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

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Judgment delivered on: 07.11.2019

+ C.R.P. 238/2018 & CM APPL. 46420/2018

SAKSHI & ANR

..... Petitioners

versus

DARSHAN SINGH (DECEASED) THR LRS

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. C.M. Grover, Advocate

For the Respondent: Mr. H.S. Sharma and Mr. Rakesh Kumar,
Advocates with legal heirs/respondents

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 22.09.2017 in so far as it dismisses the application of the petitioners under Order 7 Rule 11 CPC.
2. Subject Suit for partition was filed by the respondent – Shri Darshan Singh (now deceased) and represented by the present respondents as the legal heirs.
3. Suit sought partition of property bearing No. U-2, Hans Apartment, East Arjun Nagar, Delhi as well as the family business

running from the premises bearing no. 2/122, Nakul Gali, Vishwas Nagar, Shahdara, Delhi.

4. Subject application under Order VII rule 11 CPC was filed by the petitioners (grand daughter and daughter in law of Shri Darshan Singh) contending that the Suit for partition was filed in respect of properties which were exclusively owned and possessed by Shri Surender Singh Kalsi (son of Darshan Singh) and his wife (Petitioner No. 2). Petitioner No. 2 is the recorded owner of property bearing No. 2/122, Nakul Gali, Vishwas Nagar, Shahdara, Delhi. Shri Surender Singh Kalsi was the recorded owner of property bearing No. U-2, Hans Apartment, East Arjun Nagar, Delhi and on his demise said property devolved on his wife – Smt. Hani Kalsi (petitioner No. 2) and his daughter i.e. petitioner no. 1 absolutely and to the exclusion of all others.

5. It is contended that from the bare reading of the plaint, it is apparent that since the properties were in the name of the petitioners, no Suit for partition could lie.

6. Learned counsel further submits that the Suit is barred under Section 4 of the Benami Transactions (Prohibition) Act, 1988 as there was neither a Hindu undivided family nor HUF funds.

7. Learned counsel for the petitioner further submits that after the petitioner had filed an application under Order 7 Rule 11, an application under Order 6 Rule 17 CPC was filed by the legal heirs of

the plaintiff seeking to incorporate a plea of existence of Hindu undivided family, however, said application was dismissed by the same order and no appeal or proceedings have been initiated by the respondent impugning the order dismissing the application under Order 6 Rule 17 CPC. He submits that from the bare reading of the plaint, it is apparent that no cause of action is disclosed and further that the claim is prohibited under law.

8. In the plaint, the plaintiff has with regard to the subject properties pleaded as under:-

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3. That thereafter the plaintiff decided to finally settle with the youngest son with whom the plaintiff had all love and affection and also the wife of the plaintiff got deep love and affection as the youngest son was very much attached with the parent and hence the plaintiff decided to settle amicably the children in different ways. The plaintiff also decided to promote the business for the youngest son late Sh. Surender Singh Kalsi and ultimately started carrying out the business in the name of his youngest son Shri Surender Singh Kalsi and provided all financial assistance for promoting the business of his youngest son with the help of Sh. Mahender Singh who also provided financial assistance to the family business promoting by the plaintiff. The wife of the plaintiff also sold all her ornaments and also invested all her earnings in the family business being promoted by the plaintiff and the entire savings of life of the plaintiff was given to the youngest son for the development and promotion of independent

business as the plaintiff and his another son Sh. Mahender Singh started carrying out the business along with the youngest son and also the youngest son being the youngest one was given extra favour while giving financial assistance in the different business of the children and furthermore it was amicably settled by the other children that the plaintiff, Sh. Mahender Singh, Tarsem Kaur and the youngest son will reside jointly and will also carry out the business jointly and in any event the entire savings of the plaintiff as well as the jewellery of the wife of the plaintiff was invested in the business being carried out either in the name of the youngest son late Sh. Surender Singh Kalsi or in the name of other family members who were residing together with the plaintiff in the address given above.

4. That subsequently the defendant no. 1 started interfering the carrying out the business and very independently started alcohol together with the youngest son of the plaintiff and also brought her younger daughter and started residing together with the youngest son of the plaintiff and also started limitless drinking in the residential house where the plaintiff including the other family members were residing.

7. That with the development and promotion of the business. The plaintiff very honestly purchased property No.U-2, Hans Apartment, East Arjun Nagar, Delhi as well as purchased property No.2/122, Nakul Gali, Vishwas Nagar, Shahdara, Delhi-110032 in the name of the youngest son and his wife and the business was also promoted either

in the name of the youngest son or in the name of the wife of the youngest son as the plaintiff never wanted to create any rupture in the relations between the defendant no.1 and the other family members as the habits of defendant no. 1 and her younger sister was not appreciable and the defendant no. 1 was very alcoholic and used to take limitless liquor during the night together with the youngest son and her younger sister. However, the plaintiff objected to such heavy drinking but the defendant no. 1 threatened that in case of any objection the defendant no. 1 will implicate the youngest son and the entire family members under Sections 406/498-A IPC. Further the defendant no.1 from the beginning was very adamant and threatened the plaintiff that in the event the business is not promoted in the name of the defendant no.1 as well as properties are not purchased in the name of defendant no.1 with the family earnings then the defendant no. 1 will implicate the entire family members in some false cases through the Crime Women Cell.

