hindu Joint Family. The party who asserts that the property is joint family property has to prove it.

49. Mulla in his Treatise Hindu Law states as under:— "Para 231-Mulla's Hindu Law – 21st Edition

> *1) Presumption that a joint family continues joint - Generally speaking, 'the normal state of every Hindu family is joint. Presumably every such family is joint in food, worship and estate.' In the absence of proof of division, such is the legal presumption.*
>
> *2) No presumption that a joint family possesses joint property - There is no presumption that a family, because it is joint, possesses joint property or any property. When in a suit for partition, a party claims that any particular item of the property is joint family property, or when in a suit for a mortgage, a party contends that the property mortgaged is joint family property, the burden of proving it rests on the party asserting it."*
>
> (*emphasis supplied*)

50. In Makhan Singh (Dead) By LRs. v. Kulwant Singh, (2007) 10 SCC 602, the Apex Court has held as under:—

> *"7. ……In this connection the judgment in D.S. Lakshmaiah case becomes relevant. It had been observed that a property could not be presumed to be a joint Hindu family property merely*

> *because of the existence of a joint Hindu family and raised an ancillary question in the following terms : (SCC p. 314, para 7)*
>
> *"7. The question to be determined in the present case is as to who is required to prove the nature of property whether it is joint Hindu family property or self-acquired property of the first appellant."*

8. The query was answered in para 18 in the following terms: (SCC p. 317)

> *"18. 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."* *(emphasis supplied)*

9. The High Court has also rightly observed that there was no presumption that the property owned by the members of the joint Hindu family could a fortiori be deemed to be of the same character and to prove such a status it had to be established by the propounder that a nucleus of joint Hindu family income was available and that the said property had been purchased from the said nucleus and that the burden to prove such a situation lay on the party, who so asserted it. The ratio of K.V. Narayanaswami Iyer case [AIR 1965 SC 289 : (1964) 7 SCR 490] is thus

clearly applicable to the facts of the case. We are therefore in full agreement with the High Court on this aspect as well. From the above, it would be evident that the High Court has not made a simpliciter reappraisal of the evidence to arrive at conclusions different from those of the courts below, but has corrected an error as to the onus of proof on the existence or otherwise of a joint Hindu family property.

(emphasis supplied)

51. A Division Bench of this Court in Ravi Shankar Sharma v. Kali Ram Sharma, 2014 I AD (Delhi) 609 has held that there is a body of authority to the effect that though the family might be joint, yet there is no presumption that property of someone is Hindu Undivided Family property.

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LAND GRANTED TO A DISPLACED PERSON UNDER THE PROVISIONS OF THE DISPLACED PERSONS (COMPENSATION AND REHABILITATION) ACT, 1954 IS IN THE NATURE OF A GRANT AND A GRANT IS ALWAYS SELF ACQUIRED

54. In the opinion of this Court, land granted to a displaced person under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 is in the nature of a grant and does not retain the characteristics of properties left behind in Pakistan. A grant is always self acquired. In Pohla Singh alias Pohla Ram (D) by LRs v. State of Punjab, (2004) 6 SCC 126, the Supreme Court held :

> *"This clearly shows that a displaced person on account of his migration to India after partition did not get the same property which he had in the area which became Pakistan, but he got monetary compensation though it was possible*

that some property out of compensation pool could be sold or transferred to him out of the said compensation amount. The consequence is that the land which Dhanna Singh got in village Budhlada, in District Bhatinda is not the same land which he had got by way of military grant in Sind. It is an altogether different land purchased out of compensation amount which was payable to him or could have been transferred to him by setting off the valuation of the property against the compensation payable to him."

55. 'Grant' according to Mulla on Hindu Law, 21st Edition, para 228 is:—

"228. Separate Property-Property acquired in any of the following ways is the separate property of the acquirer, it is called "Self-Acquired", and is subject to the incidents mentioned in Para 222 above:—

1) xxxxx

2) xxxxx

3) Government Grant-Property granted by government to a member of a joint family is the separate property of the donee, unless it appears from the grant that it was intended for the benefit of the family....." (emphasis supplied)

56. The same has also been authoritatively concluded in Mayne's Hindu Law and Usage, 16th Edition:—

"308. - Government Grant - Estate conferred by Government in the exercise of their sovereign power become the

> *self-acquired property of the donee, whether such gifts are absolutely new grants, or only the restoration to one member of the family of property previously held by another but confiscated, unless members of his family show that they treated it as joint family property." (emphasis supplied)*
>
> *57. Consequently, a bare perusal of the above commentaries clearly shows that a Grant under Displaced Persons (Compensation and Rehabilitation) Act, 1954 is the 'self-acquired property' of the donee."*

12. Applying the above principles to the facts of the present case, the defendant no.1, therefore, has been unable to show, even in a remote sense, the case set up by him that the suit property is a HUF property; of there being an oral partition; and in such partition, the suit property being allotted to the defendant no. 1. In my view, such frivolous defence should not delay the adjudication of the present suit and should be nipped at the bud itself.

13. As there is no dispute on legal heirs of Late Sh. Mohan Lal Oberoi nor any of the defendants have set up any other testamentary succession or any other legal heirs being entitled to the said property, in my opinion, the plaintiff has made out a case for grant of a preliminary decree declaring the plaintiff, the defendant nos.1 to 3 and collectively the defendant nos.4 to 6 each being entitled to 1/5th share in the suit property.

14. A Preliminary Decree is passed in the above terms.

15. At this stage, at the request of the learned counsels for the parties, the parties are referred to the Delhi High Court Mediation and Conciliation Centre for exploring the possibility of arriving at an amicable settlement of their remaining disputes.

16. The parties shall appear before the Delhi High Court Mediation and Conciliation Centre on 03.03.2023 at 3.00 p.m.

17. List before the Court on 25th May, 2023.

NAVIN CHAWLA, J

FEBRUARY 14, 2023/Arya