



2026:DHC:5484



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 20th April, 2026

Pronounced on: 9th July, 2026

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RFA No. 960/2023

D. K. SAXENA

S/o Shri G.P. Saxena,

R/o Q-603, Anupam Apartments,

East Arjun Nagar

New Delhi- 110032

Also at:

Sector-121, Noida, U.P.

.....Appellant

Through: Mr. Radhakrishna S Hegde, Ms.
Farhat Jahan Rehmani, Mr. Prakash
Chandra Sharma, Advocates

versus

G. P. SAXENA

S/o Late Shri B. B. L. Saxena

R/o Q-603, Anupam Apartments,

East Arjun Nagar

New Delhi- 110032

.....Respondent

Through: Counsel for Respondent (appearance
not given)

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The ***present Regular First Appeal*** under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed against the Judgment and Decree dated 30.05.2023 whereby the Suit of the Plaintiff / Respondent, Sh. G.P. Saxena for recovery of possession,

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Signature Not Verified

Signed By: VIKAS

ARORA

Signing Date: 10.07.2026

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*permanent injunction and recovery of mesne profits **has been decreed***, by the learned Additional District Judge.

2. *The Plaintiff had filed a **Suit bearing C.S. No. 1328/2009 (renumbered as C.S. No. 1935/2016) for Possession, Permanent Injunction and recovery of mesne profits*** in respect of Flat no. Q-603, Anupam Apartments, East Arjun Nagar, Delhi- 110032 consisting of four bed rooms.

3. The **facts as narrated in the Plaint**, are that the Plaintiff, Sh. G.P. Saxena has two sons, namely the Defendant, Sh. D.K. Saxena and Sh. V.K. Saxena, and two daughters, Smt. Prem Lata Saxena and Smt. Madhu Lata Saxena. The Plaintiff got his son Sh. D.K. Saxena, defendant No.1 married to Smt. Bindu Saxena in the year 1989, and the marriage expenses were borne by him.

4. The Plaintiff was employed as an Assistant Manager with the Food Corporation of India and retired in the year 1990. Thereafter, *initially he shifted to the rented accommodation at P-303, Anupam Apartments, East Arjun Nagar, Delhi-110032*, where he resided along with his family and the defendant, for about two and a half years. During this period, Defendant got employed with N.I.C.D., as a Lab Assistant, in December 1984.

5. Thereafter, the Plaintiff arranged sufficient funds from various sources and *purchased the property in question, from his own funds, with no contribution from the defendant*. The plaintiff, thereafter, requested the defendant to arrange separate accommodation for himself and his family. However, the defendant continued to reside in rented premises at P-303, Anupam Apartments for about two years, after which he requested the



Plaintiff and other family members to allow him and his family to reside in the suit property.

6. The plaintiff, on the request of the defendant and due to intervention of family members, on humanitarian grounds, *permitted the defendant and his family to occupy a portion of the suit property* comprising of two rooms, W.C. Bathroom and one-third portion of the balcony, (*hereinafter referred to as the 'Suit Property'*), as a licensee. The plaintiff along with his younger son and his family, continued to reside in the remaining portion of the flat.

7. The plaintiff alleged that the defendant and his family did not contribute towards payment of house tax, electricity charges, water charges, or other expenses relating to the property. Subsequently, the defendant started interfering with the peaceful enjoyment and possession of the suit property by the plaintiff and his family. In March 2009, defendant demanded transfer of the portion occupied by him in the suit property exclusively in his name and threatened to forcibly dispossess the plaintiff in case of non-compliance.

8. Consequently, the plaintiff issued a Legal Notice dated 08.05.2009, terminating the license of the defendant and sought the vacant possession, on or before 30.06.2009. The defendant gave a reply dated 27.05.2009, but he failed to vacate and handover the peaceful possession of the premises, to the plaintiff.

9. The plaintiff, thus filed the Suit *seeking recovery of possession of the suit property, mesne profit for wrongful use and occupation @ 200/- per day since 30.06.2009 till date and Permanent Injunction.*

10. The Defendant, in his **Written Statement**, took a *preliminary objection* that the present *Suit was not maintainable, as the plaintiff had*



suppressed the material facts. It was further alleged that the Plaintiff was attempting to dispossess the Defendant from the suit property without any legal justification and deprive him of his legitimate rights therein, despite the Defendant having been residing in the suit property jointly with the Plaintiff and other family members, for more than 19 years.

11. The Defendant explained that the funds for purchase of the suit property were arranged by him. He had got Rs.1,00,000/- from the sale of plot bearing No.64, Prabhat Sahakari Awas Samiti Ltd., Prabhat Nagar, Bareilly, owned by him. He had taken a personal loan of Rs.1,00,000/- from his paternal aunt, Smt. Indu Verma w/o Late Sh. Umesh Verma. He also obtained a loan of Rs.10,700/- against LIC policy and contributed the remaining amount from his personal savings. It was contended that out of the total consideration amount of Rs.4,00,000/- for purchase of the flat, Defendant had contributed more than Rs.2,50,000/-, i.e., approximately 62% of the total cost, from his own funds and borrowed sources.

