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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) No. 431/2006

17th November, 2015

SUNNY (MINOR) & ANR.

..... Plaintiffs

Through: Mr. Rajeev Chhetri, Mr. Rajesh
Chhetri and Ms. Meenakshi Rawat,
Advocates.

versus

SH. RAJ SINGH & ORS.

..... Defendants

Through: Mr. S.N.Kalra and Ms. Jyoti Sharma,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The subject suit is a suit for partition and rendition of accounts. There are two plaintiffs in the suit, and who are the sons of late Sh. Harvinder Sejwal. Plaintiffs were minors when the suit was filed and now they are majors. The suit originally was filed by the plaintiffs through their mother and natural guardian Smt. Poonam, wife of late Sh. Harvinder Sejwal. In the suit there are four defendants. Defendant no.1 Sh. Guran Singh is the father of late Sh. Harvinder Sejwal i.e father-in-law of Smt.

Poonam, the mother of the plaintiffs. Defendant nos. 2 to 4 are the other three sons of defendant no.1 i.e three brothers of late Sh. Harvinder Sejwal, the husband of Smt. Poonam. By the suit, relief of partition is sought with respect to properties mentioned in Annexure A to the plaint. Though this Annexure A to the plaint does not exist, this Annexure A as per the copy shown to this Court contains the properties which are mentioned in para 15 of the plaint. The properties which are mentioned in para 15 of the plaint read as under:-

“15. That the subject matter of the present suit are the following moveable and immovable properties which belong to the Joint Hindu Family property being ancestral in nature, the details of which as per the knowledge of the plaintiffs are as under:

(k) Immoveable Properties:

- a. 113/B-1, Front, Adhichini, Hauz Khas, New Delhi
- b. 58, Village: Adhichini, Malviya Nagar, New Delhi
- c. 200 sq. yd. Plot in Ber Sarai Extension, New Delhi
- d. 4 shops in Adarshani Plaza, Adhichini, New Delhi
- e. 4 Flats in Adarshini Plaza, 93, Adhichini, New Delhi
- f. Landed/Agricultural properties in Village: Badarpur, Ballabgarh, Faridabad,
- g. Landed/Agricultural Properties in Kotputli, Rajasthan.
- h. 258, Manglapuri Extension, M.G. Road, New Delhi

(ii) Vehicles:

- a. Two Buses - Plying between Kotputilli and Bharatpur,

Blue Line - contract carriage.

b. Tempo.

(iii) Personnel belongings

(a) Bank Account in Allahabad Bank, Adhichini, New Delhi and

(b) Bank Account, Punjab National Bank, Mehrauli, New Delhi.

2. The case of the plaintiffs as per the plaint is that the defendant no.1 owned ancestral land being plot no. 93 situated in Village Adhichini, Hauz Khas, New Delhi and this property was sold out on collaboration basis and the properties which are the subject matter of the suit were purchased from the funds generated out of the said sale of the property no. 93, Village Adhichini, Hauz Khas. In the property no. 93, a commercial complex was constructed and in which as per the plaint, the family received four shops and four flats which are mentioned at serial nos. (d) and (e) of para 15 of the plaint. Further, as per the plaint, from the funds received from the sale of the property no. 93, Village Adhichini, Hauz Khas, a premises being the premises at serial no.(h) of para 15 of the plaint namely property bearing no. 258, Manglapuri Extension, New Dellhi was purchased and which is situated on an area of approximately 150 sq. yds. wherein the plaintiffs alongwith their mother are living in the ground floor of this property. The first floor is

with a tenant Sh. Rajendra Jha. Plaintiffs plead that there was a family settlement between the parties as per which the father of the plaintiffs Sh. Harvinder Sejwal got the house no. 258, Manglapuri Extension, New Delhi besides one shop on the ground floor in Adarshini Plaza, Adhichini and a flat no. 93 in Village Adhichini, Hauz Khas, New Delhi. Plaintiffs' father expired on 12.11.2004 and plaintiffs therefore plead to be owners of the properties falling to the share of their father out of the joint properties mentioned in para 15 of the plaint. Plaintiffs claim ownership of 1/5th share in the suit properties.

