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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20.08.2019.

Date of Decision: 27.09.2019.

+ RFA 390/2012 & CM Nos.11623/2014 (for additional documents),
17026/2018 (for directions)

SANJIV K SINGH & ORS
Through

..... Appellants

Mr.N.S.Vasisht with Mr.Vishal Singh &
Ms.Jyoti Kataria Bajaj, Advs.

versus

RITU SINGH & ANR
Through

..... Respondents

Mr.Sandeep Mittal with Mr.Varun
Kumar, Mr.Arjit Benjamin &
Ms.Avshreya P.S. Rudy, Advs.

+ RFA 490/2017
SANJIV K SINGH & ANR

..... Appellants

Through

Mr.N.S.Vasisht with Mr.Vishal Singh &
Ms.Jyoti Kataria Bajaj, Advs.

versus

RITU SINGH & ANR

..... Respondents

Through

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Kumar, Mr.Arjit Benjamin &
Ms.Avshreya P.S. Rudy, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

1. This decision disposes of two connected appeals under Section 96 of the Code of Civil Procedure, 1908 preferred by the defendants in Suit No. 378/2003, the first assailing the preliminary decree dated 26.05.2012 and the second assailing the final decree dated 01.03.2017, both passed by the learned Additional District Judge, Tis Hazari Courts, Delhi.

2. Once again, an unsavoury litigation has erupted amongst the kin of a departed soul. The parties are in litigation to take their parcel of share in the suit property which they have earned by way of bounty through inheritance. The lis pertains to the property situated at 104, Malcha Marg, New Delhi left by late Sardar Kavaljit Singh who died intestate on 03.10.1971.

3. Under the preliminary decree impugned in RFA No. 390/2012, the learned trial Court has decreed the suit for partition, declaration and rendition of accounts instituted by the respondents/plaintiffs, by holding that the suit property was a self-acquired property owned by their father late Sardar Kavaljit Singh and had, therefore, devolved in equal shares upon his five legal heirs when he died. The final decree in terms of the preliminary decree was subsequently passed by the trial Court on 01.03.2017 and the same is under challenge in RFA No. 490/2017.

4. Two daughters of late Sardar Kavaljit Singh, who succeeded before the trial Court, are the respondents in the present appeals while his third daughter and only son are the two appellants. The widow of late

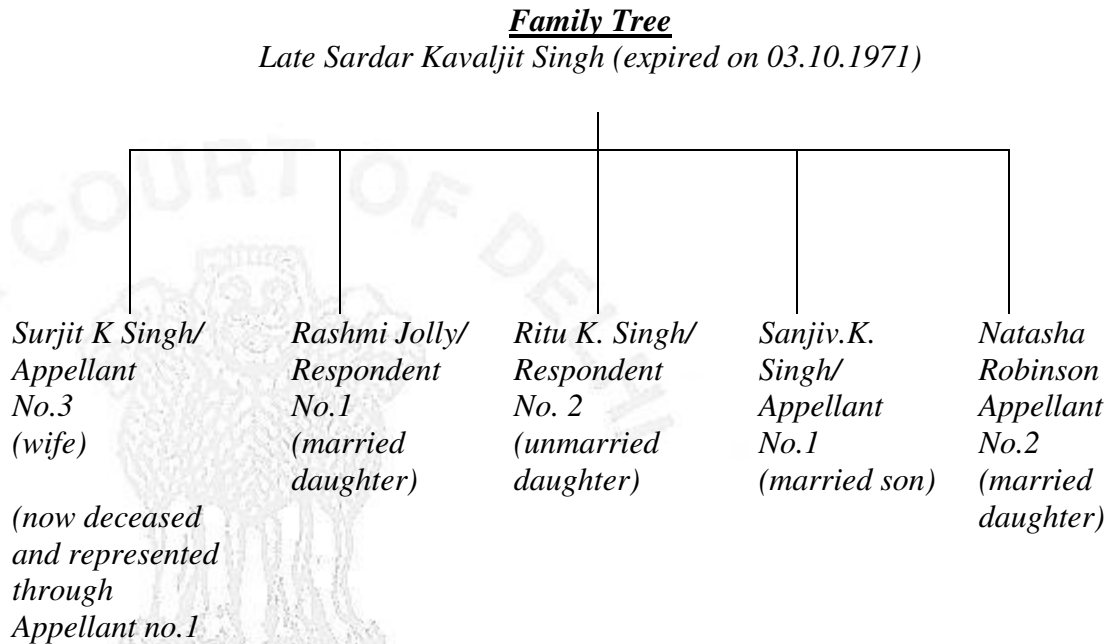
Sardar Kavalajit Singh, who was arrayed as appellant no. 3 in RFA No. 390/2012 has since expired. The appellant no.1, her son has succeeded her by way of a registered Will dated 13.12.2005 executed in his favour by her, which position is admitted by the respondents as well.