12. The Defendant further stated that he had contributed an additional sum of Rs.50,000/-, through cheque No.239045 dated 08.01.2003 drawn on Punjab National Bank, Radhey Puri, Delhi, *towards renovation of the suit property.* The cheque was issued in the name of his mother, Smt. Shail Kumari, at the instance of the Plaintiff.

13. It was stated by the Defendant that the Plaintiff was involved in a corruption case, initiated by the Food Corporation of India and was *dismissed from service after allegedly being caught while accepting a bribe,* and had not received any retirement benefits, such as pension or gratuity from FCI. Due to such circumstances, Plaintiff was not financially capable of purchasing the suit property and that the property was *acquired from joint*



family funds, though the title documents were executed in the name of the Plaintiff as Karta of the alleged HUF. Thus, the Plaintiff had no exclusive right over the suit property.

14. The Defendant further asserted that the Plaintiff and his wife had been residing with him since 1990 and had enjoyed various benefits arising out of his employment, including medical facilities and LTC benefits, as the Defendant was employed as a Research Assistant with N.I.C.D under the Ministry of Health and Family Welfare, Government of India.

15. The Plaintiff and his wife were dependent upon the Defendant for the purpose of availing medical benefits, under the C.G.H.S. facility. They had been included as a dependent under C.G.H.S. Dispensary No.67, Laxmi Nagar, Delhi, bearing Card No.0006010, issued in the name of the Defendant, and they had been availing medical benefits thereunder. However, subsequently, *vide* Application dated 08.01.2008 submitted before N.I.C.D., the Plaintiff sought deletion of his and his wife's names from the list of dependents maintained under the said C.G.H.S. card.

16. ***On merits***, the defendant denied the plaintiff's claim of ownership over the suit property and contended that the property was not purchased solely from the Plaintiff's funds or income. It was reiterated that the Plaintiff was dismissed from service. The Defendant claimed that he had contributed more than 62% of the total cost of the suit property from his own funds and resources.

17. The Defendant further contended that the family had always remained joint and maintained a common ration card Mark D-1. It was alleged that merely because the property documents stood in the name of the



Plaintiff, the Plaintiff could not claim exclusive ownership over the same, as the property was purchased for the benefit of the Hindu Undivided Family.

18. The Defendant denied the Plaintiff's claim that his marriage with Smt. Bindu Saxena, was arranged and financed by the Plaintiff. It was stated that the Defendant was already employed with N.I.C.D since 1984 and had contributed towards his own marriage expenses.

19. The Defendant further denied that the Plaintiff had taken the rented premises bearing No. P-303, Anupam Apartments, East Arjun Nagar, Delhi after leaving his employment. The Defendant claimed that the said premises were taken on rent by him, and he had paid the rent.

20. The defendant categorically mentioned that he started working with N.I.C.D as a technician since November, 1984 and not December, 1984. His wife was also employed with Indian Council for Research on International Economic Relation, New Delhi and that they were the primary earning members of the family whose income was utilised towards household expenses.

21. All the averments made in the Plaint were denied and it was claimed that *the Suit was liable to be dismissed*.

22. The ***Plaintiff in his Replication***, denied the preliminary objections and averments contained in the Written Statement of Defendant and reiterated and reaffirmed the case set up in the plaint.

23. Upon consideration of the pleadings of the parties, the ***Issues were framed on 21.11.2011, as under:***

- i. *Whether plaintiff is entitled to a decree of possession as prayed for? OPP.*



- ii. *Whether the plaintiff is entitled to a decree of permanent injunction? OPP.*
- iii. *Whether the plaintiff is entitled to a decree of mesne profit? If so, at what rate? OPP*
- iv. *Whether the suit of the plaintiff is not maintainable? OPD*
- v. *Whether the suit property is a joint Hindu family property? OPD*
- vi. *Relief.*

24. **The Plaintiff, Sh. G.P. Saxena in support of his case, examined himself as PW-1** and tendered in evidence his affidavit on the same lines of his plaint and the same is Ex. PW1/A. In support of his case, the Plaintiff relied upon various documentary evidences. The Plaintiff placed reliance upon the original conveyance deed dated 20.01.2005 pertaining to the suit property, which was Ex.PW1/1, along with the original site plan Ex.PW1/2. He further relied upon the original letter dated 19.08.2009 issued by Sir Ganga Ram Hospital to the Plaintiff, Ex.PW1/3. The Plaintiff also relied upon the original share certificates dated 05.05.1984 issued in the names of Devinder Kumar Saxena and Virender Kumar Saxena, Ex.PW1/4 and Ex.PW1/5, respectively, along with receipts relating to booking of plots in Bareilly in the names of Devinder Kumar Saxena and Virender Kumar Saxena, Ex.PW1/6 and Ex.PW1/7. Further, the Plaintiff relied upon the instalment receipts pertaining to the said plots, Ex.PW1/8 and Ex.PW1/9, and the documents relating to payment of development charges, which were marked as Mark A and Mark B (Ex.PW1/10 and Ex.PW1/11 having been de-exhibited and marked). The Plaintiff further relied upon the original allotment certificates issued in the names of Devinder Kumar Saxena and



Virender Kumar Saxena, Ex.PW1/12 and Ex.PW1/13. The Plaintiff also placed reliance upon the photocopies of sale deeds dated 24.03.1992 and 07.03.1992, which were marked as Mark C and Mark D (Ex.PW1/14 and Ex.PW1/15 having been de-exhibited and marked). Additionally, the Plaintiff relied upon the original LIC instalment receipts Ex.PW1/16 to Ex.PW1/26 and the photocopies of demand drafts marked as Mark A1 to Mark A7. These documents were relied upon by the Plaintiff to substantiate his claim regarding the ownership of the suit property and the financial transactions relied upon by him.

