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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: July 18, 2012
Judgment Pronounced on: August 21, 2012

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RFA(OS) 73/2010

BALBIR SINGH UPPAL & ANR. Appellants.

Represented By: Mr. Rahul Gupta with
Mr. Shekhar Dasi and
Mr. Pulkit Sachdeva, Advocates.

Versus

GURMEET SINGH UPPAL & ORS. Respondents.

Represented By: Mr. Harish Malhotra, Sr. Adv.
instructed by Mr. Rajender
Agarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG. J.

1. We shall be referring to the parties as per their original nomenclature i.e. plaintiffs and defendants.

2. The ancestry of the litigating parties may be noted. The pedigree table is as under:-

Hakim, Dewan Singh Uppal

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Hakim, Arjan Singh
(son) (Dft.No.4)

Amar Singh
(son)

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(1) Balbir Singh (son)	-	Plaintiff No.1
(2) Ranjeet Singh (son)	-	Plaintiff No.2
(3) Gurmeet Singh (son)	-	Defendant No.1
(4) Surjeet Singh (son)	-	Defendant No.2
(5) Rajinder Kaur (daughter)		Defendant No.3

In other words, the litigating parties are the two sons of Arjan Singh, who are the plaintiffs and are fighting with their

father. Two other sons and the only daughter of Arjan Singh stand united behind their father.

3. In the year 2006 the plaintiffs filed a suit for declaration and partition on the original side of this Court in respect of 12 immovable properties, details whereof are as under:-

S. No.	Description of the Property	Recorded Owner of the Property
1.	House bearing Municipal No.8756-58, Rahag Gunj Roshan Ara Road, Delhi	Defendant No.4
2.	Plot bearing Municipal No.A-2, Sarai Peepal Thala, G.T. Karnal Road, Delhi	Ms.Gurcharan Kaur, the mother of the plaintiffs and defendants Nos.1 to 3 and wife of defendant No.4
3.	Shop bearing Municipal No.2751/1-B Hamilton Road, Mori Gate, Delhi	Defendant No.1
4.	Shop bearing Municipal No.3761/A Mori Gate, Delhi	Defendant No.2
5.	House bearing Municipal No.E-883, Sarasvati Vihar, Delhi	Defendant No.4
6.	Shop bearing Municipal No.320/10, Fatehpuri, Delhi	Defendant No.1
7.	Plot bearing Municipal No.16-CC LG-6, Rani Bagh, Pitam Pura, New Delhi	Defendant No.1
8.	Shop bearing Municipal No.8645, Roshan Ara Road, Delhi	Defendant No.4
9.	Shop bearing Municipal No.8736/A, Ground Floor, Roshan Ara Road, Delhi	Defendant No.1
10.	Shop bearing Municipal No.8736/A, First Floor, Roshan Ara Road, Delhi	Manju Uppal, Wife of Defendant No.1
11.	Plot to be allotted in Sanjay Gandhi Transport Nagar	Defendant No.2
12.	Shop bearing Municipal No.320/11, Fatehpuri, Delhi	Plaintiff No.2 and Defendant No.1

4. It was pleaded by the plaintiffs that Late Hakim Dewan Singh Uppal was residing in an area which is now Pakistan and owned ancestral properties there. On his retirement from government service in the year 1934, Dewan Singh, who had knowledge about herbal medicine started practicing as a Hakim. As the practice expanded, defendant No.4 started assisting him. On partition of the country in the year 1947, Dewan Singh migrated to India and settled in Delhi. After settling in Delhi, Dewan Singh lodged two claims with the Claims Officer for compensation in respect of his two ancestral properties left behind in Pakistan. Claims were assessed at ₹10,240/- and ₹6,400/- totaling to ₹16,640/-. Compensation in sum of ₹5,547/- was awarded to Dewan Singh in respect of the claims. However, before he could receive the compensation assessed, Dewan Singh expired on 11.05.1955. Sometime before his death, Dewan Singh had gifted a sum between ₹10,000/- to ₹15,000/- to defendant No.4 for setting up the family business i.e. of Hakim as also for purchasing some properties. Utilizing a part of the said sum, the defendant No.4 started the family business of Hakim under the name and style of 'M/s Sewak Pharmacy'. Being the eldest son of Dewan Singh, the defendant No.4 was running the said business and his younger brother i.e. Amar Singh was assisting him in the said business. After the death of Dewan Singh, the Settlement Officer paid compensation in sum of ₹5,547/- awarded to Dewan Singh to his two sons i.e. the defendant No.4 and Amar Singh in equal shares. Utilizing a part of the sum of ₹10,000/- or ₹15,000/- given to him by Dewan Singh, and defendant No.4's share in the compensation awarded to Dewan Singh in lieu of his ancestral

