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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RSA No. 319/2016

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25th October, 2016

SARVESH KUMAR

..... Appellant

Through: Mr. Ashok Gurnani, Advocate.

versus

SH. DALEL SINGH

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 39866/2016 (for exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

RSA No. 319/2016 and C.M. Appl. No. 39865/2016 (for stay of operation of the Judgment and Decree dt. 12.8.2016 under Section 151 CPC)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellant/defendant/son impugning the concurrent Judgments of the courts below; of the Trial Court dated 24.11.2015 and the First Appellate Court dated 12.8.2016; by which the courts

below have decreed the suit of the respondent/plaintiff/father for possession and damages. The suit property is a property admeasuring 170 sq. yards bearing no. D-40, Ganesh Nagar, Pandav Nagar Complex, Delhi-92.

2. The case of the respondent/plaintiff is that the suit property was purchased from the funds provided by the respondent/plaintiff and by title deeds in the name of the respondent/plaintiff. Respondent/plaintiff pleaded that there was never any Hindu Undivided Family (HUF). Respondent/plaintiff on account of failure of the appellant/defendant to vacate one room on the ground floor of the suit property sent a Legal Notice dated 29.7.2002 calling upon the appellant/defendant to vacate the suit property, but appellant/defendant instead of vacating the property sent a Reply Notice dated 13.8.2002 stating that the entire suit property was purchased in the name of the respondent/plaintiff from the funds of joint Hindu family which were provided by the grandfather of the appellant/defendant, i.e the father of the respondent/plaintiff and thus appellant/defendant refused to vacate the room in the suit property. Accordingly, the subject suit came to be filed.

3. Appellant/defendant contested the suit by filing his written statement. It was stated that out of 170 sq. yards of the suit property 100 sq. yards were purchased in the year 1983 out of the funds of the appellant's/plaintiff's father, i.e the grandfather of the appellant/defendant, and

thereafter the same was constructed from the joint funds of the defendant and plaintiff. The remaining 70 sq. yards of the property was stated by the appellant/defendant to have been purchased by the respondent/plaintiff out of the joint funds of the plaintiff and defendant. Appellant/defendant further claimed that he had been helping his father/plaintiff and contributing his entire earnings to the plaintiff. Accordingly, it was prayed that the suit be dismissed.

4. After completion of pleadings on 9.10.2009 the following issues were framed:-

“1. Whether the property no. D 14 (correct no. is D 40), Ganesh Nagar, Pandav Nagar Complex, Delhi 92 was purchased by the plaintiff using ancestral funds and whether the defendant contributed in construction of the suit property? OPD

2. Whether the plaintiff has not valued the suit properly for purpose of court fee and jurisdiction and whether this court has no pecuniary jurisdiction to try the suit? OPD

3. Whether the plaintiff is entitled for the relief of possession? OPP

4. Whether the plaintiff is entitled to recover a sum of Rs.1,08,000/- from the defendant as mesne profits as claimed and whether the plaintiff is entitled for pendent lite and future mesne profits? If yes at what rate? OPP

5. Relief.”

5. The relevant issues which are argued before this Court are issue nos. 1 and 3 as to whether the suit property is owned by the respondent/plaintiff or that the suit property was purchased from the ancestral funds and that whether the appellant/defendant contributed towards construction of the suit property.

6. The courts below have held that no evidence of any worth was led by the appellant/defendant to show that there were funds contributed by the appellant/defendant for either purchase of 70 sq. yards of the plot in question or appellant/defendant had spent funds towards construction on the 100 sq. yards of the property which was first purchased. It is seen that admittedly the appellant/defendant did not file a single document to show that the suit property was purchased by the respondent/plaintiff from the HUF funds and similarly appellant/defendant failed to file any document to show that he had made any contribution with regard to purchase of the land or for construction of the house. Courts below also note that there is no dispute that the title documents have been executed with respect to the suit property in the name of respondent/plaintiff and therefore respondent/plaintiff is admitted to be the owner of the suit property by title documents, and that appellant/defendant however claimed ownership on the ground of first part of 100 sq. yards having purchased from ancestral funds and construction being made from contribution by the appellant/defendant and that the second part of 70 sq. yards was purchased as per the contribution by the appellant/defendant, and on which aspects the HUF cannot be said to have been proved to come into existence as discussed above, and therefore, the suit for possession of the respondent/plaintiff/father was bound to be decreed.

7. In view of the above facts it is clear that no substantial question of law arises because appreciation of evidence as has been done by the courts below is not based on any illegality or perversity for this Court to interfere under Section 100 CPC. In fact, leave aside the second appeal raising a substantial question of law, in fact there is not even a question of law or even a ground to interfere with the judgment of the trial court as confirmed by the first appellate court because even if this Court was to appreciate evidence, and which it cannot under Section 100 CPC, even then, once no documentary evidence was led by the appellant/defendant to support his defense in the written statement, the suit of the respondent/plaintiff/father was bound to be decreed as held by the courts below.