25. **PW-2, Sh. Vijay Kumar Bitta**, husband of the sister of Plaintiff's wife, *tendered his evidence by way of affidavit as Ex. PW2/A*. He supported the case set up in the plaint and stated that he arranged an accommodation on rent i.e. Flat P-303, Anupam Apartment, in the year 1991, @ Rs. 1800/- per month which was paid by the plaintiff to Sh. Sanjay, owner of the flat through cheque.

26. **PW-3, Smt. Anu Saxena**, younger daughter-in-law of the plaintiff, *tendered her evidence by way of affidavit as Ex. PW3/A*. She supported the case of the Plaintiff that he allowed the defendant to reside in the suit property in the month of December, 1992. He was allowed only to occupy the portion shown in red colour in the site plan Ex. PW1/2.

27. **PW-4, Smt. Lata Saxena**, younger daughter of the plaintiff, *in her affidavit of evidence Ex. PW4/A*, supported the case of the Plaintiff that he arranged entire funds from his own resources and purchased the suit property.

28. In defence, Defendant Sh. D.K. Saxena examined himself as **DW-1** and *tendered his evidence by way of affidavit, Ex.DW1/A*, reiterating the



averments made in the Written Statement. In support of his defence, the Defendant relied upon various documents, including the letter dated 08.09.2009 Ex.DW1/1. He further relied upon the copy of the certificate dated 20.10.2009 issued by Punjab National Bank, Radhey Puri Branch, which was marked as Mark D-1. Additionally, the Defendant placed reliance upon the copy of the LTC advance form dated 13.10.1994 and the copy of the LTC bill dated 05.01.2004, which were marked as Mark D-2 and Mark D-3, respectively.

29. **DW-2, Sh. Jagdish Chandra**, UDC from the office of NCDC, Shammath Marg, New Delhi proved the LTC advance from Mark D-2 and the *same was exhibited as Ex.DW2/1*. He also proved the LTC bills as Ex. DW2/2 (Mark D-3).

30. **DW-3, Ms. Manju Gupta**, Senior Manager, Punjab National Bank deposed that Sh. Ashok Kapoor was the Manager in Punjab National Bank, Radhey Puri Branch in the year 2009 and he expired on 28.05.2017. *She further deposed that the reply by Punjab National Bank dated 20.10.2009 bears his signature at point A and the same is exhibited as Ex. DW3/1*. In her cross-examination, she tendered email date 29.11.2017 as Ex. DW3/P1 and attested copies of the Housing Loan documents as Ex. DW3/P2.

31. **DW-4, Ms. Indu Verma**, paternal aunt of the defendant, *tendered her evidence by way of affidavit Ex.DW4/A*. She supported the defendant and stated that she had given a personal loan of Rs. 1,00,000/- to the defendant towards the purchase of the suit flat, and had issued *the* demand draft No. 063344/17 dated 08.07.1992 drawn on Allahabad Bank Bareilly, payable at Allahabad, directly in favour of Sh. B.C. Gupta, seller of the suit



flat. Moreover, the amount was repaid by the defendant in cash in several instalments, for which she relied upon the document Ex. PW1/D-1.

32. The **learned ADJ**, while deciding the claim of the Appellant/Defendant that the property in question was purchased from the funds of HUF in the name of the Plaintiff, who was acting as the Karta of the HUF and as to whether the suit property was a joint Hindu family property, placed reliance upon the Conveyance Deed dated 20.01.2005 Ex.PW1/1 to observe that the Plaintiff was the recorded owner of the suit property. No material was placed on record to establish that the Plaintiff had acquired the suit property, in the capacity of Karta of the HUF. The Defendant had also claimed that the suit property was a joint family property. The stand taken by the Defendant was held to be contradictory, as he claimed the property to be both HUF property as well as a joint family property.

33. *The learned ADJ* further observed that merely because a Hindu joint family existed, it would not automatically create a presumption that every property standing in the name of a family member, was joint family property. The defendant was required to establish that the suit property was purchased from the nucleus of any ancestral or joint family property. However, the defendant failed to produce any evidence to establish the existence of any such joint family nucleus or that the suit property was purchased from joint family funds.

34. It was held by learned ADJ that even if the defendant had contributed financially towards the purchase of the property, such contribution would not create any right, title or interest in the suit property, as explained in the case of Srinivas Krishnarao Kango v. Narayan Devji Kango, AIR 1954 SC



379, wherein Apex Court held that the existence of a joint family by itself, does not lead to a presumption that the property held by any member is joint family property. The burden lies upon the person asserting such claim to establish that the property was acquired from the joint family nucleus.