8. That due to the indifferent attitude towards the family members the youngest son of the plaintiff started keeping alone and also started keeping unwell and also intimated time and again that the defendant no. 1 is of greedy nature and also the youngest son apprehended that either the family members will be implicated in some false cases or the youngest son may be killed in dubious circumstances and in fact it so happened that only 30 days back the youngest son was administered some alcoholic poison through which the youngest son of the plaintiff got senseless and was taken to hospital where he breathe his last living the plaintiff and the family members alone.

13. *That the relationship of the joint family will be clear from the pedigree i.e. given below:-*

<i>Dr. Darshan Singh</i>	
<i>Sh. Mahender Singh</i>	<i>Late Sh. Surender</i>
	<i>Singh Kalsi</i>
<i>(Son)</i>	<i>(Son)</i>

It is further submitted that the other sons have no concern with the joint family property that has been developed and purchased by the plaintiff together with the son Sh. Mahender Singh and late Sh. Surender Singh Kalsi, out of their own earnings through the joint business of the family that was being run by the plaintiff as well as by late Sh. Surender Singh Kalsi and Sh. Mahender Singh Kalsi.”

9. Perusal of the plaint, specifically the paragraphs as extracted hereinabove, shows that the case set up by the plaintiff - Shri Darshan Singh, was that in order to settle his younger son i.e. Shri Surender Singh Kalsi with whom he and his wife had deep love and affection and to promote his business they started a business in his name and provided all financial assistance for promoting his business with the help of their other son – Shri Mahender Singh. It is alleged that they also sold all the ornaments and invested in the business for development and promotion of the independent business younger son.

10. Further it is alleged in the plaint that the properties which are

subject matter of the Suit were purchased in the name of Shri Surender Singh and his wife and the business was also promoted in his name as they did not want to create rupture in the relationship between her and the family members due to the habit of taking alcohol by the daughter-in-law and further that she used to threaten that she would implicate all the family members under Section 406/498-A IPC and also implicate them in false cases through Crime Women Cell.

11. It is contended that it is in these circumstances that the properties were bought in the name of Shri Surender Singh Kalsi or the daughter-in-law. Further it is alleged that the properties were purchased out of their own earnings through joint business of the family that was being run by the plaintiff – Darshan Singh as well as Sh. Surender Singh Kalsi and Sh. Mahender Singh Kalsi.

12. Since the Suit was filed in the year 1996, provisions of the Benami Transactions (Prohibition) Act, 1988 as it existed prior to its amendment in 2016 would apply.

13. The expressions '*Benami Transaction*' has been defined by Section 2 of the Act as under:

2. Definitions- In this Act, unless the context otherwise requires,--

(a) benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person;

- (b) *prescribed means prescribed by rules made under this Act;*
- (c) *property means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.”*

14. Section 4 of the Benami Transactions (Prohibition) Act, 1988 (prior to its amendment by the Amendment Act 2016) reads as under:

“4. Prohibition of the right to recover property held benami. –

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply -

- (a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or*
- (b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the*

benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”

15. In terms of Section 4 (1) of the Benami Transactions (Prohibition) Act, 1988, no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

16. The exceptions to Section 4(1) of the Benami Transactions (Prohibition) Act, 1988, as enumerated in Sub-section 3, are that where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

17. Perusal of the plaint clearly shows that the case set up by the respondent is not that there was any Hindu undivided family in existence or that the parties were coparcener in a Hindu undivided family or that the property was purchased in the name of Shri Surender Singh Kalsi or his wife as coparcener of the Hindu Undivided family or as trustees or in fiduciary capacity.

18. A Coordinate Bench of this Court in *'Surender Kumar Khurana Vs. Tilak Raj Khurana & Ors. 2016 (155) DRJ 71* has held that 'joint

funds' or 'joint properties' are in law not equal to Hindu undivided family funds or Hindu undivided family properties or businesses and the joint funds is an expression which is not a law equal to joint Hindu family funds working together equivalent to existence of joint Hindu family.

19. Said Bench further held that specific and categorical averments have to be made with regard to the existence, creation and continuation of HUF and its properties.

20. In the present case, it is noticed that the respondent/Plaintiff had failed to even make an averment, leave alone prima facie substantiating, that there was any HUF ever created or in existence or continued and the properties subject matter of the Suit were purchased out of such HUF funds.

21. From the bare reading of the plaint, it is apparent that the claim set up in the plaint is barred by Section 4 sub-section (1) of the Benami Transactions (Prohibition) Act, 1988.

22. Clearly, the trial court has erred in dismissing the application under Order 7 Rule 11 CPC solely on the ground that an issue has been framed and it would be a matter of trial as to whether the property is individual property or has been purchased by the joint family funds.

23. Since there is no averment that there was any Hindu Undivided

Family in existence and the properties were purchased out of Hindu Undivided Family, no evidence can be permitted to be led by the Plaintiffs on the said aspect. In the absence of pleadings to the said effect, no evidence can be led.

24. Further, it may be kept in mind that an application filed by the Respondents/plaintiff under Order 6 Rule 17 CPC to specifically plead existence of Hindu Undivided Family was rejected by the Trial Court by order dated 22.09.2017 and no appeal was filed impugning the order dismissing the application for amendment.

25. Accordingly, the Suit appears from the statement in the Plaint to be barred by the Benami Transactions (Prohibition) Act, 1988.

26. In view of the above, the impugned order dated 22.09.2017 is set aside. Application filed by the petitioner under Order 7 Rule 11 is allowed. Subject Plain is accordingly rejected under Order 7 Rule 11 (d) Code of Civil Procedure.

27. Revision Petition is accordingly allowed in the above terms

28. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

NOVEMBER 07, 2019

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