5. The brief facts of the case are that late Sardar Jaidev Singh, father of Sardar Kavaljit Singh and the grandfather of the parties, was allotted 10474 sq. yards of land in Mahaldar Khan Garden situated at Sadhura Kalan, New Delhi on 18.08.1944. After his intestate death, his widow Sardarni Channan Kaur and his four sons including Sardar Kavaljit Singh, became the joint owners of the said plot of land. The said plot of ancestral land at Mahaldar Khan Garden was sold to Delhi Land and Finance Ltd. (DLF) on 11.08.1950, the proceeds of which were divided equally amongst the legal heirs of Sardar Jaidev Singh.

6. After receiving his share of proceeds from the sale of the joint family property, Sardar Kavaljit Singh purchased a plot bearing number 104, Malcha Marg (formerly bearing no 140/48, Diplomatic Enclave) New Delhi on 27.02.1952 which came to be allotted in his favour by the Land and Development Office (L&DO). He subsequently raised construction thereon and the same forms the suit property. Following this allotment, a perpetual lease of the suit land was also executed in favour of Sardar Kavaljit Singh by the L&DO on 04.04.1963.

7. As noted above, Sardar Kavaljit Singh died intestate on 03.10.1971 leaving behind his widow, his son, i.e. the appellant no.1 born on 26.01.1956 and his three daughters. For the sake of convenience,

the family tree depicting the relationship of all the parties is reproduced hereinbelow:-



8. After his demise, the suit property continued to remain in the name of Sardar Kavaljit Singh and was being rented out to various tenants from time to time; the rent whereof was being collected by the appellant no.1. While the suit property had been let out to one M/s Care India, whose lease was set to expire in December 1993, disputes arose between the parties on the question of apportionment of rent and the respondents, consequently, suggested a formal partition of the suit property. It is the case of the respondents that even though they were desirous of partitioning the suit property by metes and bounds, they were informed by the appellant no.1 that the same was HUF property and could not be physically partitioned under the prevailing law.

9. The parties, thereafter, entered into an oral family settlement on 16.02.1993 the terms whereof were reduced into writing vide a deed of family settlement executed on 02.08.1993 whereby, the respondent no.1 was allotted 13.34% share, respondent no.2 was allotted 6.66% share while the appellant nos.1, 2 and 3 were allotted shares of 40%, 10% and 30% respectively in the suit property on the premise that it was owned by an HUF, namely, Sardar Kavaljit Singh & Sons. The settlement also recorded that sincere efforts to sell and dispose of the suit property would be made by the appellant no.1, after obtaining the respondents' consent and the proceeds thereof would be divided amongst all parties in accordance with the percentage of shares allotted to them in the suit property, as per the family settlement. Soon thereafter, since the suit property was still standing in the name of late Sardar Kavaljit Singh, the appellant no.1, vide his letter dated 20.09.1993, approached the L&DO, seeking substitution in the land record as also mutation of the suit property in the joint names of the five legal heirs, which request was acceded to. Vide memorandum dated 14.06.1994 issued by the L&DO, the parties were informed that the lease hold rights in the suit property had been substituted in their joint names, on the same terms and conditions as laid down in the lease deed dated 04.12.1963 executed in favour of late Sardar Kavaljit Singh.