8. I would like to note that the written statement filed by the appellant/defendant is really only a wishy washy written statement to say the least because there is really no specific defense set out of the existence of the suit property being an HUF property. An HUF property can come into existence only if the respondent/plaintiff/father had inherited immovable property prior to coming into force of the Hindu Succession Act, 1956 or had inherited ancestral funds prior to 1956 or that after 1956 an HUF property was created by throwing funds into common hotchpotch. This is a law as laid down by the Supreme Court in the judgment in the case of *Commissioner of Wealth*

Tax, Kanpur and Others Vs. Chander Sen and Others, (1986) 3 SCC 567 and *Yudhishter Vs. Ashok Kumar, (1987) 1 SCC 204*. I have also considered this aspect in detail by referring to the ratios of the aforesaid judgments of the Supreme Court in the case of *Surinder Kumar Vs. Dhani Ram and Others, 227 (2016) DLT 217* by observing that a mere statement in a plaint of alleged existence of an HUF cannot in law be said to create an HUF because for pleading a cause of action of an HUF it has to be specifically pleaded as to if the suit property was inherited prior to 1956 from paternal ancestors or the subject property purchased prior to 1956 from the funds received from paternal ancestors or if an HUF is created after 1956 then specific averments have to be made as to in which month and which year HUF property was purchased by throwing funds into common hotchpotch. The relevant paragraphs of the judgment in the case of *Surinder Kumar (supra)* are as under:-

“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/0265/1986 MANU/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. 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. Gudan 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. Gudan 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.”
(underlining added)

9. Therefore, in fact the subject suit filed by the respondent/plaintiff/father need not have even gone to trial on the basis of the case of the appellant/defendant of an HUF because really there was no cause of action pleaded of an HUF property as required by law. Of course, even assuming that cause of action is validly pleaded as per the requirement of the ratios of the judgments of the Supreme Court in *Chander Sen and Others (supra)* and *Yudhishter (supra)* cases, even then no evidence of any value or credibility was led by the appellant/defendant, except his own self-serving statement and which cannot be the basis for discharge of onus with respect to the suit property being an HUF property.

10. So far as the aspect that the courts below have wrongly decided issue no. 3 of ownership of the respondent/plaintiff/father of the suit property is concerned, this argument is wholly baseless because the appellant/defendant himself admitted in his own affidavit by way of evidence that the suit property

was purchased by the respondent/plaintiff/father by title deeds in his name and therefore courts below have rightly held that the respondent/plaintiff/father was the owner of the suit property on account of admissions of the appellant/defendant. The relevant aspects noted by the judgment of the first appellate court are contained in paragraphs 5 to 8 and which read as under:-

“5. The thrust of the argument of Ld. Counsel for the appellant is on the point that since documents of ownership have not been proved on behalf of plaintiff/respondent, case does not stand proved and impugned judgment is liable to be set aside. Issue no.1 pertains to whether the property No.40, Ganesh Nagar, Pandav Nagar Complex, Delhi-92 was purchased by the plaintiff using ancestral fund and whether the defendant contributed in construction of suit property. Onus of this issue was on the defendant and issue No.3 is whether the plaintiff is entitled for relief of possession. Onus of issue No.3 is on the plaintiff. The defendant in his affidavit has testified that the plaintiff has brought the suit premises on two occasions, one in the year 1983 when he purchased 100 sq yards out of 170 sq. yards with the help of the grandfather of the deponent and thereafter plaintiff bought the remaining 70 sq. yards in the year 1985 when the deponent/defendant contributed in purchasing amount after withdrawing the same from his committee and thereafter the house No. D-40, Ganesh Nagar, Pandav Nagar Complex, Delhi-91 was constructed with the help of earning of the plaintiff and the deponent.

6. In his cross examination DW-1 has stated that he had filed a suit for partition of the suit property against the plaintiff on the same facts, which was dismissed on the said suit. He has also admitted that prior to filing suit by him, the plaintiff had served him with notice dated 29.07.2002. He has not filed any document on record to show that property in question had been purchased by the plaintiff from Hindu Undivided Family fund. He had not filed any document on record to show that he had made any contribution regarding purchase of the land and so also with regard to the contribution made in the construction of the house. In response to a specific question as to how much amount did the defendant contribute towards purchase of part of the suit property, DW-1 stated that he could not state any precise figure but he could say that he used to give all his daily earning on daily basis to his father.

7. In view of this evidence, Ld. Trial Court rightly came to the conclusion that defendant has failed to prove that he contributed any funds towards purchase of part of the suit property or for its construction and said issue was decided against the defendant/appellant.

8. Now coming to findings on issue No.3 which relates to the entitlement of the plaintiff for decree of possession. The case of the plaintiff is that he is owner of the suit property and defendant, being his son, was allowed to reside in one room at the ground floor. The plaintiff could not produce property documents on record. But the plaintiff has proved other documents with regard to the property. Relationship between the parties is that of a father and son, but no challenge was ever made by the defendant that property was not registered in the name of the plaintiff. There was no dispute with regard to ownership of the property in question. It was the defendant who raised a dispute that property being merely purchased in the name of the plaintiff, he does not become owner as funds were contributed by his grandfather and defendant himself. The defendant had neither disputed the relationship nor of his being in occupation of one room on the ground floor and nature of the possession of defendant in the suit property is permissive possession, in view of the fact that he failed to prove that he contributed either in purchase of the suit property or raising construction thereon. The plaintiff in his additional evidence has stated that unfortunately the title documents executed by the vendor in respect of the property in question were misplaced by him during the year 1993. This ground was sustained by the defendant by putting suggestions to the plaintiff in his cross examination and the plaintiff (PW1) has admitted that the plaintiff had bought the suit property measuring area 170 sq. yards on two times. He has also admitted that he has not placed the documents of title on record as the same are not traceable.”

11. In view of the above, no substantial question of law arises for this second appeal to be entertained under Section 100 CPC and accordingly the same is dismissed.

OCTOBER 25, 2016

AK

VALMIKI J. MEHTA, J