35. The Id. ADJ also placed reliance upon the judgment of the Hon'ble Delhi High Court in Santosh Vishweshwarnath Wadhwa v. Gulshan Chhabra & Ors., 2016 (3) CLJ 415 Del., to hold that a mere assertion regarding existence of HUF is insufficient, unless specific facts are pleaded and established regarding the creation and nature of HUF property. Accordingly, it was held that the defendant failed to prove that the suit property was a joint family property.

36. Consequently, the Id. Trial Court *vide* Judgment and Decree dated 30.05.2023, ***decreed the Suit of the Plaintiff, for possession and permanent injunction in respect of the suit property. The Id. Trial Court further awarded mesne profits/use and occupation charges @ Rs. 3,000/- per month w.e.f. 01.07.2009 with 10% annual escalation until handing over of vacant possession by the defendant.***

37. Aggrieved by the said Judgment and Decree dated 30.05.2023, the ***present Regular First Appeal*** has been preferred by the Appellant/Defendant.

38. The ***grounds of challenge*** are that the Id. Trial Court has failed to appreciate the material evidence and facts on record and has erroneously held that the suit property was the exclusive property of the Respondent/Plaintiff. It has been contended that the suit property was purchased when the parties were residing as a joint family with a common residence and mess, and that the property was acquired from joint family



funds, including substantial contribution made by the Appellant. Merely because the property was purchased in the name of the Respondent, who was the father and Karta of the family, it could not be presumed to be his self-acquired property.

39. It has been contended that the Ld. ADJ failed to appreciate that the Appellant had contributed more than 62% towards the purchase of the suit property and that the said contribution was admitted by the Respondent in his evidence. It has been further asserted that the Ld. Trial court failed to consider the circumstances surrounding the purchase of the property, including the sale of the plot in the name of the Appellant and utilisation of the sale proceeds as well as availing loan against the LIC policy of the Appellant, which established that the property was purchased from joint family funds.

40. It has also been asserted that the findings of the Ld. Trial Court wrongly held that even if the Appellant had contributed towards the purchase of the property, he could only seek recovery of the amount and such contribution would not create any right or interest in the property. According to the Appellant, the Court has wrongly created a new case in favour of the Respondent, which was neither pleaded nor supported by evidence. Hence, the Ld. ADJ has failed to appreciate that the Appellant had proved the existence of a joint family and that the suit property was purchased from the nucleus of joint family funds.

41. The Ld. ADJ also failed to consider the evidence regarding the joint nature of the family and the fact that the Appellant was earning prior to the purchase of the suit property and had paid instalments of the plot and LIC premiums, from his own income. The Appellant further relied upon the



testimony of DW-4 Smt. Indu Verma to contend that he had taken a loan of Rs.1,00,000/- for purchase of the suit property, which was subsequently repaid from his own income.

42. It is further claimed that the **Mesne Profits** have been awarded at an arbitrary rate of Rs. 3,000/- per month, as no evidence was led by the Respondent/Plaintiff to establish entitlement to mesne profits at the awarded rate. The Ld. ADJ ignored the fact that the Appellant was already contributing towards maintenance expenses of the property and therefore, was not liable to pay mesne profits.

43. It is therefore, submitted that the *impugned Judgment dated 30.05.2023, is liable to be set aside.*

44. ***Written submission has been filed on behalf of the Appellant*** in support of and to substantiate the grounds raised in the present Appeal. The submissions contained therein reiterate the averments and contentions urged in the present Appeal.

45. The reliance has been placed on Adivappa & Ors. v. Bhimappa & Anr., in Civil Appeal No. 11220 of 2017, wherein the Apex Court held that all assets pertaining to Hindu Undivided Family (HUF) are to be treated as joint property of the HUF, unless the contrary is proved as self-acquisition of property through valid documents.

46. Similarly, in Nanak Chand and Ors. v. Chander Kishore and Ors., AIR 1982 Delhi 520 it was held that there is a presumption that family is joint, but there is no presumption that any property whether movable or immovable, held by a member of a joint Hindu 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. The mere fact that it was purchased in his name, does not render the property his separate property for all that is perfectly consistent with the notion of its being joint.

47. ***Written submission has also been filed on behalf of the Respondent,*** wherein the averments made in the Plaint have been reiterated. It has stated that the impugned Judgment is well-reasoned, detailed and free from any infirmity and that the learned Trial Court has rightly appreciated the evidence and material placed on record. Hence, there is no merit in the present Appeal.

Submissions heard and record perused.

48. The case of the Plaintiff is that he was employed as an Assistant manager with Food Corporation of India from where he retired in the year 1990. Earlier, he was residing in a rented accommodation at P-303, Anupam Apartment, East Arjun Nagar, Delhi, along with his family as well as Defendant, Sh. D.K. Saxena, where they all resided for 2.5 years.

49. Thereafter, the Plaintiff arranged funds and purchased the Suit Property by virtue of Agreement to Sell, etc. dated 16.07.1992. He thereafter shifted to the Suit Premises along with his younger son. After about 2 years of their shifting into the Suit Premises, D.K. Saxena, his son, who had been residing in a rented accommodation, shifted along with his family and requested the Plaintiff to allow him to reside in the Suit Property. Consequently, the Plaintiff being the father on humanitarian grounds as well



as on the intervention of family members, permitted Defendant and his family to occupy two rooms, WC bathroom, kitchen and one-third portion of the balcony in the Suit Flat as a Licensee.

