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

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RESERVED ON: 08.10.2013
PRONOUNCED ON: 21.11.2013

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RFA(OS) 94/2012, C.M. APPL. 17946/2012

GAJINDER PAL SINGH Appellant
Through : Ms. Mala Goel, Advocate.

versus

MEHTAB SINGH & ORS. Respondents
Through : Sh. P.R. Chopra, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S.RAVINDRA BHAT

1. This is an unsuccessful plaintiff's appeal directed against the dismissal of his partition suit by a judgment and decree - of 9th July, 2012 - of a learned single judge of this Court in CS (OS) 374/1993. The suit had sought partition of two immovable properties, viz., B-13, Nizamuddin East (a 200 sq. yard plot with a two storeyed super-structure) and B- 22, East of Kailash, New Delhi (a 211 sq. yards plot along with two and a half storeyed super-structure). The said properties are hereafter collectively referred to as "suit properties" and individually, as "Nizamuddin plot" and "East of Kailash plot".

2. Prof. Parman Singh, a "displaced person" from Pakistan, came to India leaving behind considerable Joint Hindu family immovable properties.

He was the only surviving child of his father Lala Behari Mal, a businessman with extensive properties in Rawalpindi (Pakistan). Prof. Parman Singh expired in Delhi on 17.09.1975. He was survived by his widow and two sons (i.e., Mehtab Singh, the first defendant and the second defendant) and grandsons (i.e., the plaintiff, the third and fourth defendants). Parman Singh's widow, namely, Smt. Balwant Kaur too expired on 16.06.1991 leaving behind the said individuals and the suit properties. The plaintiff contended that his grandfather Prof. Parman Singh after coming from Pakistan applied for house allotment under the Displaced Persons (Rehabilitation and Compensation) Act, 1954 ("the Rehabilitation Act") to the Central Government. By a letter dated 26.02.1950, Prof. Parman Singh was informed by the Rehabilitation Ministry, Central Government (with reference to his application) that several houses for displaced persons were under construction and were likely to be completed by June, 1950. By a letter dated 12.03.1950, he was requested to deposit a sum of Rs. 5,000/- towards the allotment of the house applied for by him. Thereafter, by another letter dated 25.05.1950, the Ministry informed Parman Singh that a double room house in Nizamuddin East was to be allotted to him and that he was to be given possession of it when it was ready. Through another letter of 23-10-1953, Parman Singh was informed about the final cost of the house, i.e. Rs. 5,946/- and since Rs. 5,000/- had been paid by him, the balance of Rs. 946/- was to be paid. The plaintiff alleged that as Parman Singh had brought movable properties such as cash and jewellery from Pakistan (which allegedly belonged to the HUF and were given to him by his father), he paid Rs. 5,000/- to the Rehabilitation Ministry and deposited the balance in the Treasury; after which he also paid Rs. 946/- from the same. The Nizamuddin

plot was accordingly allotted to him. Accordingly, it is HUF property and continues to be so.

3. The plaintiff also alleged that in 1960 Parman Singh applied to the MCD for sanction to construct on the plot; he used to rent that property and had received rent. With those amounts, he built additional floors on the property. After his demise in 1975, his widow, Smt. Balwant Kaur continued to stay in those premises and receive rents which used to be deposited in a bank account jointly held with the first defendant. All HUF moneys were allegedly handled by the first defendant. The second defendant Hari Singh (brother of the first defendant) left India sometime in the late sixties and never returned to India thereafter. It was also alleged that by using the Nizamuddin rentals, the first defendant purchased the East of Kailash plot. Thus, the nucleus for payment of consideration of that property came out of HUF funds. The plaintiff resides on the ground floor, the third defendant resides on the first floor and the first defendant with his wife (i.e. the plaintiff's mother, fifth defendant) resides in one bed room on the ground floor of the said house. The fourth defendant resides in the ground floor of Nizamuddin house. The first floor of the Nizamuddin house is let out on rent for the last many years. On the strength of these allegations, the plaintiff claimed 1/10th share in both the said alleged HUF properties. The first two defendants are entitled to one-half share each in the said properties, and the third, fourth and fifth defendants are entitled to 1/10th share each, i.e., as much as that of the plaintiff. In the event the second defendant does not claim any share, the other parties are entitled to 1/5th share each of the aforesaid properties. Apart from his share of the immovable properties, the

plaintiff claimed rendition of accounts kept by the first defendant assessed as Rs. 60,000/-.