10. At this point it is pertinent to note that even before the execution of the family settlement, the respondent no.1 had been served with a legal notice dated 23.04.1993 by the appellant no.1 seeking her

cooperation in the sale of the suit property and further stating that, after the demise of late Sardar Kavaljit Singh, the suit property had been jointly inherited by all his legal heirs. In fact, the respondent no.1 had, along with her mother and two sisters, also served the appellant no.1 with a legal notice dated 09.08.1994 seeking his cooperation in disposing of the suit property at the earliest.

11. Pursuant to the execution of the family settlement on 02.08.1993, although the appellant no.1 shared the rent received by him with his sisters for some time, he discontinued the practice after March 1994 on the premise that the suit property was no longer rented out. However in July, 1994, the respondent no.1 found one Dr. Stephen J. Atwood to be in occupation of the suit property as a tenant which led her to realise that the appellant no.1 had, in order to deprive his sisters and mother of their share of rent, misrepresented to them that the suit property had fallen vacant.

12. In the background of these facts, the respondents along with the appellant nos.2 and 3 instituted the subject suit against the appellant no.1. The plaintiffs sought partition of the suit property by metes and bounds as also for rendition of accounts. A declaration that the family settlement dated 02.08.1993 was void ab-initio and non-est was also sought. The claim in the plaint was that even though the suit property was the individual property of late Sardar Kavaljit Singh, which was to be divided in equal shares amongst all his legal heirs, the defendant no.1/appellant no.1 had misled the plaintiffs into believing that an HUF,

namely, M/s Kavaljit Singh & Sons HUF had been created by their deceased father and it is this HUF which owned the suit property. The respondents/plaintiffs urged that they had only agreed to enter into a family settlement with the defendant under the *bonafide* impression that the suit property was HUF property; they came to know of the real status of the property being the exclusive property of their late father, and not a HUF property, after obtaining a copy of the perpetual lease deed and the mutation certificate issued by the L&DO.

13. In his written statement the appellant no.1, while opposing the plaintiffs' claim, urged that the suit property was not the individual property of late Sardar Kavaljit Singh but was owned by M/s Kavaljit Singh and Sons HUF which he was now the karta of, following the demise of his father. The plaintiffs, therefore, had no right to claim partition of the HUF property. It was further claimed that upon the demise of Sardar Kavaljit Singh, the appellant nos.1 and 3, being coparceners, had become owners of 40% share each in the suit property while the remaining 20% share thereof was to be divided equally between the respondents and the appellant no.2.

14. During the pendency of the suit, Dr Atwood/defendant no.2 vacated the suit property and was, accordingly, deleted from the array of parties. Soon thereafter, Smt. Surjit K. Singh, the widow of late Sardar Kavaljit Singh who had instituted the suit against appellant no.1 along with her daughters as a co-plaintiff, sought transposition as a defendant, and then took a stand supporting the claim of the appellant no.1.

15. On the basis of the pleadings of the parties, the following issues were framed by the trial Court:-

“1. Whether the deed of family arrangement dated 3rd August, 1993 is non-est and void ab-initio for the reasons alleged in paras 5,6 and 13 of the plaint. If so, its effect?

2. To what shares, if any, parties to the suit are entitled in the suit property.

3. Whether the suit property is capable of being physically partitioned by metes and bounds? OPP

4. Whether the plaintiff is entitled to rendition of account in respect of their shares in the rent/occupational charges received by the defendant No. 1 from the suit property?

5. Whether the suit as framed is maintainable?

6. Relief”

16. Initially based on the submissions of the parties, the trial Court treated issue no.5 pertaining to the maintainability of the suit, as a preliminary issue. Based on section 23 of the Hindu Succession Act, 1956 as it then stood, this issue came to be decided against the respondent/plaintiffs and the suit came to be dismissed on 29.11.2004. Aggrieved by the dismissal of their suit, the respondents preferred an appeal before this Court being RFA 08/2005 during the pendency of which, the legislature repealed Section 23 of the Hindu Succession Act w.e.f. 09.07.2005. As a consequence, this Court allowed the respondents' appeal vide its order dated 09.07.2008 and the suit was remanded back to the trial Court for a fresh decision. The Appellate Court also granted liberty to the plaintiffs to amend their plaint by raising an additional

ground stemming from the repeal of Section 23 of the Hindu Succession Act, 1956 ('Hindu Succession Act' for short).

