

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

+ **Counter-Claim No.28/2009 in CS(OS)No.1919/1995**

% Date of decision : 27th February, 2012

PAMELA KUMAR Plaintiff
Through : None.

versus

ARUN MOHAN & ORS. Defendants
Through : Defendant No.1 in person.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

Counter-Claim No.28/2009 in CS(OS)No.1919/1995

1. The plaintiff filed suit bearing CS(OS) No. 1919/95 for declaration and partition of 'Radhe Mohan Lal HUF' which was dismissed in default as well as for non-prosecution on 15th January, 2009. Defendant No. 1 herein had filed Counter-claim along with written statement on 24th February, 1996 and the plaintiff was proceeded *ex-parte* in the Counter-claim. There has been no appearance on behalf of the plaintiff as well as defendants No. 2 & 3 in the Counter-claim since 15th January, 2009.

2. The plaintiff is the daughter of late Radhe Mohan Lal, who died on 12th June, 1977 and late Raj Rani, who died on 12th September, 1993, leaving behind one son, Arun Mohan (defendant No. 1) and three daughters, namely, Pamela Kumar
CS(OS)No.1919/1995

(plaintiff), Lalita Steinmetz (defendant No. 2) and Mala Goel (defendant No. 3).

3. The case of defendant No. 1 in the Counter-claim is that 'Radhe Mohan Lal HUF' initially comprised of late Radhe Mohan Lal as Karta, defendant No. 1 as coparcener and four members, namely, late Raj Rani and three daughters, namely, plaintiff, defendant No. 2 and defendant No. 3. The plaintiff and defendant No. 2 were married during the lifetime of late Radhe Mohan Lal whereupon they ceased to be the members of the HUF. Defendant No. 3 separated from the family in 1971-72, which has been accepted by her in paras 4 to 6 of her written statement. After the death of late Radhe Mohan Lal on 12th June, 1977, the HUF comprised of defendant No. 1 as its karta, his mother late Raj Rani as a member and his son as a coparcener. After the death of late Radhe Mohan Lal, the name of the HUF was changed to 'Arun Mohan Radhe Mohan HUF'. There was an oral family settlement on 25th December, 1977 which was reduced into writing on 28th December, 1977 by which, late Raj Rani surrendered her membership. The HUF thereafter comprised of defendant No. 1 as karta and his son as coparcener. The HUF owned five properties mentioned in para-3 of the Counter-claim, including property bearing No.51, Sunder Nagar, New Delhi and property bearing No.4/20, Asaf

Ali Road, New Delhi. Defendant No. 1 is seeking a declaration that the plaintiff, defendant No. 2 and defendant No. 3 are not members of the HUF and have no interest in the properties of the HUF. Defendant No. 1 is also seeking declaration in respect of his self-acquired properties mentioned in para-5 of the Counter-claim to the effect that the plaintiff, defendant No.2 and defendant No. 3 have no interest in the self-acquired properties of defendant No.1. Late Raj Rani, mother of the plaintiff and defendants No.1 to 3 died on 12th September, 1993 leaving behind her Will dated 12th February, 1992 and two codicils dated 7th May, 1993 and 25th June, 1993. Defendant No.1 has sought succession to estate of Raj Rani in the Counter-claim but at the time of the hearing, defendant No. 1 has restricted the prayer only to the declaration that the estate of Raj Rani has devolved as per her Will dated 12th February, 1992 and two codicils dated 7th May, 1993 and 25th June, 1993.

4. Defendant No. 1 examined four witnesses to prove the Counter-claim. Defendant No. 1 himself appeared in the witness box as DW-4 and tendered his affidavit by way of evidence as Ex. DW4/A. DW-4 deposed that his father late Radhe Mohan Lal purchased the property bearing No. 51, Sunder Nagar, New Delhi benami in the name of his wife Raj