properties left behind in Pakistan, defendant No.4 purchased the property mentioned at serial No.1 in the table noted herein above i.e. the property situated at Roshnara Road. The business of Hakim carried on by defendant No.4 flourished and yielded good income and in due course of time the plaintiffs also joined the said family business. Between the years 1969 to 2005 defendant No.4 acquired the properties mentioned at serial Nos.2 to 12 in the table noted herein above from the income derived by him from the aforesaid family business and the compensation received by him from the ancestral properties left behind in Pakistan.

5. Relevant would it be to note that with respect to property mentioned at serial No.5 in the table noted herein above i.e. the property situated in Saraswati Vihar, it was pleaded that in the year 1984 one Ms.Shakuntla, the original owner of the said property, had executed a General Power of Attorney in favor of the plaintiff No.1 thereby authorizing him to sell the said property and had issued a receipt in the name of defendant No.4 acknowledging having received consideration from him for sale of the said property. In the year 1993 a sale deed was executed by plaintiff No.1, acting as the General Attorney of Ms.Shakuntla transferring title to defendant No.4.

6. In essence, it was claimed by the plaintiffs that they are entitled to a share in : (i) the property mentioned at serial No.1 in the table noted herein above i.e. the property situated at Roshnara Road for the reason defendant No.4 had utilized a nucleus of the ancestral fund in the acquisition of the said property i.e. the compensation received by him in lieu of the ancestral properties of his father Dewan Singh left behind in

Pakistan; and (ii) the properties mentioned at serial Nos.2 to 13 in the table noted herein above, for the reason the defendant No.4 had utilized the income derived by him from family business of Hakim in the acquisition of the said properties. Declaration sought by the plaintiffs was that the properties mentioned in the table noted herein above be declared as joint family properties.

7. Along with the plaint, numerous documents were filed by the plaintiffs which included documents pertaining to compensation awarded to Dewan Singh in lieu of properties left behind in Pakistan. The first document in said regards is the application form(s) submitted by Dewan Singh for claiming compensation, the relevant portion whereof reads as under:-

“5. Nature and extent of applicant's interest in property.	Under Ownership and possessed by applicant.
6. How did applicant acquire his interest in property.”	Self Purchased by applicant

8. The next document in said regards is orders dated 10.07.1951 and 08.11.1951 passed by the Claims Officer whereby the 2 claims lodged by Dewan Singh for two properties left behind in Pakistan were assessed at ₹6,400/- and ₹10,240/- respectively. The next document is the application form(s) submitted by the defendant No.4 and his brother Amar Singh claiming compensation awarded to their late father Dewan Singh, the relevant portion whereof reads as under:-

“(2) Was the applicant a member of Joint Hindu Family in Pakistan? Yes

(3) Was his claim filed on behalf of the Joint Hindu Family as constituted in Pakistan? If not state whether claim properties had been separately filed and state Index No. of such claim. State names and addresses of principal members of joint family	The claim was filed by Shri Dewan Singh and after his death the claim was substituted in two names myself and brother Shri Arjan Singh."
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9. The next document is an agreement dated 21.11.1969 entered into between defendant No.4 and his brother Amar Singh, the relevant portion whereof reads as under:-

"This agreement is made on 21st day of November, 1969 between Shri Amar Singh..... hereinafter called the party No.1 and Shri Arjan Singh....hereinafter called the 2nd party and whereas the party No.2 has purchased from Rehabilitation department an allotable property No.XII/8756 to 8758 in Rahat Ganj, Roshanara Road, Delhi for ₹7581/- and the parties have with their mutual understanding willingly submitted their compensation.....adjustment for price of allotable property purchased by the second party....., party No.1 does not want to have any share of the purchased property from party No.2, the party No.1 has therefore received ₹2773.80 P. in cash the compensation of his share from party No.2....."

10. The next document is a letter dated 27.11.1969 written by Amar Singh to the Regional Settlement Commission stating therein that the compensation payable to him be adjusted against the sale price of the property bearing Municipal No.8756-8758, Rahat Ganj, Roshnara Road, Delhi purchased by his brother i.e. defendant No.4.