17. After the remand, even Ms. Natasha A. Robinson/appellant no.2 who had, along with her sisters, instituted the suit as a co-plaintiff, sought her transposition as a defendant which was permitted by the trial Court. She was, accordingly, arrayed as defendant no.4 in the suit. The plaint was once again amended and separate written statements to the amended plaint were filed by both the appellant no.1 and the newly transposed defendant no.4/the appellant no.2.

18. Based on the pleadings of the parties and the evidence led before it, the trial Court passed a preliminary decree of partition on 26.05.2012 by holding that the suit property was not HUF property but was the self-acquired property of late Sardar Kavaljit Singh and, resultantly, the succession thereof would be effected as per Section 8 of the Hindu Succession Act. The trial Court also found that the family settlement dated 02.08.1993 was a result of the misrepresentation made by the appellant no.1 and having not been acted upon, held the same to be null, void and not enforceable. The parties were, therefore, held to be entitled to 1/5th share each in the suit property.

19. Aggrieved by the preliminary decree, the appellants preferred the appeal being RFA No. 390/2012; since no stay was granted therein by this Court, the trial Court proceeded to pass the final decree on 01.03.2017 which has been impugned by way of RFA No. 490/2017.

20. In support of the appeals, Mr. Vishal Singh, learned counsel for

the appellants submits that the trial Court has failed to consider the effect of the respondents' own admission of various vital documents, including the agreement dated 11.08.1950 vide which the property in Mahaldar Khan Garden was sold as also the income tax assessment order dated 29.11.1962 wherein Sardar Kavaljit Singh himself had described the rental income from the suit property as the income of M/s Kavaljit Singh & Sons HUF. He submits that the factum of the suit property being HUF property is not only evident from these undisputed documents but was also recorded in the family settlement and clearly admitted by the respondents themselves in their legal notice dated 09.08.1994. He further submits that even during her cross examination, the respondent no.1 had evasively stated that she was not aware of the source of funds used for the purchase and construction of the suit property. He, thus, contends that the trial Court has erred in holding that the suit property purchased by Sardar Kavaljit Singh was his individual, self-acquired property and not ancestral, coparcenary property.

21. He further submits that even otherwise once the suit property had been purchased by late Sardar Kavaljit Singh on 27.02.1952 using the funds he received from the sale of the ancestral property at Mahaldar Khan Garden, the suit property had to be necessarily treated as ancestral and HUF property in which the appellant no.1, the only son in the family being born on 26.01.195, had acquired an interest and right by birth which he retained as a coparcener even after the enactment of the Hindu Succession Act on 17.06.1956. He submits that the learned trial Court

has ignored the settled legal position that the right which the son attains in the ancestral property by birth is an independent right and not a right which he derives through his father.

22. Mr. Singh further submits that in the light of the aforesaid factual position, the reliance placed on the decisions of the Supreme Court in ***Yudhishter v. Ashok Kumar*** (1987) SC 588 and ***CIT v. Chander Sen*** (1986) 3 SCC 567 by the trial Court was wholly misplaced. He submits that in ***Yudhishter*** (*supra*) and ***Chander Sen*** (*supra*) the Supreme Court, while dealing with a situation where the property had devolved under section 8 of the Hindu Succession Act, had held that the same could not be held as HUF property, which is not the position in the present case as the joint family property had devolved on M/s Kavaljit Singh & Sons HUF prior to the engagement of the Hindu Succession Act. He places reliance on the decisions of the Supreme Court in ***Sunil Kumar vs. Ram Prakash*** (1988) 2 SCC 77 and ***Shyam Narayan Prasad vs. Krishna Prasad & Ors.***(2018) 7 SCC 646 to contend that the property inherited by a male Hindu from his father is an ancestral property in which not only his son but also his grandson and great-grandson acquire an interest by birth. He also places reliance on ***Allah-diya & Anr v. Mt. Sona Devi*** AIR (29) 1942 Al 331 to contend that when a Hindu obtains possession of a share in the ancestral property by partition, this share held by him continues to be in the nature of an ancestral property.

