

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: January 31, 2019
Judgment delivered on: February 06, 2019

+ FAO(OS) 31/2018 & CM. Nos. 7497/2018, 9166/2018,
9167/2018, 16121/2018, 16212/2018 & 45493/2018

SURAJ MUNJAL

..... Appellant

Through: Mr. D.K. Rustagi, Mr. Mayank
Rustagi, Mr. Akshit Rastogi and
Mr. Anurag Kumar, Advs.

versus

CHANDAN MUNJAL & ORS

..... Respondents

Through: Mr. Krishnendu Datta, Mr. Sandeep
Bajaj, Ms. Aakanksha and Ms. Garima
Goel, Advs. for R1 to R4

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this appeal is to the order dated January 30, 2018 of the learned Single Judge whereby the learned Single Judge has by applying principles of Order 7 Rule 11 CPC read

with Order 12 Rule 6 CPC, rejected the plaint insofar as first and second category of properties, mentioned as HUF properties, are concerned, as the suit does not contain necessary averments with regard to the causes of action of these properties being HUF properties. The learned Single Judge has granted liberty to the appellant to seek partition of any of the properties, which have been mentioned in the first or second category in case the appellant is co-owner of any such properties in terms of specific title deeds. The learned Single Judge has also directed the appellant to amend the plaint.

2. Some of the relevant facts necessary for the purpose of deciding this appeal are that the appellant filed a suit for partition, declaration and injunction. As per the plaint, vide para 5, the appellant has categorized the property of which partition is sought, as under:-

<i>Para of the plaint</i>	<i>Description of the Property</i>	<i>Averment in the Plaint</i>
<u>First Schedule</u>		
<i>Para 5(I)(i)</i>	<i>Property bearing number 620, Phase V, Ydyog Vihar, Gurugram of a land measuring 300 sq. yards having superstructure of Basement, Ground Floor, First Floor and Second Floor</i>	<i>(a) Plaintiff (b) Defendant No.1 (c) Defendant No.2 (d) Defendant No.3 Purchased in 2006</i>
<i>Para 5(I)(ii)</i>	<i>Property at Arya Samaj Road, Sirsa which is built on a land measuring 450 sq.</i>	<i>Defendant No.2</i>

	yards	
Para 5(I)(ii)	A-222, Second Floor, Spazedge (The Mall), Sohna Road measuring 1488 sq. ft.	(a) Plaintiff (b) Defendant No.1 (c) Defendant No.2 (d) Defendant No.3 Purchased in 2008
Para 5(I)(iii)	Property at Dabwali Road, Sirsa measuring 1800 sq. yards	Defendant No.3
<u>Second Schedule</u>		
Para 5(II)	9 Acre land, Village Byhampur, Rania Road Sirsa	Joint names of Defendant No. 3 and Plaintiff Purchased in 1982
<u>Third Schedule</u>		
Para 5(III)(i)	Basement, E-82A, Greater Kailash-I, New Delhi	Joint names of Plaintiff and Defendant No.1 Purchased in 2011
Para 5(III)(ii)	Joint Account NO. 09872151000168 with Oriental Bank of Commerce, Gurugram	Joint names of Plaintiff and Defendant No.1 opened in September 2007

3. The plaintiff had sought the following prayers in the suit:-

“In view of the aforesaid, this Hon“ble Court may kindly be pleased to:-

(a) pass a decree of declaration in favour of the Plaintiff and against the Defendant Nos.1,2,3 & 4 thereby declaring the title deeds of each of the 4 HUF properties to be having the Plaintiff, Defendant Nos.1 & 2 as co-sharers/co-owners having 1/3rd share each notwithstanding the recorded shareholding of the Defendant No.3 therein, and/or;