11. The last document in said regards is a conveyance deed dated 11.07.1984 executed between the President of India in favour of defendant No.4 transferring the ownership of the

property situated at Roshanara Road in favour of defendant No.4, which records that defendant No.4 has purchased said property for a consideration of ₹7581/-, out of which a sum of ₹5,155/- has been paid by him in cash and remaining sum of ₹2,426/- stands adjusted against the compensation payable to him under the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

12. Another document filed by the plaintiffs is an unregistered partnership deed dated 01.04.1985, which records that the plaintiffs and defendant Nos.1, 2 and 4 have formed a partnership to carry on the business of pharmacy and medical profession under the name and style 'M/s Hakim Arjan Singh Uppal & Sons'. It would be relevant to note here that the plaintiffs filed a certificate of registration of 'M/s.Sewak Pharmacy', which certificate records that 'M/s.Sewak Pharmacy' is the sole proprietorship concern of defendant No.4. In addition thereto, various documents were filed by the plaintiffs to show that they along with their families had resided together with the defendants for a couple of years.

13. In the common written statement filed, the defendants pleaded that 'M/s.Sewak Pharmacy' was not a joint family business as alleged by the plaintiffs but was a sole proprietorship concern of defendant No.4, who had good knowledge about herbs. It was denied that 'M/s.Sewak Pharmacy' was set up by the defendant No.4 by using the funds of joint family or any sum given to his father Dewan Singh. It was denied that defendant No.4 had acquired the property mentioned at serial No.1 in the table noted herein above i.e. the property situated at Roshnara Road or other

properties from the joint family funds or the compensation received by him in lieu of the properties of his father late Dewan Singh left behind in Pakistan. It was pleaded that the plaintiffs used to work as helpers at M/s.Sewak Pharmacy and thereafter started their own business.

14. After filing the written statement, the defendants filed an application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the same does not disclose any cause of action and is barred under the provisions of 'Hindu Gains of Learning Act, 1930'.

15. During the pendency of the suit, the statement of the plaintiff No.1 was recorded under Order X CPC, the relevant portion whereof reads as under:-

“My date of birth is 17th August, 1950.....The compensation payable to payable to Late Hakim Dewan Singh Uppal, was received by my father and his brother. Property No.8756-58, Rahat Ganj, Roshan Ara Road, Delhi -7, was purchased from the compensation paid by the Department of Rehabilitation. However, other properties mentioned in annexure-1 were not purchased from the compensation payable by Department of Rehabilitation.

Q Did Late Hakim Dewan Singh Uppal carry on business along with his sons in HUF?

A I do not know, as I was five years old at the time when my grandfather expired and the business was carried on by grandfather in question in Pakistan.

My father and his brothers have been giving professional advice as Hakims before partition in the country and continued to do so after they shifted to India. Properties mentioned at serial No.1 and 3 to 11 are HUF properties as the entire family had worked together and provided services as professional Hakims to third parties/patients. I

do not know whether income from Hakim profession/business was being declared as income of HUF.

...I have declared my income from profession as Hakim in my Income Tax returns. My father also files Income Tax return in his individual capacity and declares income from Sewak Pharmacy in his Income Tax returns....I do not know Sewak Pharmacy is a partnership firm or a sole proprietorship concern as the papers are with my father...I am aware of the document enclosed at page 294, in which Hakim Arjan Singh Uppal has been shown as sole proprietor of Sewak Pharmacy and the date of said document is 4.3.1974." *(Emphasis Supplied)*

16. Vide impugned order dated 22.04.2010 the learned Single Judge has allowed the application filed by the defendants under Order VII Rule 11 CPC and has rejected the plaint on the grounds that : (i) the averments made in the plaint, even if taken to be true in their entirety, do not disclose any cause of action; (ii) a cumulative analysis of the documents pertaining to compensation awarded to Dewan Singh in lieu of his properties left behind in Pakistan filed by the plaintiffs and the statement of plaintiff No.1 recorded under Order X CPC shows that the properties in respect whereof Dewan Singh had claimed compensation were not ancestral properties but his self-acquired properties and thus the claim of the plaintiffs that defendant No.4 had utilized the compensation received by him in lieu of the 'ancestral' properties of his father left behind in Pakistan for acquiring the properties mentioned in the table noted herein above is falsified; (iii) in view of the provisions of Section 3 of Hindu Gains of Learning Act, 1930 which require that earning of an individual from acquired skills such as medical or legal

practice, accountancy or other avocations where individual effort and skill is necessary, shall always be deemed to be separate property of the individual and not the property of joint Hindu family and the fact that business of Hakim carried on by defendant No.4 under the name and style of 'M/s.Sewak Pharmacy' was not a commercial venture but a calling or profession, the income derived by defendant No.4 from the said business is his separate income and property acquired from said funds would be his personal property and thus the plaintiffs cannot lay a claim to the properties, and (iv) the plaintiffs are not justified in laying a claim to the properties mentioned in the table noted herein above for they have not produced on record any material whatsoever to show that the recorded owners of the said properties were holding the said properties for or on behalf of joint Hindu family.

