* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA No. 676/2017**

% **2nd August, 2017**

ROHIT SETHI & ORS. ..... Appellants

Through: Ms. Naghma Imtiaz, Advocate.

versus

SHIV CHARAN AGGARWAL ..... Respondent

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. 27168/2017 (for condonation of delay)

For the reasons stated in the application, the delay of 11 days in filing the appeal stands condoned.

C.M. stands disposed of.

RFA No. 676/2017 and C.M. Appl. No. 27169/2017 (for stay)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit impugning the judgment of the trial court dated 16.2.2017 whereby the trial court has dismissed the suit filed for partition and declaration

with respect to the property being WZ-105 and 106 (total 300 sq. yards) Meenakshi Garden, Nazafgarh Road, New Delhi. As per the plaint the case set up by the appellants/plaintiffs was that the suit property was an HUF property. Suit was filed by two plaintiffs being Sh. Rohit Sethi and Smt. Deepali Sethi, and who are two out of three appellants before this Court. The third appellant before this Court was the defendant no. 2 in the suit, namely, Sh. Vishal Sethi. All the three appellants are the children of late Sh. Vinod Kumar Sethi. Late Sh. Vinod Kumar Sethi is stated to have expired during the pendency of the suit. Defendant no. 3 in the suit was one Smt. Sanjogta Devi and who also has not been made a party in the present appeal because it is stated that Smt. Sanjogta Devi had expired *pendente lite*. Effectively therefore, the suit and the present appeal is for enforcing rights by the children of late Sh. Vinod Kumar Sethi with respect to the suit property pleading that the suit property was owned by their grandfather namely late Sh. Madan Lal Sethi and was HUF property as Sh. Madan Lal Sethi had got funds for purchase of the suit property from his father Sh. Lakshmi Chand. The suit property is therefore pleaded to be an HUF property only because Sh. Madan Lal Sethi is said to have received funds for purchase of this property from his father Sh. Lakshmi Chand.

2. It is further seen that the suit property no longer was owned on the date of filing of the suit on 29.9.1995 either by Sh. Vinod Kumar Sethi or late Sh. Madan Lal Sethi, inasmuch as, the suit property was sold by means of agreements to sell and sale deeds respectively dated 15.3.1979/24.12.1986 and 17.3.1987/23.3.1987 whereby the suit property was sold by late Sh. Madan Lal Sethi to the defendant no. 4 in the suit, and who is the sole respondent in the present appeal. The original suit filed did not contain any challenge to the aforesaid transfer documents executed by late Sh. Madan Lal Sethi in favour of the respondent herein (defendant no.4) being the aforesaid agreements to sell and sale deeds, however, subsequently the suit plait was amended and declaration was sought with respect to the documents executed by late Sh. Madan Lal Sethi being forged, fabricated and sham documents and therefore null and void. The relief clauses in the amended plaint read as under:-

> "In the present circumstances it is most respectfully prayed that this Hon'ble Court may most graciously be pleased to:-

a) Pass a preliminary decree of partition in respect of property described in para 2 of the plaint in favour of the Plaintiffs and against the Defendants.

aa) Pass a declaration decree thereby declaring that the documents i.e. agreement to sell dated 15.3.1979 and 24.12.1986, Power of Attorney 7.1.1987, sale deed dated 7.3.1987 and 23.3.1987 as filed by the defendant are void abinitio being false, fabricated and sham documents and are null and void, having no legal validity.

b) Appoint a Commissioner for ascertaining the mode of partition of the aforesaid property.

c) Pass a final decree of partition.

d) Pass such other and further orders as it may deem fit and just to this Hon'ble Court."

3. The court below has held that besides the fact that the transfer documents with respect to the suit property stand duly executed by late Sh. Madan Lal Sethi in favour of the respondent/defendant no. 4 and were not forged and fabricated, but be that as it may, trial court has further held that in order to succeed in the suit to the claim of the suit property being an HUF property, the appellant nos.1 and 2/plaintiffs had to prove that funds were given by Sh. Lakshmi Chand to late Sh. Madan Lal Sethi for purchasing the property and that there is not a shred of evidence led to show any payment of funds by Sh. Lakshmi Chand to late Sh. Madan Lal Sethi. Trial court accordingly and rightly held that the suit property cannot be held to be an HUF property because it is not proved that the suit property is purchased from the funds given by Sh. Lakshmi Chand to

late Sh. Madan Lal Sethi, the grandfather of the appellant nos. 1 and 2/plaintiffs, and who was the father of Sh. Vinod Kumar Sethi, the father of the appellants. In fact on the facts as pleaded, even if they were proved of giving of funds by Sh. Lakshmi Chand to late Sh. Madan Lal Sethi, yet in law that would not have made the suit property as an HUF property as discussed hereinafter.