3. Defendants have contested the suit by filing a common written statement. Defendants have denied that the suit properties were/are Joint Hindu Undivided Family properties/HUF properties. Defendants have also denied that any family settlement as alleged was entered into. Defendants have also stated that when the property no. 93, Village Adhichini, Hauz Khas was sold, the father of the plaintiffs was given his share in the consideration received. Defendants have denied any right to the plaintiffs for seeking partition of the suit properties. Defendants made certain personal allegations against the character of Smt. Poonam on account of her illicit relationship with the tenant Sh. Rajendra Jha and which facts are not

relevant for decision of the present suit. The defendants also plead that the father of the plaintiffs ie Sh. Harvinder Sejwal died under mysterious circumstances. As per the preliminary objection no.6 of the written statement, it is stated that the properties which are the subject matter of the suit are the self-acquired properties of the father/defendant no.1 Sh. Guran Singh, standing in the name of Sh. Guran Singh or in the names of defendant nos. 2 to 4; though the same are of the defendant no.1. Defendant no.1 died during the pendency of the suit and since he was represented by defendant nos.2 to 4, Sh. Guran Chand's estate was accordingly represented.

4. In the suit, the following issues were framed on 18.1.2011:

- “1. Whether the suit properties, as detailed in Schedule-A to the plaint, are liable to be partitioned and if so, what would be the share of the parties? (OPP)
2. Whether the plaintiff is entitled to rendition of accounts? (OPP)
3. Relief.”

5. Issues no. 1 and 2 can be taken together as the main issue to be decided is whether there existed a Hindu Undivided Family and the suit properties are HUF properties to which the father of the plaintiffs late Sh. Harvinder Sejwal had a 1/5th ownership right and which 1/5th ownership right on the death of the father Sh. Harvinder Sejwal devolved upon the

plaintiffs, who are the children of late Sh. Harvinder Sejwal. Related issue to be considered will also be as to whether there was a family settlement as alleged by the plaintiffs as per which their father received certain properties.

6. At the outset, it is necessary to refer to the ratio of the judgment of the Supreme Court in the case of *Yudhishter Vs. Ashok Kumar, (1987) 1 SCC 204* and in para 10 of the said judgment the Supreme Court has made the necessary observations with respect to when HUF properties can be said to exist before passing of the Hindu Succession Act, 1956 or after passing of the Act in 1956. This para reads as under:-

“10. This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. MANU/SC/0265/1986MANU/SC/0265/1986 : [1986]161ITR370(SC) 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 become 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 Kar of his own undivided family but takes it in his individual capacity. At pages 577 to 578 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 924-926 as well as Mayne's on Hindu Law 12th Edition pages 918-919. Shri Banerji relied on the said observations of Mayne on 'Hindu Law', 12th Edn. at pages

918-919. 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 developed on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a-vis his own sons.** If that be the position then the property which developed 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 is mine)

7(i). As per the ratio of the Supreme Court in the case of *Yudhishter (supra)* after passing of the Hindu Succession Act, 1956 the position which traditionally existed with respect to an automatic right of a person in properties inherited by his paternal predecessors-in-interest from the latter's paternal ancestors upto three degrees above, has come to an end. Under the traditional Hindu Law whenever a male ancestor inherited any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him had a right in that property equal to that of the person who inherited the same. Putting it in other words when a person 'A' inherited property from his father or grandfather or great grandfather then the property in his hand was not to be treated as a self-acquired property but was to be treated as an HUF property in which his son,