17. Aggrieved by the impugned order dated 22.04.2010 passed by the learned Single Judge, the instant appeal has been filed.

18. In support of the appeal, learned counsel appearing for the appellants advanced 4 following submissions:-

A. That the learned Single Judge failed to appreciate the settled legal position that while deciding an application under Order VII Rule 11 CPC the Court cannot delve into the merits of the averments made in the plaint which have to be taken on their face value. Only if taken in totality, the case made out in the plaint is untenable would the Court be justified in rejecting the plaint as either barred or not disclosing any cause of action.

B. That in coming to the conclusion that the properties in respect whereof compensation was sanctioned to Late Dewan Singh were his self-acquired properties, the learned Single Judge has not correctly analyzed the documents filed by the plaintiffs pertaining to compensation awarded to Late Dewan Singh, particularly the recording contained in the application forms seeking grant of compensation awarded to Late Dewan Singh submitted by defendant No.4 and his brother Amar Singh; that they were members of a joint family in Pakistan.

C. That the learned Single Judge has committed an illegality in holding that no material was placed on record by the plaintiffs to show that the properties mentioned in the table noted herein above were being held by the recorded owners of the said properties for and on behalf of the joint Hindu family. In the instant case, the documents filed by the plaintiffs establish that the plaintiffs and the defendants resided together for a number of years, leading to a presumption of existence of joint family, urged the counsel, which in turn leads to a further presumption that the properties held by the members of the joint family were acquired out of income of the joint family. According to learned counsel, said presumption gets strengthened by the circumstance that the erstwhile owner of the property situated at Saraswati Vihar executed a General Power of Attorney in the favour of the plaintiff No.1 authorizing him to sell the said property notwithstanding sale consideration for purchase of the said property was paid by the defendant No.4.

D. The learned Single Judge failed to appreciate that the provisions of 'Hindu Gains of Learning Act, 1930' have no application in the present case.

19. The aforesaid conspectus of facts and the submissions made thereon shows that following 3 questions arise for determination in the instant appeal:-

(i) Whether the property mentioned at serial No.1 in the table noted herein above i.e. the property bearing Municipal No.8756-8758, Rahat Ganj, Roshnara Road, Delhi would be ancestral?

(ii) Whether the business of Hakim carried on by the defendant No.4 under the name and style of M/s Sewak Pharmacy was joint family business or separate business of defendant No.4?

(iii) If the answer to question no.(ii) is that the business of Hakim carried on by the defendant No.4 was his separate business, whether the properties mentioned in the table noted herein above were acquired by the defendant No.4 with the income derived by him from the said business?

20. We commence our journey by noting certain observations from a recent pronouncement of the Supreme Court reported as JT 2012 (3) SC 451 Maria Margardia Sequeria Fernandes & Ors. v. Erasmo Jack de Sequeria (dead) Thru LRs. The facts of the said case were that the appellant No.1 and respondent No.1 therein were brother and sister. The respondent No.1 had filed a suit under Section 6 of the Specific Relief Act, 1963 against the appellant No.1 seeking grant of a decree of permanent and mandatory injunction in his favour in respect of the suit property. In the plaint filed, it was alleged by respondent No.1 that he remained in

possession of the suit property for several years by virtue of a family arrangement; his sister, appellant No.1 had dispossessed him from the suit property without following the due process of law and thus the possession of the suit property should be restored to him. On the other hand, appellant No.1 contended that she is the rightful owner of the suit property and had given possession of the suit property to her brother as a caretaker. The trial court decreed the suit filed by respondent No.1, which decree was affirmed by the High Court. The Supreme Court held that the pleadings and the documents placed on record by the parties establishes that appellant No.1 had a valid title to the suit property and had given possession of the suit property to her brother as a caretaker; the respondent No.1 had not been able to establish any family arrangement by virtue of which the possession of the suit property was given to him; caretaker, watchman or servant can never acquire interest in the property irrespective of their long possession and the courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time, either as a friend, relative or caretaker. Thus, the Supreme Court allowed the appeal. Though the matter had reached the Supreme Court after trial and parties had led their evidence, 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 and particularly with respect to the first contention advanced by learned counsel for the appellants.