4. In my opinion, there is another reason for dismissal of this suit which was filed way back in the year 1995 pleading that the suit property was an HUF property, inasmuch as, it is now settled law in view 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*** that inheritance of ancestral property after passing of the Hindu Succession Act in 1956 will not make the properties as HUF properties, but inheritance will be as a self acquired property and it is noted that there is no pleading of the plaintiffs of inheritance by Sh. Madan Lal Sethi prior to passing of the Hindu Succession Act. Also in the present plaint it is not the case of the plaintiffs that the property of Sh. Lakshmi Chand was inherited by late Sh. Madan Lal

Sethi because the case pleaded is not inheritance of property by late Sh. Madan Lal Sethi but the case pleaded is that late Sh. Lakshmi Chand gave funds for purchase of the property to his three sons which included one son namely, Sh. Madan Lal Sethi being the father of Sh. Vinod Kumar Sethi, the father of the appellants. Even assuming for the sake of arguments that the appellants proved that the money was paid by Sh. Lakshmi Chand to his three sons for purchase of the property in their names, however in law this will not mean that the suit property will become an HUF property.

5. The suit plaint is also defective and the suit was *ex-facie* liable to be dismissed in the initial stage itself in view of the ratios of the judgments of the Supreme Court in the cases of ***Commissioner of Wealth Tax (supra)*** and ***Yudhishter (supra)*** because all that was pleaded in para 3 of the plaint was that the suit property was purchased in the year 1956 jointly by late Sh. Madan Lal Sethi and his brothers Sh. Roshan Lal and Sh. Joginder Lal, and that the brothers Sh. Roshan Lal and Sh. Joginder Lal in the year 1979 relinquished their rights in the suit property in favour of late Sh. Madan Lal Sethi. It is only and only on this count that the suit property is pleaded to be

an HUF property in the hands of late Sh. Madan Lal Sethi and which in law does not make the suit property as HUF property. In order to understand that the complete lack of pleadings or completely defective pleadings and which were required to be pleaded for HUF property to at all come into existence, para 3 of the plaint is reproduced as under:-

> "3. The property at Meenakshi Garden was purchased in the year 1956, jointly by late Madan Lal Sethi and his brothers Shri Roshan Lal and Shri Joginder Lal. The respective rights in respect of the said property were relinquished in the year 1979 by Joginder Lal and by the legal heirs of late Shri Roshan Lal. That the said property was purchased by Shri Madan Lal out of funds provided by this father Shri Lakshmi Chand who retired from the post of Guard in the Indian Railways. In the said circumstances, said property was HUF property. Right from the beginning and co-parceners had interest in the same family, being governed by Mitakshra Law. In any case. After the death of late Shri Madan Lal the said property is HUF property in the hands of defendant no. 1 as against the plaintiffs since the said property has devolved upon the defendant no. 1 from his father. The said property is presently in occupation of defendant no. 4 who is an alleged tenant put in possession by late Karta Shri Madan Lal. In the said circumstances the defendant no. 4 is proper and necessary party to the present suit."

6. In my opinion, therefore, clearly the court below has rightly held that the suit property was not an HUF property and that the suit property is owned by and thus belonged to respondent/defendant no. 4 and who had purchased the suit property from late Sh. Madan Lal Sethi in terms of the agreements to sell dated 15.3.1979/24.12.1986 and the consequent sale deeds dated 17.3.1987/23.3.1987.

7. I would also like to add at this stage that late Sh. Madan Lal Sethi in his life time never challenged execution of the documents executed by him with respect to the suit property in favour of respondent/defendant no. 4, and once late Sh. Madan Lal Sethi never challenged the documents, I fail to understand as to how his grandchildren, being the appellants, can challenge the transfer documents in favour of the respondent/defendant no. 4. Also, inheritance by Sh. Vinod Kumar Sethi/defendant no. 1 of the suit property from late Sh. Madan Lal Sethi, assuming late Sh. Madan Lal Sethi has not sold the same to respondent/defendant no. 4, would have made the property as self acquired property on Sh. Vinod Kumar Sethi/defendant no. 1, and Sh. Vinod Kumar Sethi/defendant no. 1 himself never challenged the transfer documents executed by his father, namely, late Sh. Madan Lal Sethi in favour of the respondent/defendant no. 4. The appellants therefore can have no *locus standi* to plead that respondent/defendant no.4 is not the owner because the suit property is HUF property inasmuch as neither Sh. Madan Lal Sethi nor Sh. Vinod Kumar Sethi ever filed legal

proceedings to challenge the ownership of the respondent/defendant no.4 that the suit property was an HUF property.

8. I therefore hold that neither their existed pleadings for holding that the suit property is an HUF property, or that even as per the pleadings if Sh. Lakshmi Chand is proved to have given moneys to his three sons for purchase of the property then giving of funds would not create an HUF because an HUF would have been created only if immovable property is inherited prior to passing of the Hindu Succession Act. The suit property also cannot be an HUF property unless it was pleaded and proved that the suit property was inherited by late Sh. Madan Lal Sethi from Sh. Lakshmi Chand prior to 1956 and which is not the case as laid out in the plaint. Finally, taking everything in favour of the appellants, yet, appellants could have only succeeded if it was shown that Sh. Lakshmi Chand had given funds for purchase of the suit property to his three sons including late Sh. Madan Lal Sethi, and as rightly held by the trial court, this burden is not discharged by the appellant nos. 1 and 2/plaintiffs inasmuch as there is no evidence whatsoever led in this regard, much less credible evidence in the form of documents, that any funds were paid by Sh.

Lakshmi Chand to late Sh. Madan Lal Sethi for purchase of the suit property.

9. There is no merit in the appeal. Dismissed.

AUGUST 02, 2017 **VALMIKI J. MEHTA, J**
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