50. These facts have essentially not been denied by the Defendant except that he claimed that his father did not retire in 1990, but his services were terminated. Before that, he had faced corruption charges and a departmental inquiry had been initiated against him.

51. The Defendant claimed that since he got appointed with N.I.C.D. as Lab Assistant in December 1984 and his wife was employed in Indian Council for Research on International Economic Relations in Delhi. They both were the primary earning members of the family, whose income was being utilized for household expenses. The Defendant claimed that it was not he who was dependent on the Plaintiff, but it was other way around and the Plaintiff and his wife in fact, were dependent upon the Defendant.

52. To support his assertions, he had deposed that the Plaintiff, i.e., his father as well as mother, were shown as dependents in his office records.

53. The Plaintiff in his cross-examination admitted that D.K. Saxena, Appellant was holding C.G.H.S Card wherein, the plaintiff and his wife were shown as dependents of the Defendant. He explained that since the termination of his service in the year 1990, he was not having any medical facility, which explains why his name was added in the CGHS Card of the Defendant, D.K. Saxena.

54. The Plaintiff also admitted that he and his wife had been availing medical facility on this C.G.H.S. Card upto 2008. He however, moved an Application before Administrative Officer, N.I.C.D for deletion of the name of himself and his wife from the aforesaid CGHS Card on 08.10.2008, copy



of which is Ex.PW1/D4 and PW1/D5. The Plaintiff sought to explain by volunteering that he had asked the Defendant several times for deletion of his and his wife's name from the CGHS Card, but he did not do so which compelled him to file the Application.

55. It was explained by DW1 Defendant, Sh. D.K. Saxena in his testimony that thereafter, the Plaintiff has started availing the CGHS Card facilities of Smt. Anu Saxena, wife of V.K. Saxena, younger son of the Plaintiff by getting their names added on their card.

56. The Defendant had further stated in his affidavit of evidence that the Plaintiff and his wife had also availed LTC facility for Delhi to Jagannath Puri from 14.11.1994 to 17.11.1994 and they also went to Delhi-Goa from 22.12.2003 to 02.01.2004 along with the Defendant, in support of which he filed documents Ex.DW1/3 and DW1/4.

57. The Plaintiff had further admitted that he had shifted to **L-202, Anupam Apartments**, had been taken on rent by his younger son, V.K. Saxena, which was vacated on 15.04.2014. The renovations were going on in the Suit Flat which got completed in March, 2014, after which the Plaintiff along with his wife, younger son and his family had shifted on around 15.04.2014 to the suit Flat.

58. **The core question which arises is whether the circumstances are sufficient to establish that there existed a joint family or there were any HUF funds.**

59. It is quite evident that the Plaintiff was in service and he and his wife shifted to Delhi only in 1990. They shifted into the rented premises which according to them, had been taken on rent by the younger son V.K. Saxena. The Plaintiff and his wife thereafter, on acquiring the suit property, along



with their younger son, shifted to suit property wherein the Defendant along with his family joined them, after about two years.

60. It has emerged from the evidence of the parties that both the sons and the Plaintiff were in Government jobs and they all have been working independently. They may have decided to reside as a family for a certain period as has emerged from the testimony above, but these circumstances do not establish any joint family as is understood under the traditional Hindu Law. For their convenience, they may have lived together for a certain period of time, and the Plaintiff along with his wife on retirement, may have started residing with one son or both the son, but that in itself does not constitute a joint family.

61. *It would be pertinent to first understand that the two concepts of Joint Hindu family and Hindu Undivided family (HUF) are absolutely different. In Gowli Buddana v. Commissioner of Income Tax, Mysore AIR 1966 SC 1523, it was held that a Hindu Joint Family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. However, a Joint Family is a larger body consisting of a group of persons who are united by a tie of sapindaship arising by birth, marriage or adoption as was observed in Surjit Lal Chhabra v. Commissioner of Income Tax, Bombay 1976 SCR (2) 164. The fundamental principle of Hindu Joint Family is the sapindaship. A Joint Family is not limited to three generations or only to male members but is a larger body which includes all the family members from a common ancestor.*

62. In Sunny (Minor) & Anr. v. Raj Singh & Ors. (2015) 225 DLT 211 this Court considered the judgments of the Apex Court in Yudhishter v. Ashok Kumar, 1987 (1) SCC 204, and Commissioner of Wealth Tax, Kanpur



v. Chander Sen, (1986) 3 SCC 567 and succinctly enumerated the principles relating to HUF property and its inheritance as under:

“(i) If a person dies after passing of the Hindu Succession Act, 1956 and there is no HUF existing at the time of the death of such a person, inheritance of an immovable property of such a person by his successors-in-interest is no doubt inheritance of an “ancestral” property but the inheritance is as a self-acquired property in the hands of the successor and not as an HUF property although the successor(s) indeed inherits “ancestral” property i.e a property belonging to his paternal ancestor.

