

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

% **Date of decision: 25th May, 2018**

+ **CS(OS) 430/2016 & IAs No.10391/2016 & 11079/2016 (both u/O XXXIX R-1&2 CPC)**

SAURABH SHARMA

.... Plaintiff

Through: Ms. Neha Garg, Adv.

Versus

OM WATI & ORS.

.....Defendants

Through: Mr. N.K. Goyal, Adv. for D-1 to 4.
Mr. Amit Gupta, Adv. for D-5&6.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for partition of property No.500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi, claiming 1/16th share therein, pleading (i) that the paternal grandfather of the plaintiff namely Sunder Lal Sharma was taken in adoption by his aunt (*chachi*) namely Basanti Devi as she had no issue from her marriage; Basanti Devi thus became the adoptive mother of Sunder Lal Sharma; (ii) that Basanti Devi in the year 1966 executed a General Power of Attorney (GPA) in favour of Sunder Lal Sharma in respect of all her properties; (iii) that Basanti Devi died in the year 1985-1986 and Sunder Lal Sharma, paternal grandfather of the plaintiff, became the owner of all the properties of his adoptive mother Basanti Devi; (iv) that Sunder Lal Sharma, paternal grandfather of the plaintiff, died on 20th December, 1998, leaving his widow defendant No.1 Om Wati, defendants No.2&3 Ashok Sharma and Gopal Sharma as his sons, defendant No.4 Prem Lata as his daughter, plaintiff Saurabh Sharma as his grandson and the defendants No.5&6 Deepa Sharma and Roma Sharma as his granddaughters; (v) that the

plaintiff was born to defendant No.2 Ashok Sharma on 7th April, 1990 i.e. prior to the demise on 20th December, 1998 of Sunder Lal Sharma; (vi) that the aforesaid heirs of Sunder Lal Sharma constituted a Hindu Undivided Family (HUF) which was residing together at 3/156, Gali Ganga Ram, Teliwara, Shahdara, Delhi; (vii) that Sunder Lal Sharma was carrying on business in the name of M/s. Gopal Lime (Ashok Chuna Bhandar) at 500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi; the business of lime stone was in fact commenced by Musaddi Lal, husband of Basanti Devi adoptive mother of Sunder Lal Sharma; (viii) that Sunder Lal Sharma, in the year 1984, changed the name of his business to M/s. Shakti Chuna Bhandar; (ix) that Sunder Lal Sharma along with his wife defendant No.1, his sons defendants No.2&3 and his daughter defendant No.4 constituted a HUF under one roof and sharing one kitchen and of which Sunder Lal Sharma was the *Karta* and Sunder Lal Sharma as *Karta* inherited the entire property and business which is still being carried on by defendant No.1 Om Wati as *Karta* of Hindu Joint Family; (x) that property No.500/5, Pandav Road, Vishwas Nagar, Shahdara initially was a land measuring 370 sq. yds. where the business of *Bhatti* of making lime stone was being carried on; however, after the order of the Supreme Court in *M.C. Mehta Vs. Union of India* (1996) 4 SCC 750 whereby industries were ordered to be shifted outside Delhi, this *Bhatti* was shifted to 460A/4, Mahavir Block, Pandav Road, Vishwas Nagar, Shahdara, Delhi and shops were constructed on this land bearing 500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi and were rented out in the year 1990; out of the total area of 370 sq. yds., 150 sq. yds. was already sold by the defendant No.1 in the year 2012, without any legal necessity and/or for benefit of the estate; (xi) that the plaintiff and

the defendants No.4&5 have been requesting the defendant No.1 to give their legal share from the sale amount of Rs.3.5 crores but the same has not been given inspite of promise; (xii) that the defendant No.1 is now again trying to sell out the remaining portion of the property measuring 220 sq. yds.; (xiii) that there is no legal necessity for or benefit to the estate from the sale of the property; (xiv) that the plaintiff is in possession of three shops in the property and the defendant No.1 is threatening the plaintiff to hand over possession of the said shops; (xv) that the entire family expenditure from the very beginning till today is being meted out from the business of lime stone and from rent received from the property; (xvi) that the property is a Joint Hindu Family property/HUF; (xvii) that in the Ration Card of Sunder Lal Sharma, the name of all the family members were shown; (xviii) that the plaintiff, along with his mother, has on 19th September, 2015 filed a suit for permanent injunction and declaration against defendants No.1 to 4 but the plaint in the suit was rejected, being without consequential relief; the plaintiff preferred RCA No.133/2016 against the rejection of the plaint but which was withdrawn; (xix) that the plaintiff has filed a suit for partition of property No.3/156, Gali Ganga Ram, Teliwara, Shahdara, Delhi and House No.460A/4, Mahavir Block, Pandav Road, Vishwas Nagar, Shahdara, Delhi and which is now pending for final arguments.

