

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+
%

CS(OS) No.1862/2010

6th May, 2016

SAGAR GAMBHIR

..... Plaintiff

Through: Ms. Aastha Dhawan, Advocate.

Versus

SHRI SUKHDEV SINGH GAMBHIR AND ANR.

..... Defendants

Through: Mr. Rajesh Yadav, Advocate with
Mr. J.K. Chawla, Advocate and Mr.
Rajan Chawla, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

+ CS(OS) No.1862/2010 and I.A. Nos.12117/2010 (stay), 15254/2011 (under Order XI Rules 12 and 14 CPC by plaintiff), 1325/2012 (under Order VII Rule 11 CPC by defendant no.1), 5248/2012 (under Order XXXIX Rule 4 CPC by defendant No.2) & 13263/2013 (under Order VI Rule 17 CPC by plaintiff)

1. This suit for partition etc is filed by the plaintiff/Mr. Sagar Gambhir who is the son of late Sh. Sunil Gambhir. Late Sh. Sunil Gambhir was the younger son of defendant no.1/Sh. Sukhdev Singh Gambhir. Defendant no.2 in the suit is the son of the defendant no.1 and the brother of late Sh. Sunil Gambhir.

2. By the suit, reliefs are claimed for two immovable properties and one business. The two immovable properties are 4-B/8, Poorvi Marg (NEA), Rajinder Nagar, New Delhi and D-II/83, Sector-10, Faridabad, Haryana. The business is

the business in the name of M/s. Gian Singh Sukhdev Singh, K-42, Connaught Place, New Delhi-110001. Plaintiff claims that the properties and the business are HUF properties and business inasmuch as the defendant no.1, grandfather of the plaintiff and father of late Sh. Sunil Gambhir and the defendant no.2, purchased these properties and started business from ancestral properties. Accordingly, plaintiff who is the son of late Sh. Sunil Gambhir claims that since Sh. Sunil Gambhir was entitled to 1/3rd share in the two immovable properties and the business which are the subject matter of the suit, the plaintiff who is the son of late Sh. Sunil Gambhir will hence inherit the 1/3rd share of late Sh. Sunil Gambhir.

3. The relevant paras of the plaint containing averments with respect to existence of HUF and its properties are paras 2 and 3 of the plaint and these paras read as under:-

“2. It is submitted that the Plaintiff attained majority in the year 2007 and has been studying abroad for the past 5 years. The Plaintiff alongwith his mother have been residing at the premises at 4-B/8, Poorvi Marg (NEA), Rajinder Nagar, New Delhi and more specifically on the first floor thereof ever since Plaintiff's birth. Unfortunately, disputes and differences have arisen between the family members with regard to distribution of the assets of HUF of Defendant No.1 of which late Shri Sunil Gambhir was a member which interalia include the residential house at 4-B/8, Poorvi Marg (NEA), Rajinder Nagar, New Delhi, income from the proprietorship concern under the name and style of Gian Singh Sukhdev Singh, K-42, Connaught Place, New Delhi-110001 and a property bearing No. D-II/83, Sector-10, Faridabad, Haryana.

3. It is submitted that the property at 4-B/8, Poorvi Marg (NEA), Rajinder Nagar, New Delhi was purchased by the Defendant No.1 from the funds of the firm M/s. Gian Singh Sukhdev Singh which was set up by the late great grandfather of the Plaintiff and as such the same is ancestral in the hands of the Plaintiff herein. The Plaintiff believes that even the funds for the business came from the properties left behind in Pakistan prior to partition of India. Similarly, the income from the firm Gian Singh Sukhdev Singh is also liable to be divided

amongst the legal heirs of late Shri Sunil Gambhir to the extent of his share, as he was the grand son of late Shri Gian Singh who was the Owner/Proprietor of the firm Gian Singh Sukhdev Singh. The property at Faridabad is also an HUF property as per information of the Plaintiff.”