21. We need to note a very pertinent observation, on the subject of pleadings, by the US Supreme Court in the decision reported as 556 U.S. 662, John D. Ascroft, Former Attorney General v Javaid Iqbal: *factual allegations must be enough to raise a right to relief above the speculative level. The pleadings must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action and recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we are not bound to accept as true a legal conclusion couched as factual allegation only a complaint that states a plausible claim for relief survives a motion to dismiss*’.

In re: Question No.(i).

22. From a cumulative analysis of the pleadings and documents filed by the plaintiffs, following facts can be gleaned:-

- A. Late Dewan Singh was residing and owned 2 properties in Punjab, which upon partition were left behind in Pakistan.
- B. After his retirement from government service in the year 1934, Late Dewan Singh started the business of Hakim.

C. On partition of country in the year 1947, Late Dewan Singh migrated to India and settled in Delhi.

D. Late Dewan Singh lodged 2 claims with Rehabilitation Department seeking compensation for the properties left behind by him in Pakistan and compensation in sum of ₹ 5,547/- was assessed in respect of said claims.

E. Before he could receive compensation Late Dewan Singh expired on 11.05.1955 leaving behind his sons defendant No.4 and Amar Singh as his legal heirs.

F. The Rehabilitation Department divided the sum of compensation awarded to Late Dewan Singh between the defendant No.4 and Amar Singh in 2 equal shares.

G. An agreement was entered into between the defendant No.4 and Amar Singh whereby they agreed that ₹2,773/- from out of the compensation assessed could be adjusted against the sale consideration of the property at Roshnara Road and that said sum was received by Amar Singh.

H. On 11.07.1984 a conveyance deed was executed by the President of India in favour of defendant No.4 transferring the ownership of the property situated at Roshanara Road in favour of defendant No.4, which records that sale consideration for said property was ₹7,581/-, out of which ₹2,426/- has been adjusted against the compensation payable to the defendant No.4 and remaining sum of ₹5,155/- has been paid in cash by defendant No.4.

23. Whereas the plaintiffs contend that the properties in respect whereof compensation was assessed in the name of Late Dewan Singh were ancestral, the defendants contend that the same were self-acquired properties of Late Dewan Singh.

24. As already noted herein above, the learned Single Judge has held that the said properties were self-acquired properties of Late Dewan Singh.

25. It is unnecessary to go into the said controversy for the reason Late Dewan Singh expired on 11.01.1955 i.e. prior to the enactment of the Hindu Succession Act, 1956 and thus it could be said that in the hands of his sons, with respect to the interest of his grandsons, the property had assumed an ancestral character.

26. Thus, admittedly, the property at Roshnara Road was purchased by defendant No.4 by paying partly from the ancestral compensation pool and the remainder from his personal funds, and for which we may clarify that we would be herein after dealing in Re. Question No.2 as to why we are holding that income generated by defendant No.4 has to be treated as his personal. The ratio is ₹2,426/- (ancestral) : ₹5,155/- (self).

27. In a recent decision in RFA (OS) No.75/2007 titled as 'Shikha Sharma v Daljit Singh' decided on 04.05.2012, the issue which had arisen before a Division Bench of this Court, of which one of us; namely Pradeep Nandrajog J. was a member of, was a similar acquisition of a property where part sale consideration was by adjusting an ancestral fund and the remainder by the self generated fund. As were the instant parties, the litigating parties in the said suit were also Sikhs from Punjab and were governed by Hindu Law. It was held:-

“14. In Labh Singh's case (Supra) the Lahore High Court while holding that „if the Court is unable to find what proportion of land is ancestral and which is non-ancestral, the whole must be held to be non-ancestral observed as under:-

"In other words, if before consolidation he held 40 kanals ancestral and 60 kanals non-ancestral that out of his new consolidated holding 40 per cent should be recorded as ancestral and 60 per cent as non-ancestral. This indeed was the argument adopted by the learned trial Judge and it has undoubtedly the advantage of equity. But I do not myself see and the appellants counsel was unable to explain how this rule of proportion can be brought into line with any legal principle. Ever since the well known Privy Council ruling, 42 P R 1910 [Attar Singh vs. Thakkar Singh], the principle has been followed that if a Court is unable to find what proportion of land is ancestral and which is non-ancestral, the whole must be held to be non-ancestral."