2. The suit was entertained, though no *ex-parte* injunction sought, granted.

3. The defendants no.1 to 4 have defended by the suit filing a written statement pleading (i) that the suit property was the self acquired property

of Sunder Lal Sharma and the plaintiff, who is the grandson of Sunder Lal Sharma, has no right over the same being not a Class 1 heir of Sunder Lal Sharma; (ii) there was no family business in the name and style of M/s. Shakti Chuna Bhandar or any earlier business as alleged; (iii) that as per the documents filed by the plaintiff also, the business was started by the defendant no.3 Gopal Sharma and is the proprietorship of defendant no.3 Gopal Sharma; (iv) property No.500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi has already been sold by the defendant no.1 and there is no business of any type in the said property; (v) Musaddi Lal was not engaged in the business of lime stone and thus the question of Sunder Lal Sharma continuing the said business as *Karta* of the HUF or otherwise did not arise; (vi) there was / is no HUF and the defendant no.1 is not a *Karta* of any HUF; (vii) Musaddi Lal used to run a printing press in Chawri Bazar in a rented premises; (viii) the kitchen of the defendant no.3 Gopal Sharma is separate since his marriage and the defendant no.2 and the defendant no.3 reside separately; (ix) Sunder Lal Sharma was not residing in any Joint Hindu Family and there was no common kitchen as alleged; (x) the shops on property No.500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi were not constructed with any joint funds; the said property has already been sold by the defendant no.1 after getting the Relinquishment Deed in her favour; (xi) the defendants no.1 to 4, being the Class I heirs of Sunder Lal Sharma, alone were / are entitled to inherit the estate of Sunder Lal Sharma; the sale was not for Rs.3.5 crores; (xii) the occasion for the plaintiff and the defendants no.5&6, who are the daughters of the defendant no.2, for demanding any share of the sale consideration never arose and no such demand was ever made; (xiii) the plaintiff and the defendants no.5&6 have

no rights over any property of Sunder Lal Sharma and property with respect to which suit has been filed has already been sold; (xiv) defendant no.4 though as daughter is a Class I heir of Sunder Lal Sharma, has never demanded any share in the estate of Sunder Lal Sharma; (xv) the entire property No.500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi having already been sold prior to the institution of the suit, the question of the defendants no.1 to 4 or the defendant no.1 threatening to sell the remaining portion *ad measuring* 220 sq. yds. of the same does not arise; (xvi) the plaintiff is not in possession of three shops or any other part of property No.500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi and thus the question of the defendants no.1 to 4 or the defendant no.1 threatening to dispossess the plaintiff therefrom does not arise; (xvii) the defendants no.2,3&4 are residing separately and have separate kitchens in property no.3/156, Gali Ganga Ram, Teliwara, Shahdara, Delhi – 110 032; and, (xviii) there is no coparcenary or HUF and the question of the plaintiff and the defendants being members thereof does not arise.

4. The plaintiff has filed a replication to the aforesaid written statement but which is not found to contain any new pleas and merely reiterates the contents of the plaint.

5. The defendants no.5&6 though have been appearing, have not filed any written statement and the order dated 20th July, 2017 records that they support the claim of the plaintiff.

6. On the pleadings aforesaid, the following issues were framed on 20th July, 2017:-

- “1. Whether the suit is barred under Order II Rule 2 CPC? OPD (1-4)*
- 2. Whether the suit of the plaintiff is liable to be rejected on the ground of deficiency of court fees? OPD (1-4)*
- 3. Whether the plaintiff is entitled to partition of the suit property No. 500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi-32 as prayed for? OPP*
- 4. Whether the plaintiff is entitled for declaration that he is owner of the 1/16th share of the suit property No. 500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi-32 as prayed for? OPP*
- 5. Whether the plaintiff is entitled for permanent injunction thereby restraining the defendant Nos. 1 to 4 from creating any third party interest in the suit property No.500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi-32 as prayed for? OPP*
- 6. Whether the plaintiff is in possession of property bearing No.500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi-32? OPP*
- 7. Whether the defendant No. 1 has already sold the property bearing No.500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi-32, if so, the effect? OPD (1-4)*
- 8. Relief.”*

and the Issue No.1 was ordered to be treated as a preliminary issue.

