

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

% **Date of decision: 27th May, 2020**

+ **CS(OS) 2454/2009**

PARMOD KUMAR JAIN & ANR

..... Plaintiffs

Through: Mr. Rajiv Dutta, Sr. Adv. with Mr. Kumar Dushyant Singh, Mr. Siddharth Dutta and Mr. Devesh Kumar Chauvia, Advs.

Versus

RAM KALI JAIN & ORS.

..... Defendants

Through: Mr. Darpan Wadhwa, Sr. Adv. with Aditya Vaibhav Singh and Mr. Manish Kaushik, Advs. for D-1&3. Mr. Kuljeet Rawal and Mr. Vikram, Advs. for D-4. Mr. R.K. Naagpal, Adv. for D-5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This suit for partition of property bearing No.26, admeasuring 3595 sq. mts., Friends Colony (West), New Delhi came up before the undersigned on 7th August, 2019, for hearing of some pending applications and for framing of issues. Having heard the counsels on the controversy for the purposes of adjudicating the applications, it was felt that the question of framing of issues if any qua the pleas of the defendants of Hindu Undivided Family (HUF) and oral family settlement will have to be first adjudicated and if it was found that no issue arises on the said aspect, in accordance with the admitted position as to title through documents, there should be no impediment to a decree for partition being passed immediately. It was however further felt that the counsels should have an opportunity to address

the Court on the said aspect. Accordingly, the framing of issues was deferred to 20th November, 2019 and on which date the counsels were heard and order on framing of issues deferred.

2. The suit has had a chequered history, as also evident from the fact that inspite of having been pending for over ten years, issues even have not been framed as yet.

3. The suit was originally instituted by Niti Jain (Niti) against (i) Ram Kali Jain (Ram Kali), (ii) Shruti Jain (Shruti), (iii) Pramod Kumar Jain (Pramod), (iv) Sunil Jain (Sunil), (v) Ramesh Kumar Jain (Ramesh) and (vi) Raj Kumar Jain (Raj Kumar). It was the case of Niti, that (a) Niti, (b) Ram Kali and Shruti together, (c) Pramod and (d) Sunil had 1/4th share each in the property and Ramesh and Raj Kumar were impleaded, being tenants in the property. Pramod and Sunil, in their written statements, supported the claim of Niti to the extent of the share of different parties in the property. However Ram Kali, Shruti, Ramesh and Raj Kumar controverted the claim of Niti with respect to the shares in the property also.

4. Vide order dated 9th December, 2013, Pramod and Sunil, whose stand qua the shares in the property was the same as Niti, were transposed as plaintiffs in the suit along with Niti. Vide order dated 9th December, 2015, the suit, on enhancement of minimum pecuniary jurisdiction of this Court, was transferred to the District Court. However finding the valuation of the suit to be defective and the suit as per valuation pleaded by Niti also being within the pecuniary jurisdiction of this Court, vide order dated 20th August, 2016 of the District Judge, the plaintiffs were directed to amend the plaint qua valuation and the suit sent back to this Court. Vide subsequent order

dated 10th April, 2019, on the plea of Pramod and Sunil that Niti was not co-operating in filing of amended plaint with correct valuation as directed by the District Judge and that Niti was in collusion with the other defendants, Niti was transposed from plaintiff no.1 to the defendant no.5 in the suit. Thus the position today is, that Pramod and Sunil are plaintiffs and Ram Kali, Shruti, Ramesh, Raj Kumar and Niti are defendants no.1 to 5 in the suit. However, the parties in this order/judgment will be referred to by their name as aforesaid instead of their nomenclature.

5. It is not in dispute that (i) title to the property was acquired vide sale deed dated 14th November, 1978 in the names of Rakesh Kumar Jain (Rakesh), Pramod, Sunil and Sushil Kumar Jain (Sushil); (ii) the said Rakesh, Pramod, Sunil and Sushil were / are sons of J.R. Jain, R.N. Jain, N.L. Jain and S.R. Jain respectively; (iii) the said J.R. Jain, R.N. Jain, N.L. Jain and S.R. Jain were sons of Uddham Singh Jain; (iv) Rakesh gifted his 25% share in the property to his wife Niti; (v) Sushil, son of S.R. Jain, gifted his 25% share in the property to Ram Kali, wife of J.R. Jain and mother of Rakesh; (vi) Ram Kali, out of her 25% share in the property, gifted 12.5% share to Shruti; and, (vii) in this way, (a) Niti, (b) Pramod, (c) Sunil and (d) Ram Kali and Shruti together were / are the owners of 25% share each in the property.

