

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

+ **Ex.FA No.4/2017 and C.M. No. 9055/2017 (stay)**

% **25<sup>th</sup> April, 2017**

JAGDISH SINGHAL & ANR. .... Appellants

Through: Mr. P.K. Rawal, Advocate.

Versus

RAM BHAI BANSAL & ORS. .... Respondents

Through:

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This Execution First Appeal impugns the judgment of the executing court dismissing the objections of the present appellants. The impugned judgment dated 21.1.2017 deals with objections of various persons, and the objections of the present appellants namely Sh. Jagdish Singhal and Sh. Manoj Singhal are referred to in para 11 onwards of the impugned judgment. The objections on merits have been dealt with in para 28 onwards of the impugned judgment.

2. The facts of the case are that with respect to the suit property being H.No.2074, Old Anaj Mandi, Narela, Delhi, the subject suit for partition was filed by the respondent no.1/plaintiff/Sh. Ram Bhaj Bansal against his three brothers. The suit for partition was filed

on the ground that the suit property was purchased in the joint names of the four brothers, being sons of late Sh. Gyani Ram, as per the sale deed dated 17.8.1967. In this suit, a preliminary decree of partition was passed vide order dated 12.11.2009. By this order dated 12.11.2009, Suit No. 892/2008 filed for partition was decreed under Order XII Rule 6 of Code of Civil Procedure, 1908 (CPC). Against this judgment, an RFA was filed in this Court being RFA No.48/2010. This RFA was dismissed by this Court. The decree dated 12.11.2009 partitioning the suit property therefore became final. Counsel for the appellants/objectors also informs this Court that final decree was thereafter also passed and the suit property was auctioned. The appellants/objectors filed their objections on 25.11.2013 contending that they are claiming through the daughter of late Sh. Gyani Ram, and who was the sister of the plaintiff and the defendants in the suit, who are the respondents herein. The appellant no.1/objector no.1 is the husband of late Smt. Darshna Devi the daughter of late Sh. Gyani Ram and the appellant no.2/objector no.2 is the son of late Smt. Darshna Devi.

3. By the objection petition, the objectors pleaded that the suit property was an HUF property inasmuch as the suit property was purchased by late Sh. Gyani Ram in the name of his four sons who are

the plaintiffs and the defendants in the suit. The relevant pleadings with respect to the suit property being an HUF property are contained in paras 9 and 10 of the objections and these paras read as under:-

“9. That it is respectfully submitted that the maternal grandfather of the applicant/objector no.2 had purchased suit property in question in the year 1967 i.e. 2074, Narela Anaj Mandi, Delhi in the name of the Plaintiff/deGREE holder and Defendants/judgment debtors as a trustee for the benefits and welfare of the members of the Joint Hindu Family after selling the other ancestral property of the Joint Hindu Family in the year 1966 i.e. Shops in Aggarwal Mandi, Tatiri, Bagpat, U.P.,. Copy of same is annexed here with as Annexure-A.

10. That it is respectfully submitted that the suit property bearing No.2074, Old Anaj Mandi, Narela, Delhi for which the aforesaid execution petition has been filed by Plaintiff/deGREE holder was purchased in the year 1967 for a sum of Rs.37,500/- and at that particular time the Plaintiff/deGREE holder was serving as a government servant, the defendant/judgment debtor No.1 was assisting his father in his business, the defendant/judgment debtor No.2 was aged about 16-17 years and was studying in college and the defendant/judgment debtor No.3 was aged about 3-4 years only, therefore none of the Plaintiff/deGREE holder and Defendants/judgment debtors were in the position to purchase or even contribute anything towards purchase of above said immovable property in question and all the funds towards purchase of the said property were contributed by Late Sh. Gyani Ram from joint family funds for the benefit/welfare of all the coparceners of the joint family.”

4. In my opinion, the objections filed by the appellants/objectors were liable to be dismissed and have been rightly dismissed by the executing court. Though executing court has not given the particular reasoning given below by this Court for dismissing of the objections in paras 28 to 31 of the impugned judgment and the executing court has held that a daughter was not entitled to claim rights in the suit property as a co-parcener in view of the judgment of the Supreme Court in the case of *Prakash and Others Vs. Phulavati and*

***Others (2016) 2 SCC 36***, however, in my opinion objections are liable to be dismissed for the reasons given hereinafter, and which reasons are given by this Court in exercise of the spirit of the provisions of Order XLI Rule 24 CPC read with the ratio of the judgment of the Supreme Court in the case of ***Lisamma Antony and Another Vs. Karthiyayani and Another (2015) 11 SCC 782***.

5. A conjoint reading of the ratio in the case of ***Lisamma Antony (supra)*** with Order XLI Rule 24 CPC shows that Courts should not remand the matters and once the record of the courts below can be looked into and the impugned judgment can be sustained on additional reasons which are given by the appellate court, then by giving such reasons the appeal can be disposed of without remanding the matter for fresh decision by the courts below.

6. In my opinion, the averments made in the objection petition do not constitute the pleadings as required by law for constitution of a joint hindu family/hindu undivided family. This is because after passing of the Hindu Succession Act, 1956 any property which is inherited by a male from his paternal ancestor is inherited not as an HUF property but as a self-acquired property. This is the ratio of the judgments of the Supreme Court in the cases 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.**

After passing of the Hindu Succession Act, if anyone pleads existence of an HUF, a person must show that the property which is inherited by a person and which is claimed to be an HUF property was inherited prior to coming into force of the Hindu Succession Act. Unless such an averment is made the inherited property cannot be treated as an HUF property. The only other way where an HUF is created is if after 1956 a property is thrown into a common hotchpotch and therefore the property becomes an HUF property. Vague pleadings with respect to an HUF ought not to be entertained by the Courts because various Courts in this country are flooded with false litigations with respect to existence of an HUF and its properties, and which concept has more or less no longer remained active.

7. I have dealt with the aforesaid judgments of the Supreme Court in the cases of ***Chander Sen (supra)*** and ***Yudhishter (supra)***, and expounded upon the same, in the judgment in the case of ***Surender Kumar Vs. Dhani Ram and Others*, 227 (2016) DLT 217** and made observations as to that property can be an HUF property only if specific and clear cut pleadings are made as to an HUF existing on account of the property being inherited before 1956 and continuing thereafter or if properties are inherited after 1956, then an HUF is

created by throwing the properties into a common hotchpotch. The relevant paras of the judgment in the case of ***Surender Kumar (supra)*** are paras 5 to 12 and which paras read as under:-

“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. 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. 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."

8. A reading of the objections filed by the appellants/objectors do not show that the requisite pleadings have been made out for creation/existence of an HUF. It is not stated as to whether late Sh. Gyani Ram had inherited a particular specific property before 1956 and hence the said inherited property is an HUF property. In fact para 9 of the objections of the appellants/objectors does not even refer to any specific property number which was allegedly inherited by late Sh. Gyani Ram. Also, it is not pleaded that this alleged property, with no particulars, was sold by which sale deed and for how much amount, and how for the said consideration of the sale of the earlier property has been invested for purchase of the subject/suit property. Also, there have been made no averments as to an HUF being created after 1956 by throwing a particular property into a common hotchpotch. Clearly therefore there was never an HUF and in fact objections have been filed by the appellants/objectors only to delay and drag the achieving the finality with respect to the main suit for partition and which is now pending since the year 2007.

9. In view of the above, there is no merit in the objections, as also the present appeal, and the same are therefore dismissed, leaving the parties to bear their own costs.

**APRIL 25, 2017/ Ne**

**VALMIKI J. MEHTA, J**