grandson and great grandson had a right equal to 'A'. After passing of the Hindu Succession Act, 1956, this position has undergone a change and if a person after 1956 inherits a property from his paternal ancestors, the said property is not an HUF property in his hands and the property is to be taken as a self-acquired property of the person who inherits the same. There are two exceptions to a property inherited by such a person being and remaining self-acquired in his hands, and which will be either an HUF and its properties was existing even prior to the passing of the Hindu Succession Act, 1956 and which Hindu Undivided Family continued even after passing of the Hindu Succession Act, 1956, and in which case since HUF existed and continued before and after 1956, the property inherited by a member of an HUF even after 1956 would be HUF property in his hands to which his paternal successors-in-interest upto the three degrees would have a right. The second exception to the property in the hands of a person being not self-acquired property but an HUF property is if after 1956 a person who owns a self-acquired property throws the self-acquired property into a common hotchpotch whereby such property or properties thrown into a common hotchpotch become Joint Hindu Family properties/HUF properties. In order to claim the properties in this second exception position as being HUF/Joint Hindu Family properties/properties, a plaintiff has to establish to the

satisfaction of the court that when (i.e date and year) was a particular property or properties thrown in common hotchpotch and hence HUF/Joint Hindu Family created.

(ii) This position of law alongwith facts as to how the properties are HUF properties was required to be stated as a positive statement in the plaint of the present case, but it is seen that except uttering a mantra of the properties inherited by defendant no.1 being 'ancestral' properties and thus the existence of HUF, there is no statement or a single averment in the plaint as to when was this HUF which is stated to own the HUF properties came into existence or was created ie whether it existed even before 1956 or it was created for the first time after 1956 by throwing the property/properties into a common hotchpotch. This aspect and related aspects in detail I am discussing hereinafter.

8(i). A reference to the plaint shows that firstly it is stated that Sh. Tek Chand who is the father of the defendant no.1 (and grandfather of Sh. Harvinder Sejwal and defendants no.2 to 4) inherited various ancestral properties which became the basis of the Joint Hindu Family properties of the parties as stated in para 15 of the plaint. In law there is a difference between the ancestral property/properties and the Hindu Undivided Family

property/properties for the pre 1956 and post 1956 position as stated above because inheritance of ancestral properties prior to 1956 made such properties HUF properties in the hands of the person who inherits them, but if ancestral properties are inherited by a person after 1956, such inheritance in the latter case is as self-acquired properties unless of course it is shown in the latter case that HUF existed prior to 1956 and continued thereafter. It is nowhere pleaded in the plaint that when did Sh. Tek Chand father of Sh. Gugan Singh expire because it is only if Sh. Tek Chand father of Sh. Gugan Singh/defendant no.1 had expired before 1956 only then the property which was inherited by Sh. Gugan Singh from his father Sh. Tek Chand would bear the character of HUF property in the hands of Sh. Gugan Singh so that his paternal successors-in-interest became co-parceners in an HUF. Even in the evidence led on behalf of the plaintiffs, and which is a single affidavit by way of evidence filed by the mother of the plaintiffs Smt. Poonam as PW1, no date is given of the death of Sh. Tek Chand the great grandfather of the plaintiffs. In the plaint even the date of the death of the grandfather of the plaintiffs Sh. Gugan Singh is missing. As already stated above, the dates/years of the death of Sh. Tek Chand and Sh. Gugan Singh were very material and crucial to determine the automatic creation of HUF because it is only if Sh. Tek Chand died before 1956 and Sh. Gugan Singh inherited the

properties from Sh. Tek Chand before 1956 that the properties in the hands of Sh. Gudan Singh would have the stamp of HUF properties. Therefore, in the absence of any pleading or evidence as to the date of the death of Sh. Tek Chand and consequently inheriting of the properties of Sh. Tek Chand by Sh. Gudan Singh, it cannot be held that Sh. Gudan Singh inherited the properties of Sh. Tek Chand prior to 1956.

