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

% Judgment Reserved On : March 02, 2017
Judgment Delivered On : March 06, 2017

+ **RFA(OS) 46/2016**

SAGAR GAMBHIRAppellant
Represented by: Mr.Kirti Uppal, Sr.Advocate
instructed by Ms.Aastha Dhawan
and Mr.Harsh Kumar, Advocates

versus

SUKHDEV SINGH GAMBHIR
(SINCE DECEASED) THR HIS LEGAL
HEIRS & ANRRespondents
Represented by: Mr.A.S.Chandhiok, Sr.Advocate
instructed by Mr.J.K.Chawla and
Mr.Rajan Chawla, Advocates for
R-1(i) to R-1(v)
Mr.Rajesh Yadav, Advocate for
R-2

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE YOGESH KHANNA

PRADEEP NANDRAJOG, J.

1. The appellant is the grandson of late Sukhdev Singh Gambhir, whom he impleaded as defendant No.1 in a suit seeking partition. Appellant's uncle : Anil Gambhir was the second defendant. The appellant is the son of late Sh.Sunil Gambhir, the second son born to Sukhdev Singh Gambhir. The appellant claims 1/3rd share through his father in properties bearing municipal No.B-4/8 Poorvi Marg (NEA) Rajinder Nagar, New Delhi and D-II/83, Sector-10, Faridabad (Haryana). He also claims 1/3rd share in the income and assets of the firm M/s Gian Singh Sukhdev Singh carrying on

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business from K-42, Connaught Place, New Delhi. Case pleaded is that the property at Rajinder Nagar and Faridabad was purchased from the funds of the firm M/s Gian Singh Sukhdev Singh which was set up by the late grandfather of the plaintiff and as such the same is ancestral in the hands of the appellant. It is pleaded : *'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 grandson 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.'*

2. The defendants denied the averments made in the plaint and pleaded that the firm M/s Gian Singh Sukhdev Singh was the sole proprietary firm of defendant No.1 who migrated to India and settled in Delhi during partition. As a refugee he came with no funds. The native place now in Pakistan was Jhelam. Ownership of the two properties, partition whereof was prayed for, was claimed to be his and for which plea the title documents were relied upon. It is pleaded that the property at Faridabad had been sold.

3. As the suit lingered on, defendant No.1 died. His legal heirs were brought on record. Appellant filed IA No.13263/2013 to amend the plaint by laying a challenge to the sale of the property at Faridabad on the plea that being property of the HUF, defendant No.1 could not sell the same without the consent of the other coparceners. A will dated May 29, 2008 which was propounded by defendant No.2 was also challenged.

4. An application registered as IA No.1525/2011 for discovery and inspection was also filed concerning sale of the property at Faridabad as also the wealth-tax return, if any, filed by defendant No.1.
5. The defendants filed IA No.1325/2012 invoking Order VII Rule 11 of the Code of Civil Procedure pleading that the averments in the plaint did not disclose a cause of action.
6. Vide impugned order dated May 06, 2016, relying upon the decision of the Supreme Court reported as (1987) 1 SCC 204 Yudhihster vs. Ashok Kumar, and two decisions of this Court reported as 225(2015) DLT 211 Sunny (Minor) & Anr. vs. Sh.Raj Singh & Ors. and 227 (2016) DLT 217 Surinder Kumar vs. Dhani Ram & Ors. the learned Single Judge has held that the pleadings were illusory and did not disclose a cause of action. The suit has been dismissed, and we treat this to be a misnomer for the reason if a plaint does not disclose a cause of action it has to be rejected. Qua challenge to the will, the learned Single Judge has held that this would be a separate cause of action and a separate suit could be filed.
7. Laying a challenge to the impugned order, Sh.Kirti Uppal, learned Senior Counsel for the appellant argued that the impugned order suffers from a serious procedural infirmity, in that, the learned Single Judge ought to have first decided appellant's application to amend the plaint and if the amendment was allowed, to consider thereafter whether as amended the plaint disclosed a cause of action. On merits, learned Senior Counsel urged that it was sufficient averment to be made that defendant No.1 set up the firm from ancestral funds and the two properties partitioned whereof was prayed for were acquired from the gains of the said ancestral business. The third grievance was to the view taken in para 9 of the impugned decision wherein the learned Single Judge has referred to the written statement filed concerning the firm M/s Gian Singh Sukhdev Singh, which was

pleaded to be the sole proprietary firm of defendant No.1 with the plea that he used his father's name out of respect and that on May 10, 1980 it was converted into a partnership firm by inducting appellant's father as a partner who retired from the firm with effect from March 31, 1992 in terms of the retirement deed dated April 07, 1992.