4. The first defendant, Mehtab Singh, set out the common defence of all defendants in his written statement. He completely denied that the plaintiff was entitled to maintain a suit for partition. He also denied that the two properties were bought with HUF funds. He claimed that the properties were acquired by him, through his earnings. He stated that his grandfather (the late Parman Singh's father, Lala Behari Mal) lived in a small village, Village Mochh, District Mianwali (now in Pakistan) in a *kutchha* mud house. He was, it is claimed, a small shopkeeper and not a businessman as alleged by the plaintiff. He passed away in 1935, and his wife had pre-deceased him. He left no asset of any substance or value. The mud house and the small shop was abandoned as Parman Singh, the only living heir, had, at a very young age, left the village to further his education and later for his employment. He did not live at Mochh when his father died; he lived at Shahpur and later, Rawalpindi, where he worked as a teacher, and later as a professor. Parnam Singh constructed a house in Rawalpindi in 1946 with his funds after 11 years of the death of his father in 1935. He had to abandon that house upon partition in 1947, when he was airlifted in a military plane from Rawalpindi and at that time, no luggage was allowed. He brought no cash and jewellery to India as alleged by the plaintiff. The Nizamuddin property was Parman Singh's self-acquired property and the East of Kailash plot was the self-acquired property of first defendant. That the said properties were acquired from HUF funds/HUF nucleus is denied. The written statement also avers that Prof. Parman Singh, a displaced person, had lodged a claim with the Central Government for compensation for his

self-acquired house left in Rawalpindi (presently in Pakistan) and in settlement of that claim he received Rs.4,486/- only, which he had perforce to use for purchasing clothes and other personal articles for himself and his wife Balwant Kaur. With part of the compensation received by Prof. Parman Singh for his self-acquired property and with money given to him by the first defendant Mehtab Singh – who was in Government service in Delhi since 1942 – Prof. Parman Singh purchased the Nizamuddin property. He got possession of the said property in 1951 and started living there and continued to live there till his death in 1975.

5. The defendants alleged that Prof. Parman Singh, therefore, acquired the Nizamuddin property from his own sources and did not inherit it. By his Will dated 08.06.1972, he bequeathed his property to his wife Smt. Balwant Kaur, excluding his sons, i.e., the first two defendants from his Will. On the basis of the said will executed by Prof. Parman Singh, the property was mutated in the name of Mrs. Balwant Kaur by a letter dated 27.06.1981 by the Land and Development Officer, Central Government, and she later bequeathed the property to Mehtab Singh by a will dated 25.01.1986. The property was thereafter mutated in the name of the first defendant by letter dated 27.09.1991. The first defendant asserts that the plaintiff knew about Prof. Parman Singh's will and the consequent mutation of the property at the time of his death in 1975 and never objected to it and after 18 years he claims a share in the said property, falsely describing it as HUF property. Regarding the East of Kailash property, the first defendant contended that the plot was purchased by him from the Delhi Development Authority (DDA) in 1965 with his own resources, including Rs. 7,000/- from his GPF account. He constructed the house also from his own resources, including

the loans obtained by him from the Central Government against the mortgage of the property and advances from his GPF account, loans against LIC policies held by him, a loan from a cooperative society and loans from his friends. He denied that the plot was HUF property or that he had used HUF funds for its purchase or construction.

6. The following issues were settled on 07.01.2003:

- "1. Whether the suit property is a HUF property or not?*
 - 2. Whether the plaintiff is entitled to any share in the property and if so to what extent?*
 - 3. Whether the plaintiff is entitled for rendition of account claimed by him?"*
- Other additional issues were later framed:

- "1. Whether the suit is bad for non-joinder of defendant no.2? OPD*
- 2. Whether suit is barred by time? OPD"*

7. The issue pertaining to joinder of second defendant was treated as a preliminary one. An order in relation to it was carried in appeal (as FAO(OS) No.351/2003), which was disposed off on 25.11.2004 as infructuous in view of the order dated 7th April, 2004 deleting the 2nd defendant from the array of parties. In another order of 18.10.2005, in I.A. No. 4154/2004, the Court, after noting the stand of both the parties that the 2nd defendant had not been heard of for well over 30 years, held, after referring to the provisions of Sections 107 and 108 of the Indian Evidence Act, 1872, that the presumption would have to be drawn that the said party is no more. The application was accordingly disposed off.

8. The plaintiff examined himself as his lone witness; the defendants relied on the oral testimony of six witnesses. They filed affidavits of Shri Jodh Singh, Shri Harnam Singh and Shri Santokh Singh Dua. The first two

were born and lived in Mochh and in their affidavits deposed about the poor economic condition of Lala Behari Mal and the fact that the *kutchha* mud house and the shop belonging to him were abandoned by Prof. Parman Singh (who lived at Rawalpindi), the value of which during those days was only a few hundred rupees. Harnam Singh also deposed that Prof. Parman Singh, after his matriculation had become a school teacher and lived away, in Shahpur and later in Rawalpindi, whereas Lala Behari Mal continued to live in village Mochh till his death in 1935. He deposed that in 1946, Prof. Parman Singh, who completed his M.A. and had become a college lecturer, constructed a small house in Rawalpindi. Prof. Parman Singh came to Delhi in September, 1947 virtually penniless, by air in the military plane. The third named witness, namely, Santokh Singh Dua had lived in Rawalpindi and Delhi and had personally known Prof. Parman Singh at both the places. During the pendency of the suit, Jodh Singh and Harnam Singh passed away and having regard to Santokh Singh's advanced age (he was 86 years at the time of his deposition), the Court permitted the defendants to produce him as DW1 before the plaintiff led his evidence. DW-1, in his affidavit, Ex.DW1/A deposed that Prof. Parman Singh and his wife came to Delhi from Rawalpindi in the first half of September, 1947 by a military aircraft and did not bring with them any luggage other than the clothes they were wearing. Thereafter, both lived in the same house at Mahatma Niwas in Ram Nagar where the first defendant Mehtab Singh was residing. He came to Delhi in 1942 for the first time when Santokh Singh gave him accommodation in his rented house at Mahatma Niwas in Ram Nagar, near New Delhi Railway Station. Mehtab Singh continued to live in the said house until 1951. DW-1 was cross-examined, but remained unshaken. In the