7. Vide judgment dated 15th November, 2017, the preliminary issue was decided in favour of the plaintiff and against the defendants and vide order dated 2nd November, 2017, the suit posted to 17th January, 2018 for consideration of IA No.10391/2016 and IA No.11079/2016, both filed by the plaintiff under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 (CPC) and vide separate order dated 15th November, 2017,

the suit was posted before the Joint Registrar on 19th February, 2018 for evidence of the plaintiff on the other issues.

8. The plaintiff, by way of interim order in this suit, seeks to restrain the defendants no.1 to 4 from selling, disposing of, alienating property No.500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi and from carrying on any work of demolition and reconstruction thereon.

9. During the course of hearing of the applications for interim relief and having gone through the pleadings, it was enquired from the counsel for the plaintiff on 17th January, 2018 as to how the plaintiff, on the basis of averments in the plaint even if believed, makes out a case of existence of an HUF / coparcenary and of the property, with respect to which suit is filed being, of any coparcenary or HUF and the plaintiff as a member of the said coparcenary / HUF, having a share therein. Attention of the counsel for the plaintiff was also drawn to *Surender Kumar Vs. Dhani Ram* AIR 2016 Delhi 120, *Sagar Gambhir Vs. Sukhdev Singh Gambhir* (2016) 231 DLT 247 and *Sagar Gambhir Vs. Sukhdev Singh Gambhir* (2017) 241 DLT 98 (DB).

10. The counsel for the plaintiff relied upon *Uttam Vs. Saubhag Singh* (2016) 4 SCC 68, *Harvinder Pal Singh Vs. Laj Pal Singh* 225 (2015) DLT 165 and *Ganender Pal Singh Vs. Mehtab Singh* 84 (2000) DLT 836.

11. Before dealing with the aspect on which arguments were heard, I may deal with another aspect though not urged by the counsel for the plaintiff i.e. whether, upon finding the plaintiff on the averments in the plaint to be not entitled to the relief claimed, the suit can be dismissed at this stage, after issues as aforesaid have been framed in the suit and after

the issue ordered to be treated as a preliminary issue has already been decided in favour of the plaintiff.

12. In my opinion, merely because issues have been framed in the suit does not prevent this Court from, if finds the plaintiff to be not entitled to the relief, even if the averments in the plaint are believed, from dismissing the suit even though issues have been framed.

13. Though Issues No.3 to 5 as to the entitlement of the plaintiff to a share in the property have been framed but it is not as if the Court had occasion to apply its mind to or adjudicate whether any trial is necessary. There is nothing in the order sheet to suggest that the defendants urged or that the Court considered whether the suit is capable of being decided under Order XV and / or under Order XII Rule 6 of the CPC. It has been held in (i) *ITC Limited Vs. ITC Limited* (1998) 2 SCC 70; (ii) *Sanjay Sharma Vs. Sanjay Sharma* MANU/DE/1999/2013; (iii) *Guru Nanak Vidya Bhandar Trust Vs. Guru Nanak Vidya Bhandar Trust* MANU/DE/8130/2006; and, (iv) *P.S. Jain Co. Ltd. Vs. Atma Ram Properties (P) Ltd.* (2013) 205 DLT 302 that merely because issues have been framed does not prevent the Court from, at a subsequent stage, invoking Order XII Rule 6 and / or Order XV of the CPC for disposing of the suit. Evidence is to be recorded only if the plaintiff is to succeed on proof of the averments made in the plaint, if disputed by the defendants. However if the plaintiff, even if proves the averments in the plaint, in law is not entitled to the relief, the need for putting the parties to trial, merely to keep the counsels and the Court busy, does not arise.

14. That brings me to the meat of the controversy i.e. whether the averments in the plaint constitute a plea of existence of an HUF/coparcenary and / or of the property being of the said HUF and coparcenary and of which the plaintiff claims to be a member and thus entitled to a share in the property and claim partition thereof.