15. In Mara's case (Supra) the Supreme Court considered the issue whether the properties of Jhalli Jats of Tehsil Ludhiana were RFA (OS) 75/2007 Page 8 of 11 ancestral or non-ancestral and held as under:- "Now, it has been ruled in the Punjab consistently that where lands are so mixed up that the ancestral and non-ancestral, portions cannot be separated they must be regarded as non-ancestral, unless it is shown which are ancestral and which are not. This was laid down by the Privy Council in Avtar Singh v. Thakar Singh 35 I.A. 206. It was held by Mr. Justice Kapur (as he then was) in Indar Singh v. Gulzara Singh and others A.I.R. 1951 Pb. 345 basing himself upon Saif-ul-Rahman vs. Mohammad Ali Khan I.L.R. 9 Lah. 95 and Jagtar Singh v. Raghbir Singh I.L.R. 13 Lah. 165 that land ceases to be ancestral if it comes into the hands of an owner otherwise than by descent.

16. In Pohlo Ram's case (Supra) a learned Single Judge of the Himachal Pradesh High Court, following the decision of the Supreme Court in Mara's case (Supra) held as follows:- "The property ceases to be ancestral if it comes into the hands of an owner otherwise than by descent or by reason merely of his connection with the

common ancestor. In case the property is acquired by gift, it ceases to be ancestral except when the gift is made of ancestral property by the donor to the person/persons who would succeed to it by inheritance on his death and the gift amounts to acceleration of succession, that is, the donor completely effaces himself and makes a gift of his whole property to the entire body of heirs, who would be entitled to inherit it in the event of his death."

17. In Inder Singh's case (Supra) a Single Judge of the Punjab and Haryana High Court came to the conclusion that if ancestral and non-ancestral part of the land has been mixed in such a way that it is difficult to find out as to which part of the land is ancestral and non-ancestral, it has to be held that the entire land is non-ancestral.

18. In the present case, it is observed that the only surviving issue was whether the property i.e. Shop No.30, Central Market, Lajpat Nagar-II, New Delhi was allotted to late Shri Prem Singh Bedi in lieu of ancestral property or alternatively, did he blend his personal interests with the joint interests. In this behalf, both the parties had relied upon Ex.PW-2/1 being the order dated 26th April, 1951 passed by the Claims Officer on the application made by late Shri Prem Singh Bedi. In Ex.PW-2/1 there is a mention of two properties one of which was House No.524, Mohalla Lotian, Bazar Ganj Gali Kotla, Peshwar City, Pakistan about which it is noted that the same was divided into two equal shares, one going to late Shri Prem Singh Bedi and the other to his brother Shri Raghubir Singh Bedi. The other property mentioned in the said order is the one, late Shri Prem Singh Bedi inherited from his maternal grandfather. Further, it is noted that the claim passed against the house inherited from his father was ₹2,608/-. It is also noted that late Shri Prem Singh Bedi had thereafter made construction thereon and the cost of the building was assessed at ₹1,328/- and after adding the value of the site, total value of the house was

assessed as ₹2,608/-. It is, therefore, evident that out of ₹2,608/- once the cost of construction/building is excluded, the value of the site/land which late Shri Prem Singh Bedi inherited from his father comes to ₹1280/- only. On the other hand, with regard to the house inherited from maternal grandfather, the claim is to the extent of ₹10,000/-. Consequently, it is seen that out of the total claim awarded, value of the portion inherited from the father was very meagre. Further, substantial claim awarded is from the other property inherited from his maternal grandfather.

20. In the present case, the parties belong to Punjab. The land, both ancestral and non-ancestral, was also situate in erstwhile Punjab. In Mara's case (Supra), the Hon'ble Supreme Court, dealing with property situated in Punjab, ruled that in Punjab, where there is a personal property of a person and he has acquired an ancestral property; both of which merge into a third property, the entirety of the third property is to be treated as the self-acquired property of the person concerned. Therefore, we are of the opinion that in Punjab it has been consistently ruled that where land comprises of both ancestral and non-ancestral portions and cannot be reasonably separated, they must be regarded as non-ancestral. Further, in Labh Singh's case (Supra), the Court negated the argument being sought to be raised by the appellant before us with respect to the shares of ancestral and non-ancestral property. The consistent legal rule settled by the Privy Council in the decision reported as 42 PR 1910 Attar Singh Vs. Thakkar Singh has consistently been followed."

28. Thus, applying the ratio of law afore-noted, we hold that on the pleadings of the parties and the documents filed, there being no requirement for any trial, the learned Single Judge has correctly opined that the property at Roshnara Road has

to be treated as personal to defendant No.4. This answers question No.(i).