(b) pass a decree of declaration in favour of the Plaintiff and against the Defendant Nos.1, 2, & 3 thereby declaring the partial settlement as reached between the parties which is detailed in para 6 and 7 above in relation to the basement premises and also including the exclusive valuable interest in Defendant No.6 Company

and duly recorded in the transfer deed dated 03.10.2017 as executed by the Defendant No.3 in favour of the Defendant No.1, to be binding on all the parties to the present suit, for all intents and purposes, and/or;

(c) pass a decree of permanent injunction in favour of Plaintiff and against the Defendant Nos.1,2, & 3, their agents, representatives, assignees from entering the basement premises of the larger property no.E-82A, Greater Kailash-I, New Delhi on any account whatsoever being having no valuable interest as shareholder or director after the partial settlement duly acted upon and acknowledged in writing, including in the transfer deed dated 03.10.2017, and/or;

(d) pass a preliminary decree of partition holding 1/3rd share each in the Plaintiff and the Defendant Nos.1 & 2 in respect of the HUF properties as described in para 5 I (i) to (iv) above and the Plaintiff to hold ½ undivided share in respect of the joint properties including the deemed joint properties as mentioned in second and third categories of properties as described in para 5 II and III above to be concluded and binding as found by this Hon'ble Court to be not enforceable for any reasons whatsoever, and/or;

Any other or further order or direction, this Hon'ble Court may deem fit and proper may also be passed in the interest of justice."

4. Vide prayers (a) and (d), the appellant claims right in HUF properties to the extent of 1/3rd share. The question arose whether the claim of the appellant in prayers (a) and (d) as HUF properties is sustainable. The learned Single Judge in para 7 of the impugned order, has referred to the position of law, inasmuch as in ***Commissioner of Wealth Tax, Kanpur and Others v.***

Chander Sen and Others (1986) 3 SCC 567 and *Yudhishter vs. Ashok Kumar (1987) 1 SCC 204* it was held that after passing of the Hindu Succession Act, 1956 inheritance of the ancestral properties by a person does not implant the character of HUF property on the inherited properties. Inheritance by a person of a property or properties from his paternal ancestors after the year 1956 results in inheritance being taken as a self-acquired property and not as an HUF property. HUF property would be an HUF property only if the properties were inherited by a person before coming into force of Hindu Succession Act in the year 1956 and HUF continued thereafter after the year 1956 with the second manner in which HUF can come into existence if after the year 1956 a person throws his property into common hotchpotch and consequently HUF is created. The learned Single Judge has noted the following averments made in the plaint with regard to HUF, which are in paras 1 to 3 of the plaint and the same reads as under:-

“1. That the Plaintiff is a medical practitioner as ophthalmologist and is well known eye surgeon. The Defendant No.1 is the real brother of the Plaintiff and the Defendant No.2 is the father of the Plaintiff and Defendant No.1. That Defendant No.2 is also Karta of HUF which comprised of beside himself Plaintiff and Defendant no.1 as coparcerner.

2. That the actual HUF which was formed at the birth of the Plaintiff on 05.11.1978 and then the Defendant No.1 became its member by birth in 1982. This HUF was formed out of funds acquired by share of ancestral properties. This HUF instituted with funds available in the hands of Defendant No.2 who duly acknowledged so in various statutory records. Each of these records are in exclusive custody of the Defendant No.2. These funds were invested only to purchase properties which has been in joint names of all coparceners with exception of name of Defendant No.3. This addition was made out of love and affection only. Since these properties were acquired entirely from the HUF/Ancestral funds came in hand with Defendant No.2 as Karta, the properties could include the name of the Defendant No.2 in the form of 20/30 acres of land and cloth shop in Village Khuban in District Abohar, Punjab. This shop used to be run by the grandfather of the Plaintiff. The grandfather made huge assets and the Defendant No.2 acquired his share as member of this HUF. The grandfather died intestate in 1967-68. Therefore, the inclusion of name of the Defendant No.2 does not alter the actual ownership status i.e. in the name of the Defendant No.2, Plaintiff and the Defendant No.1.