Rani and then threw this property in the HUF vide affidavit Ex.D-1. Late Radhe Mohan Lal acquired the property bearing No. 4/20, Asaf Ali Road, New Delhi in his own name and also threw the same in the HUF vide affidavit Ex.D-1. DW-4 deposed that properties bearing No. 51, Sunder Nagar, New Delhi and 4/20, Asaf Ali Road, New Delhi were assessed as properties of HUF by Income Tax Authorities and the Income Tax Returns have been placed on record as Ex.D-30 to Ex.D-69. Late Radhe Mohan Lal died on 12th June, 1977 leaving behind his widow late Raj Rani, one son (defendant No. 1) and three daughters (plaintiff, defendant No.2 and defendant No.3). However, so far as the HUF was concerned, plaintiff and defendant No. 2 had ceased to be the members of the HUF upon marriage during the lifetime of the father whereas defendant No. 3 had separated from the family in 1971-72. The HUF after the death of the father comprised of defendant No.1 as Karta, his mother Raj Rani as member and his son as coparcener. The HUF was renamed as 'Arun Mohan Radhe Mohan HUF'. Late Raj Rani surrendered her membership on 25th December, 1977 vide memo of settlement Ex.D-3, which was signed by late Raj Rani as well as plaintiff, defendant No.1 and defendant No.3 on each page. The HUF thereafter comprised of defendant No. 1 as Karta and his son as coparcener. Late Radhe Mohan Lal left

behind a Will dated 8th June, 1974, Ex. D-4 which was probated in Probate Case No.36LA of 1978. DW-4 deposed that the properties mentioned in para 5 of the Counter-claim are self-acquired properties of defendant No.1 and that the plaintiff, defendant No.2 and defendant No.3 have no interest whatsoever in the said properties. DW-4 has proved the relevant documents relating to the Counter-claim detailed in para 14 of the affidavit by way of evidence as Ex.D-1 to Ex.D-9 and Ex.D-13 to Ex.D-96. DW-4 submitted the additional evidence by way of affidavit, Ex.DW-4/B and has proved the documents of title relating to all the properties including property bearing Nos. 51, Sunder Nagar, New Delhi and 4/20, Asaf Ali Road, New Delhi as Ex.D-97 to Ex.D-110.

5. Late Raj Rani died on 12th September, 1993 leaving behind a registered Will dated 12th February, 1992 and two Codicils dated 7th May, 1993 and 25th June, 1993. The Will dated 12th February, 1992 was witnessed by Rattan Singh Longia, who appeared in the witness box as DW-1 and proved that the Will was executed in his presence and the presence of defendant No.3 as second witness. The Will was exhibited as Ex.DW1/1. The Codicil dated 7th May, 1993 was witnessed by Ms. Chitra Mehendale, Advocate, who appeared in the witness box as DW-2 and proved the execution of the Codicil in her

presence and in the presence of the second witness, Man Singh Bhadauria. The Codicil dated 7th May, 1993 was exhibited as Ex.DW2/1. The second Codicil dated 25th June, 1993 was witnessed by Dr. Ashok Kapoor, who appeared in the witness box as DW-3 and proved the execution of the Codicil in his presence and the presence of the second witness, Dinesh Garg, Advocate. The Codicil dated 25th June, 1993 was exhibited as Ex.DW3/1. It is submitted that estate of late Raj Rani does not comprise of property bearing No.51, Sunder Nagar, New Delhi or property bearing No.4/20, Asaf Ali Road, New Delhi, which are owned by the HUF. Copy of the affidavit dated 24th April, 1980 of Raj Rani has been proved as Ex.D-6 in which she has deposed that she did not have any interest in 51, Sunder Nagar, New Delhi. The plaintiff and defendants No.2 and 3 have also given similar affidavits in Probate Case No.36LA/78 which have been proved as Ex.D-27, Ex.D-16 and Ex.D-18 respectively. From the evidence on record, it is clear that 51, Sunder Nagar, New Delhi is the property of the HUF.