course of his cross-examination, he deposed that he was residing in Delhi since September, 1940, that he knew first defendant from Rawalpindi, and that he was related to the first defendant as well as the plaintiff as his daughter's sister-in-law (Nand) is married to the son of the first defendant and brother of the plaintiff. For the first time he met Prof. Parman Singh in 1946 when the latter built a house by the side of his sister's house in Akalgarh, Rawalpindi. His (DW1's) family had come from Pakistan to Delhi in October, 1947. When Prof. Parman Singh arrived at Safdarjung Airport with his wife, he had nothing with him. He (DW1) was present at the airport to inquire as to the welfare of his family from persons who were coming from Pakistan, and further stated that he (Prof. Singh) was carrying nothing. About 60 persons had got down from the military plane. They were carrying nothing with them. The first defendant deposed as DW-2 and was cross examined on four dates by the plaintiff. DW3 Mrs. Katyani Mathur, UDC, L&DO, Nirman Bhawan, New Delhi appeared in the witness box with the original record from which she proved as Ex. DW3/1 and Ex. DW3/2, i.e., the letter of mutation favouring Smt. Balwant Kaur, of 27.06.1981 and the letter of mutation of 27.09.1991 in favour of the first defendant in respect of the Nizamuddin property. DW-4 deposed to being related to the parties, as the first defendant was the son of his mother's sister; he was aware about when Parman Singh passed away, and also about the will dated 08.06.1972. He deposed that on 20.09.1975, the first defendant read the said will in the presence of all close relatives including the plaintiff and the defendant Nos. 3, 4 and 5, Late Harnam Das Bhatia, Late Smt. Balwant Kaur, Late Madan Lal and Late Smt. Ram Bai. Plaintiff was about 22 years old at that time. In cross-examination, DW4 stated that he was not able to

read English but was aware of the fact that by his will, Ex. DW2/1, the late Prof. Parman Singh had left his properties to his wife Smt. Balwant Kaur. The other witnesses, DW-5 and DW-6 produced records; DW-5 proved letters relating to money raised as loans and advances by the first defendant from his office for constructing upon suit properties. DW-6 placed on record the certified copy of the Original register of Registration Record in respect of LIG Scheme of 1979 containing an entry, Ex. DW6/A; he also proved Ex. DW6/B, the plaintiff's affidavit that he owned no property in Delhi (condition precedent for entitlement under the aforesaid claim) with letter dated 19.05.1989. He also proved Ex. DW6/C, the possession letter dated 26.05.1989 issued by the DDA in favour of the plaintiff in respect of the flat allotted to him.

9. After considering the pleadings and the evidence (oral and documentary) on the record, the learned single judge held that the plaintiff failed to prove that the properties were HUF assets or that they were partible. She held that:

“The aforesaid documents thus clearly show that the said property was purchased by Prof. Parman Singh from his own resources and not out of the claims or compensation. The Court is fortified in coming to the aforesaid conclusion from the fact that the plaintiff, in his cross-examination, has categorically admitted that Prof. Parman Singh was gainfully employed as soon as he came to India from West Pakistan in the year 1947 as a Lecturer in the Camp College and was subsequently appointed as a Special Magistrate. Clearly, therefore, the said property was purchased by Prof. Parman Singh from his own funds. Even otherwise, the plaintiff has failed to establish the existence of any HUF of which Prof. Parman Singh was the Karta, and in the course of his cross-examination candidly admitted that he was not aware whether any HUF had been legally created by Prof. Parman Singh. The plaintiff was also compelled to admit that he did

not have copies of the income-tax returns of Prof. Parman Singh, who was an income-tax payee, to substantiate his contention that Prof. Parman Singh was the Karta of an HUF which had purchased the property in question.

55. The plaintiff also proved on record the original Compensation Card issued by the Ministry of Rehabilitation (Ex.PW1/1) to Prof. Parman Singh, which is dated 07.05.1955, and was apparently issued 5 years after the purchase of the property at Nizamuddin East, which admittedly was purchased in the year 1950. Thus, on the own showing of the plaintiff, no compensation element could possibly have been utilized for the purchase of the property five years in advance of the receipt of the compensation, in 1950, when the said property was purchased and paid for. Even assuming the same was acquired with the funds generated from the claims of Prof. Parman Singh, the property would have nevertheless remained the self- acquired property of the father of the defendant No.1, namely, Prof. Parman Singh [See Chander Sen (Supra)].