3. That the Defendant no.2 is a general medical practitioner since 1971 and now running a hospital in the name of "Munjhal Hospital" at Arya Samaj Road, Sirsa (Haryana). This building comprised of Ground floor and First Floor superstructure. In Ground Floor, the Defendant No.1 is controlling the Hospital and the Defendant Nos.2 and 3 residing on the First Floor portion. This building was constructed on a plot of land measuring 450 sq. yds. This property was acquired and constructed/renovated by the joint funds. This property is acknowledged throughout as property of HUF by the Defendant No.2, who has been receiving rental income into HUF account."

5. The learned Single Judge after noting his own

judgment in the case of *Surender Kumar Vs. Dhani Ram and Others 227 (2016) DLT 217*, wherein he had referred to the judgments of the Supreme Court in *Chander Sen (supra)* and *Yudhishter (supra)*, has, by holding that the plaint lacks the necessary averments as required in law to be made for complete cause of action to be pleaded for existence of an HUF and its properties, rejected the plaint insofar as the claim for HUF properties is concerned, by invoking the principles underlying Order 7 Rule 11 read with Order 12 Rule 6 CPC (category 1 and category 2 in para 5 of the plaint).

6. Mr. D.K. Rustagi, learned counsel for the appellant would submit that under Order 7 Rule 11 CPC, there is no concept of legal cause of action. The provision provides for ground for non-disclosure of cause of action. He further submitted, there is no provision to revoke a part of plaint. According to him, there are sufficient averments in the plaint where the existence of joint ancestral property and the funds in the hands of respondent No.2 were specifically pleaded and the documentary evidence of acquisition of properties in the joint names of the four Members were placed on record. It is his submission that there is no formal rejection of any of the prayers

in the plaint. In other words, it is a case of partial rejection without drawing a decree. He also stated that the rejection of the plaint partially on the finding of lack of averments therein of existence of HUF as per law referred to therein, is without considering the fact that the case of the appellant is never on the formation of HUF on inheritance but availability of HUF funds in the hands of respondent No.2. It is also his submission that the learned Single Judge was swayed away by the averments in the plaint that the “*actual HUF which was formed at the birth of the appellant on November 05, 1978 and then the respondent No.1 became its Member by birth in 1982*”. These averments have to be read in the context of the other pleas in the same para wherein it is written that HUF was instituted with funds available in the hands of the respondent No.2. He also stated that the respondent No.2 having been born in the year 1944 was a co-parcener, which status continued. He would rely upon the following judgments in support of his contention:-

- (i) ***I (2018) SLT 80 Sejal Glass Ltd. vs. Navilan Merchants Pvt. Ltd.;***
- (ii) ***230 (2016) DLT 73 Satya Pal Gupta v. Sudhir Kumar Gupta;***
- (iii) ***(1986) 3 SCC 567 Commisisoner of Wealth Tax,***

Kanpur & Ors. v. Chander Sen & Ors.;

(iv) (1987) 1 SCC 204 Yudhishter v. Ashok Kumar;

(v) 227 (2016) DLT 2107 Surender Kumar v. Dhani Ram & Ors.;

(vi) (2003) 5 SCC 89 Madanlal (dead) by LRs & Ors. v. Yoga Bai (dead) by LRs.

7. On the other hand, Mr. K. Datta, learned counsel appearing for the respondents would submit that the learned Single Judge was justified in rejecting the plaint with regard to claim based on HUF properties, on the basis of the averments made in the plaint. According to him, the grandfather of the appellant died in the year 1967 and he was born in 1978. So, between 1967 and 1978, the properties in the hands of the father i.e respondent No.2 have been self-acquired properties. In other words, there is no continuity of HUF as sought to be projected by Mr. Rustagi. He stated that the judgments referred to by Mr. Rustagi has no applicability as the same are with regard to cases where applications have been filed under Order 7 Rule 11 CPC and the proposition of law as laid down by the Supreme Court, that a part of plaint cannot be rejected, cannot be disputed in those cases. Whereas on the basis of certain limited pleadings, the learned Single Judge concluded, the claim of HUF properties

