

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

+ **RFA No.456/2018**

% **28th May, 2018**

YOGINDER SINGH & ANR. Appellants
Through: Mr. R.S. Tomar, Adv.

versus

SUMIT GAHLOT & ORS. Respondents
Through: Mr. Pankaj Vivek, Adv.
for R-6/caveator.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CAVEAT No. 518/2018

1. Since counsel for the caveator has entered appearance,
the caveat stands discharged.

C.M. Appl. No. 22637/2018(for exemption)

2. Exemption allowed, subject to all just exceptions.
I.A. stands disposed of.

RFA No. 456/2018 & CM Appl.No.22636/2018(stay)

3. This Regular First Appeal under Section 96 of the Code
of Civil Procedure, 1908 (CPC) is filed by the two defendants in the

suit, being defendants no. 2 and 3, and who are the appellants in this appeal, impugning the judgment of the Trial Court dated 31.3.2018. By the impugned judgment, trial court has decreed the suit filed by the respondent nos.1 to 6/plaintiffs for declaration and injunction and has declared as illegal and null and void the sale deeds, as mentioned in para 2.6 of the impugned judgment, and which were executed by late defendant no.1/Sh. Prithvi Singh in favour of the appellants. Para 2.6 of the impugned reads as under:-

“2.6 Defendants are alleged to have changed their attitude after the death of late Raghuvinder Singh and defendants no. 2 and 3 having prevailed upon defendant no. 1 Sh. Prithvi Singh are alleged to have obtained/manipulated following sale deeds in their favour with mala fide intention to deprive the plaintiffs of their right in the ancestral land :-

(1) Sale deed dated 11.01.2005 in respect of Plot No. 258, measuring 1015 sq. yards known as A Block, Gopal Nagar, Najafgarh, Delhi for sale consideration of Rs. 4,50,000/- registered as Document No. 423 in Book No. 1, Volume No. 1760 on Pages no. 95-99;

(2) Sale deed dated 13.01.2005 in respect of Khasra No. 208/2(0-4) and 209(7-2) (kayami) situated in Village Mitraon, Delhi for sale consideration of Rs. 24,00,000/- registered as Document No. 548 in Book No. 1, Volume No. 1768 on Pages 28-40.

(3) Sale deed dated 20.01.2005 in respect of Plot measuring 600 sq. yards out of Khasra No. 115 min. situated in old Lal Dora of village Mitraon, Delhi for sale consideration of Rs. 2,50,000/- registered as Document No. 876 in Book No. 1, Volume No. 1782 on Pages 69-74.

(4) Another sale deed 20.01.2005 in respect of Plot measuring 110 sq. yards out of Khasra No. 115 min. situated in old Lal Dora of village Mitraon, Delhi for sale consideration of Rs. 1,00,000/- registered as Document No. 877 in Book No. 1, Volume No. 1782 on Pages 75-80.

(5) Sale deed dated 07.02.2005 in respect of Khasra No. 245 measuring 9 biswas situated in extended Lal dora of village Mitraon

for sale consideration of Rs. 1,80,000/- registered as Document No. 1670 in Book No. 1, Volume No. 1824 on pages 71–83.”

4. The only issue before the trial court and which is also the issue before this Court is as to whether the said sale deeds could have been executed in favour of the appellants/defendant nos.2 and 3 by the late defendant no.1/Sh. Prithvi Singh, inasmuch as Sh. Prithvi Singh was not the sole owner of the subject properties but he was only a karta of the HUF which owned these properties and since there existed no legal necessity or benefit of estate for the karta to transfer the subject properties much less to none other than the family members being the son and daughter-in-law of Sh. Prithvi Singh viz the appellants in this appeal and the defendant nos.2 and 3 in the suit. Sh. Prithvi Singh was the grandfather of the respondent nos.1 to 6/plaintiffs as respondent nos.1 to 6/plaintiffs are the children of the pre-deceased son Sh. Raghuvinder Singh. Appellant no.2/defendant no.3/daughter-in-law of Sh. Prithvi Singh married one other son of Sh. Prithvi Singh, namely Sh. Vijender but as Sh. Vijender died, thereafter the appellant no.2/defendant no.3 married the other son of Sh. Prithvi Singh, namely Sh. Yoginder Singh/appellant no.1/defendant no.2.