56. The whole story concocted by the plaintiff that Prof. Parman Singh and his wife had brought valuables and jewellery with them and were carrying 20 kgs. of luggage is also not borne out from the record. The plaintiff himself in his cross-examination was compelled to admit that he was not born at that time nor he was aware as to what his grandparents had done with the valuables they had brought from Pakistan nor he was aware as to how much was realized from the sale of the said valuables nor as to how the said money was utilized. In direct contrast, DW2 Mehtab Singh categorically stated in the witness box that Prof. Parman Singh and his wife were air lifted from Rawalpindi to Delhi in a military plane with 60 other passengers and had come empty handed. DW1 Santokh Singh, a close relative of the plaintiff and the defendants, corroborated this fact by deposing that he was personally present when Prof. Parman Singh and his wife arrived at the Safdarjung Airport in the year 1947 empty handed. It may be noted that the testimony of this witness withstood the test of cross- examination and nothing emerged therefrom to discredit the witness in any manner.

57. There is also on record the registered Will and testament of Prof. Parman Singh dated 08.06.1972 (Ex.DW2/1) in favour of his wife Smt. Balwant Kaur bequeathing to her House No.13, Block B,

Nizamuddin East and the resultant mutation of the property in her favour by L&DO's letter dated 27.06.1981 (Ex.DW2/2). There is also on record the Will of Smt. Balwant Kaur in favour of the defendant No.1, Mahtab Singh (Ex DW2/12) and the resultant mutation of the property in favour of Mehtab Singh by L&DO's letter dated 27.09.1991 (Ex.DW2/13). Then there is the testimony of DW4 Shri Ram Prakash Bhatia, which establishes that the Will of Prof. Parman Singh was read out to the family members, including the plaintiff and the other defendants on 20th September, 1975, four days after Prof. Parman Singh had passed away. The witness was extensively cross-examined by the plaintiff, but nothing could be elicited from him in his cross-examination to discredit his aforesaid statement on oath. The plaintiff himself admitted in his cross-examination that he had not raised any objection to the aforesaid mutations of the Nizamuddin property in favour of Smt. Balwant Kaur and, subsequently in favour of the defendant No.1, and had not written to the L&DO to make a claim of ownership/share in the said property.

58. There are also on record the affidavits filed by the plaintiff in Matrimonial Petition No.269/1987 stating that the deponent did not own any immovable property in Delhi or anywhere else in India. There is also on record the testimony of DW6 Akbar Ali from the office of the Delhi Development Authority, who has placed on record the affidavit of the plaintiff with the supporting documents (Ex.DW6/A to Ex.DW6/C) to show that the plaintiff had sworn an affidavit before the DDA that he owned no property in Delhi, a condition precedent for entitlement of a flat in respect of the LIG Scheme of 1979 floated by the Delhi Development Authority.

59. As regards the property at East of Kailash, there is ample documentary evidence on record to conclusively establish that the said property was the self-acquired property of the defendant No.1, Mehtab Singh. As noted above, documents Ex.DW2/3 to DW2/11, proved on record by DW2, the defendant No.1, sufficiently establish that the plot for the aforesaid property was purchased by the defendant No.1 and the building thereon constructed by the defendant No.1 from the loans and advances generated by the office of the defendant No.1, i.e., the Ministry of Defence, from time to time. There is also on record the Certificate of the Government of India to show that the said property was the self-acquired property of the defendant

No.1 and his wife, the defendant No.5. The plaintiff has been wholly unable to challenge the aforesaid documentary evidence on record. The oral evidence too is tilted in favour of the defendants, in that according to the plaintiff's own admissions in his affidavit by way of evidence and cross-examination, no funds were given by Prof. Parman Singh to the defendant No.1 for the construction of House No.B-22, East of Kailash. Prof. Parman Singh, according to the plaintiff, had retired in 1959 from the Delhi University, whereas the property in question was acquired and built in the year 1970. Prof. Parman Singh was a cancer patient and the plaintiff in his cross-examination admitted that there was no need or reason for Prof. Parman Singh to pay any sum to the defendant No.1. He also admitted that Prof. Parman Singh did not have any joint account with the defendant No.1. To be noted at this juncture that the joint account relied upon by the plaintiff was a joint account of Smt. Balwant Kaur and the defendant No.1, which admittedly was opened in the year 1984, i.e., 14 years after the construction of the property at East of Kailash and, therefore, has no bearing on the matter in issue.

60. In view of the aforesaid overwhelming evidence on record, oral and documentary, the inevitable conclusion is that it must be held that neither Prof. Parman Singh nor the defendant No.1 Mehtab Singh had created any HUF and the properties acquired by them respectively cannot, therefore, partake of the nature of HUF properties.

10. On the basis of the above findings, the impugned judgment found that the suit properties were not HUF assets, and accordingly dismissed the suit.