cannot be established. So, keeping in view the position of law laid down by the Supreme Court in ***Chander Sen (supra)*** and ***Yudhishter (supra)***, the property in the hands of father i.e respondent No.2 necessarily has to be self-acquired property. He also stated, the learned Single Judge was right, by invoking principles underlying Order VII Rule 11 and Order 12 Rule 6, based on limited pleadings and admission, in rejecting the claim with regard to HUF properties. He also stated, the learned Single Judge was right in nipping in the bud, a claim which ultimately cannot be granted. He would rely upon the following judgments in support of his contention:-

- (i) ***(1977) 4 SCC 467 T. Arivandandam vs. T.V. Satyapal and another;***
- (ii) ***163 (2009) DLT 287 Sushil Bhardwaj vs. Ved Parkash Shastri & Ors.;***
- (iii) ***(2015) 8 SCC 428 Raveesh Chand Jain vs. Raj Rani Jain.***

8. Having heard the learned counsel for the parties, there is no dispute on the proposition of law that inheritance by a person of a property from his parental ancestors after the year 1956 results in inheritance as a self-acquired property and not as an HUF property. There is no dispute that the grandfather of the

appellant i.e father of the respondent No.2 died in the year 1967. The properties were inherited by the respondent No.2 and the same shall be self-acquired properties. This we say so, as the appellant was not even born in the year 1967. He was born in the year 1978.

9. The plea of Mr. Rustagi that the actual HUF, which was formed at the birth of the appellant on November 05, 1978 and then on the birth of respondent No.1, who became a Member by birth in 1982 has to be read in conjunction with other averments in the plaint that the HUF was instituted with funds available in the hands of respondent No.2, who duly acknowledged the same in various statutory records, which records are stated to be in the exclusive custody of respondent No.2. In other words, the funds were invested only to purchase the properties, which have been in the joint names of all the co-parceners with exception of name of respondent No.3, is without any merit, for the simple reason, what was required to be pleaded by the appellant was that the properties were inherited before the year 1956 or the HUF being created after the year 1956 by throwing the properties into common hotchpotch, which plea admittedly has not been taken. In fact, this aspect had weighed with the learned Single Judge to

conclude that the claim as HUF properties (under first and second category), was unsustainable. We agree with the said conclusion arrived at by the learned Single Judge.

10. Insofar the judgments in the case of *Sejal Glass Ltd. (supra)* and *Satya Pal Gupta (supra)* are concerned, the said judgments were with regard to application filed under Order 7 Rule 11 unlike the case in hand where the learned Single Judge has invoked the principles underlying Order 7 Rule 11 read with Order 12 Rule 6 CPC.

11. Insofar as the judgment in the case of *Madanlal (dead) by LRs & Ors. (supra)* is concerned, the said judgment is for the proposition that the HUF property does not lose its character merely because it was being owned in the name of individual coparceners or partnership firms. The same has no applicability in the facts of this case and the issue with which we are concerned.

12. The other judgments referred to by Mr. Rustagi i.e. *Commissioner of Wealth Tax, Kanpur and Others (supra)*, *Yudhishter (supra)* and *Surender Kumar (supra)* are of no help to the appellant.

13. We agree with the submission made by Mr. Datta by relying upon the judgments of the Supreme Court and this Court

relating to Order 12 Rule 6 CPC in support of proposition of law that there is wide discretion of Court to pass a judgment at any stage of a suit on the basis of an admission made in the pleadings or otherwise, without waiting for determination of other questions arising between the parties, so as to nip in the bud any claim sought to be raised in the plaint, which is vexatious and without any merit in the sense, not disclosing a clear right to sue.

14. In view of our discussion above, we do not see any merit in the appeal. The same is dismissed. No costs.

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Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

FEBRUARY 06, 2019/ak