(ii) In fact, on a query put to the counsels for the parties, counsels for parties state before this Court that Sh. Gudan Singh expired in the year 2008 whereas Sh. Tek Chand died in 1982. Therefore, if Sh. Tek Chand died in 1982, inheriting of properties by Sh. Gudan Singh from Sh. Tek Chand would be self-acquired in the hands of Sh. Gudan Singh in view of the ratio of the Supreme Court in the case of *Yudhister (supra)* inasmuch as there is no case of the plaintiffs of HUF existing before 1956 or having been created after 1956 by throwing of property/properties into common hotchpotch either by Sh. Tek Chand or by Sh. Gudan Singh/defendant no.1. There is not even a whisper in the pleadings of the plaintiffs, as also in the affidavit by way of evidence filed in support of their case of PW1 Smt. Poonam, as to the specific date/period/month/year of creation of an HUF by

Sh. Tek Chand or Sh. Gugan Singh after 1956 throwing properties into common hotchpotch.

(iii) The position of HUF otherwise existing could only be if it was proved on record that in the lifetime of Sh. Tek Chand a Hindu Undivided Family before 1956 existed and this HUF owned properties include the property bearing no.93, Village Adhichini, Hauz Khas. However, a reference to the affidavit by way of evidence filed by PW1 does not show any averments made as to any HUF existing of Sh. Tek Chand, whether the same be pre 1956 or after 1956. Only a self-serving statement has been made of properties of Sh. Gugan Singh being 'ancestral' in his hands, having been inherited by him from Sh. Tek Chand, and which statement, as stated above, does not in law mean that the ancestral property is an HUF property.

9. Onus of important issues such as issue nos.1 and 2 cannot be discharged by oral self-serving averments in deposition, once the case of the plaintiffs is denied by the defendants, and who have also filed affidavit of DW1 Sh.Ram Kumar/defendant no.2 in the amended memo of parties for denying the case of the plaintiffs. An HUF, as already stated above, could only have been created by showing creation of HUF after 1956 by throwing property/properties in common hotchpotch or existing prior to 1956, and

once there is no pleading or evidence on these aspects, it cannot be held that any HUF existed or was created either by Sh. Tek Chand or Sh. Gugan Singh. In my opinion, therefore, plaintiffs have miserably failed to discharge the onus of proof which was upon them that there existed an HUF and its properties, and the plaintiffs much less have proved on record that all/any properties as mentioned in para 15 of the plaint are/were HUF properties.

10. While on the aspect of properties mentioned in para 15 of the plaint, it bears note that defendants have categorically denied that there are any properties of the family which are found at serial nos.(c), (e), (f) and (g) of para 15 of the plaint either in the name of defendant no.1 or of any of the defendants and that in fact no such properties exist. Once that is so there does not arise any question of partition of such imaginary properties. This Court notes that the properties at serial nos.(c), (f) and (g) being of 200 sq. yds plot in Ber Sarai Extension, New Delhi, Ballabhagarh in Faridabad and Kotputli, Rajasthan are wholly vague and without any details of the municipal numbers or agricultural khasra numbers and therefore it cannot be said that any of the said three properties exist, and are thus available for partition. The defendants have further denied that the defendants have ever owned even a single flat, much less four flats, at Village Adhichini, Hauz

Khas, New Delhi as mentioned at serial no.(e) of para 15 of the plaint. This Court further observes that the details given of even the last two properties in para 15 of the plaint being vehicles and personal belongings including bank accounts are again wholly vague and are thus incapable of being understood and hence partitioned, because what are the bus and tempo numbers are not stated and nor are the bank accounts details given of the alleged accounts in Allahabad Bank and Punjab National Bank and there is no proof on record that these properties are in the name of defendant no.1 or in the name of any member of the family. Therefore, qua all such vague/non-existent properties there does not arise any issue of passing any vague decree of partition having vague and incomplete particulars.

11. I must, at the risk of repetition, note that there exists the legal requirement of discharge of the onus of proof by atleast leading some credible documentary evidence in a case where partition is sought of valuable immovable properties, and oral evidence is not to be treated by courts as sufficient, inasmuch as, rights in immovable properties of defendants cannot be destroyed on account of self-serving oral statements and stand of the plaintiffs that there existed an HUF and HUF had various properties which are mentioned in para 15 of the plaint.