5. The admitted facts are that Sh. Ram Singh was father and predecessor-in-interest of Sh. Prithvi Singh. Sh. Ram Singh died in the year 1943 and the properties of Sh. Ram Singh were mutated in the name of Sh. Prithvi Singh in the year 1943. Sh. Prithvi Singh had three sons being Sh. Raghuvinder Singh, the father of the respondent nos.1 to 6/plaintiffs, appellant no.1/defendant no.2 and Sh. Vijender. Since Sh. Prithvi Singh/late defendant no.1 inherited the properties from his father Sh. Ram Singh in the year 1943, in the hands of Sh. Prithvi Singh properties were having the character of HUF properties because inheritance by a person from his parental ancestors prior to the year 1956 makes the properties inherited not as self-acquired properties but as HUF properties, whereas inheritance by a person of a property from his parental ancestors after the year 1956 makes the inherited property as a self-acquired property of the inheritor and not as an HUF property *vide 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*. This aspect has been considered by this Court in detail by reference to the judgments of the Supreme Court in the cases of *Chander Sen and Others (supra)*

and *Yudhishter (supra)* in the case of *Surinder Kumar Vs. Dhani Ram and Others*, 227 (2016) DLT 217. This aspect has been exhaustively and rightly dealt with by the trial court while deciding issue no.4 and the relevant observations of the trial court in this regard read as under:-

“18. Issue No. (iv) Whether the suit properties are ancestral properties in the hand of defendant no. 1? ... OPP

18.1 Advocate Sh. R. K. Dahiya for defendant has vehemently argued by insisting that property inherited by defendant Sh. Prithvi Singh from his father constitutes his self-acquired property in which his children did not acquire any right by birth. Ld. counsel has relied upon the judgment of Hon'ble High Court of Delhi in case titled “*Neelam & Anr. vs. Sadaram & Ors.*” bearing CS (OS) No. 823/2010 decided 30.01.2013 and other judgment titled “*Pratap vs. Shiv Shankar*” 164 (2009) DLT 479 for insisting that defendant Sh. Prithvi Singh being male heir had inherited the property from his father late Ram Singh as his self acquired property whereas plaintiffs have neither averred or pleaded in the plaint nor in their evidence that suit properties are coparcenary / HUF properties.

18.2 Relevant portion of aforesaid case-laws cited by defendants' counsel is reproduced below for reference:-

“The Hindu Succession Act, 1956 enacted more than half a century ago did away with the concept of ancestral properties, as existed prior thereto. After the coming into force thereof, the property inherited by a male from his father is held as self acquired property in which children of such male do not acquire any right by birth. Reference in this regard can be made to Commissioner of Wealth Tax, Kanpur vs. Chander Sen AIR 1986 SC 1753 and Yudhishter vs. Ashok Kumar AIR 1987 SC 558.... However the popular misconception of 'ancestral properties' continues to hold field, as is apparent from plethora of claims, even in courts, being made on the said premise.” Para No. 3 of case titled Neelam & Anr (Supra).

“However, it is no longer res integra that under Section 8 of the Act, the property which devolves on a Hindu would not be HUF property in his hands, vis a vis his own sons. The aforesaid conclusion was drawn by the Supreme Court in the case of Commissioner of Wealth

Tax, Kanpur vs. Chander Sen, etc. reported as AIR 1986 SC 1753.

Para No. 6 of case titled Pratap (Supra).

18.3 Advocate Sh. Pankaj Vivek for plaintiff, per contra, has argued that defendant no. 1 Sh. Prithvi Singh had inherited agricultural lands in Village Mitraon upon death of his father late Ram Singh and his name was recorded as Bhumidhar in revenue records but the property existing prior to enactment of Delhi Land Reforms Act, 1954 and The Hindu Succession Act, 1956 retained its character of coparcenary / HUF property in which succession to properties would be governed by survivorship as coparcenary got revived on 02.02.1951 upon birth of Sh. Raghuvinder Singh who therefore had right in the said property by birth.

18.4 Plaintiff's counsel in support of his contention, has relied upon judgment of Hon'ble Supreme Court of India in case titled "***Gaya Din (D) through LRs & Ors. vs. Hanuman Prasad (D) through LRs & Ors.***" Appeal (Civil) 191 of 1991 decided on 27.11.2000 and "***Kavita & Anr. vs. Samunder Singh & Ors.***" RFA 56/2011 decided on 31.07.2013.