11. Learned counsel, Ms. Mala Goel, argued that the findings and judgment of the learned single judge are in error of law. It was argued that the evidence presented on behalf of the appellant/Plaintiff were sufficient to conclude that the suit properties were bought with HUF funds. Reliance was placed on Ex.D-2, the letter dated 1-2-1959, issued by the Central Government (Rehabilitation Ministry); letter dated 17.03.1950 from the Ministry of Rehabilitation to Prof. Parman Singh requesting him to deposit Rs. 5,000/- in the Government Treasury/Imperial Bank of India towards the

allotment of the house, i.e. Ex. P4, and stating that his Cheque No.451453 dated 03.04.1950 for Rs. 5,000/- was being returned; Ex. P1, a letter dated 26.03.1950 from the Ministry of Rehabilitation to Prof. Parman Singh with respect to his application of 10-02-1950 for allotment of a house to be constructed in displaced persons colonies likely to be completed by the end of June, 1950; the allotment letter (Ex. P-2) 25-05-1950 in regard to the Nizamuddin property; letter dated 23rd October, 1953 whereby Prof. Parman Singh was informed that the final figure of the actual cost of the house was Rs. 5,946/- and since Rs. 5,000/- was already deposited by him, the balance of Rs. 946/- was to be paid by him within one month of the receipt of the letter, Ex.P-3. Further reliance was placed on the letter dated 04.03.1958 Rehabilitation Ministry by which Prof. Parman Singh was asked to deposit the arrears of ground rent, etc. amounting to Rs. 608.12 until 31.03.1958. Other documents in respect of the construction, such as the sanction letter (Ex. PW-1/7); receipts of moneys spent for construction (Ex.PW1/8 and Ex.PW1/9). The appellant, similarly, also relied on the bank statements of the first respondent, his father (PW-1/12) as well as that of Smt. Harnam Kaur.

12. The appellant's counsel argued that an overall reading of the documents conclusively proved that late Parman Singh had registered as a displaced person with the Rehabilitation Ministry and applied for allotment of a house as a displaced person, had been registered in the prescribed period, i.e. period between 10.02.1947 and 29.02.1948. He had paid Rs. 5,946/- for the allotment of the house. In this context, reliance was placed on Ex. D2, the Compensation Payment certificate, issued by the Regional

Settlement Commissioner to the late Parman Singh, where the total assessed value of his claim(s) or share was shown as Rs. 12,316.62 under Column 5.

13. Ms. Goel argued that the Nizamuddin property was purchased with the money and jewellery brought by Prof. Parman Singh and his wife from Pakistan. It was a rehabilitation benefit for properties left in Pakistan. His father, Lala Behari Mal, died in 1935 leaving behind property in Mochh valued by the defendants at a few hundred rupees. Parman Singh had shifted to Rawalpindi where he had built a house in 1946. Prof. Parman Singh used the money from the sale of the ancestral house at Mochh and the compensation provided for the property at Rawalpindi to purchase of the Nizamuddin property which was not his self-acquired property. It was argued that DW-2 Mehtab Singh admitted that the NOC from Hari Singh (the second defendant, his brother) was submitted to L&DO for mutation of the Nizamuddin property; the further admission by DW2 that he did not pay any amount to his father for purchasing that property and that its mutation in his name was conditional. Counsel argued that the defendant's argument about Parman Singh spending the Rs. 4,486/- received as compensation for clothes, etc. for himself and for his wife was unbelievable. Someone without a house or shelter and who valued his claim for Rs. 12,316.62 could not be expected to spend Rs.4,486/- for clothes, etc.

14. Counsel contended that the East of Kailash property was also HUF property as it had been derived from the rents of the Nizamuddin property. The records of the joint account of the first defendant and his mother Mrs. Balwant Kaur, Ex.PW1/12 and Ex.PW1/13, were sufficient to establish that fact. The defendants, it was argued, could not establish that the East of Kailash plot was the self-acquired property of the first defendant No.1 as he

claimed. It was argued by the appellant that the first defendant (Mehtab Singh) had clearly used HUF funds to purchase the East of Kailash property. The findings of the single judge about lack of evidence were unsustainable.

15. It was submitted that since Parman Singh was born before the Hindu Succession Act was enacted the suit properties were clearly HUF assets. In this context, Section 8 of the Act was relied upon to say that the properties were bought from the proceeds of the house owned by late Behari Mal, who died in 1935, before the Act came into force. The properties of the said late Behari Mal went to Parman Singh, grandfather of the plaintiff and father of Mehtab Singh. Clearly the sale proceeds of that property were the nucleus for the HUF funds used to buy valuable assets later. All evidence pointed to Prof. Parnam Singh using that money, and later claiming that he had left behind assets in present day Pakistan. That claim resulted in compensation amounts paid to him which were used to purchase the suit properties.

16. Learned counsel for the plaintiff/Appellant argued that once evidence is placed on record showing that the assets acquired could be traced to HUF funds, the onus shifts on the defendant or the party asserting otherwise. Counsel relied on *Sameer Kumar Pal v. Sheikh Akbar*, 2010 (11) SCC 777 in support of the contention. She also relied on the decision reported as *Mudi Gowda Gowdappa Sankh v. Ram Chandra Ravagowda Sankh* (1969) 1 SCC 386 to the following effect:

“The burden of proving that any particular property is joint family property, is, therefore, in the first instance upon the person who claims it as coparcenary property. But if the possession of a nucleus of the joint family property is either 'admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is however, subject to the limitation that

the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self acquisition to affirmatively make out that the property was acquired without any aid from the family estate. In Appcdaswami v. Suryanarayanamurti I.L.R. (1948) Mad. 440. (P.C.), Sir John Beaumont observed as follows:

The Hindu law upon this aspect of the case is well settled.' Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property. See Babubhai Girdharlal v. Ujamlal Har-govandas I.L.R. [1937] Bom. 708, Venkataramayya v. Seshamma I.L.R. [1937] Mad. 1012 and Vythianatha v. Varadaraja I.L.R. [1938] Mad. 696."