6. It is the defence of Ram Kali, Ramesh and Raj Kumar in the joint written statement of Ram Kali and Ramesh on the one hand and separate written statement of Raj Kumar on the other hand, that (a) all the members of the joint family have not been impleaded as parties to the present suit and the suit is thus not maintainable; (b) the suit is not also maintainable being for

partial partition of properties of HUF; there are other various properties and businesses of the joint family which also need to be included in case partition is to be effected; (c) the parties to the suit are descendents of Uddham Singh Jain who was the Chairman of Municipal Committee of Charkhi Dadri, Haryana and had lot of assets in the shape of agricultural land and properties; (d) Uddham Singh Jain had four sons viz. R.N. Jain, J.R. Jain, S.R. Jain and N.L. Jain; (e) J.R. Jain, some time in the year 1942-43, started family business with his father Uddham Singh Jain, of manufacture of electric stoves, in Delhi; they made good fortune and entered into other businesses; (f) J.R. Jain was very energetic and enthusiastic and in 1948 shifted to Assam for exploiting the business opportunities there; (g) as the business was expanding R.N. Jain, S.R. Jain and N.L. Jain also joined the family business; (h) as the business expanded even further, various companies like Jain Steel Fabricators Pvt. Ltd., Jain Tube Mills India Pvt. Ltd., Jain Tube Co. Ltd., Ajanta Tubes Ltd. etc. were incorporated; as the family was joint, the shareholding of these companies was allotted in such a manner that each brother had an equal share in the same; (i) as the business was growing, the family, in or about 1951, bought house No.110-D, Kamla Nagar, Delhi in the name of wives of N.L. Jain, R.N. Jain, J.R. Jain and S.R. Jain; in 1962, property No.3372/73, Hauz Qazi, Delhi was acquired “with the funds of HUF”; the title deed was again executed in such a manner so that each brother gets an equal share; in 1970, property No.14 Alipur Road, Delhi was purchased in the name of wives of N.L. Jain, R.N. Jain, J.R. Jain and S.R. Jain so that each brother had equal share; in 1978, the subject property No.26, Friends Colony (West), New Delhi was purchased and thereafter rebuilt, again in such a manner that the four brothers had an equal share i.e. in

the names of son of each of the brothers i.e. Pramod, Rakesh, Sushil and Sunil; (j) in order to avoid disputes, it was orally decided, with the blessings of the father Uddham Singh Jain, that subject property No.26, Friends Colony (West), Delhi shall be occupied and belong to J.R. Jain and his family, house No.14, Alipur Road, Delhi shall be owned and enjoyed by R.N. Jain and S.R. Jain and their families and the property at Kolkata will be enjoyed by Anil Jain, son of N.L. Jain and his family; was also given occupation of a bungalow at Mumbai; (k) the said family settlement was implemented and the four brothers and their families continued to enjoy the properties in terms thereof; (l) as per further oral settlement within the family of J.R. Jain, it was decided that in the subject property No.26, Friends Colony (West), Delhi, Ram Kali, Raj Kumar, Ramesh, Mukesh and Rakesh shall have an equal share; Vinod, another son of J.R. Jain, was residing at House No.25, Friends Colony (West), Delhi and Vijay Jain another son of J.R. Jain was residing at Mumbai; (m) as formal recording of transfer of title would have required a lot of documentation and expenditure, the oral family settlement was given effect to in various forms: (i) Ram Kali gifted her share in house No.14, Alipur Road property in favour of Sushila, wife of S.R. Jain; (ii) Sushil, son of S.R. Jain, executed Gift Deed in favour of Ram Kali of his share in subject property No.26, Friends Colony (West), Delhi; and, (iii) similar transactions of “so called rent” were created in favour of various companies like Jain Export Pvt. Ltd., Ajanta Tubes and Pashupati Spinning and Weaving Mills Ltd. which otherwise belonged to Raj Kumar and Ramesh; (n) J.R. Jain, being the head of his branch of the family, continued to deal with the property with all authorities including MCD on behalf of all those in whose name the sale deed of the property may have existed; (o)

