

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

% **Date of decision: 16th April, 2019.**

+ **CS(OS) 374/2018 & IA No.10091/2018 (u/O XXXIX R-1&2 CPC)**

NIKHIL BATRA **Plaintiff**

Through: Mr. Vinay Jaidka, Adv.

Versus

DIWAKAR BATRA & ORS. **Defendants**

Through: Mr. Rahul Gupta, Mr. Shekhar Gupta
& Mr. Arav Kapoor, Advs. for D-
1,2&4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff Nikhil Batra has instituted this suit against (i) Diwakar Batra, (ii) Sudhakar Batra, (iii) Ratnakar Batra, (iv) Divya Batra, and, (v) Bhavna Batra, for partition of property No.A-2/27, Janakpuri, New Delhi pleading that, (a) the aforesaid property was acquired by paternal grandmother Kanta Batra of the plaintiff from the monies received by her husband K.N. Batra i.e. the paternal grandfather of the plaintiff for giving up his share in property F-259, New Rajinder Nagar, Delhi which was the property of the Hindu Undivided Family (HUF) of B.D. Batra being the paternal great grandfather of the plaintiff; (b) B.D. Batra along with his sons K.N. Batra and S.K. Batra born in the years 1924 and 1939 respectively, had migrated from Multan now in Pakistan and in lieu of properties left behind in Pakistan was allotted property No.F-259, New Rajinder Nagar, Delhi which was property of the HUF; (c) B.D. Batra died on 3rd June, 1955 leaving two sons viz. K.N. Batra and S.K. Batra and property No.F-259,

New Rajinder Nagar, Delhi belonged to the HUF of K.N.Batra and S.K. Batra; (d) as per mutual settlement between K.N. Batra and S.K. Batra, K.N. Batra in lieu of his share in property No.F-259, New Rajinder Nagar , Delhi took money from S.K. Batra and from the said monies brought property No.A-2/27, Janakpuri, New Delhi in the name of his wife viz. Kanta Batra; (e) Kanta Batra died on 22nd March, 2015 leaving defendants no.1 to 3 as her sons and the plaintiff and defendants no.4 and 5 as her grand children; (f) that since property No.A-2/27, Janakpuri, New Delhi has been bought from the funds received on partition of HUF property F-259, New Rajinder Nagar, Delhi, though in the name of Kanta Batra wife of K.N. Batra, would also be HUF property and the plaintiff by birth would have a share therein.

2. The suit came up before this Court first on 1st August, 2018 when, without recording any reasons as to the maintainability thereof the same was entertained and summons thereof ordered to be issued and *status quo* regarding title of the property ordered to be maintained.

3. The defendant no.1, for himself and on behalf of defendants no.2 & 4 and the defendant no.3 for himself and on behalf of defendant no.5, appeared before this Court on 30th October, 2018. However none of the defendants filed any written statement and their right to file written statement was closed vide order dated 11th February, 2019.

4. The suit came up before this Court yesterday i.e. 15th April, 2019 when it was the contention of the counsel for the defendants no.1,2&4 that the plaintiff, as per averments in the plaint had no cause of action for the suit for partition and the suit was liable to be dismissed.

5. Adjournment was sought on behalf of the counsel for the plaintiff yesterday and the suit was posted for today.

6. Today, the counsel for the plaintiff has appeared and has been heard on the maintainability of the suit. He contends that since the subject property, being property No.A-2/27, Janakpuri, New Delhi, though in the name of Kanta Batra, paternal grandmother of the plaintiff, was purchased from the funds received by her husband K.N. Batra (who was the paternal grandfather of the plaintiff) for giving up his share in property no. F-259, New Rajinder Nagar, Delhi which was a property of the HUF, the property No.A-2/27, Janakpuri, New Delhi also is property of the HUF and the plaintiff, being the son of defendant no.3 who in turn is the son of K.N. Batra, has a share in the property.

7. The plaintiff, along with the plaint has filed (i) proof of his identity; (ii) copy of the Perpetual Lease Deed dated 29th June, 1971 with respect to property No.A-2/27, Janakpuri, New Delhi in the name of Kanta Batra; (iii) Conveyance Deed dated 3rd August, 1999 of freehold rights with respect to property No.A-2/27, Janakpuri, New Delhi in favour of Kanta Batra; and, (iv) Death Certificate of Kanta Batra showing her date of death as 22nd March, 2015.