15. The claim of the plaintiff is of the property, for partition of which the suit is filed, being of his paternal grandfather Sunder Lal Sharma as a *Karta* of a coparcenary / Joint Hindu Family of which plaintiff as a grandson of Sunder Lal Sharma is a member. The plaintiff however in the plaint has pleaded that “Shri Sunder Lal Sharma was taken in adoption by his aunt (*chachi*) namely Smt. Basanti Devi as she had no issue from her marriage and became his adoptive mother”. The plaintiff has not pleaded that Sunder Lal Sharma was taken in adoption by Basanti Devi and her husband Musaddi Lal. Thus the plea is of Basanti Devi having taken Sunder Lal Sharma in adoption after the death of her husband Musaddi Lal. On the said pleas, the question of Sunder Lal Sharma, on adoption, becoming a coparcener of HUF / coparcenary of Musaddi Lal and of the nucleolus of the properties of Sunder Lal Sharma including of property No.500/5, Pandav Road, Vishwas Nagar, Shahdara, Delhi being the properties / estate of Musaddi Lal, does not arise as on demise of Musaddi Lal, his properties / estate would have been inherited by his widow i.e. Basanti Devi. The plaintiff has expressly admitted so by also pleading that Basanti Devi “executed a GPA” in favour of Sunder Lal Sharma “in respect of all her properties in the year 1966”. The plaintiff along with the plaint has filed a photocopy of the said registered GPA in Urdu language along with English translation thereof. The said GPA is with

respect to property, houses, quarters, land etc. situated in Shahdara. The said GPA describes Basanti Devi as a widow of Musaddi Lal, further confirming that Musaddi Lal was not alive at the time of adoption by Basanti Devi of Sunder Lal Sharma. The said GPA, though vests all powers in Sunder Lal Sharma with respect to the properties but does not make any reference to any business or the business earlier being carried on by Musaddi Lal or which may have been continued by Basanti Devi after the demise of her husband Musaddi Lal. The reason given for execution by Basanti Devi of the GPA is that she being a lady could not manage her properties though was in good health. Ordinarily, if there was any business of Basanti Devi or business of Musaddi Lal which was being continued by Basanti Devi, Basanti Devi would have by the said GPA also appointed Sunder Lal Sharma as attorney with respect to the said business. The same belies the plea in the plaint of Sunder Lal Sharma having merely continued the lime business of Musaddi Lal.

16. Further, Basanti Devi is pleaded, by the plaintiff himself, to have died in the year 1985-86 i.e. after coming into force of the Hindu Succession Act, 1956. Under the provisions of Section 15(1)(a) of the said Act, the properties / estate of Basanti Devi and with respect to which Basanti Devi had earlier executed a GPA in favour of Sunder Lal Sharma would devolve on Sunder Lal Sharma as the personal properties of Sunder Lal Sharma and in which the sons of Sunder Lal Sharma would not have any share or interest. I repeat, that it is not the case that Sunder Lal Sharma on adoption became member or *Karta* of coparcenary or HUF of Musaddi Lal or Basanti Devi or acquired a share in the properties of said

coparcenary / HUF, by adoption. The specific plea is of Sunder Lal Sharma having become owner of properties on demise of Basanti Devi.

17. It is not the plea of the plaintiff that Sunder Lal Sharma, after demise of Basanti Devi in 1985-86, constituted a HUF with his sons or threw the properties in the HUF hotchpotch. On the contrary, the plaint is premised on Sunder Lal Sharma, having so become the owner of properties and owing to having a common residence with his sons defendants no.2&3 herein, having constituted a HUF and which very premise of the plaintiff in the plaint has no legs in law to stand on.

18. I have in ***Kamlesh Devi Vs. Shyam Sunder Tyagi*** MANU/DE/7689/2017 and in ***Aditya Prasad Dube Vs. Shobha Dube*** 2018 SCC OnLine Del 6567 observed that everybody including Advocates seem to remember the ancient Hindu Law prevalent prior to coming into force of Hindu Succession Act, 1956 i.e. probably prior to the time they were born and / or joined the practice of law and no one remembers the law in force for the last over a half a century i.e. the Hindu Succession Act.

19. This Court, in ***Surender Kumar*** supra has held 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**, MANU/SC/0265/1986 : (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**, MANU/SC/0525/1986 : (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.**, MANU/DE/3560/2015 : 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.

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.

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.

13. In view of the above, actually the application filed under Order VII Rule 11 CPC in fact is treated as an application under Order XII Rule 6 CPC, inasmuch as, it is observed on

the admitted facts as pleaded in the plaint that no HUF and its properties are found to exist. There is no averment in the plaint that late Sh. Jage Ram inherited property(s) from his paternal ancestors prior to 1956. In such a situation, therefore, the properties in the hands of late Sh. Jage Ram cannot be HUF properties in his hands because there is no averment of late Sh. Jage Ram inheriting ancestral property(s) from his paternal ancestors prior to 1956. There is no averment in the plaint also of late Sh. Jage Ram's properties being HUF properties because HUF was created after 1956 by late Sh. Jage Ram by throwing properties into a common hotchpotch. I have already elaborated in detail above as to how an HUF has to be pleaded to exist in the pre 1956 and the post 1956 positions and the necessary averments which had to be made in the present plaint. The suit plaint however grossly lacks the necessary averments as required in law to be made for a complete cause of action to be pleaded for existence of an HUF and its properties.”