4. The defendant no.1 has filed the written statement in which existence of HUF and its properties is denied. It is also denied that defendant no.1 at all received any ancestral properties and in fact it is pleaded that defendant no.1 came as a refugee in India and thereafter the defendant no.1 started the business of M/s Gian Singh Sukhdev Singh with the name of Sh. Gian Singh being put as a mark of respect for Sh. Gian Singh who was father of the defendant no.1/Sh. Sukhdev Singh Gambhir and therefore the name of the sole proprietorship firm of the defendant no.1 was M/s Gian Singh Sukhdev Singh. As per the written statement, the Rajinder Nagar property was purchased in the year 1953 for which the perpetual lease was executed in favour of the defendant no.1 on 7.12.1960 and thereafter the Conveyance Deed has been executed in favour of the defendant no.1 on 15.1.2009. It is therefore stated that Rajinder Nagar property is a self-acquired property of the defendant no.1 and it is not an HUF property for the plaintiff to claim any share in this property. It may be noted that the plaintiff himself has filed title documents of this Rajinder Nagar property in the name of the defendant no.1 and the plaintiff has also filed income tax returns of the year 1957-58 showing the property to be of the defendant no.1.

5. So far as the Faridabad property is concerned, in the written statement it is stated that this property was not an HUF property and in any case

this property was sold way back on 19.5.2008. The plaintiff on account of the Faridabad property having been sold has filed an application to amend the plaint being I.A. No.13263/2013.

6. What is an HUF, how does an HUF come into existence, how can the properties be the properties of HUF and whether ancestral properties are HUF properties are aspects which I have considered in detail in the judgments in the cases of *Sunny (Minor) & Anr. Vs. Sh. Raj Singh and Ors.*, 225 (2015) DLT 211 and *Surender Kumar Vs. Dhani Ram and Ors.*, 227 (2016) DLT 217. In these judgments, I have referred to and relied upon the ratios of the judgments of the Supreme Court in the cases of *Yudhishter Vs. Ashok Kumar*, (1987) 1 SCC 204 and *Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others*, (1986) 3 SCC 567 and which hold that inheritance of ancestral properties after passing of the Hindu Succession Act, 1956 does not result in the property being held as HUF property and that the property inherited after 1956 is inherited as a self-acquired property. The different scenarios of how an HUF property comes into existence have been dealt with in detail in the judgment in the case of *Sunny (Minor) & Anr. (supra)* with reference to pre 1956 and post 1956 positions. Also, general and vague averments without specifying what were the ancestral properties inherited and that too without stating that they were inherited by a person before 1956 cannot result in creation of HUF and its properties and which aspect I have dealt in the judgment passed recently on 5.5.2016 in CS(OS)

No. 683/2007 titled as **Mrs. Saroj Salkan Vs. Mrs. Huma Singh and Ors.** The relevant paras of the judgment in the case of **Surender Kumar (supra)** are paras 4 to 13 and these paras read as under and which also reproduce the ratios of the earlier judgments of the Supreme Court:-

“4. Plaintiff claims that as a son of defendant no.1 and as a grandson of late Sh. Jage Ram, plaintiff is entitled to his share as a coparcener in the aforesaid suit properties on the ground that the properties when they were inherited by late Sh. Jage Ram were joint family properties, and therefore, status as such of these properties as HUF properties have continued thereby entitling the plaintiff his rights in the same as a coparcener.

5. The Supreme Court around 30 years back in the judgment in the case of **Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, (1986) 3 SCC 567**, held that after passing of the Hindu Succession Act, 1956 the traditional view that on inheritance of an immovable property from paternal ancestors up to three degrees, automatically an HUF came into existence, no longer remained the legal position in view of Section 8 of the Hindu Succession Act, 1956. This judgment of the Supreme Court in the case of **Chander Sen (supra)** was thereafter followed by the Supreme Court in the case of **Yudhishter Vs. Ashok Kumar, (1987) 1 SCC 204** wherein the Supreme Court reiterated the legal position that after coming into force of Section 8 of the Hindu Succession Act, 1956, inheritance of ancestral property after 1956 does not create an HUF property and inheritance of ancestral property after 1956 therefore does not result in creation of an HUF property.

6. In view of the ratios of the judgments in the cases of **Chander Sen (supra)** and **Yudhishter (supra)**, in law ancestral property can only become an HUF property if inheritance is before 1956, and such HUF property therefore which came into existence before 1956 continues as such even after 1956. In such a case, since an HUF already existed prior to 1956, thereafter, since the same HUF with its properties continues, the status of joint Hindu family/HUF properties continues, and only in such a case, members of such joint Hindu family are coparceners entitling them to a share in the HUF properties.