17. Reliance was placed upon the decision of the Supreme Court reported as *Eramma v. Virpanna*, 1966 (2) SCR 626, especially the following observations:

"It is clear from the express language of the section that it applies only to coparcenary property of the male Hindu holder who dies after the commencement of the Act. It is manifest that the language of s. 8 must be construed in the context of s. 6 of the Act. We accordingly hold that the provisions of Section 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force i.e., where succession opened before the Act, s.8 of the Act will have no application."

18. Urging that the Court should uphold the judgment and decree of the learned single judge, Mr. Chopra, learned counsel for the respondent submitted that there was no worthwhile evidence on the record to support any inference, much less prove that the suit properties were purchased out of HUF funds. Counsel highlighted the fact that apart from expounding a theory that Prof. Parman Singh's father had a house and business at the time of his death in 1935, which included a house in Mochh, Distt. Mianwali, there was no concrete evidence to establish that any such nucleus based around ancestral funds ever existed. It was submitted that the evidence clearly revealed that Parman Singh was by all accounts a self-made man who completed his education working as college teacher or lecturer. It is also clear, learned counsel argues, that he had a house in Rawalpandi, which he had to give up when coming to India at the time of partition.

19. The defendants' counsel contended that the suit properties were not HUF properties. It was argued that there was never any HUF of Prof. Parman Singh nor is there any HUF of the defendant Mehtab Singh. The Nizamuddin property was the self-acquired property of Prof. Parman Singh, which he bequeathed to his wife Smt. Balwant Kaur by a Will dated 8th June, 1972, (Ex.DW2/1) and thus, it was mutated in her name on 27-06-1981 by a letter Ex. DW2/2. Subsequently, she bequeathed the property by a will dated 25.01.1986, Ex. DW2/12, to the first defendant. As regards the East of Kailash property, the plaintiff's contention that it was HUF property is without basis, since Mehtab Singh paid the full consideration for that property to DDA on allotment of the said land to him and had raised money by way of loans from his office and other agencies for the said purchase and to raise the superstructure thereon. The evidence showed that the first

defendant No.1 in Central Government service and retired as Joint Secretary. With his income and loans raised by him the East of Kailash property was acquired by him. Documents Ex. DW2/3 to Ex. DW2/11 proved by the said defendant proved that the property was the self-acquired property of the first defendant and built with his resources. The plaintiff had to prove the first three issues, which he could not. Ex. P1 and Ex. P2, letters from the Rehabilitation Ministry to Prof. Parman Singh, in respect of the allotment of Nizamuddin property, showing that he could purchase that property since even if he was a displaced person, he was employed and could pay the consideration for the property in lump-sum, i.e., Rs.5,000/-. These clearly established that the property was not purchased with rehabilitation compensation. Likewise, this was also supported by the plaintiffs' admission that Prof. Parman Singh was a lecturer and was later appointed as a Special Magistrate. On his coming to India in 1947, he started earning immediately and the payment for the Nizamuddin property was made with his savings and earnings. That property was not paid for with compensation. The plaintiff relied upon the original compensation Card issued by the Rehabilitation Ministry (Ex.PW1/1) issued to Prof. Parman Singh at the time of payment of interim compensation. That card is dated 07.05.1955, since the Displaced Persons (Compensation and Rehabilitation) Act was enacted in 1954 and the rules under it were promulgated in 1955. Ex.PW1/1 was issued five years after the purchase of the Nizamuddin property. Therefore no compensation element could possibly have been utilized to buy the suit property five years earlier in 1950.

20. Mr. Chopra argued that Prof. Parman Singh and Smt. Balwant Kaur had come empty handed in a military aircraft, which was admitted by DW1

Santokh Singh in his affidavit in evidence and again in the cross-examination. He admitted that Prof Parman Singh did not claim that any of the suit properties were an HUF asset, and to the contrary, admitted that there was no document on record to substantiate his claim that Prof. Parman Singh contributed towards purchase of land at East of Kailash. Counsel highlighted that the joint account of Mehtab Singh and his mother was opened nine years after Parman Singh's death. This was supported by the testimony of DW-6, Shri Akbar Ali, who was summoned with the record of the DDA to prove the certified copy of the registration of the flat in the name of the plaintiff, at Entry No.48624 (Ex.DW6/A). All the evidence proved and placed on record of the Court clearly revealed that at no stage was any of the properties purchased out of any amounts other than the earnings and savings of their original owners, the late Prof. Parman Singh and the defendant Mehtab Singh.