23. Mr. Singh further submits that not only has the trial Court erred in holding the suit property to be the separate property of Sardar Kavaljit

Singh when it was clearly an ancestral and HUF property, but even its finding that the family settlement dated 02.08.1993 is non est and void ab initio is erroneous. He submits that while the respondents/plaintiffs had in their plaint, pleaded fraud, misrepresentation and undue influence by the appellant no.1 which they were unable to prove, it is only at the stage of tendering evidence that they adopted a wholly new plea seeking annulment of the family settlement on the ground that they had now learnt that the suit property was a HUF property. He submits that on the contrary, the terms of the settlement had already been given effect to as the appellant no.1 was duly distributing the rent accruing from the suit property to all his sisters, according to the ratio set out in the family settlement. He submits that once the respondents admitted that they had voluntarily signed the family settlement, the learned trial Court ought not to have interfered with the same on merely a reverse claim made by them that they had recently learnt that the true nature of the suit property was self-acquired and not HUF.

24. On the other hand, Mr. Sandeep Mittal, learned counsel for the respondents while supporting the impugned judgment submits that the learned trial Court has rightly come to the conclusion that the suit property was not an ancestral or HUF property and was, in fact, the self-acquired property of late Sardar Kavaljit Singh. He submits that once the sons of Sardar Jaidev Singh, after his death, had sold the ancestral property at Mahaldar Khan Garden to DLF on 11.08.1950 and went their separate ways with their respective shares of the sale proceeds, the

question of there being any joint family property did not arise. Therefore the plot on which the suit property was subsequently constructed, having been purchased by Sardar Kavaljit Singh in his own name from his own funds, was a self-acquired property, which fact is also corroborated from both the land allotment dated 27.02.1952 and the perpetual lease executed on 04.04.1963 having been made in his individual name by the L&DO.

25. He further submits that since the original owner, i.e. Sardar Kavaljit Singh, purchased the suit property in his own individual name and not in the name of any HUF, the appellants' plea that there was a pre-existing HUF when the appellant no.1 was born or that the so-called HUF continued to exist even after the enactment of the Hindu Succession Act is absolutely without any basis. The so-called HUF never existed; it neither maintained any bank account in its name nor was it ever allotted a PAN Card.

26. Mr. Mittal submits that as no HUF existed at the time of death of Sardar Kavaljit Singh on 03.10.1971, the suit property being his self-acquired property devolved upon all his five legal heirs in equal shares, i.e., in the proportion of $1/5^{\text{th}}$ share each. Without prejudice to his submission that no HUF was ever created, he submits that in any event the suit property remained the separate individual property of Sardar Kavaljit Singh and was never treated as the property of the purported HUF which, as per the claim of the appellants, existed at the time of purchase of the suit property. He further submits that even the trial Court

had rightly relied on the decision of the Supreme Court in *Yudhishter (supra)* to hold that inheritance of immovable property of a person who dies intestate without creating a HUF, after the enactment of the Hindu Succession Act, in the hands of his successors is as a self-acquired property and not as a HUF property. He submits that the trial Court had, therefore, come to a correct conclusion that the suit property, having been purchased from the separate share of sale proceeds received by Sardar Kavaljit Singh, was in the nature of a self acquired property. This is further affirmed by the fact that even after his death, the mutation of the suit property had been carried out by the L&DO on 14.06.1994 in the joint name of all his legal heirs and not in the name of any HUF.

27. Mr. Mittal submits that the only document relied upon by the appellants in support of their claim that the suit property is HUF property is the income tax assessment order dated 29.11.1962 which document, at best, only shows that the rental income derived from the suit property was being treated as the income of the HUF. He submits that it could also have been, in turn, used to meet the expenses of any HUF. He contends that this assessment order, however, does not signify that the suit property itself was an HUF property or that it was purchased from any purported ancestral funds.

