

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

Reserved on : 28.11.2013
Date of Decision: 12.12.2013

+ **RFA(OS) NO.13 OF 2013 & CMs 1113/2013 & 1114/2013**

RAVI SHANKAR SHARMA Appellant
Through: Mr. Ravi Prakash Gupta, Advocate.

versus

KALI RAM SHARMA & ORS. Respondents
Through: Mr. Vipin K.Singh, Advocate for
R-3, 4, 7, 9, 11 & 12.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI**

1. The appellant had, on a claim of hereditary rights, sought partition, possession, rendition of accounts, injunction, etc. of certain properties which he claims were inherited by his father from his grandfather Mr. Tulsi Ram. He had claimed the suit property devolved upon his father and him too by inheritance from his grandfather, who in turn had earlier inherited it from his father (i.e. from the appellant's great-grandfather). It is thus claimed that the suit property was an HUF property because of this hereditary succession of the ancestral property.

2. The suit was dismissed on the ground that the plaintiff had not been able to establish as to how the mere ownership of property of the grandfather Mr.Tulsi Ram and then to his father Late Shri Kali Ram and, if at all, subsequently to him formed a part of a HUF. His suit was dismissed by the learned Single Judge vide order dated 7th September, 2012 wherein it was noted that Mr.Tulsi Ram died on 2nd November, 1980 i.e. after the enactment of the Hindu Succession Act, 1956. According to the legal precedents (*The Commissioner of Wealth Tax, Kanpur & Ors. v. Chander Sen Ors.*, 1986 AIR 1753 and *Yudhister v. Ashok Kumar*, 1987 AIR 558), the inheritance of property by a male Hindu from his paternal ancestors will be treated as his self-acquired property and not as HUF property. It was not the case of the plaintiff/ appellant that the grandfather was part of an HUF which owned the suit property. The plaintiff was unable to make out a legal entitlement for himself which would require adjudication. Even the reliance by the plaintiff on *Thamma Venkata Subbamma Thr. LR v. Thamma Rattamma & Ors.*, 1987 (3) SCC 294 was misplaced since that judgment dealt with alienation of undivided coparcenary interest. Whereas in the present case, a Mitakshara

coparcenery had yet to be established and the mere fact of transfer of ownership of property down the male lineage do not, *ipso facto*, establish that fact. The appellant has impugned the aforesaid dismissal of his suit.

3. Learned counsel for the appellant reiterates emphatically the contentions raised before the learned Single Judge and again relied upon the judgment in *Thamma Venkata Subbamma* (supra). He urged that since the appellant's grandfather acquired the property before 1956, the provisions of the Hindu Succession Act is inapplicable and that he (the appellant) was entitled to sue his father for partition, as a coparcener member of the Hindu Undivided Family of which both were members.
4. This Court has considered the arguments. The law has been laid down by the Supreme Court in *Chander Sen* and *Yudhister* (supra). In the latter case, it has been held:

“11. This question has been considered by this Court in Commr. of Wealth Tax, Kanpur v. Chander Sen (1986) 3 SCC 567 : (AIR 1986 SC 1753), where one of us (Sabyasachi Mukharji, J.) observed that under the Hindu law, the moment a son is born, he gets a share in father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property

from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as karta of his own undivided family but takes it in his individual capacity. At pages 577 to 578 (of SCC) : (at p. 1760 of AIR) of the report, this Court dealt with the effect of Section 6 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th Edn., pages 924-26 as well as Mayne's on Hindu Law, 12th Edition pages 918-19. Shri Banerji relied on the said observations of Mayne on Hindu Law', 12th Edn., at pages 918-19. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and was unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12th Edn., page 919. In that view of the matter, it would be difficult to hold that property which devolved on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-à-vis his own sons. If that be the position then the property which devolved upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house." (emphasis supplied)

5. The appellant has not claimed or set up his case on the basis of an existing HUF apropos the suit property and the consequent devolution of hereditary rights equivalent to that of his father. His claim is premised, but not proved, upon the act of inheritance by the father of

the grandfather's property thus entitling him to a claim in the "ancestral property". Section 8 of the Hindu Succession Act, 1956 declares succession of intestate estate. The appellant's father became the successor by virtue of the said provision. The fundamental flaw in the appellant's argument is that it fails to acknowledge that the suit property was a self-acquired property by operation of law as discussed hereinabove, both when the grandfather later when the father inherited it. The plaint was devoid of any particulars setting up a claim through an HUF. Therefore, the arguments of the appellant are untenable.

6. There is a body of authority to the effect that though a family might be joint, there is no presumption that property of someone is HUF property. Understood from this perspective, the appellant-plaintiff was under an obligation to prove in the first instance that his grandfather's acquired the suit property through devolution of HUF interest. He clearly did not adduce any evidence in support of such claim. Consequently, the Single Judge's finding that succession was to be in terms of Section 8, cannot be faulted.
7. We find no reason to interfere with the reasoning and conclusion arrived at by the learned Single Judge. Accordingly, the appeal is

dismissed along with the applications.

**NAJMI WAZIRI
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

**DECEMBER 12, 2013
RN**