Analysis and Conclusions

21. It can be gathered from the above discussion that the main question which needs adjudication is whether the plaintiff was able to establish that any of the suit properties were HUF assets and capable of partition.

22. The plaintiff/appellant entirely relies on Ex. P-1 to P-4 and Ex. PW-1/7, PW-1/8 and PW-1/9 to say that the Nizamuddin property was acquired out of HUF funds. These documents establish that late Parman Singh applied for allotment of house property, as one possessed of some means, to pay the consideration for it. He did pay over Rs. 5,000/- for that purpose, and was given the Nizamuddin property. The plaintiff's attempt to connect the payment of consideration with compensation paid to Prof. Parnam Singh, in the opinion of this court, is without any basis. The Displaced

Persons (Compensation & Rehabilitation) Act and rules provides the formula for compensation – Appendix VIII read with Rule 16. The consideration is assessed value of the claim, compensation, grant, rehabilitation, total and percentage. The assessed value of the assets and properties of the claimant (i.e. Parman Singh) was Rs. 4400/-. The payment of compensation was made to him in July, 1955, much after he had been allotted the Nizamuddin property, for which Prof. Parman Singh had paid the consideration. The reference to displaced persons in the offer of allotment is only to show which of the individuals were eligible to apply. They had to be displaced persons and in a position to pay. The plaintiff, in the opinion of this Court, was unable to place any evidence showing that the said Nizamuddin property was purchased with the compensation amounts. Tellingly, the enactment under which compensation was assessed and paid to late Parman Singh was brought into force 5 years after he bought the said property.

23. The plaintiffs' reliance on Ex. D2 again is of no avail to show that the Nizamuddin property was purchased out of HUF funds. That is the compensation assessed, and the document was issued in 1959. The plaintiff's effort to say that the total compensation paid included the amount paid for the Nizamuddin property is nowhere borne out from the record. Furthermore, the effort to say that Prof. Parman Singh could not have spent over Rs.4400/- which he initially received as compensation towards household effects and movables is neither here nor there. That he received that amount is a fact. However, to say that it could not have been spent by him except for paying consideration in respect of the Nizamuddin property without anything to support such contention is untenable. The fact of the

matter is that the plaintiff was not even born when the compensation was paid, and even Mehtab Singh could only surmise about these facts. In fact, the plaintiff's awareness about the manner in which Parman Singh and his wife arrived in India – by a military aircraft, by his admission, was derived from his grandmother's narration to him. He could not possibly have known whether they had any jewelry or any other valuables, which could have been the corpus for purchasing the Nizamuddin property. Nor do any of the parties know if he had any amount in his bank accounts, which he was in a position to access and use, to pay for the assets he eventually purchased.

24. The parties to this litigation admit that Parman Singh was educated. He had moved out of Mochh at a fairly young age, completed his graduation and started living in Rawalpindi. Back then itself, he was working as a lecturer during pre-Partition times. At one stage, plaintiff's counsel relied on some rulings of the Supreme Court and this Court to submit that the pay of a lecturer at the time was too meager for Parman Singh to have saved much and to have been able to afford to purchase the Nizamuddin property. However, there is no acceptable proof of that allegation, and reliance on judgments in that regard amounts to conjecture. Whether the late Parnam Singh had any previous savings that he could access and use to purchase property cannot be reasonably inferred or proved with such speculations.

25. The law declared by the Supreme Court in regard to properties acquired by individuals who also happen to be members of HUFs is that there is no presumption that such properties are joint family assets. There is a presumption that families are joint, but that presumption does not apply to properties. In *Mst. Rukhmabai v. Lala Laxminarayan and Ors.*, [1960] 2 SCR 253 it was held that:

“5. There is presumption in the Hindu Law that a family is joint. There can be a division in status among the members of a joint Hindu family by definement of shares which is technically called "division in status", or an actual division among them by allotment of specific property to each one of them which is described as "division by metes and bounds" ... But there is no presumption that any property, whether movable or immovable, held by a member of a joint Hindu family, is joint family property. The burden lies upon the person who asserts that a particular property is joint family property to establish that fact. But if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the burden shifts to the member of the family setting up the claim that it is his personal property to establish that the said property has been acquired without any assistance from the joint family property.” (emphasis supplied)

Likewise, in *Surendra Kumar v. Phoolchand (dead) Through Another*, (1996) 2 SCC 491 it was held that:

“6. It is no doubt true that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been acquired. But such a presumption is a presumption of fact which can be rebutted. But where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family.”