disputes started arising amongst the family members in 2005; (p) when J.R. Jain confronted his brothers in this regard, they apologized for their behavior and the matter rested; (q) however on demise of R.N. Jain on 2nd May, 1997 again disputes started; (r) Mukesh Jain, son of J.R. Jain expired on 31st July, 1997; to assure his wife, Ram Kali transferred 12.5% out of her 25% share in the subject property in favour of his widow Shruti by way of Gift Deed; and, (s) J.R. Jain and his family have been using the property and have been making additions, alterations and constructions therein. This narrative has been given from the written statement of Ram Kali and Ramesh. Though in the written statement of Raj Kumar details of certain additional properties are also given but the same are not relevant for the present purposes and thus are not recorded herein.

7. Suffice it is to state that Niti, in her replication disputed the existence of any HUF or of oral family settlement and Pramod and Sunil also controvert the same.

8. Ram Kali and Ramesh, along with their written statement, have produced before this Court a document described in the index of documents as “copy of Family Settlement” and which is a photocopy of a single page document with no title, as under:

“We agree to divide all the assets of JAIN GROUP in seventeen Shares after first taking up Rs.5 Crore which is to be divided in four equal shares Plus Rs.0 lacs each for two unmarried girls.

The assets of all persons, Ladies and Children in their name or in the name of third party or Benami will be disclosed including Ornaments by taking oath.

Sd/-
(Dr. R.N. Jain)

Sd/-
(S.R. Jain)

Sd/-
(Vinod Jain)

Sd/-
(Vijay Jain)

Sd/-
(Raj Kumar Jain)

Sd/-
(Rakesh Jain)

Sd/-
(Ramesh Jain)

Sd/-
(Mukesh Jain)

Sd/-
(Sunil Jain)”

Sd/-
(J.R. Jain)

Sd/-
(N.L. Jain)

Sd/-
(Swaraj Jain)

Sd/-
(Pramod Jain)

Sd/-
(Satish Jain)

Sd/-
(Pradeep Jain)

Sd/-
(Sushil Jain)

Sd/-
(Anil Jain)

9. Though the document aforesaid does not bear any date but Vinod Jain and Ramesh Jain, under their signatures have mentioned the date of “13/10/88” and Pramod Jain and Satish Jain under their signatures have written the date “13/8/92”.

10. The question for adjudication, as stated in the opening paragraph of this order / judgment also, is, whether on the pleas aforesaid in the written statements of Ram Kali, Ramesh and Raj Kumar, any issues are required to be struck with respect to (i) existence of an HUF, (ii) the subject property being owned by the said HUF and (iii) of an oral family settlement amongst

the members of the HUF and whereunder the subject property is claimed to have fallen exclusively into ownership of the branch of J.R. Jain. If it were to be held that on the said pleas, no issue with respect to existence of HUF, ownership of the property of HUF and resultantly in the oral family settlement amongst the members of the HUF, the property falling to the share of J.R. Jain branch, are not required to be framed, there is no impediment to passing a decree for partition as per the title documents and whereunder (i) Niti, (ii) Promod, (iii) Sunil and (iv) Ram Kali and Shruti together, have 1/4th undivided share each in the property and a preliminary decree for partition can follow.

11. The law with respect to framing of issues and HUF has been dealt with repeatedly, not only by me on earlier occasions but also in a large number of other judgments.

12. Reference on the aspect of framing of issues can be made to:

- (a) ***Precision Steels Vs. Reeta Salwan*** (2013) 205 DLT 695 holding (i) it is not as if the CPC requires all matters to be decided only after trial, unless admissions are made; (ii) issues are to be framed on material propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence; (iii) where parties are found not in issue on any question of law or fact, Order XV requires the Court to at once pass judgment; (iv) if on a meaningful, not formal reading, the pleading is found to be manifestly vexatious and meritless, not disclosing a right to sue or defend and implausible, the Court should exercise its

powers and should not allow it to create an illusion and such defences should not be needlessly permitted to go to trial; and, (v) mere clever drafting by advocates cannot compel the Courts to put a suit to trial and the Court is entitled to see through and clear the maze sought to be raised and see what the real defence is.