12. I may note that counsel for the plaintiffs sought to place reliance upon a certified copy of the written statement filed by the defendants in an earlier suit filed by Smt. Poonam and attention of this Court was drawn to para 5 of the said written statement which as per the plaintiffs shows the admission of the defendants that property no.93, Village Adhichini, Hauz Khas, New Delhi was an 'ancestral' property. This argument of the plaintiffs is liable to be rejected for two reasons. Firstly, this document has not been proved and mere filing of a certified copy of a written statement in an earlier suit will not amount to proof of the same. Written statement filed in a civil suit is a private document, and this private document in public record has to be proved by summoning the file containing the written statement and thereafter the certified copy being proved and exhibited in accordance with law, and which has not been done. The second reason is that even if we take into account the averments contained in para 5 of the written statement filed by the defendants in the earlier suit, it is seen that the averments only show that the property no.93, Village Adhichini is an 'ancestral' property as defendant no.1/Gugan Singh acquired it from his ancestors, however, mere acquiring of property by defendant no.1 from his ancestor Sh. Tek Chand who died in 1982 will not make the property an HUF property in view of the ratio of the judgment of

the Supreme Court in *Yudhishter's* case (*supra*) quoted above. Post 1956 the position is that even if Sh. Gugan Singh/defendant no.1 inherited any property from his father Sh. Tek Chand, inheritance by Sh. Gugan Singh of the property of Sh. Tek Chand in 1982 would be as a self-acquired property of Sh. Gugan Singh and not an HUF property. A paternal ancestral property could be an HUF property only if such property was inherited by Sh. Tek Chand prior to 1956, but that is not the case which has been so pleaded and proved by the plaintiff for discharging the onus in this regard.

13. I may note that in the cross-examination of PW1 on 18.05.2012 a suggestion was put by the defendants that the share of her husband namely Sh. Harvinder Sejwal in the property no.93, Village Adhichini was paid to Sh. Harvinder Sejwal, however, such receipt of consideration by Sh. Harvinder Sejwal cannot be said to be on the ground that the same was given to him on account of the property being an HUF property because payment of part price to Sh. Harvinder Sejwal by his father/defendant no.1 can be for various reasons including Sh. Harvinder Sejwal being the son of the defendant no.1 and as a son he could have been paid by the father/defendant no.1, part consideration of sale of the property no.93, Village Adhichini, Hauz Khas, New Delhi, whereas, the creation of an HUF in law had to be

proved (either pre 1956 or post 1956) by leading clear-cut evidence discharging the onus of proof and which has not been done by the plaintiffs.

14. Plaintiffs thus have failed to prove that there existed an HUF before 1956 on account of Sh. Tek Chand having inherited properties before 1956 and that the plaintiffs have further failed to prove that HUF was created after 1956 on account of throwing of property/properties into common hotchpotch either by Sh. Tek Chand or by Sh. Gugan Singh/defendant no.1. Accordingly, it is held that there is no HUF and there are no properties of HUF in which late Sh. Harvinder Sejwal had a share. The entire discussion given above for existence/creation of HUF and plaintiffs failing to discharge the onus of proof upon them will similarly apply qua the alleged family settlement pleaded by the plaintiffs because once again no credible evidence has been led except self-serving statements and which cannot be taken as discharge of the onus. In his cross-examination on 01.04.2013, the defendant no.3 as DW1 has denied the suggestion that there was any family settlement. It is therefore held that plaintiffs have failed to prove issue nos.1 and 2.

15. Since both the issues are decided in favour of the defendants and against the plaintiffs, the plaintiffs are not entitled to the reliefs of

partition or rendition of accounts. The suit is therefore dismissed. Parties are left to bear their own costs. Decree sheet be drawn accordingly.

NOVEMBER 17, 2015
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VALMIKI J. MEHTA, J.