26. The plaintiff's mainstay as mentioned earlier, P-1 to P-4, are also unhelpful to establish that Parman Singh purchased the Nizamuddin property with joint family (HUF) funds. Ex.P1 and Ex.P2 are letters of 26.03.1950 and 25.05.1950 from the Rehabilitation Ministry to Parman

Singh in allotting the Nizamuddin property. The first letter is in clear terms an offer spelling out conditions of eligibility, i.e. the consideration, and his status as a displaced person from Pakistan. The applicant also had to be gainfully employed, and prepared to pay Rs. 5,000/- in lump sum. That the said Parman Singh was able to pay for the property, even before he received any compensation (the earliest point of time being in 1955 in that regard) indicates that the amount so paid had no co-relation to the compensation claimed. The other documents, such as compensation card, document evidencing payment (of compensation) on 07-05-1955, etc. do not carry the matter even a whit further. The Displaced Persons (Compensation and Rehabilitation) Act was made in 1954 and the rules under it were promulgated in 1955. The Court is also cognizant of the fact that the plaintiff/appellant admitted that Parman Singh was employed as a Lecturer in the Camp College soon after his coming to Delhi and was later appointed as a Special Magistrate. Parman Singh apparently did not suffer any loss of employment and got a source of livelihood soon after coming over to India. Thus, quite clearly, the Compensation Card (Ex.PW1/1) was issued five years after the purchase of the Nizamuddin property. Therefore, the materials on record established that no compensation could possibly have been utilized for the purchase of the Nizamuddin property in 1950, when it was purchased and paid for.

27. So far as the East of Kailash property goes, DW1 proved the documents Ex. DW2/3 to DW2/11. They establish that the East of Kailash property was a self-acquired property, built by resources of the first defendant. Ex.DW2/3 is a Certificate dated 13-01-1970 issued by Shri G.L. Goswami, Advocate, Government Pleader to certify that the East of Kailash

property is the absolute property of the first defendant and his wife. Likewise, Ex. DW2/4 is an abstract of cost for the building at B-22, East of Kailash certified by a Gazetted Valuer for Rs.70,620/- issued to the first and fifth defendant. Ex.DW2/5 is the Central Government letter No. 3 dated 17.12.1965 for grant of non-refundable advance of Rs.7,000/- to the first defendant from his GPF Account for the purchase of a residential plot. Ex. DW2/6 is letter dated 13.03.1970 communicating the sanction of non-refundable advance to first defendant from his GPF Account for Rs. 9,300/- and also certifying that he had withdrawn Rs.7,000/- for the purchase of the plot and proposed to apply for a loan of Rs.35,000/- under the House Building Advance Scheme. Ex.DW2/7 dated 25.04.1970 is a letter from the Ministry of Defence, Central Government conveying sanction of loan of Rs. 35,000/- to Shri Mehtab Singh. Ex. DW2/8 is a Certificate (dated 05.07.1971) issued by the Postal authorities regarding sanction of Rs.5,273/- to the first defendant as the surrender value of his PLI Policy. In the same vein, PW-2/9 is a letter enclosing a cheque for Rs.3,286.41 - dated 02.06.1970 from Life Insurance Corporation of India to the first defendant. Ex. DW-2/10 and DW-2/11 are letters in respect of loans that the first defendant availed. Cumulatively, these prove that the East of Kailash property was acquired by the first defendant with his funds, i.e. out of his own savings and earnings.

28. The appellant's argument about the provisions of the Hindu Succession Act being inapplicable since Prof. Parman Singh's father died before its enactment is, in our opinion, incorrect. In *Commissioner of Wealth Tax v. Chander Sain*, AIR 1986 SC 1753, the Supreme Court ruled that:

“It is necessary to bear in mind the Preamble to the Hindu Succession Act, 1956. The Preamble states that it was an Act to amend and codify the law relating to intestate succession among Hindus.

In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under section 8 of the Hindu Succession would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under section 8 of the Act included widow, mother, daughter of predeceased son etc.

Before we conclude we may state that we have noted the observations of Mulla's Commentary on Hindu law 15th Edn. dealing with section 6 of the Hindu Succession Act at page 924-26 as well as Mayne's on Hindu Law, 12th Edition pages 918-919

The express words of section 8 of The Hindu Succession Act, 1956 cannot be ignored and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but included son of a predeceased son cannot be ignored.”

The above ruling has been reiterated and applied in *Yodhishter v. Ashok Kumar*, (1987) 1 SCR 516 at 523, *Sunderdas Thackersay & Bros. v.*

Commissioner of Income-tax, 1982 (137) ITR 646, *Commissioner of Income Tax v. P.L. Karuppan Chettiar*, 1993 Supp. (1) SCC 580, and *Additional Commissioner of Income-tax v. M. Karthikeyan*, 1994 Supp.(2) SCC 112.

29. In the opinion of this court, the overwhelming nature of documentary material – which is the safest kind of evidence that can be relied upon under such circumstances point to both properties not being joint family properties, but individual acquisitions of Prof. Parman Singh (in respect of the Nizamuddin property) and of the first defendant (in respect of the East of Kailash property). Both of them were earning when these properties were purchased for valuable consideration. The plaintiff cannot rest his case on assumption that Prof. Parman Singh inherited some amount by selling his father's property at Mochh, and then utilized it after partition to buy the Nizamuddin plot. There is undeniable evidence that he was working for quite some time in pre-partition Pakistan and continued to do so, after he came here. Likewise, Mehtab Singh was working at the time his father came to India. He has established that he paid for the East of Kailash property out of his earnings, savings and loans.

30. In view of the above discussion, this court is of the opinion that the impugned judgment and order does not call for any interference. The appeal is therefore dismissed without any order on costs.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

NOVEMBER 21, 2013