8. Pertaining to the first grievance, whilst it may be true that procedurally the learned Single Judge ought to have first decided the application filed by the appellant to amend the plaint. But we find that said procedural error needs to be overlooked in the facts and circumstances of the instant case because while seeking to amend the plaint the appellant did not expand upon the existing pleadings concerning the HUF. Challenge was to the sale effected by defendant No.1 of the property at Faridabad and that too without proposing to implead the purchaser. The challenge was on the ground that the property belonged to HUF.

9. It thus has to be seen whether actionable pleadings have been made in the plaint qua the claim.

10. In Chander Sen's case (supra), the Supreme Court held that after the promulgation of the Hindu Succession Act, 1956, the traditional view under the Hindu Law no longer remained the legal position. This decision was followed in case (supra) the Supreme Court held that after the promulgation of the Hindu Succession Act, 1956, the traditional view under the Hindu Law no longer remained the legal position. This decision was followed in Yudhishter's case (supra). We agree with the legal position noted by the learned Single Judge which flows out of the two decisions of the Supreme Court, which would be as under:-

“(i) If a person dies after passing of the Hindu Succession Act, 1956 and there is no HUF existing at the time of the death of such a person, inheritance of an immovable property of such a person by his successors-in-interest is no

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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."

11. In the decision reported as JT 2012 (3) SC 451 Maria Margardia Sequeria Fernandes & Ors. v. Erasmo Jack de Sequeria (dead) Thru LRs, the facts of the case were that the appellant No.1 and respondent No.1 therein were brother and sister. The respondent No.1 had filed a suit under Section 6 of the Specific Relief Act, 1963 against the appellant No.1 seeking grant of a decree of permanent and mandatory injunction in his favour in respect of the suit property. In the plaint filed, it was alleged by respondent No.1 that he remained in possession of the suit property for several years by virtue of a family arrangement; his sister, appellant No.1 had dispossessed him from the suit property without following the due process of law and thus the possession of the suit property should be restored to him. On the other hand, appellant No.1 contended that she is the rightful owner of the suit property and had given possession of the suit property to her brother as a caretaker. The trial court decreed the suit filed by respondent No.1, which decree was affirmed by the High Court. The Supreme Court held that the pleadings and the documents placed on record by the parties establishes that appellant No.1 had a valid title to the suit property and had given possession of the suit property to her brother as a caretaker; the respondent No.1 had not been able to establish any family arrangement by virtue of which the possession of the suit property was given to him; caretaker, watchman or servant can never acquire interest in the property irrespective of their long possession and the courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time, either as a friend, relative or caretaker. Thus, the Supreme Court allowed the appeal. Though the matter had reached the Supreme Court after trial and parties had led their evidence, the Supreme Court laid emphasis that Courts must accord due attention to the pleadings, and in civil cases pertaining to

property, must accord the necessary consideration to the admitted documents filed by the parties and highlighted that this care would prevent many a false claims from sailing beyond the stage of issues. In paragraph 73 to 79 of the opinion, the Supreme Court highlighted that suspicious pleadings, incomplete pleadings and pleadings not supported by documents would not even warrant issues to be settled. Thus, the said observations of the Supreme Court would be very relevant in the instant case.

12. We need to note a very pertinent observation, on the subject of pleadings, by the US Supreme Court in the decision reported as 556 U.S. 662, John D. Ascroft, Former Attorney General v Javaid Iqbal : ***factual allegations must be enough to raise a right to relief above the speculative level. The pleadings must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action and recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as a true, we are not bound to accept as true a legal conclusion couched as factual allegation only a complaint that states a plausible claim for relief survives a motion to dismiss***'.

13. In the decision reported as 2011 (6) SCALE 677 Ramrameshwari Devi vs. Nirmala Devi in para 52(a) the Supreme Court highlighted that pleadings are foundation of the claim by a party and it is the bounden duty and obligation of every trial Judge to carefully scrutinize the pleadings and the documents on which the pleadings are predicated. In the decision reported as AIR 1999 SC 1464 D.M. Dehpande vs. Janardhan Kashinath Kadam, the Supreme Court highlighted the relevance of pleading material facts. In the decision reported as AIR 1982 Bom. 491 Nilesh Construction Co. vs. Gangu Bai, with reference to a plea of tenancy, the Bombay High

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Court highlighted that pleadings must disclose the details with reference to the day when the tenancy was created and the exact nature thereof. In the decision reported as AIR 2006 SC 1828 Mayar (HK) Ltd. & Ors. vs. Owners & Parties Vessel MV Fortune Express, the Supreme Court highlighted the requirement to read pleadings meaningfully in view of the relied upon documents and see whether the same are not illusory or vexatious.