(ii) The only way in which a Hindu Undivided Family/joint Hindu family can come into existence after 1956 (and when a joint Hindu family did not exist prior to 1956) is if an individual's property is thrown into a common hotchpotch. Also, once a property is thrown into a common hotchpotch, it is necessary that the exact details of the specific date/month/year etc. of creation of an HUF for the first time by throwing a property into a common hotchpotch have to be clearly pleaded and mentioned and which requirement is a legal requirement because of Order VI Rule 4 CPC which provides that all necessary factual details of the cause of action must be clearly stated. Thus, if an HUF property exists because of its such creation by throwing of self-acquired property by a person in the common hotchpotch,



consequently there is entitlement in coparceners etc. to a share in such HUF property.

(iii) An HUF can also exist if paternal ancestral properties are inherited prior to 1956, and such status of parties qua the properties has continued after 1956 with respect to properties inherited prior to 1956 from paternal ancestors. Once that status and position continues even after 1956; of the HUF and of its properties existing; a coparcener etc. will have a right to seek partition of the properties.

(iv) Even before 1956, an HUF can come into existence even without inheritance of ancestral property from paternal ancestors, as HUF could have been created prior to 1956 by throwing of individual property into a common hotchpotch. If such an HUF continues even after 1956, then in such a case a coparcener etc. of an HUF was entitled to partition of the HUF property”

63. Therefore, in such a post 1956 scenario, a mere ipse dixit statement in the plaint that an HUF and its properties exist is not a sufficient compliance of the legal requirement of creation or existence of HUF properties in as much as it is necessary for existence of an HUF and its properties, It must be specifically stated that as to whether the HUF came into existence before 1956 or after 1956 and if so how and in what manner giving all requisite factual details. It is only in such circumstances where specific facts are mentioned to clearly plead a cause of action of existence of an HUF and its properties, can a suit then be filed and maintained by a person claiming to be a coparcener for partition of the HUF properties.



64. The next question which arises is whether there was any HUF existing inter se the Plaintiff and his two sons. ***Merely because the father and the sons at certain times, started residing together, it does not lead to any ipso facto creation of an HUF.***

65. For an HUF to be created especially after 1955, it has to be a conscious creation of HUF. However, ***in the present case there is not an iota of evidence from where the inference of existence of any HUF can be drawn.*** There is neither any HUF account nor any details of any nucleus being created on the HUF; rather what has emerged is that after the retirement, Plaintiff had been residing with the two sons with some contribution for the day to day expenditure, by the two sons and their wives. ***There is not an iota or any evidence of there being any HUF in existence or of any HUF corpus, from where money was paid for the purchase of suit property.***

66. The Plaintiff had asserted that he had purchased the Suit Property in the name of his deceased wife Smt. Shail Kumari Saxena, on payment of the sale consideration of Rs.4 lakhs. It may now be considered whether the explanations given by the Plaintiff, about the manner of payment of Rs.4 lakhs, for purchase of the suit property.

67. He had explained the sources for payment of Rs.4 lakhs which he deposed, to have been arranged by him. He deposed that he had made the payment through 7 Demand Drafts, the details of which are as under:

“i. Demand Draft No. 063344/17 dated 08.07.1992,
for Rs.1,00,000/- of Allahabad Bank, Bareilly.



- ii. *Demand Draft No. 91/1/ 859602 dated 08.07.1992, for Rs.50,000/- of Bank of Baroda, Civil lines, Bareilly.*
- iii. *Demand Draft No. 196209 dated 10.07.1992, for Rs.50,000/- New Bank of India, Radhey Puri, Delhi.*
- iv. *Demand Draft No. QVA 578516 dated 11.07.1992, for Rs.1,00,000/- Punjab National Bank, Laxmi Nagar, Delhi.*
- v. *Demand Draft No. 196217 dated 11.07.1992, for Rs.50,000/- New Bank of India, Radhey Puri, Delhi.*
- vi. *Demand Draft No. 297744 dated 13.07.1992, for Rs.25,000/- State Bank India, Indra Nagar, Bareilly.*
- vii. *Demand Draft No. 297745 dated 13.07.1992, for Rs.25,000/- State Bank of India, Indra Nagar, Bareilly.”*

68. These aforesaid Demand Drafts were marked as Mark A to G. The Plaintiff explained in his testimony that he had purchased two plots bearing No. 62 and 63 in Prabhat Sahakari Awas Samiti, Bareilly, Uttar Pradesh, in the names of his sons, namely D.K. Saxena and V.K. Saxena. The original Share Certificates relating to these plots, are Ex.PW1/4 and Ex.PW1/5. The booking receipts dated 01.09.1983 were Ex.PW1/6 and Ex.PW1/7, respectively. The *Instalment Receipts* dated 16.01.1985 are Ex.PW1/8 and Ex.PW1/9. The *Development charge receipts* Ex.PW1/10 and Ex.PW1/11. The *Allotment Letters* dated 20.01.1985 are Ex.PW1/12 and Ex.PW1/13.

69. The Plaintiff as PW1 had further deposed that he had sold the plot in the name of his elder son, D.K. Saxena on 24.03.1992, to Smt. Rita



Srivastava for a consideration of Rs.1,00,000/- through demand drafts Ex.PW1/14. Likewise, the plot in the name of his younger son, V.K. Saxena was sold on 07.03.1992 to Smt. Aanchal Aggarwal, for a sale consideration of Rs.1,20,000/- through Ex.PW1/15. Accordingly, the Plaintiff deposed that he had arranged Rs.2,20,000/- by the sale of these two plots from which he had got the drafts prepared and given them for the purchase of the Suit Property.