- (b) ***Kawal Sachdeva Vs. Madhu Bala Rana*** 2013 SCC OnLine Del 1479, holding (i) the Court would not frame an issue on a point of law which is perfectly clear; (ii) if the plea is *mala fide* or preposterous or vexatious and can be disposed of without going into the facts or is contrary to law or the settled legal position, the Court will not be justified in adopting a hands off policy and allow the game of the defendant to have its sway; (iii) it is a notorious fact that to drag a case, a litigant often takes all sorts of false untenable pleas; legal process should not be allowed to be misused by such persons and only such defence as give rise to clear and *bona fide* dispute should be put to trial and not illusory or unnecessary or *mala fide* based on false or untenable plea, to delay the suit; (iv) the Court is not bound to frame an issue on unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable time; (v) in order to frame an issue, it is necessary to consider whether the plea raised is *bona fide* or merely raised to delay decision in the matter and which entitles the litigant so raising the plea to remain in possession of the property until adjudication of the issue; (vi) it is necessary to

see whether there is sufficient material placed on record to frame an issue; (vii) the Court is not under any obligation to frame and remit the issue mechanically, merely on the same being raised in the written statement and without judicial satisfaction of its necessity and justification; (viii) if the Courts were to so act mechanically, it prompts and tempts unscrupulous litigants to take pleas to perpetuate their unmerited possession; (ix) when a vague plea is taken, the Court should hesitate to frame an issue unless the parties are able to give particulars in support of the plea; and, (x) if it were to be held that on every plea, howsoever vague and unsubstantiated, an issue needs to be struck, there can be no effective application of Order XII Rule 6 of the CPC.

- (c) ***Adarsh Kumar Puniyani Vs. Lajwanti Piplani*** 2015 SCC OnLine Del 14022, in addition holding that in the absence of particulars viz. date, mode and terms of creation of tenancy, in the pleadings, an issue, on bare claim of tenancy ought not to have been framed that that a bogey of a legal defence should not be permitted to prevail.
- (d) ***Abbott Healthcare Pvt. Ltd. Vs. Raj Kumar Prasad*** (2018) 249 DLT 220 holding that a mere plea of invalidity (of registration of trade mark) in the pleading would not be enough to raise an issue of invalidity, without satisfying the Court that the said plea is *prima facie* tenable and for which specific averments will ought to be made in the pleadings.

- (e) **Anil Kumar Vs. Devender Kumar** 2019 SCC OnLine Del 8782, holding that (i) framing of omnibus issues with respect to the reliefs claimed, is in violation of Order XIV Rule 1(3) of the CPC which requires distinct issues to be framed on each material position affirmed by one party and denied by the other party; such omnibus issues do not cull out the material proposition of fact or law on which the parties are at variance and do not tell the Court the issues on which the right decision of the case depends; (ii) the stage of framing the issues is an important one as on that day, the scope of the trial is determined by laying the path on which trial shall proceed, excluding diversions and departures therefrom; and, (iii) at the stage of framing of issue, the real dispute between the parties is determined, the area of conflict is narrowed and a concave mirror held by the Court reflecting the pleadings of the parties pinpointing into issues and disputes on which the two sides differ.
- (f) **Bhavna Khanna Vs. Subir Tara Singh** 2019 SCC OnLine Del 6978, holding that what is required to be seen, at the stage of framing of issues, is, whether the pleaded defence of the defendant, in law, entitles the defendant to defeat the claim of the plaintiff. If it does not, it will not constitute a material proposition of fact or law for an issue to be framed thereon.
- (g) **Satish Kumar Vs. Purshottam Maheshwari** MANU/DE/2741/2019 where finding the pleaded defence of the

defendant to be barred by law, no issue was framed and decree passed immediately.