8. The counsel for defendants no.1,2&4 relies on (i) ***Surender Kumar Vs. Dhani Ram*** AIR 2016 Del 120; (ii) ***Marabasappa Vs. Ningappa*** (2011) 9 SCC 451; (iii) ***Ashok Sardana Vs. Dropadi Devi*** 195(2012) DLT 297; (iv) ***Satyawati Vs. Suraj Bhan*** MANU/DE/1085/2017; and, (v) ***Saurabh Sharma Vs. Om Wati*** 250 (2018) DLT 544 to contend that the plaintiff, as per averments in the plaint, applying the prevalent law, has no rights in the property.

9. What immediately strikes one in the face is that the plaintiff has not filed any documents with respect to property no. F-259, New Rajinder

Nagar, Delhi with respect where to it is claimed was a HUF property and out of share wherein the property no. A-2/27, Janakpuri, New Delhi was acquired.

10. The counsel for the plaintiff states that since the plaintiff has made averments in the plaint to the effect that property no. F-259, New Rajinder Nagar, Delhi was a HUF property and property no. A-2/27, Janakpuri, New Delhi was acquired from funds received for giving up share in property no. F-259, New Rajinder Nagar, Delhi, even if has not filed any documents, the plaintiff has to be given an opportunity to prove the case set-up. It is stated that Kanta Batra was a housewife with no source of income.

11. The counsel for the defendants no.1,2&4 states that defendant no.3 Ratnakar Batra, being the father of the plaintiff, has instituted Test. Cas. with respect to a document claimed to be the Will of Kanta Batra and which Test. Cas. is pending adjudication.

12. On enquiry as to who appears for defendant no.3 Ratnakar Batra, one lady who claims to be Jaishree Batra wife of Ratnakar Batra and mother of the plaintiff states that the property No.A-2/27, Janakpuri, New Delhi has been made from the funds of the property no.F-259, New Rajinder Nagar, Delhi.

13. It is quite obvious that the defendant no.3 in this suit is supporting his son and otherwise is seeking to prove the document claimed to be the Will of Kanta Batra, stated to be executed in her capacity as the absolute owner of the property.

14. I have considered the respective contentions.

15. The property No.A-2/27, Janakpuri, New Delhi of the paternal grandmother of the plaintiff, perpetual lease of land whereunder was

acquired by her from the government authorities in her own name as far back as in the year 1971, in my opinion cannot in law constitute a property of the HUF of her husband K.N. Batra (who is stated to have died in the year 1985) along with his sons, for the plaintiff as her grandson to have a share therein. As far as the argument, of Kanta Batra being a housewife and being a benami owner of the property, is concerned, the same is barred by the provisions of Benami Transactions (Prohibition) Act, 1988. It is not open to the plaintiff to contend that the property was held *benami* by Kanta Batra on behalf of HUF. Moreover, there is nothing, save for a bald plea to this effect and which does not constitute a pleading in law. There is no plea, a) of the amount received in lieu of share in property no.F-259, New Rajinder Nagar, Delhi; b) of, in whose name property no.F-259, New Rajinder Nagar, Delhi was recorded; c) of how the share in property no.F-259, New Rajinder Nagar, Delhi relinquished and how such relinquishment was recorded / acted upon; d) of why was property No.A-2/27, Janakpuri, New Delhi not acquired in name of K.N. Batra; and, e) of property No.A-2/27, Janakpuri, New Delhi at any time having been treated as or dealt with the property of any HUF. In today's day and time, when abuse of process of Court is rampant, the Court cannot, at the mere making of a bald plea, set their process in motion and allow abuse thereof, obviously to the prejudice of other parties. Had there been an iota of truth, pleadings with particulars would have been made.

16. As far back as in *Pushpa Devi Vs. Commissioner of Income-Tax, New Delhi* (1977) 4 SCC 184, it was held (i) that a Hindu coparcenary is a much narrower body than the joint family and it includes only those persons who acquire by birth an interest in the joint or coparcenary property; (ii) that

a Hindu female, is not a coparcener; (iii) that even the right to reunite is limited under the Hindu law to males; (iv) that a female member of such family cannot blend her separate property, even if she is an absolute owner thereof, with the joint family property; (v) that if a Hindu female, who is a member of an undivided family, impresses her absolute, exclusive property with the character of joint family property, she creates new claimants to her property, to the exclusion of herself, because not being a coparcener, she has no right to demand a share in the joint family property by asking for a partition; she has no right of survivorship and is entitled only to be maintained out of the joint family property; her right to demand a share in the joint family property is contingent, on partition taking place between her husband and his sons; (vi) that thus the expression 'blending' is inapposite in the case of a Hindu female who puts her separate property, be it her absolute property or limited estate, in the joint family stock; (vii) that the only way a Hindu female can divest herself of her property in favour of an undivided family of which she is a member, is by way of a gift; and, (viii) that whether the separate property is female's absolute property or whether she has a limited estate in that property would make no difference to that position. The same view was reiterated in ***Commissioner of Income Tax, Bihar-II, Ranchi Vs. Sandhya Rani Dutta*** (2001) 3 SCC 420 and it was held that no Hindu females could form amongst themselves, a HUF.