70. The Defendant D.K. Saxena in his testimony, claimed that these two Plots were in his name and in the name of his brother and the Plaintiff could not have claimed these two properties as owned by him and he could not claim the sale proceeds from the sale of these two plots, as his own income.

71. From the documents placed on record, the bookings had been made in the year 1983. The Defendant, D.K. Saxena in order to show his earning capacity to be able to book the flat, had deposed that he had passed his class Xth in 1975. He asserted that he was taking tuitions of the students of class VI to VIII since the year 1980. He further tried to explain that he was getting tuition fee in cash and was earning about Rs.2,000-2,500/- p.m., but was unable to produce any documents in proof thereof. He claimed that he used to save about Rs.1,500 to 1,600/-, but again it is not corroborated by any evidence.

72. However, it is difficult to believe that a student who has himself studied till class X, would be in a position to take the tuition for the students of class VI to VIII. Moreover, he admittedly was unable to produce any documents, registers to show that he was taking the tuitions of the students or to prove the fee that he had been receiving from these tuitions.



Admittedly, he has not filed any income tax returns prior to 1984, when he got his appointment in NICD.

73. He, when specifically asked, was unable to give details of the payments made in the year 1983 for purchase of these two plots, was unable to give any details. In fact, he himself admitted that these amounts pertaining to the plots in Bareilly purchased in his name, was from the unaccounted wealth of the father. It all clearly reflects and supports that testimony of the Plaintiff that the booking of the two plots had been done by him, though in the name of his two sons.

74. Another significant aspect which has emerged from the cross-examination of DW1 D.K. Saxena, is that from the sale of the plot booked in his name, on 24.03.1992, a sale consideration of Rs.1,00,000/- was received through two demand drafts of Rs.50,000/-, each. *He got prepared two demand drafts of Rs.50,000/- each from his bank account and directly gave it to Sh. B.C. Gupta, seller of the Suit Property.*

75. It is quite evident that the money on sale of the plots came to the two sons since the plots were in their respective names, *but it was the investment made by the Plaintiff, who sold them for the purpose of raising the part sale consideration for the purchase of land.*

76. The Plaintiff had further asserted that *he had taken two LIC Policies* in the names of his sons, respectively on 28.03.1979 for a sum assured of Rs.25,000/-, each. He deposed that the entire premiums/payments were paid by the Plaintiff in respect of these two Policies, which were for a period of 10 years. He had further deposed that during this period of 10 years, and no payment towards the premium, was made by the two sons. When the Suit Property was purchased, on his request, the LIC policies were encashed and



Rs.10,700/- was received D.K. Saxena and Rs.10,000/- by V.K. Saxena. *The two sons returned him Rs.20,700/- realised on the encashment of LIC policy, which were utilised for payment of sale consideration.* The Defendant in his testimony as DW-1, has not furnished any proof of having paid the premium of LIC policy.

77. As already discussed above, it has emerged from his testimony that till about 1984, when he got into the service, he did not have sufficient funds for making any investments. The testimony of the parties thus, establishes that all the investments had been made by the Plaintiff in the name of his two sons, which he liquidated to arrange for the sale consideration of the Suit Property

78. The Plaintiff had further claimed that his sister, Indu Verma had given him a Bank Draft of Rs.1,00,000/-, which also was paid to the seller B.C. Gupta. He explained that Indu Verma had repaid the amount that was spent by him on the treatment of her husband Umesh Chand Verma in Ganga Ram Hospital, during the period March-April, 1991, where he was treated for Kidney failure. The Certificate issued by the hospital, is Ex.PW1/3.

79. The Defendant, D.K.Saxena, however, asserted that he had used his goodwill with Indu Verma, his Bua and had taken Rs.1,00,000/- as loan. The Draft was admittedly given by Indu Verma directly in the name of seller B.C. Gupta, on his request.

80. In order to corroborate his defense, he had examined DW4 Indu Verma, who deposed that she had given the draft of Rs.1,00,000/- in the name of the seller on the request of D.K. Saxena *and it was a loan given to D.K. Saxena.*



81. DW4 Indu Verma, however, in her cross-examination, admitted that she was a Clerk in Government Department, i.e., Hydral Department, wherein she had got the job on compassionate ground in place of her husband, in the year 1991. She admitted that no loan document in regard to this alleged loan transaction, was executed. She further explained that this amount was refunded by D.K. Saxena in 3 to 4 years, in the instalment of Rs.5,000/- to Rs.10,000/-. However, she admitted that she had not shown the repayment of these amount in her Income Tax Returns, as she was getting it in cash. She thereafter, volunteered that she was not an Income Tax Assessee at that time.

82. Pertinently, DW4 Indu Verma admitted that in the year 1991, her husband was ill and admitted to Sir Ganga Ram Hospital and about Rs.70,000-80,000/- were spent on his treatment. These admissions support the assertions of the Plaintiff that he had spend from his pocket, on the treatment of husband of Indu Verma and the draft of Rs.1,00,000/- was in lieu thereof.