14. On November 21, 2011 this Court while deciding RFA (OS) 78/2011 P.K. Gupta vs Ess Aar Universal (P) Ltd. held as under:-

“11. We need to highlight that the fundamental principles, essential to the purpose of a pleading is to place before a Court the case of a party with a warranty of truth to bind the party and inform the other party of the case it has to meet. It means that the necessary facts to support a particular cause of action or a defence should be clearly delineated with a clear articulation of the relief sought. It is the duty of a party presenting a pleading to place all material facts and make reference to the material documents, relevant for purposes of fair adjudication, to enable the Court to conveniently adjudicate the matter. The duty of candour approximates uberrima fides when a pleading, duly verified, is presented to a Court. In this context it may be highlighted that deception may arise equally from silence as to a material fact, akin to a direct lies. Placing all relevant facts in a civil litigation cannot be reduced to a game of hide and seek. In the decision reported as 2011 (6) SCALE 677 Rameshwari Devi vs. Nirmala Devi the Supreme Court highlighted that pleadings are the foundation of a claim of the parties and where the civil litigation is largely based on documents, it is the bounden duty and obligation of the Trial Judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties.

12. Highlighting that pleadings must be sufficient and consequence of laconic pleadings, which cannot be permitted, and the failure to plead sufficient details amounting to an insufficient plea, in the decision reported as

AIR 1999 SC 1464 D.M. Deshpande vs Janardhan Kashinath Kadam, the Supreme Court observed qua a claim for tenancy that in the absence of a concise statement of material facts relating to the tenancy, the mere raising of a plea of tenancy is not enough for the purpose of raising an issue on the question. The Court cautioned against a pedantic approach to the problem and directed that the Courts must ascertain the substance of the pleading and not the form, in order to determine the same. It was observed that pertaining to a claim of tenancy, the exact nature of the right which is claimed has to be set-forth and no issue pertaining to existence of tenancy could be framed on a vague plea."

15. The pleadings by the appellant is only to the effect that the property at Rajinder Nagar was purchased by the grandfather of the appellant from out of the funds of the firm M/s Gian Singh Sukhdev Singh which was set up by the late grandfather of the appellant and that the funds for the business came from the properties left behind in Pakistan. No details or particulars of the properties left behind at Pakistan have been pleaded. We take judicial notice of the fact that post-partition, people who migrated to India from the territories of the newly State of Pakistan were required to file claims before the custodian of evacuee properties and upon proof of properties left behind in Pakistan, compensations were assessed. These people were treated as refugees and either money or an immovable property was allotted to these refugees by the Ministry of Rehabilitation, Government of India. In the plaint the lack of pleadings to said effect cannot be overlooked. There is thus a bald assertion without any material particulars regarding the firm M/s Gian Singh Sukhdev Singh being set up by the great grandfather of the appellant. The appellant has himself filed documents, and one of which is an income-tax assessment order for the Assessment Year 1957-58 concerning the income-tax return of the defendant No.1. The same shows that the business of M/s Gian Singh

Sukhdev Singh was the sole proprietary business of defendant No.1 and the source of funds to acquire the property in Rajinder Nagar was from the income generated from the firm. This document being filed by the appellant could be looked into by the learned Single Judge and the only error in the impugned order would be one of narrative of fact wherein said document has been referred to as relied upon by the defendants. It is a case where the appellant as well as the defendants relied upon the documents.

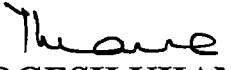
16. The positive statements required by law to be pleaded in the plaint regarding constitution of an HUF are missing as has been rightly held by the learned Single Judge.

17. We concur with the view taken that the plaint does not disclose an actionable cause of action and we supplement by recording that the proposed amendment of the plaint does not improve this lack of actionable pleading.

18. Defendant No.1 died during the pendency of the suit and defendant No.2 propounded a will statedly executed by defendant No.1. We agree with the view taken by the learned Single Judge that if the appellant has to challenge the will a separate cause of action has to accrue and it would be open to the appellant to claim partition of the properties as devolving upon the legal heirs through intestacy.

19. The appeal is accordingly dismissed but without any order as to costs.


(PRADEEP NANDRAJOG)
JUDGE


(YOGESH KHANNA)
JUDGE

MARCH 06, 2017/skb