28. He further submits that the trial Court had rightly held the family settlement dated 02.08.1993 to be non est and void ab initio for being vitiated by fraud perpetuated by the appellant no. 1 who repeatedly misrepresented to the respondents that the suit property was HUF

property while the respondents, in turn, owing to their ignorance of the prevalent law, had consented to the said arrangement under the belief that the appellant no. 1 was acting bonafidely and in the common interest of their family. He contends that the settlement was also marred by a further misrepresentation made by the appellant no.1 that the suit property could not be physically partitioned under the law. In view of all these falsehoods perpetuated by the appellant no.1, the family settlement has rightly been held to be unenforceable, null and void, especially after it was found that the same had not been implemented till date. He, therefore, prays that the appeals be dismissed with costs.

29. In the light of the submissions made by the learned counsel for the parties, the primary issue before this Court is regarding the nature of the suit property which, in fact, was also the main question raised before the learned trial Court. The question, therefore, is as to whether the suit property is HUF property, as is being claimed by the appellants, or was it the individually owned, self-acquired property of Sardar Kavaljit Singh, as has been held by the trial Court? The appellants do not deny that only if the suit property is held to be coparcenary or HUF property, can the appellant no.1 claim a larger share therein vis-a-vis the respondents.

30. The undisputed position emerging from the record is that after the property at Mahaldar Khan Garden, which was owned by the parties' grandfather Sardar Jaidev Singh and was inherited jointly by all his sons including Sardar Kavaljit Singh, was sold to DLF on 11.08.1950 and the proceeds thereof were apportioned amongst them, the jointness between

them ceased to exist. As per well-settled principles of Hindu law governing the field of succession prior to the commencement of the Hindu Succession Act, when ancestral property is partitioned between members of a Hindu Undivided Family and each coparcener is given the share accruing to them therefrom, this share of the coparcener, despite being his separate property, retains the character of ancestral property vis-à-vis his male issues even if they are born after the said partition.

31. In the present case, the property at Mahaldar Khan Garden which was inherited by Sardar Kavaljit Singh from his father much prior to the commencement of the Hindu Succession Act was admittedly ancestral. This ancestral property, however, was sold by him in the year 1950 itself when he did not have any male issues and, therefore, the portion of sale proceeds received by him upon the sale and partition of the ancestral property, had become separate property in his hands at the time of sale. Had the property at Mahaldar Khan Garden not been sold by Sardar Kavaljit Singh prior to the birth of the appellant no.1 on 26.01.1956, no doubt the property would have been treated as ancestral property in the hands of Sardar Kavaljit Singh and consequently, the appellant no.1 would have acquired an equal right in the same as a coparcener in the HUF of Sardar Kavaljit Singh by virtue of being born before the commencement of the Hindu Succession Act. The admitted position, however, is that this ancestral property was sold much before his birth by Sardar Kavaljit Singh himself thereby leaving no ancestral or HUF property in which the appellant no.1 could claim any right as a

coparcener.

32. Once the ancestral property was sold in 1950 itself and the proceeds thereof distributed amongst the members of the family, the appellant no.1, who was born after this partition, would be entitled to claim his right as a coparcener in any property purchased by his father subsequent to the said partition only if it were established that this property was purchased entirely out of the funds received from the sale of the ancestral property thereby causing it to acquire an ancestral character. While the appellants claim, by relying on the income tax assessment order dated 29.11.1962, that the suit property was purchased entirely out of the proceeds received from the sale of the ancestral property at Mahaldar Khan Garden, the respondents claim that the plot was purchased in instalments by their father primarily from his own income and his savings. Without prejudice to the aforesaid, the respondents also claim that even supposing that their father had utilised some part of the sale proceeds received by him to purchase and construct the suit property that, in itself, would not imply that the same was purchased solely out of those sale proceeds. In order to claim a share in the suit property as a coparcener thereof, it was incumbent upon the appellant no.1 to demonstrate that either Sardar Kavaljit Singh had purchased the suit property entirely out of the proceeds received from the sale of the ancestral property, which was inherited by him from his father, or that the joint family had, at the time of purchase of the suit property, sufficient nucleus from which the same could be purchased. In