In re: Question No.(ii) and (iii)

29. The plaintiffs are claiming that the business of Hakim carried on by defendant No.4 is a joint family business for the reasons:- (a) the defendant No.4 had started said business with a sum of ₹10,000 – ₹15,000/- given to him by his father Late Dewan Singh; and (b) Amar Singh, the brother of defendant No.4, and the plaintiffs had rendered assistance to defendant No.4 in carrying on said business.

30. As already noted herein above, the learned Single Judge has dealt with the said question with reference to the provisions of Hindu Gains of Learning Act, 1930. The relevant provisions of the said Act reads as under:-

“2. Definitions – In this Act, unless there is anything repugnant in the subject or context, -

(b) “gains of learning” means all acquisitions of property made substantially by means of learning, whether such acquisitions be made before or after the commencement of this Act and whether such acquisitions be the ordinary or extraordinary result of such learning;

(c) “learning” means education, whether elementary, technical, scientific, special or general, training of every kind which is usually intended to enable a person to pursue any trade, industry, profession or avocation in life.

3. Gains of learning not be held, not to be separate property of acquirer for certain reasons – Notwithstanding any custom, rule or interpretation of the Hindu Law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely by reason of-

(a) his learning having been, in whole or in part, imparted to him by any member, living or deceased of his family, or with the aid of the joint funds of his family, or with the aid of the funds of any member thereof.

(b) himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part, by the joint funds of his family, or by the funds of any member thereof."

(Emphasis Supplied)

31. Before the enactment of Hindu Gains of Learning Act, 1930 it was settled law that income earned by a member of a joint family by the practice of a profession or occupation requiring special training was joint family property, if such training was imparted from the funds of the joint family. But this term 'learning' was interpreted by the Courts to mean some kind of special learning, as distinguished from ordinary general education, that all members of the family might be expected to receive. The most famous decision in said regards is the decision of the Privy Council reported as AIR 1921 PC 35 Gokalchand v. Hukumchand where a person had acquired education by paying fee from the joint family income which enabled him to acquire knowledge, compete at a competitive examination and become a member of the Indian Civil Service. It was held by the Court that salary earned by said person was the property of joint family and thus should be partitioned between the members of the said family.

32. After the decision of Privy Council in Gokalchand's case (supra), Hindu Gains of Learning Act, 1930 was enacted by virtue of which all gains of learning, whether the learning be

special or ordinary, became the self-acquired property of the acquirer.

33. In the instant case, the defendant No.4 had acquired learning about herbal remedies, which learning was used by him to render medical advice in relation to herbal remedies to the people suffering from diseases. As noted herein above, the plaintiffs allege that the defendant No.4 started the business of Hakim utilizing a sum of ₹10,000/- - ₹15,000/- given to him by his father Late Dewan Singh.

34. Assuming the same to be true, can it be said that income earned by defendant No.4 from the business of Hakim was joint family business since he had started the said business with the capital given to him by his father?

35. The answer to this question has to be a 'NO' for the reason, the defendant No.4 earned his income from the learning of herbal remedies acquired by him, and capital if any, given to the defendant No.4 by his father only facilitated him to earn an income from the learning acquired by him. In fact, the use of the word '*business*' for the work of Hakim carried on by defendant No.4 is a misnomer. The defendant No.4 was practicing the profession of Hakim, in that, he was rendering service of medical advice relating to herbal remedies to the people suffering from diseases. In a profession, the capital of a professional is his competency and specialized knowledge of his profession.

36. In every business there is a use of learning. What needs to be seen is the dominant source of the earning from a business : Whether it is from learning or from the capital. If the capital is the dominant factor for the earning derived from the business and such capital was given from the joint family

funds, the earnings from the business would be the income of the joint family. While in case where dominant source of the earnings derived from the business is learning, such earning would be the income of the acquirer, irrespective of the fact whether the learning was acquired or business was started by the acquirer from the joint family funds.

37. Let us take an illustration: A has 2 sons named B and C, who are automobile engineers. A gives a sum of ₹50,000/- to B, who sets up a consultancy business in automobiles, and uses the sum of ₹50,000/- to acquire an office. A gives ₹5,00,000/- to C who sets up a factory to manufacture spare parts for automobiles. The income earned by B would be from his learning and that of C would be from the capital.