13. Reference on the aspect of HUF can be made to:

- (i) ***Neelam Vs. Sada Ram*** 2013 SCC OnLine Del 384, holding (i) that the Hindu Succession Act, 1956 did away with the concept of ancestral properties as existed prior thereto; after coming into force thereof, the property inherited by a male from his father is held as self-acquired property in which children of such male do not acquire any right by birth; (ii) that the plea of property being a joint family property owing to being jointly owned by members of a family, is not the plea of existence of a coparcenary or HUF; (iii) that HUF and coparcenary are not one and the same under the Hindu law though for the purposes of taxation under the taxation laws are treated as one and the same; (iv) that the law of succession, after coming into force of the Hindu Succession Act is governed thereby only; of course Section 6 thereof carves out an exception qua interest held by the deceased in a Mitakshara coparcenary property and provides that such interest shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the Act; (v) however in the absence of any plea of existence of any coparcenary, merely on the plea of the property being of the joint family, no inference of a coparcenary arises; (vi) for a case for claiming a share in the property otherwise than under the Hindu Succession Act, it has to be pleaded that

there existed a HUF since prior to the coming into force of the Succession Act and which HUF, by virtue of Section 6 of the Act has been permitted to be continued.

- (ii) ***Surender Kumar Vs. Dhani Ram*** AIR 2016 Del 120 holding as under:

“5. The Supreme Court around 30 years back in the judgment in the case of ***Commissioner of Wealth Tax, Kanpur v. Chander Sen***, (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 v. Ashok Kumar***, (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) v. Sh. Raj Singh**, 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.”

- (iii) ***Sagar Gambhir Vs. Sukhdev Singh Gambhir*** (2017) 241 DLT 98 (DB) affirming ***Surender Kumar*** supra and as noted in ***Saurabh Sharma Vs. Om Wati*** 2018 SCC OnLine Del 9186.
- (iv) ***Sangeeta Vs. Ramphool @ Bobby*** 2016 SCC OnLine Del 5774, ***Jagdish Singhal Vs. Ram Bhaj Bansal*** 2017 SCC OnLine Del 8031, ***Sukruti Dugal Vs. Jahnvi Dugal*** 264 (2019) DLT 182 and ***Raj Kumar Vs. Ram Bhaj Bansal*** 2019 SCC OnLine Del 9658 following the above.

14. The senior counsel for defendants Ram Kali and Ramesh, (a) drew attention to page 136 of Part-1A, Volume-II file, being the family tree commencing from Uddham Singh Jain and ending with the wives, children and grandchildren of the sons of Uddham Singh Jain; (b) drew attention to the written statement of Raj Kumar, where the history as aforesaid from J.R. Jain along with his father Uddham Singh Jain commencing business and subsequently other sons of Uddham Singh Jain joining the said business, is pleaded; (c) contended that each of the business and each of the properties owned by the family has a member / representation from the family of each of the four sons of Uddham Singh Jain; (d) contended that the oral family settlement arrived at was implemented through execution of Gift Deeds *inter se* family members; (e) contended that such conduct of the members of the family demonstrates a family settlement and which will be proved during trial; (f) contended that, it is for the reason of said family settlement only that J.R. Jain's family is in exclusive occupation of the subject property at 26, Friends Colony (West), Delhi and similarly the families of the other three sons of Uddham Singh Jain are also in exclusive occupation of other

properties so acquired by the family and in which J.R. Jain and his family members inspite of having a share are not asserting any right; similarly in no other property also constituents of other branch of the family though having a share are asserting any right; (g) contended that such long course of conduct itself is proof of a family settlement and this is not such a suit where opportunity to further prove the plea of HUF and oral family settlement should not be granted; (h) contended that in fact wherever Gift Deeds have not been executed, the concerned family members are bound under the family settlement to execute the same; (i) a copy of the written statement dated 2nd July, 2019 filed by Pramod in CS(OS) No.261/2019 of this Court filed by Poonam Jain and others against Kailashwati Jain and others was handed over in the Court and attention was invited to paragraph (c) of the preliminary submissions therein where Pramod has pleaded that he along with others was in possession of property No.14, Alipur Road, Civil Lines, Delhi, ad-measuring 6170 sq. yds. and was asserting a title and ownership claim to the said property and had also filed CS(OS) No.182/2017 in this Court in this regard; attention was also invited to paragraphs (e) and (f) of the preliminary submissions in the said written statement where Pramod has pleaded that Kailashwati Jain wife of R.N. Jain, Ram Kali wife of J.R. Jain, Sushila Devi Jain wife of S.R. Jain and Ratan Mala Jain wife of N.L. Jain had purchased the property No.14, Alipur, Delhi out of the funds of their respective husbands which were drawn from their partnership firm M/s Jain Bros.