my opinion, the appellant no.1 has failed to discharge the onus placed upon him. On a consideration of the evidence on record, it emerges that both when the suit land was allotted and the lease deed finally executed in his name, Sardar Kavaljit Singh was the sole earning member of his family as all his children were minors at that time including the appellant no.1, who was born on 26.01.1956. The fact that despite the allotment of the suit land to him in 1952, the lease thereof was executed in his favour only in 1963 indicates that the payment for the same was not made in one go. There is, therefore, no reason to disbelieve the respondents' plea that the payment for the suit property had been made in instalments by Sardar Kavaljit Singh who may have perhaps, at best, made only the initial part payment for the same out of the sale proceeds of the ancestral property. In these circumstances, the respondents' plea that Sardar Kavaljit Singh had taken financial assistance not only from his in-laws but also from his sisters to purchase the suit land and construct the suit property assumes importance when it is considered that payment for the same had been made in instalments and the lease thereof had been executed in favour of Sardar Kavaljit Singh only after 13 years had elapsed following the sale of the ancestral property, during which period he had admittedly remained employed in public undertakings. Merely because the income tax assessment order records that the construction of the suit premises was carried out with ancestral capital, the contemporaneous evidence which does not support this position cannot be brushed aside especially in the light of the fact that even after the

demise of Sardar Kavaljit Singh, the appellant no.1 had sought mutation of the suit property in the joint names of all the legal heirs. It cannot, therefore, be said with any certainty that the suit property had been purchased out of the sale proceeds of the ancestral property received in the year 1950 or that the family possessed the requisite nucleus at the time of purchasing the suit property.

33. The fact remains that although the appellant no.1 is claiming that the suit property is an ancestral property, this property was admittedly purchased by Sardar Kavaljit Singh in his individual name. The appellants have vehemently argued, by relying on the income tax assessment order dated 28.11.1962, that the suit property, even if not purchased from the ancestral corpus, had always been treated as the property of the HUF by Sardar Kavaljit Singh himself. I find that there is, however, nothing in this assessment order or, for that matter, any of the other documents placed on record to conclusively prove that Sardar Kavaljit Singh had ever decided to put his individually owned property in the common hotchpotch of the HUF. The assessment order merely refers to the rent being received from the suit property as the income of the HUF and does not state that the property in fact belonged to the said HUF although it does mention that the proceeds received by Sardar Kavaljit Singh upon the sale of ancestral property had been utilised in the purchase of the plot and construction of the suit property. In my view, the mere existence of M/s Sardar Kavaljit Singh & Sons HUF is not enough to establish that Sardar Kavaljit Singh ever intended to treat the

suit property as HUF property or put this property, which was his individual property, in the common hotchpotch of the HUF. It is quite possible that Sardar Kavaljit Singh, by purchasing the suit property in his individual name, had made a conscious decision to treat the rent received therefrom as a corpus for meeting the expenditure of the HUF. The assessment order, therefore, cannot be read to conclude that the suit property was HUF property. Once it is evident that the suit property was never owned by M/s Sardar Kavaljit Singh & Sons HUF but had, instead, continued to be in the individual name of Sardar Kavaljit Singh, which position remained unaltered till his demise on 03.10.1971 when the Hindu Succession Act was already in force, the appellant no.1 cannot claim coparcenary right in a property standing in the exclusive name of his father; the suit property, thus, cannot at all be treated as coparcenary or HUF property. A significant fact to be noticed in this regard is that the appellant no.1 has never mentioned that he was representing the joint family in any of the lease deeds he executed with respect to the suit property; his decision to lease out the suit premises in his individual name and not as the karta of the HUF also shows that he has always been aware that the suit property was not owned by the HUF.

34. I have also considered the decisions relied upon by the appellants and find that none of them are applicable to the facts of the present case. While in ***Sunil Kumar*** (*supra*), the Supreme Court was dealing with the powers of the karta to deal with HUF property, in ***Shyam Narayan Prasad*** (*supra*) the central issue was regarding the partition of a property

being, admittedly, coparcenary property. In the present case the property owned by Sardar Kavaljit Singh has not been found to be coparcenary property. Reliance by the appellants on *Allah-diya* (*supra*) is also misplaced as the said decision pertains to a period prior to the enactment of the Hindu Succession Act, while in the present case in view of my finding that the suit property was the individual property of Sardar Kavaljit Singh, the succession in question opened only upon his death on 03.10.1971. On the other hand, in view of the admitted position that Sardar Kavaljit Singh died intestate after the enactment of Hindu Succession Act, the trial Court has, in my view, rightly placed reliance on the decisions in *Yudhishter* (*supra*) and *Chander Sen* (*supra*), to hold that the suit property had devolved on all his legal heirs in accordance with Section 8 of the Hindu Succession Act.