6. Defendant No. 1 submits that Section 6 of Hindu Succession Act as amended on 9th September, 2005 would not have any effect on the present case because the amendment in 2005 is prospective in nature. It is submitted that prior to 9th September, 2005, the plaintiff and defendant No.2 ceased to

be the members of the HUF upon their marriage and defendant No.3 ceased to be a member of the HUF upon separation from the HUF in 1971-72. Late Raj Rani was a member of the HUF at the time of the death of late Radhe Mohan Lal but she also surrendered her membership by a settlement dated 25th December, 1977, memo whereof was recorded on 28th December, 1977 (Ex.D3). Defendant No. 1 refers to and relies upon the judgment of the Supreme Court in Surjit Lal Chhabda v. CIT, (1976) 3 SCC 142.

7. Defendant No.1 submits that he has proved by sufficient evidence that 'Arun Mohan Radhe Mohan HUF' comprised of two members, namely, defendant No.1 and his son. It is submitted that the plaintiff and defendants No.2 and 3 are not the members of the said HUF and have no interest in the properties of the HUF. It is submitted that the HUF is in possession of the properties of the HUF. It is further submitted that late Raj Rani was not a member of the HUF and did not have any right or interest in the properties of HUF bearing Nos. 51, Sunder Nagar, New Delhi and 4/20, Asaf Ali Road, New Delhi at the time of her death on 12th September, 1993. It is further submitted that defendant No.1 is the owner of self-acquired properties mentioned in para 5 of the Counter-claim; and the plaintiff, defendants No.2 and 3 have no interest in the

said properties. It is further submitted that defendant No. 1 is in possession of his self-acquired properties. It is further submitted that Late Raj Rani left behind Will, Ex.DW1/1 and Codicils, Ex.DW2/1 and Ex.DW3/1 which have been proved with sufficient evidence. Defendant No.1 seeks a declaration that Ex.DW1/1, Ex.DW2/1 and Ex.DW3/1 are the last and valid Will and Codicils of Late Raj Rani. It is further submitted that probate is not necessary in the case of Will made by a Hindu in Union Territory, Delhi. Defendant No.1 refers to and relies upon the judgments of this Court in Arjan Dass v. Madan Lal, 6 (1970) DLT 260, Chander Bhan v. Hannath Singh, 20 (1981) DLT 32 and Mrs. Vijaya Gursahaney v. DDA, 1994 (29) DRJ 457. It is further submitted that the suit for declaration simplicitor is maintainable. Defendant No.1 refers to and relies upon the judgment of this Court in Dr. Mangal Dass Kapoor v. Kamla Rani, MANU/DE/1821/2009 in which this Court held a suit for declaration simplicitor to be maintainable following the judgment of Punjab and Haryana High Court in Dr. Mrs. Joginder Kaur Malik v. Malik Anup Singh, AIR 1966 P&H 385 as well as two judgments of this Court in Sanjay Gupta v. Ved Kanti Gupta, 1994 (31) DRJ 76 and Jugdish Chander v. Punjab National Bank, 1998 RLR 254. Defendant No.1 also refers to and relies upon the judgment of the Andhra Pradesh High

Court in Amara Venkata Subbaiah and Sons v. Shaik Hussain Bi, 2008 (5) ALD 547.

8. On the basis of unrebutted testimonies of the witnesses, this Court is satisfied that defendant No.1 has successfully proved the Counter-claim. The Counter-claim is, therefore, decreed declaring 'Arun Mohan Radhe Mohan HUF' to comprise of two members, namely, defendant No.1 and his son; and that the plaintiff, defendants No.2 and 3 are not the members of the HUF and have no right in the properties of HUF detailed in para 3 of the Counter-claim including 51, Sunder Nagar, New Delhi and 4/20, Asaf Ali Road, New Delhi. Defendant No.1 is declared to be the owner of his self-acquired properties mentioned in para 5 of the Counter-claim and that the plaintiff, defendant Nos.2 and 3 have no right in the said properties. Following the judgment of this Court in Dr. Mangal Dass Kapoor (Supra), the Counter-claim is also decreed declaring that Will, Ex. DW1/1 and two codicils Ex. DW2/1 and DW3/1 of late Raj Rani have been duly proved. Let a decree be drawn subject to proper valuation of the properties of late Raj Rani and deposit of the differential Court fees in this regard. No costs.

FEBRUARY 27, 2012/rs

J.R. MIDHA, J