18.5 Relevant portion of the judgment of Hon'ble Supreme Court of India in Gaya Din's case (Supra) is reproduced below for reference:-

"It is a well-settled principle of Hindu Law that the joint and undivided family is the normal condition of Hindu society but it is not a juristic person as such it cannot hold any property independent of the members. On a perusal of the afore-mentioned judgment of Full Bench of Allahabad High Court, we approve the following proposition laid down by it : That the members of the joint family collectively own the coparcenary property. Each member has an interest in such property, though his interest becomes definite on partition. Till then, it is an undivided interest. The view expressed in Mahabir Singh and the other cases mentioned above, that the members were not the tenants of the holding because they had no interest in it, is, with respect, fallacious. In law, the members of the joint Hindu family together become the tenants of the holding. The coparcenary body as such, and as an entity apart from its members, does not own property. The property does not vest in the coparcenary but in its members, though collectively."

18.6 Hon'ble High Court of Delhi in para no. 12 of the next case titled ***Kavita and Anr.*** (Supra) has held :-

"It is the admitted position that Sh. Mauzi Ram, father of the respondent/defendant no. 1 died in 1943. The finding of the learned Additional District Judge that the respondent/defendant no. 1 inherited the residential house from his father Sh. Mauzi Ram as his Class-I heir under the Succession Act which came into force in the year 1956 is thus obviously incorrect."

18.7 Para No. 13 of aforesaid judgment being relevant is also reproduced below for reference :

“Prior to coming into force of the Succession Act in the year 1956, a male Hindu inheriting any property from his ancestors including his father, inherited the same not as his personal individual property but also for the benefit of his own male heirs. Thus when the respondent / defendant No. 1 inherited the residential house from his father Sh. Mauzi Ram in the year 1943, he inherited the same with the condition that his own male progeny would also have a share in it by birth. (see para 15 of Commissioner of Wealth Tax Vs. Chander Sen (1986) 3 SCC 567). It was held in Eramma Vs Verrupanna AIR 1966 SC 1879 that Section 8 of the Succession Act is not retrospective in operation and when a male Hindu died before the Succession Act came to force i.e. where succession opened before 1956, Section 8 will have no application.”

18.8 Ld. counsel for plaintiff, therefore, has rightly contended that Sh. Raghuvinder Singh being born on 02.02.1951 was entitled to his share in the coparcenary / HUF property as his father defendant Sh. Prithvi Singh had inherited the ancestral property from his father late Sh. Ram Singh not as his self acquired property but also for the benefit of his male heirs/sons namely Sh. Raghuvinder Singh, Sh. Vijender Singh and Sh. Yoginder Singh (defendant no. 2). Similarly, plaintiff's counsel has rightly contended that succession opened in the year 1943 upon death of common ancestor Sh. Ram Singh and defendant no. 1 Sh. Prithvi Singh being the only male lineal descendant had succeeded to the lands as per The Punjab Tenancy Act, 1887. Naturally, Sh. Raghuvinder Singh being born on 02.02.1951 before enactment of The Hindu Succession Act, 1956 became coparcener with Sh. Prithvi Singh and defendant Sh. Prithvi Singh recorded as Bhumidhar in revenue records after enactment of Delhi Land Reforms Act, 1954 was not holding the land as sole owner but on behalf of every member of joint family and for the benefit of all his male descendants (heirs).

18.9 **FINDING** :- Defendant no. 1 Sh. Prithvi Singh being only male descendant of late Sh. Ram Singh had inherited the ancestral property in the year 1943 for the benefit of his own male heirs subject to the condition that his own male progeny would also have also a share in it by birth and not as his self acquired property. Issue No. (iv) is therefore decided in favour of plaintiffs.”

6. I completely agree with the aforesaid reasoning and conclusion of the trial court because it is now settled law in view of the judgments of the Supreme Court in the cases of **Chander Sen**

(*supra*) and *Yudhishter (supra)* that inheritance by a person of a property from his parental ancestors before the year 1956 makes the inheritance as an HUF property and not a self-acquired property of the inheritor.

7. Counsel for the appellants/defendant nos. 2 and 3 argues that the property inherited by Sh. Prithvi Singh is a self-acquired property because the property in this case are the rights of bhumidar under the Delhi Land Reforms Act, 1954 (hereinafter referred to as 'the DLR Act') and bhumidari rights under the DLR Act would not be an HUF property. Reliance for this purpose in this regard is placed by the appellants/defendant nos. 2 and 3 upon the following judgments:-

- (i) ***Nathu Vs. Hukam Singh & Ors. AIR 1983 Delhi 216.***
- (ii) ***Bimla Devi & Ors. Vs. Zile Singh & Ors. 205 (2013) DLT 35***
- (iii) ***Hatti Vs. Sunder Singh (1970) 2 SCC 841***