15. The counsel for Raj Kumar supported the aforesaid contentions of Ram Kali and Ramesh.

16. Neither is there any written statement of Shruti nor any appearance on her behalf despite service.

17. The counsel for Niti stated that he had nothing to address.

18. During the hearing on 20th November, 2019, it was enquired from the senior counsel / counsel aforesaid of the contesting defendants, whether the HUF alleged and which HUF as per the allegations owned a large number of properties, was/is reflected in any document of taxation or otherwise before any governmental authority and was assessed for income tax and wealth tax.

19. The answer was either in the negative or that there were no instructions.

20. It was enquired from the senior counsel / counsel for the contesting defendants, how the property, once purchased by four persons, even if of the same family, became the property of any HUF and whether not under the law i.e. the Transfer of Property Act, 1882, in the absence of any specification of respective shareholding, all four purchasers are co-owners of the property. It was also enquired from the senior counsel / counsel for the contesting defendants that if the four family members representing each of the four branches of the four sons of Uddham Singh Jain were not the absolute owner of one-fourth undivided share in each of the property, in their personal individual capacity and joined the purchase merely as members of HUF, with the property being of the HUF, how could they execute Gift Deeds in favour of others, representing in the said Gift Deeds to be the sole absolute owner of one-fourth share, of which the sale deed dated 14th November, 1978 stood in their name. I may in this regard notice that the Gift Deeds filed by the plaintiffs as well as the Gift Deeds filed by the

contesting defendants have been executed by the executants thereof representing to be the sole absolute owner of the share in the property gifted under the deed being executed. Had the property been of any HUF or been treated by the family members to be of the HUF, the family members in whose name sale deed of the property stood, could not have so executed the Gift Deeds.

21. No answer was forthcoming.

22. It was also enquired on 20th November, 2019 from the senior counsel / counsel for the contesting defendants, how exclusive occupation of the property even if any by the members of family of each of the sons of Uddham Singh Jain indicated any HUF since in large families it is quite normal that separate properties are occupied by separate units of the family. Attention was also invited to **Ramesh Arya Vs. Pawan Arya** MANU/DE/3117/2019 and **Rameshwar Prasad Gupta Vs. Rajender Kumar Gupta** 2011 SCC OnLine Del 2963 laying down that mere long occupation of separate portions of the property is not indicative of oral partition of the property.

23. As far as the contention, of the contesting defendants not asserting any rights in other properties occupied by families of the plaintiffs is concerned, it was enquired, where was the bar to the contesting defendants so asserting rights and where had the contesting defendants disclaimed any rights in accordance with law in the other properties.

24. It was further enquired, whether not the written statement of Pramod, in CS(OS) No.261/2019, also does not contain any admission of HUF and only a plea of the wives of J.R. Jain, R.N. Jain, M.L. Jain and S.R. Jain
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having purchased property No.14, Alipur Road, Delhi with monies of their husbands drawn from M/s Jain Bros. of which they were partners and whether not in law there is a difference between a HUF and a partnership firm. It was yet further enquired, how from one family member to another, rights in immovable property which earlier did not exist, could be conveyed under the garb of oral family settlement.

25. The senior counsel for the contesting defendants, in response referred to judgment dated 22nd October, 2018 of this Court in CS(OS) No.59/2017 titled **Sunita Aggarwal Vs. Ankit Jain** culling out the legal position as emerging from the judgments cited in the earlier paragraphs as, that (i) an oral family settlement would be binding on the party; (ii) by an oral family settlement, a member can relinquish his / her rights in favour of another member of the family even without a registered document; and, (iii) a family arrangement can, as a matter of law, be implied from long course of dealing between the parties.

26. Attention of the senior counsel for the contesting defendant was drawn to **Rama Nand Vs. Roop Ram** 2018 SCC OnLine Del 10186, **Pushpa Saroha Vs. Mohinder Kumar** 157 (2009) DLT 425, **Satender Kumar Jain Vs. Nirmal Jain** 2019 SCC OnLine Del 8414, **Kalpana Palupuri Butta Vs. Pritendra Kumar Butta** 2018 SCC OnLine Del 10716 and **Harvinder Singh Chadha Vs. Saran Kaur Chadha** 2014 SCC OnLine Del 3413 (DB) holding that under a family settlement shares of each of the member of the family in different properties of the family can be increased, decreased or relinquished in favour of another member already having a share in that property, without a registered document but under a family settlement even if in writing but