17. Mention may also be made of a judgment of a learned Single Judge of the High Court of Orissa in ***Santanu Kumar Das Vs. Bairagi Charan Das*** AIR 1995 Ori 300 and with which I respectfully agree. In that case, the property was purchased in the name of a female, when the family members were living jointly and the husband of the said female was the manager and

karta of the family. It was the case of the son of the said female that the property was purchased from joint family fund and it was so purchased in the name of the female to maintain goodwill with her. It was held that the Courts below were under a misconception of law that when a property is purchased in the name of a female member of the joint family and there is sufficient nucleus, the said property should be presumed to be joint family property. Such a presumption was held to be available only in the case of a male member of the family, but not a female member. It was held that a female may continue to be a member of the joint family, but property purchased in her name is not joint family property. Reliance was placed on earlier judgment of the Division Bench of the same High Court in ***Manahari Devi Vs. Choudhury Sibanova Das*** AIR 1983 Ori 135 and which in turn relied on yet another judgment of the High Court of Madras in ***Nagayasami Naidu Vs. Kochadai Naidu*** AIR 1969 Mad 329.

18. However, the aforesaid judgments are also of an era when benami as a plea was permitted in the Indian Courts. The Benami Transactions (Prohibition) Act which came into force on 5th September, 1988 changed the said position. Section 4 thereof bars a 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, on behalf of a person claiming to be the real owner thereof. However the said bar, per Section 4(3) does not apply to the person in whose name the property held is a coparcener in a HUF and the property is held for the benefit of coparceners in the family or where the person in whose name the property is held is a trustee or otherwise standing in a fiduciary capacity and who holds the property for the benefit of any other person for whom he is a trustee or for

whom he stand in such capacity. However, the said exceptions would not be attracted inasmuch as neither can a Hindu female be a coparcener nor is Kanta Batra said to be standing or stood in law in a fiduciary capacity qua her husband or qua the alleged HUF.

19. The aforesaid Act has been amended with effect from 10th August, 2016 and is now known as Prohibition of Benami Property Transactions Act, 1988. Section 4 of the Amended Act also bars a suit to enforce any right in respect of a property held benami.

20. The plea of the plaintiff in this suit, of Kanta Batra being the benami owner of the property and HUF of K.N. Batra being the real owner of the property, is in the teeth of the said law.

21. As far as the judgments cited by the counsel for the defendant no.1 are concerned, (i) **Ashok Sardana** and **Marabasappa** supra concerned with claims, of the property in the name of a female being the property of the HUF, referred to Section 14 of the Hindu Succession Act, 1956 mandating that any property of a female Hindu is her absolute property and she has full ownership thereof; (ii) **Surender Kumar** and **Satyawati** supra explain what constitutes a coparcenary / Hindu undivided family; and, (iii) **Saurabh Sharma** supra was also a case of a property of a female Hindu and also holds that the same cannot constitute a property of the HUF.

22. Once it is held that the property No.A-2/27, Janakpuri, New Delhi, in law and on the averments in the plaint, cannot be the property of the HUF, the question of the plaintiff having any share therein would not arise. On the demise of Kanta Batra, in the absence of any Will, the said property would devolve on her heirs in accordance with Section 15 of the Hindu

Succession Act upon her sons and daughters and not upon the plaintiff who is the grandson of Kanta Batra.

23. It may also be noticed that none other than the plaintiff including the father of the plaintiff i.e. the defendant no.3 is claiming the property to be of the HUF. On the contrary, the father of the plaintiff is claiming the property to be the sole property of Kanta Batra and is claiming exclusive right thereto under a document stated to be the last Will of Kanta Batra. The claim if any of the plaintiff to the property can be only out of the share of his father and once the father of the plaintiff himself is not supporting the plea of the plaintiff, it is quite obvious that the present suit has been filed by the plaintiff in collusion with his father and for the eventuality of the father of the plaintiff failing in the Will set up by him.

24. The suit is thus dismissed with costs payable by the plaintiff to the defendants no.1,2&4 of Rs.30,000/-.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

APRIL 16, 2019

‘gsr’/pp/bs’

(Corrected & released on 27th April, 2019)