

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

+ **RFA No. 563/2018**

% **23rd July, 2018**

SUSHOVANPAL Appellant
Through: Mr. Sumit Kumar, Advocate
versus

SHARMISTHA PAL @ SHARMISTHA MAZUMDAR & ANR.

..... Respondents
Through: Mr. K.Iyer and Mr. Bankey
Bihari, Advocates for R-1.
Mr. Chittaranjan Dutta Biswas,
Advocate for R-2.

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

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

Caveat No. 648/2018

Counsel appears for the caveator. Caveat accordingly stands
discharged.

CM No. 28645/2018 (Exemption)

Exemption allowed subject to just exceptions

CM stands disposed of.

RFA No.563/2018 & CM Nos. 28643/2018(stay) & 28644/2018 (U/s 151 CPC)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no.1 in the suit, impugning the Judgment of the Trial Court dated 15.5.2018, by which the trial court has decreed the suit for partition filed by the sister of the appellant, with respect to the 50% ownership interest in the property bearing no.40/205, Chitranjan Park, New Delhi. Whereas the appellant was the defendant no.1, the defendant no.2 in the suit was the mother of the appellant/defendant no.1 and the plaintiff, the defendant no.2/mother supported the case of the respondent no.1/plaintiff for partition of the suit property. In fact, the aged mother in her written statement filed as defendant no.2 in the suit has leveled grave charges of her mistreatment by the appellant/defendant no.1/son, and has prayed that the partition suit be decreed, as per the ownership of the property existing in terms of a Lease Deed dated 15.6.1992 of DDA giving joint ownership rights in the suit property to the defendant no.2/respondent no.2/mother and the father of the appellant/defendant no.1 and respondent no.1/plaintiff late Sh. Shayam Sunder Pal, the husband of the respondent no.2/defendant no.2.

Partition was claimed only with respect to the 50% interest as 50% of the remaining interest was already sold to a third person/buyer.

2(i) That the suit property was leased by a Perpetual Lease Deed by the DDA in favour of Sh. Shayam Sunder Pal (husband) and the respondent no.2/defendant no.2/Smt. Sudha Pal (wife) is an undisputed fact. This document being the Lease Deed giving joint ownership rights in the property to Sh. Shayam Sunder Pal and Smt. Sudha Pal, is dated 15.6.1992, and this document has not been challenged by the appellant/defendant no.2. I have gone through the written statement filed by the appellant/defendant no.1 along with the counsel for the appellant/defendant no.1 in order to examine the plea of the appellant/defendant no.1 raised before this Court that though the Lease Deed was in the joint names of the mother and the father, the mother was not the half owner and that the father was the sole owner because the Lease Deed was executed only because of a policy of DDA for giving a displaced person a property jointly with his wife. What was argued by the appellant/defendant no.1 before this Court, (for the first time) *dehors* any such specific pleadings of the appellant/defendant no.1 in the trial court as regards the date and

number of a DDA policy, that though the Lease Deed dated 15.6.1992 was in the joint names of the mother Smt. Sudha Pal and the father Sh. Shayam Sunder Pal, but Smt. Sudha Pal was not the co-owner of the property and that the father Sh. Shayam Sunder Pal was the sole owner of the property inasmuch as the father being a displaced person from East Pakistan, he was to be the sole owner of the suit property which was allotted to the father as a displaced person, however the Lease Deed dated 15.6.1992 was executed by the DDA in favour of Sh. Shayam Sunder Pal and Smt. Sudha Pal because of a policy of DDA. As already stated above, the written statement of appellant/defendant no.1 does not refer to any specific policy by its date and number which required the lease deed to be executed in favour of displaced person only with the wife of the displaced person. The appellant/defendant no.1 therefore cannot for the first time in this appeal raise this plea before this Court, and this is all the more so because no policy of DDA was proved by the appellant/defendant no. 1 during the course of leading of evidence by the appellant/defendant no. 1.

(ii) Even if such a plea was raised, the challenge to the Lease Deed dated 15.6.1992 that though written in the lease deed that both mother and father were joint owners, it was only the father who was the sole owner, then such a plea would obviously be time barred because the Lease Deed executed by the DDA in favour of the father and mother is dated 15.6.1992, whereas this oral challenge for the first time is raised before this Court in the year 2018, and a limitation to challenge the validity to a document as per Article 59 of the Limitation Act, 1963 is three years from the knowledge of the document which is sought to be cancelled. It is undisputed on behalf of the appellant/defendant no.1 that the appellant/defendant no.1 knew the existence of the Lease Deed dated 15.6.1992 by the DDA in favour of the mother and father right since inception. Therefore, even otherwise the plea of the appellant/defendant no.1 would be time-barred preventing the appellant/defendant no.1 from questioning the half ownership of the mother in the suit property in terms of the Perpetual Lease Deed dated 15.6.1992.

(iii) Even on merits, I fail to understand as to how a son can dispute the grant of half ownership rights in a property by the husband

to his wife, because even for the sake of argument we take that the suit property was allotted to the husband Sh. Shayam Sunder Pal because of being a displaced person on account of his having left a property in East Pakistan, surely a husband can take an ownership of a property jointly in his name with his wife and which will have the effect that he having gifted his half ownership rights in the suit property to his wife Smt. Sudha Pal in this case. Also, there does not arise any issue of the appellant/defendant no.1 challenging the Lease Deed, once the father Sh. Shayam Sunder Pal in his life time got the Lease Deed executed jointly in his favour and his wife and that Sh. Shayam Sunder Pal during his life time never questioned the lease deed or he executed any private document that he was the sole owner of the suit property and that his wife was not the co-owner to the extent of half in the suit property.