not registered, right in immovable property cannot be transferred from one family member to another family member who earlier did not have any right in that property. Thus, for the property subject matter of this suit i.e. property No.26, Friends Colony (West), Delhi to be dealt with under a family settlement, it was essential that the family members to whose exclusive share the property fell had a pre-existing share in the same. Seen in this context, it will be seen that the sale deed of the property though was in the names of son of each of the four brothers J.R. Jain, R.N. Jain, N.L. Jain and S.R. Jain but Rakesh being the son of J.R. Jain did not retain his one-fourth share in the property and transferred the same by way of a Gift Deed, claiming to be sole absolute owner of the said one-fourth share, in favour of his wife Niti. With the execution of the said Gift Deed, J.R. Jain's branch of the family ceased to have any share in the subject property inasmuch as Niti, though daughter-in-law of J.R. Jain, did not qualify as a coparcener / member of the alleged HUF and property held by female members are not properties of the HUF. Reference in this regard may be made to ***Pushpa Devi Vs. CIT, New Delhi*** (1977) 4 SCC 184 and ***Harish Peswani Vs. Jaishree Peswani*** MANU/DE/3387/2016. Though Sushil, being the son of S.R. Jain gifted his one-fourth share in the subject property to Ram Kali, wife of J.R. Jain but again, she was not a coparcener / member of the alleged HUF and the property held by her could not be of the HUF. Moreover, Ram Kali being wife of J.R. Jain further as absolute owner of the said 25% share, transferred 12.5% thereof to her daughter-in-law Shruti who also was not a member / coparcener of the HUF. The said conduct of the male and female members of the family of J.R. Jain itself nullifies the plea of existence of the HUF and of the property being of the HUF or having been dealt with as

such. Rather, the conduct of the male and female members of the family of J.R. Jain demonstrates that the property has never been treated as HUF property and a facade has been built in the written statement, to somehow or the other have issues framed and have the suit listed for trial, thereby deferring the evil day of partition of the property by a decade or more.

27. As far as the photocopy of the document aforesaid produced is concerned, even if Ram Kali, Shruti, Ramesh and Raj Kumar succeed in proving the same, the same in my view does not prove the existence of HUF or the subject property being of the HUF. In fact, the document as per its tenor is not a Memorandum of Family Settlement already executed and implemented but at best is a agreement to on a future date divide “all the assets of Jain Group” after disclosure of all assets including the assets in the name of third party or held benami including ornaments by taking oath. From the dates under some of the purported signature, it is also clear that the at least between 13th October, 1988 and 13th August, 1992 the division as envisaged had not taken place. The contesting written statements also do not give any date of settlement. Had anything been orally decided amongst the four brothers with the blessings of the father, as pleaded in the contesting written statements, a date on which the said oral settlement would have been pleaded. No date, month or year of the oral family settlement has been pleaded. Merely because those carrying on business as proprietors, partners, shareholders, Directors through the vehicle of partnership firm and company are family members, does not convert the business into a family business or business of an HUF. Law, besides sole proprietary firm, partnership firm, private limited companies and public limited companies, also recognizes a joint Hindu family trading firm and which is not governed by the Partnership

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Act, 1932 or the Companies Act, 1956. The business carried on by the Jain family, to qualify in law as a business of the family, was required to be carried on as joint Hindu family trading firm and assessed for the purposes of taxation as joint Hindu family trading firm and it is not open to the contesting defendants to, before revenue and other authorities represent their business vehicle to be a partnership or a corporate entity governed respectively by Partnership Act and Companies Act, 1956 and for the purposes of the present suit, represent the business to have been carried on through the vehicle of joint Hindu trading firm.