8. The contention urged on behalf of counsel for the appellants/defendant nos. 2 and 3 is completely misconceived because whenever a property is inherited by a person from his paternal ancestors before the year 1956, the inheritance is as an HUF property and even if the inheritance is land which is subject matter of the DLR

Act. Bhumidar under the DLR Act is nothing but an owner of the land because by the DLR Act all that happened was that the ownership of the land which had vested with private landlords came to be vested in the State and the owners of the land, or the lessees of the land as the case maybe, in fact became the lessees of the land under the government, with the lessees being called by the term 'bhumidar' under the DLR Act. Bhumidar therefore is nothing but an owner of the lessee rights in the land with the State being the owner/lessor. Another term in the DLR Act and with which we are not concerned, is 'asami', and asami is nothing but a sub-tenant i.e the State is the owner of the land and the bhumidar is the lessee and the tenant under the lessee being the sub-tenant is the asami. There is absolutely nothing whatsoever in the DLR Act that the bhumidar rights which are vested in a karta or a coparcener ceases to be the subject matter of HUF and that bhumidari land becomes the self-acquired property of the karta or the coparcener in whose name the land stands or is mutated. I have not found anything whatsoever in the judgments relied upon by the appellants/defendant nos. 2 and 3 and as stated above, that because of any provision of the DLR Act the land which a

karta or a coparcener holds as bhumidar/lessee will become the self-acquired property of the karta or the coparcener only and simply because the land is bhumidari land under the DLR Act. In fact, in my opinion, this argument raised on behalf of the appellants/defendant nos. 2 and 3 is preposterous to say the least because it is not the subject matter of the DLR Act to convert the HUF property into self-acquired property simply because the owner of lessee rights is under the DLR Act a bhumidar. The only object of the DLR Act was to do away the intermediary who was the private owner/landlord and the private owner/landlord, is now substituted by the government/State, with the private owner/landlord or the existing lessee of a property (in certain circumstances) of the private landlord, became the bhumidars under the DLR Act.

9. In view of the aforesaid discussion, the following conclusions emerge:-

(i) The predecessor-in-interest Sh. Ram Singh being the father of Sh. Prithvi Singh died in the year 1943, and therefore, Sh. Prithvi Singh inherited the land of Sh. Ram Singh as an HUF property in his hands.

(ii) The land being HUF property in the hands of Sh. Prithvi Singh, Sh. Prithvi Singh could only sell the same for legal necessity or benefit of the estate, and this is not even the case of the appellants/defendant nos. 2 and 3 that Sh. Prithvi Singh sold the land to them by the subject sale deeds because there existed legal necessity or benefit of estate, inasmuch as the only case of the appellants/defendant nos.2 and 3 was that the suit land was exclusively owned by Sh. Prithvi Singh, and therefore, Sh. Prithvi Singh had the right to transfer the suit lands to the appellants/defendant nos.2 and 3.

(iii) Once there existed no legal necessity or benefit of estate then trial court was justified in arriving at a conclusion that by the subject sale deeds Sh. Prithvi Singh could not have sold the suit land to the appellants/defendant nos.2 and 3 and therefore the trial court has rightly granted the following reliefs:-

“Relief:- Plaintiffs’ suit is therefore decreed and five sale deeds referred in prayer clause (a) of the plaint (reproduced in para no.2.6 of judgment) are declared illegal, null and void without any authority which sham transactions do not confer any right upon defendants no.1 and 2 in respect of properties mentioned therein. Plaintiffs, in addition, are also entitled to protect their right in coparcenery/HUF property as sought in prayer clause (b), (c) and (d) of the plaint and defendants are therefore restrained from selling, alienating, encumbering, transferring or creating any third party interest in the ancestral land (property) and are also restrained from

interfering in the use and enjoyment of ancestral property as sought in prayer clause (d). Parties to bear their own costs.”

10. In view of the aforesaid discussion, this appeal is completely without merit. The appeal is unnecessary harassment of the respondent nos. 1 to 6/plaintiffs and which is in furtherance of the illegal acts of execution of the subject sale deeds by Sh. Prithvi Singh in favour of the appellants/defendant nos.2 and 3 so as to deny the legitimate rights of the respondent nos. 1 to 6/plaintiffs in the subject properties. Appeal is therefore dismissed with costs of Rs.20,000/- payable by the appellants/defendant nos.2 and 3 to the respondent nos.1 to 6/plaintiffs. Costs be paid within six weeks.

MAY 28, 2018
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VALMIKI J. MEHTA, J