7. On the legal position which emerges pre 1956 i.e before passing of the Hindu Succession Act, 1956 and post 1956 i.e after passing of the Hindu Succession Act, 1956, the same has been considered by me recently in the judgment in the case of **Sunny (Minor) & Anr. vs. Sh. Raj Singh & Ors., CS(OS) No.431/2006** decided on 17.11.2015. In this judgment, I have referred to and relied upon the ratio of the judgment of the Supreme Court in the case of **Yudhishter (supra)** and have essentially arrived at the following conclusions:-

(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.

8. The relevant paragraphs of the judgment in the case of **Sunny (Minor)** (*supra*) are paragraphs 6 to 8 and which paras read as under:-

“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. Guman Singh expire because it is only if Sh. Tek Chand father of Sh. Guman Singh/defendant no.1 had expired before 1956 only then the property which was inherited by Sh. Guman Singh from his father Sh. Tek Chand would bear the character of HUF property in the hands of Sh. Guman 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. Guman Singh is missing. As already stated above, the dates/years of the death of Sh. Tek Chand and Sh. Guman 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. Guman Singh inherited the properties from Sh. Tek Chand before 1956 that the properties in the hands of Sh. Guman 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. Guman Singh, it cannot be held that Sh. Guman 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. Guman 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. Guman Singh from Sh. Tek Chand would be self-acquired in the hands of Sh. Guman 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. Guman 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. Guman 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. Guman 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. I would like to further note that it is not enough to aver a *mantra*, so to say, in the plaint simply that a joint Hindu family or HUF exists. Detailed facts as required by Order VI Rule 4 CPC as to when and how the HUF properties have become HUF properties must be clearly and categorically averred. Such averments have to be made by factual references qua each property claimed to be an HUF property as to how the same is an HUF property, and, in law generally bringing in any and every property as HUF property is incorrect as there is known tendency of litigants to include unnecessarily many properties as HUF properties, and which is done for less than honest motives. Whereas prior to passing of the Hindu Succession Act, 1956 there was a presumption as to the existence of an HUF and its properties, but after passing of the Hindu Succession Act, 1956 in view of the ratios of the judgments of the Supreme Court in the cases of **Chander Sen (supra)** and **Yudhishter (supra)** there is no such presumption that inheritance of ancestral property creates an HUF, and 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 inasmuch as it is necessary for existence of an HUF and its properties that 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.

10. A reference to the plaint in the present case shows that it is claimed that ownership of properties by late Sh. Jage Ram in his name was as joint Hindu family properties. Such a bald averment in itself cannot create an HUF unless it was pleaded that late Sh. Jage Ram inherited the properties from his paternal ancestors prior to 1956 or that late Sh. Jage Ram created an HUF by throwing his own properties into a common hotchpotch. These essential averments are completely missing in the plaint and therefore making a casual statement of existence of an HUF does not mean the necessary factual cause of action, as required in law, is pleaded in the plaint of existence of an HUF and of its properties.

11. I may note that the requirement of pleading in a clear cut manner as to how the HUF and its properties exist i.e whether because of pre 1956 position or because of the post 1956 position on account of throwing of properties into a common hotchpotch, needs to be now mentioned especially after passing of the Benami Transaction (Prohibition) Act, 1988 (hereinafter referred to as 'the Benami Act') and which Act states that property in the name of an individual has to be taken as owned by that individual and no claim to such property is maintainable as per Section 4(1) of the Benami Act on the ground that monies have come from the person who claims right in the property though title deeds of the property are not in the name of such person. An exception is created with respect to provision of Section 4 of the Benami

Act by its sub-Section (3) which allows existence of the concept of HUF. Once existence of the concept of HUF is an exception to the main provision contained in sub-Sections (1) and (2) of Section 4 of the Benami Act, then, to take the case outside sub-Sections (1) and (2) of Section 4 of the Benami Act it has to be specifically pleaded as to how and in what manner an HUF and each specific property claimed as being an HUF property has come into existence as an HUF property. If such specific facts are not pleaded, this Court in fact would be negating the mandate of the language contained in sub-Sections (1) and (2) of Section 4 of the Benami Act.