38. A similar view was taken by the Madras High Court in the decision reported as AIR 1953 Mad 834 Parsam Venkataramayya v Parsam Venkatarmappa wherein it was observed as under:-

“11. We are inclined to the view that if a member of a Joint family who was given a certain sum from the Joint family funds and who goes out of the family in the sense of leaving the family house as in the present case, starts a business of his own individually or in partnership and by virtue of his exertions he prospers in his business and acquires properties it will be not justifiable to hold that either the business or his properties would be joint family properties. In view of the constitution of the Hindu joint family and the incidents of its ownership of properties, to come to any other conclusion would be to deprive a member of such family of his initiative and his desire to eke out a livelihood by his individual efforts and intelligence. The trend of judicial opinion has been as far as possible to recognise properties acquired out of the individual exertions of a member of a joint family to be his self-acquisition. The Hindu Gains of Learning Act (Act 30 of 1930) is one of the

enactments which gave legislative recognition to this view, by treating the properties acquired out of the earnings of the members of the family who happened to have had their education from out of the joint family funds as self-acquired and separate properties. The Act provides that notwithstanding any custom, rule or interpretation of the Hindu law, no gains of learning shall be held not to be the exclusive and separate property of the acquirer merely for the reason that his learning, in whole or in part has been acquired with the aid of the funds of the family and "learning" has been understood to mean education which is to enable a person to pursue any trade, industry, profession or avocation in life. If a member of the family is inclined to start a trade and for that purpose he gets assistance by way of a contribution from the joint family funds without any further assistance from the joint family and goes and starts a business and acquires properties, it appears to be reasonable to extend the principle of the Hindu Gains of Learning Act to such a case. We are unable to find any real distinction between the case of a member getting himself educated out of the joint family funds and employing himself somewhere earning and acquiring properties and a member getting a cash contribution from the family and starting a trade on his own account."

39. Even on the second and third question, the observations of the Supreme Court in *Maria's* case (supra) compel us to hold that no trial is warranted and that on the pleadings and the relied upon documents by the plaintiffs, keeping in view the legal position noted herein above, the verdict has to be in favour of the defendants.

40. In the instant case, a careful examination of the pleadings and documents filed by the plaintiffs and the statement of the plaintiff No.1 recorded under Order X CPC we find that the pleadings do not even reach speculative level and are of a kind which merely create a suspicion of a legally

cognizable right of action, but meaningfully read in light of the admitted documents, reveal the hollowness thereof.

41. Whereas it has been averred by the plaintiffs in the plaint that the defendant No.4 used to carry on the business of Hakim with his father, Late Dewan Singh, in Pakistan, the plaintiff No.1 pleaded ignorance of the said fact in his statement recorded under Order X CPC. The certificate of registration of M/s. Sewak Pharmacy records that it is a sole proprietorship concern of defendant No.4 and the fact that the defendant No.4 used to treat his earnings from M/s Sewak Pharmacy as his separate income in the income tax returns filed by him stated by plaintiff No.1 in his statement recorded under Order X CPC do not warrant any trial with respect to the income generated by defendant No.4 as the sole proprietor of M/s.Sewak Pharmacy. As far back as 1944, it was held by the Allahabad High Court in the decision reported as AIR 1945 All 164 Kailashi v Shankar that *'if a business is started by an adult member of the family separately, the mere fact that the sons who are dependent on him and are being maintained by him give him some help in the carrying on of the business would not necessarily make the business the joint business of himself and his sons.'*

42. With respect to the argument of the plaintiffs predicated upon the fact that the plaintiffs and defendants resided together for a couple of years, suffice would it be to state that the learned Single Judge has rightly held that proof of existence of joint family does not lead to a presumption that the property held by any member of the family is joint, and the burden rests upon the person asserting that the property is joint to establish said fact. In the instant case, except for

making bald averments that the properties mentioned in the table noted herein above were held by their recorded owners for and on behalf of joint family the plaintiffs have not been able to show, either by way of pleadings or documents filed by them, that the said properties mentioned in the table noted herein above were held by their recorded owners for and on behalf of joint family.

43. In view of the above discussion, the present appeal fails. As a necessary consequence thereof, the impugned order dated 22.04.2010 passed by the learned Single Judge is affirmed. But, we would recommend to the appellants not to litigate with their father and as their siblings agree that the wealth accumulated by their father is due to his personal efforts, should also agree to the same and thereafter mend fence with their father. After all, who else other than the children would inherit the estate of parents (in India) and needless to state if the appellants are in peace with their father, we are sure that the father would be fair to them pertaining to his estate.

44. However, we leave the parties to bear their own costs.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

August 21, 2012
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