83. Another significant admission made by DW4 is that their relations were cordial, but they ceased to be so after the filing of the Suit.

84. *From this evidence as well, it is established that it is the Plaintiff, who had arranged Rs.1,00,000/- from his sister.*

85. From the entire evidence as discussed above, it is established that the sum of Rs.4,00,000/- for payment of sale consideration, had been arranged by the Plaintiff from his various resources. Those investments may have been made in the name of his two sons, but that in itself, cannot be a ground to claim that the property so purchased, was an HUF property.

86. Learned ADJ had rightly observed that even if it is accepted that some contributions were made by the two Defendants, this is not sufficient to



conclude that the Suit Property is HUF. To be so, it has to be established that it is purchased from HUF funds, which the Defendants have miserably failed to establish.

87. The property has been purchased by the Plaintiff initially in the name of his wife, by arranging the funds himself and thus, it is shown that the wife Smt. Shail Kumari was the owner in whose name the sale documents were executed. Thereafter, the Conveyance Deed dated 20.01.2005 was executed by Smt. Shail Kumari Saxena, in the name of the Plaintiff.

88. The Defendant had asserted that on the instructions of the Plaintiff, he had also paid a sum of Rs.50,000/- *vide* cheque dated 08.01.2003, Ex.DW1/1 and Ex. DW1/2 respectively, issued in the name of the mother of the Defendant, *to the Plaintiff as a contribution for carrying out renovation work in the Suit Flat.*

89. The Plaintiff, however, had explained that he had made investment in Kishan Vikas Patra, which he had purchased on 23.06.1997, jointly in the name of his wife, Smt. Shail Kumari Saxena and Smt. Bindu Saxena, wife of the Defendant, for a sum of Rs.25,000/-. The Plaintiff deposed that he had made this investment with the intent of extending financial assistance for the education of the children of the Defendant. The Kishan Vikas Patra matured on 23.12.2002 and was encashed on 30.12.2002 and an amount of Rs.50,000/- so received on maturity, was returned by Smt. Bindu Saxena *vide* the cheque bearing No. 239045 dated 08.01.2003. The Plaintiff denied that such amount was towards renovation or maintenance of the Suit Property.

90. The first thing, which emerges, is that admittedly, a sum of Rs.50,000/- had been given to the Plaintiff *vide* Cheque dated 08.01.2003 by



the wife of the Defendant. The suit property was purchased in the year 1992, since when the Plaintiff and the Defendant had been residing together. Though, subsequently differences arose, but there is nothing on record to show that this Rs.50,000/- were actually utilized for renovation. But even if it is accepted, then merely because the Defendant contributed Rs.50,000/- for repairs, would not be a fact indicating his ownership rights in the Suit Property.

91. The Defendant had also asserted that he was paying 50% of maintenance charges of the Suit Property. However, being in occupation and using the Property, merely payment of maintenance charges, would not create any title in the Defendant.

92. It is pertinent to observe that the Plaintiff's father had been driven to file a *Petition before the Maintenance Tribunal*, for seeking the maintenance in which an Order dated 04.05.2012 Ex.PW1/D11, was made directing the Defendant, to pay the maintenance w.e.f. 2011.

93. The aforesaid evidence as led by the parties, do not establish either that there was any Joint Hindu Family or an HUF constituted between the Plaintiff and the Defendant. *There is also no evidence of any HUF being constituted or the sale proceeds from the nucleus of HUF. The Plaintiff was, therefore, rightly held entitled to recovery of possession.*

94. ***The only question which remains, is the determination of the Mesne Profits and at what should be the rate at which the Mesne Profits must be calculated.***

95. The Mesne Profits are defined under Section 2 (12) of CPC as under:

"2(12) "mesne profits" of property means those profits which the person in wrongful possession of such property



actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;”

96. The very definition of Mesne Profits means the profits that the person has derived from the wrongful possession of the property. It is, therefore, evident that the calculation of *Mesne Profits* is not of the profits that the Plaintiff may have derived from sale or otherwise of the property, but it is the wrongful benefit derived by the Tenant who has continued in unlawful possession.

97. In the case of Bureau of Indian Standards vs. Goodwill Threatres Pvt. Ltd. 2018(1) RCR (Civil) 400, while referring to the definition of Mesne Profits under Section 2(12) CPC, it was observed that the Mesne Profits do not include profits due to improvements made by the person in wrongful possession. It is the value of the usage of the land to the person in wrongful possession.

98. In the light of this definition, the mesne profits may be considered. Even if no evidence was led by the Plaintiff to prove the Mesne Profits i.e. the charges, he could have realized by letting out the suit property to the third person, but the learned District Judge rightly took judicial notice of the location, nature of the premises and the long possession of the Defendant, to grant Mesne Profits @Rs.3,000/- per month towards user and occupation charges w.e.f. 01.07.2009. Furthermore, the annual escalation @10% p.a., has also been rightly granted to the Plaintiff.

CONCLUSION



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99. In the light of the aforesaid discussion, **there is no merit in the present Appeal, which is hereby dismissed. The pending Applications, if any, are also disposed of accordingly.**

(NEENA BANSAL KRISHNA)
JUDGE

JULY 09, 2026
N/RS