35. For the aforesaid reasons, I have no hesitation in concurring with the finding of the trial Court that the suit property could not be said to be HUF property. Consequently, there is no infirmity with the findings in the impugned judgment that the suit property was inherited in equal shares by all the legal heirs of Sardar Kavaljit Singh in accordance with Section 8 of the Hindu Succession Act.

36. The second point of contention between the parties is regarding the validity and enforceability of the family settlement dated 02.08.1993. The trial Court has found that the respondents were led to believe by the appellant no.1 that the suit property was HUF property and, as a result of this misrepresentation, the family settlement had been arrived at.

Admittedly, the appellant no.1 had always represented to the respondents that the suit property was HUF property, which position the respondents realised subsequently was incorrect when they received a copy of the mutation certificate dated 14.06.1994 issued in the joint names of all the legal heirs. The appellant no.1 had even obtained the consent of the respondents to the family settlement by way of this misrepresentation which, in the light of my aforesaid finding that the suit property is not HUF property, is incorrect. The very fact that the appellant no.1 had, on 20.09.1993, approached the L&DO seeking mutation of the suit property in the joint names of all the legal heirs and not in the name of the HUF goes to show that even he was aware that as per law, the suit property had been inherited jointly by all the legal heirs. Despite knowing that the suit property was not HUF property, he still dishonestly represented to his sisters, i.e, respondents and the appellant no.2 that the suit property was HUF property and, therefore, the trial Court was justified in concluding that the family settlement stood vitiated on this ground alone. Even otherwise, the trial Court has found that the family settlement has not been acted upon till date, which position is virtually undisputed as the property was not sold till the time of filing of the suit before the trial Court in 1994, which was almost one year after the date of execution of the family settlement. I, thus, find no infirmity with the conclusion of the trial Court that the family settlement is null, void and unenforceable.

37. While concurring with the trial Court's finding that the family settlement is null and void, I am conscious of the fact that the Courts

must endeavour to give effect to a family settlement arrived at between the litigating members of a family. Family settlements, by their very essence, are integral to the resolution of disputes arising between family members, but such settlements in my view can be effective only when they arise out of transparency, honesty and amicability, which I find to be missing in the present case. Evidently, the motive of the appellant no.1 in executing the family settlement in question, was to usurp the legal rights of his sisters to their father's property by misleading them with respect to the very nature of the suit property. I may also note that today, it is only two daughters of late Sardar Kavaljit Singh, i.e. the respondents, who are claiming their share of 20% each in the suit property, while his third daughter/appellant no.2 is supporting the appellant no.1's claim and the deceased mother of the parties had already bequeathed her share in favour of the appellant no.1 by way of her registered will.

38. I also do not find any merit in the appellants' submission that the respondents had failed to prove fraud, undue influence and misrepresentation which were the main grounds on which the family settlement had been assailed in their plaint. A bare perusal of the findings shows that the respondents were able to establish that they had learnt about the suit property not being HUF property, only on receipt of the letter dated 14.06.1994 issued to them by the L& DO. While they had all along been misled by the appellant no.1 to believe that the suit property was HUF property in order to fraudulently induce them to enter into the

arrangement, it is evident that the family settlement has rightly been held to be vitiated on the grounds of misrepresentation and fraud itself. In these circumstances, it cannot be said that the respondents had, at the time of leading evidence, sought to urge new grounds beyond their pleadings or that the trial Court had erred in accepting the respondents' plea that the family settlement was vitiated by fraud, undue influence and misrepresentation. I, therefore, find no infirmity in the finding of the trial Court that the family settlement dated 02.08.1993 is null and void.

39. For all the aforesaid reasons, I find no reason to interfere with the impugned judgment. The appeals, being meritless, are dismissed along with the pending applications with no order as to costs.

SEPTEMBER 27, 2019

REKHA PALLI, J