(iv) Therefore, all arguments urged on behalf of the appellant/defendant no.1 to question the 50% ownership of the mother, are without any basis and therefore rejected. After conclusion of arguments urged on behalf of the appellant/defendant no.1, counsel for the appellant/defendant no.1 took instructions from the

appellant/defendant no.1 as to whether the appeal should be pressed or not in order to see if the appeal is not pressed possibly appellant/defendant no.1 can repair relationship with his aged mother, but counsel for the appellant/defendant no.1 on instructions from the appellant/defendant no.1 states that the appellant/defendant no.1 invites a judgment. In fact, the counsel appearing for the respondent no.2/defendant no.2/mother very sincerely states that the appellant/defendant no.1 has left no stone unturned to harass and trouble his aged mother, and this Court should pass a judgment and clarify the ownership rights, otherwise the appellant/defendant no.1 will keep on harassing his aged mother.

3. The next aspect to be considered is that whether the suit property in the hands of Sh. Shayam Sunder Pal was an ancestral property, ie the plea is that once the suit property is an ancestral property, then the suit property would be of the HUF of Sh. Shayam Sunder Pal. It may be noted that parties are governed by the Dayabhaga School of Law, they having their original roots in the State of West Bengal.

4. So far as this aspect is concerned, all ancestral properties are no longer HUF properties because if a person inherits a property from his paternal ancestor, the inheritance will be taken as HUF only if the inheritance is prior to the year 1956. Any inheritance by a person of property from his paternal ancestor after 1956 makes the inheritance as a self-acquired property and not an HUF property. This is held by the Supreme Court in the judgments 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. I have in the judgment in the case of *Surinder Kumar Vs. Dhani Ram and Others*, 227 (2016) DLT 217 expounded upon the ratios of the judgments of the Supreme Court in the cases of *Chander Sen (supra)* and *Yudhishter (supra)*, and I have observed that whenever a case of HUF is set up it must specifically be pleaded as to how the property is an HUF property because after passing of the Hindu Succession Act, 1956, inheritance of a property as an HUF property is only if the property is already inherited prior to the year 1956. After the year 1956, if a person inherits property, in view of the aforesaid ratios of the judgments of the Supreme Court, inheritance

would be as a self-acquired property. The ratio of the judgment in the case of *Surinder Kumar (supra)* has been upheld by a Division Bench of this Court in the case of *Sagar Gambhir vs. Sukhdev Singh Gambhir and Ors* 241(2017)DLT 98; 2017 (162) DRJ 575 . The relevant para of the Division Bench judgment in *Sagar Gambhir's case (supra)* is para 10 and which reads as under:-

“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 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."

5. In the present case, it is seen that there is no pleading whatsoever of the appellant/defendant no.1 in the written statement that Sh. Shayam Sunder Pal has inherited a property from his paternal ancestor before the year 1956. Therefore, the case of the appellant/defendant no.1 is completely bereft of requisite pleadings for existence of an HUF. Be it noted that it is not the case of the appellant/defendant no.1 that the father created an HUF for the first time by putting the suit property into the common hotchpotch after the year 1956. Therefore, the contention of the appellant/defendant no.1 that the suit property is an ancestral or HUF property is liable to be

rejected inasmuch as the ancestral property does not automatically become an HUF property.

6. Another reason for rejecting the argument urged on behalf of the appellant/defendant no.1 of the suit property being an HUF property (called as an ancestral property as per the pleading of the appellant) is that even if Sh. Shayam Sunder Pal got allotted the suit property on account of his leaving any property in East Pakistan, there had to be a pleading of the appellant/defendant no.1 that a specific property left behind by Sh. Shayam Sunder Pal was a property which Sh. Shayam Sunder Pal had inherited from his which specific paternal ancestor. Once again the pleading of the appellant/defendant no.1 is conspicuously silent in this regard, and therefore, on completely vague pleading no case can be made out of the suit property being an HUF property.

7. Learned counsel for the appellant/defendant no.1 argued that the suit was at the stage of evidence and could not have been disposed of by a judgment by applying Order XII Rule 6 CPC, however, I cannot agree because Order XII Rule 6 CPC can be invoked at any stage of suit, and the suit, and this provision applies

more so when trial unnecessarily taking place, provided of course the court proceeds on admitted facts and pleadings. The admitted facts in the present case show that the suit property to be a joint ownership in the name of Sh. Shayam Sunder Pal and Smt. Sudha Pal/defendant no.2/respondent no.2 and the fact that there is remotely no pleading of existence of an HUF coming into existence either because of inheritance by Sh. Shayam Sunder Pal of the ancestral property prior to the year 1956 or Sh. Shayam Sunder Pal creating an HUF after the year 1956 by throwing the property into a common hotchpotch.

7. The present is a classic case of aged parent/mother being harassed by her children for properties. Obviously, it is not unexpected any longer in this age that we are living in, and which is vividly depicted in a Hindi Movie '*102 Not Out*'. Obviously this case is nothing else but a copy of the Movie '*102 Not Out*'. This appeal therefore being completely frivolous, meritless and an abuse of the process of law is dismissed with costs of Rs.1,00,000/- which shall be paid by the appellant/defendant no.1 to the defendant no.2/respondent no.2/mother within a period of six weeks from today.

JULY 23, 2018 /ib

VALMIKI J. MEHTA, J