12. This Court is flooded with litigations where only self-serving averments are made in the plaint of existence of HUF and a person being a coparcener without in any manner pleading therein the requisite legally required factual details as to how HUF came into existence. It is a *sine qua non* that pleadings must contain all the requisite factual ingredients of a cause of action, and once the ratios of the judgments of the Supreme Court in the cases of **Chander Sen (supra)** and **Yudhishter (supra)** come in, the pre 1956 position and the post 1956 position has to be made clear, and also as to how HUF and its properties came into existence whether before 1956 or after 1956. It is no longer enough to simply state in the plaint after passing of the Hindu Succession Act 1956, that there is a joint Hindu family or an HUF and a person is a coparcener in such an HUF/joint Hindu family for such person to claim rights in the properties as a coparcener unless the entire factual details of the cause of action of an HUF and each property as an HUF is pleaded.

13. In view of the above, actually the application filed under Order VII Rule 11 CPC in fact is treated as an application under Order XII Rule 6 CPC, inasmuch as, it is observed on the admitted facts as pleaded in the plaint that no HUF and its properties are found to exist. There is no averment in the plaint that late Sh. Jage Ram inherited property(s) from his paternal ancestors prior to 1956. In such a situation, therefore, the properties in the hands of late Sh. Jage Ram cannot be HUF properties in his hands because there is no averment of late Sh. Jage Ram inheriting ancestral property(s) from his paternal ancestors prior to 1956. There is no averment in the plaint also of late Sh. Jage Ram's properties being HUF properties because HUF was created after 1956 by late Sh. Jage Ram by throwing properties into a common hotchpotch. I have already elaborated in detail above as to how an HUF has to be pleaded to exist in the pre 1956 and the post 1956 positions and the necessary averments which had to be made in the present plaint. The suit plaint however grossly lacks the necessary averments as required in law to be made for a complete cause of action to be pleaded for existence of an HUF and its properties.”

7. The relevant para of the judgment in **Mrs. Saroj Salkan's** case (*supra*) is para 10(i) and this para reads as under:-

“10(i) A reading of the suit plaint in the present case does not show as to creation and existence of an HUF prior to 1956 because of which specific properties were inherited by late Gen. Budh Singh prior to 1956. In the absence of such pleadings no HUF and its properties can exist on account of late Gen. Budh Singh having inherited ancestral properties prior to 1956. I cannot agree with the argument that what were the ancestral properties which were inherited by Gen. Budh Singh prior to 1956 is a matter of trial for various reasons. Firstly, evidence can only be if a property is pleaded to exist by reference to the property by specific description. This is the mandate of Order VI Rule 4 CPC. Secondly, no amount of evidence can be looked into on a plea which is not found in the pleading. Thirdly, in my opinion courts are not forced to entertain suits on totally vague averments of alleged ancestral properties inherited before 1956 and hence courts being flooded with litigation of suits for partition on self-serving convenient vague allegations of ancestral properties inherited before 1956 and which cause of action is only an illusory cause of action and not a real/legal cause of action.”

8. I have already reproduced above paras 2 and 3 of the plaint. As per Order VI Rule 4 of the Code of Civil Procedure, 1908 (CPC) and the ratios of the judgments in the cases of *Surender Kumar (supra)*, *Sunny (Minor) & Anr. (supra)* and *Mrs. Saroj Salkan (supra)*, it was necessary for the plaintiff to state as to how HUF exists specifically either because of the pre 1956 or the post 1956 position. If HUF and its properties are stated to exist because of the pre 1956 position, then, what are the specific properties with their details which were inherited by defendant no.1 had to be mentioned and only on inheritance by the defendant no.1 of such ancestral properties prior to 1956 would defendant no.1 have HUF properties and its funds in his hands. This aspect is conspicuously silent in the plaint. I may note that it is not the case of the plaintiff in the plaint that HUF and its properties were created post 1956 by the defendant no.1 by throwing the properties into a common hotchpotch. Also, at this stage, it is relevant to refer to the observations made in the judgment in the case of *Surender*

Kumar (supra) wherein reference is made to passing of the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as 'the Benami Act') and observed that once a property is found to be in the ownership of a particular person by title deeds (and that particular person being the defendant no.1 in the present case as regards the Rajinder Nagar property and the Faridabad property), it is hence the defendant no.1 who would be the owner of such properties and a suit for claiming rights in such properties would be barred by Section 4(1) of the Benami Act. Exceptions to Section 4(1) of the Benami Act are stated under Section 4(3) of the Benami Act and which are firstly of existence of an HUF or secondly of the property being purchased as a trustee/in fiduciary relationship. Since the provision of Section 4(3) of the Benami Act is in the nature of exception to the provision of Section 4(1), this aspect read with Order VI Rule 4 CPC which requires all necessary particulars to be mentioned in the plaint, plaintiff had to set up a clear cut case by pleading in the plaint as to how HUF and its properties have come into existence and as to how the suit properties are HUF properties once the title deeds of the properties are admittedly in the name of the defendant no.1.