20. Though I am unable to find any appeal having been preferred against **Surender Kumar** but the same learned Judge who authored **Surender Kumar** supra reiterated the same by reproducing excerpts thereof, in **Sagar Gambhir** supra and appeal preferred whereagainst was dismissed as aforesaid by the Division Bench of this Court.

21. Applying the ratio aforesaid, Sunder Lal Sharma, paternal grandfather of the plaintiff, even if inherited the property subject matter of the present suit from Basanti Devi who died after the coming into force of the Hindu Succession Act, inherited the same in his personal individual capacity and not for the benefit of his own progeny. Even under the ancient Hindu Law, in the property inherited by a male hindu from his mother, the sons of such male hindu did not acquire any right, as was the case on inheritance from paternal ancestors. Needless to state, Sunder Lal Sharma

also died after coming into force of Hindu Succession Act and his estate would be inherited thereunder by his Class I heirs i.e. his wife, sons and daughter, the defendants no.1 to 4 herein and the plaintiff as a grandson of Sunder Lal Sharma did not acquire any interest in the estate of Sunder Lal Sharma. I have already hereinabove observed that the premise of the suit is on a lack of appreciation of law and there is no plea of creation of HUF after 1985-86.

22. I have also dealt with the said aspect in *Aditya Prasad Dube* supra as well as in *Satyawati Vs. Suraj Bhan* MANU/DE/1085/2017 and *Jai Narain Mathur Vs. Jai Prakash Mathur* 228 (2016) DLT 515.

23. Thus the plaint, on averments contained therein, does not disclose any cause of action for the relief claimed.

24. As far as the judgments relied upon by the counsel for the plaintiff are concerned,

A. In *Uttam* supra, the factual finding was of the property, in the hands of Jagannath Singh who died in the year 1973, being joint family property which was ancestral property. It was in view of the said factual finding that it was held that the proviso to Section 6 of the Hindu Succession Act, 1956 as it stood prior to the amendment with effect from the year 2005, applied. Else, *Uttam* also refers to the same earlier judgments of the Supreme Court relying whereon the Division Bench of this Court has culled the principles in *Sagar Gambhir* supra.

However the aforesaid ratio cannot be applied to the facts of the present case where Sunder Lal Sharma paternal grandfather of the plaintiff is claimed to have inherited the properties from his mother.

Even under the ancient Hindu Law applicable prior to coming into force of the Hindu Succession Act and continued to a certain extent by Section 6 thereof as it stood prior to the amendment with effect from the year 2005, provided for a coparcenary to arise from the male lineage and not from the female lineage. Thus reliance by the counsel for the plaintiff on *Uttam* is misconceived.

B. *Ganender Pal Singh* supra only adjudicates whether a son, in the lifetime of his father, can seek partition of HUF property.

However for the same to apply, first the existence of the HUF and of the property being of the HUF has to be pleaded in law and which is not so in the present case.

C. *Harvinder Pal Singh* supra, on full reading thereof is against, instead of in favour of the plaintiff. The counsel for the plaintiff however relied on para 11 thereof which in turn sets out the paragraph of another judgment of this Court in *Amit Johri Vs. Deepak Johri* 196 (2013) DLT 29 holding that under the Hindu Law, as soon as a son is born, he gets a share in his father's property and becomes a part of the coparcenary and which right accrues in favour of his son by birth and not by the date of demise of his father or inheritance from the father.

Again, the observations relied upon are in the context of coparcenary / HUF property and if there is no coparcenary / HUF and / or the property is not of such coparcenary / HUF, the question of the son by birth getting a share in the father's personal private property is alien to law.

25. I am thus of the opinion that when this suit, on the averments in the plaint itself, is deadwood and no purpose will be served in putting the same

to trial, merely because without consideration of all the aforesaid aspects, issues have been framed.

26. This suit is thus dismissed in exercise of powers under Order XII Rule 6 and Order XV of the CPC. However, since the defendants also did not show any desire to have the suit dismissed at the threshold, no costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MAY 25, 2018

'bs'/pp..