9. The business of M/s Gian Singh Sukhdev Singh which is carried on is the sole proprietorship business of the defendant no.1 as the plaintiff admits to this fact of this business being a proprietorship business in para 2 of the plaint. As per the pleadings of the defendant no.1 and the documents filed by the defendant no.1, the proprietorship firm of the defendant no.1 M/s Gian Singh

Sukhdev Singh was made into a partnership firm on 10.5.1980 and Sh. Sunil Gambhir, father of the plaintiff retired on 31.3.1992 in terms of the Retirement Deed dated 7.4.1992. Therefore, by means of written documentation, the father of the plaintiff late Sh. Sunil Gambhir retired from the partnership business, way back before filing of this suit in the year 2010 i.e around 18 years prior to the filing of the suit. Once the business is a partnership business, such a partnership business cannot be taken as an HUF business because of two reasons. Firstly, what is apparent is real in view of Section 4(1) of the Benami Act and therefore the partnership business has to be taken as a partnership business and not an HUF business. Secondly, the father of the plaintiff late Sh. Sunil Gambhir was a partner in this firm and therefore it is not permissible for the plaintiff to contend to the contrary that business of a firm was not a partnership business but was an HUF business, more so when the father of the plaintiff having retired from the partnership firm around 18 years prior to the filing of the suit. These undisputed facts emerge from the pleadings in the case as also the documents filed on behalf of the parties.

10. In view of the above, it is clear that the suit as per the pleadings, documents and the undisputed/admitted position does not show existence of a cause of action with respect to HUF and its properties. At the cost of repetition, and also so stated in para 12 in the judgment in the case of ***Surender Kumar (supra)***, it is to be noted that courts are flooded with litigations which are

frivolous in nature, simply by making vague and illusionary allegations of facts as to the traditional concept of HUF and which no longer exists after 1956 as per the ratios of the judgments of the Supreme Court in the cases of *Yudhishter (supra)* and *Commissioner of Wealth Tax, Kanpur and Others (supra)*. Obviously, such litigations are in the nature of speculations only and are against the spirit of the Benami Act which intends to give finality to the ownership of the properties in the name of a particular person by means of title deeds in the name of a particular person. As per the pleadings and admitted documents in the present case, there is no legal cause of action with the necessary ingredients existing/averred with respect to existence of HUF and its properties, and it may be again noted at the cost of repetition that there are only general and vague averments in paras 2 and 3 of the plaint, of the defendant no.1 inheriting ancestral properties in Pakistan without giving details as to what those imaginary properties were. The suit on the basis of such imaginary cause of action cannot be allowed to continue and cause harassment to the defendants.

11. This suit is listed for framing of issues as also for the decision of an application under Order VII Rule 11 CPC of the defendant no.1. No issues need to be framed when they do not arise from the existing and admitted pleadings and documents. *Dehors* the pendency of any application under Order VII Rule 11 CPC, since the suit itself does not disclose the cause of action and does not show that HUF and its properties existed, plaintiff cannot claim a right for partitioning

of the imaginary and alleged HUF properties. Once the suit itself is not maintainable, the application under Order VI Rule 17 CPC filed by the plaintiff being I.A. No. 13263/2013 is liable to be dismissed more so because the cause of action of the defendant no.1 dying leaving or not leaving behind a Will will be an independent cause of action which will be totally different from the cause of action in this suit and which is that the properties are HUF properties which are stated in the plaint. If the plaintiff wants to file a suit on the basis of a cause of action that the suit properties are not HUF properties and properties were in the ownership of the defendant no.1 and that the defendant no.1's Will propounded by the defendant no.2 is not a valid document, then, of course in accordance with law plaintiff can file a suit on such an independent/different cause of action but the present suit on the basis of the present cause of action of existence of HUF and its properties is an illusory cause of action and does not deserve any further consideration by this Court. Suit is accordingly dismissed for lacking cause of action of existence of HUF and its properties. Parties are left to bear their own costs.

12. Since the suit itself is dismissed, all the pending applications will stand disposed of accordingly.

MAY 06, 2016
Ne

VALMIKI J. MEHTA, J.