28. Though it is pleaded in the contesting written statement that Uddham Singh Jain had a lot of assets in the shape of agricultural land and property but it is not the plea that he had inherited the same assets from his forefathers. It is not the plea that Uddham Singh Jain even though all assets were his personal, created a HUF along with his sons and put the said assets in the hotchpotch of the said HUF. It is also not the plea that Uddham Singh Jain or his forefathers were carrying on business. Rather, the plea is that on J.R Jain, being the son of Uddham Singh Jain, coming on age he commenced the business and in which business he also included his father Uddham Singh Jain and which business was subsequently joined by other brothers of J.R. Jain. It is not the plea that J.R. Jain and his brothers created a HUF and decided to put all their assets in the HUF hotchpotch. Rather, from the averments, it is evident that the family of Uddham Singh Jain and his children, in the post independence era was a leading business / industrial family of India. During the said post independence era, laws were in force regulating the businesses and their income carried on through the vehicles of sole proprietary, partnership and private limited company and public limited

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companies. Law, as aforesaid, besides the said vehicles also recognizes a joint Hindu family trading firm as distinct from a partnership firm. It is not the plea that any of the businesses carried on by the family members were carried on through any such joint Hindu family trading firm. Similarly, Taxation laws provide for filing returns of income earned from salary or through business as a partner, proprietor or by way of dividend on shares held in private limited companies and public limited companies. There is a separate structure for taxation of HUF and joint Hindu family trading firm. Considering the wealth of the family as evident from the pleadings, it is surprising that there is not a whisper of any income tax return filed at any point of time of any HUF or of the assets held by the HUF. In the absence of any such plea, it has but to be inferred that each of the family members was being assessed for income in their personal individual capacity and not as members of any HUF. Moreover whatever was owned by Uddham Singh Jain, on his death, in the absence of any Will, would be inherited by his widow, sons and daughters and not by his grandchildren. Though the date of demise of Uddham Singh Jain is not pleaded but it is obvious from the pleadings that he died post coming into force of Hindu Succession Act. The document filed by Ram Kali and Ramesh along with their written statement refers to properties held benami. If any of the properties are held benami, they are liable to be acted upon under the Prohibition of Benami Property Transactions Act, 1988 and to be confiscated.

29. The question which arises for consideration is, whether the Courts today can permit litigants coming before it to take a stand before the Court different from that they have been taking for long period of time before taxation and other authorities. In my view, the Courts, if permit the litigants

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to, for the purposes of litigation take a different stand from what they have been taking while complying with various laws, would be aiding and abetting such litigants to violate the laws, particularly fiscal laws and would be permitting the litigants to change their face from time to time to their advantage and to the detriment of public exchequer and the public at large. The same cannot be permitted. Reference in this regard can be made to **Dr. Mukesh Sharma Vs. Dr. Maheshwar Nath Sharma** 2017 SCC OnLine Del 7237, **M/s New Era Impex (India) Pvt. Ltd. Vs. M/s Oriole Exports Pvt. Ltd.** (2016) 234 DLT 615 and **M/s Moolchand Khairati Ram Trust Vs. Union of India** 2016 SCC OnLine Del 2840.

30. Here, the documents executed by the wife and son of J.R. Jain who have now raised the bogey of HUF, belie that the property was ever owned by or dealt with as the property of HUF. Again, no litigant can be permitted to, when faced with litigation, turn turtle and take a stand diametrically opposite with the past dealing with the subject matter of the dispute.

31. It cannot also be forgotten that the initiation of this suit for partition was by none other than the daughter-in-law of J.R. Jain namely Niti, who, it is not as if is estranged from the remaining family of J.R. Jain or from her husband; she and her husband are themselves residing in the subject property.

32. Mention in this contest may also be made of yet another dealing of J.R. Jain himself with the subject property and which is also not in consonance with the defence now raised. J.R. Jain representing all the owners of the property created leases of different portions of the property in favour of companies of which also the family members were shareholders,

Directors and for the residence of Ramesh and Raj Kumar as tenants therein. J.R. Jain, while so letting out the property, did not create lease on behalf of any HUF and the rentals were not credited to any HUF. The explanation of the same being for taxation purposes cannot be accepted. As aforesaid, what is good for revenue purposes is good for Court purposes also and different stands diametrically contrary to each other cannot be permitted to be taken.

33. The pleas in the written statements of Ram Kali, Ramesh and Raj Kumar who alone are contesting the suit are not found to be *bona fide*; the said pleas are vague and without any particulars; they are inconsistent with the past admitted conduct of the family of J.R. Jain to which Ram Kali, Ramesh and Raj Kumar belong and seek to, by way of clever drafting, create an illusion of a defence to this suit for partition, when no such defence exists. Resultantly, as per the law of framing of issues enunciated above, the same do not constitute raising any material proposition of law or fact.

34. Once the pleas aforesaid are not found to be raising any material proposition of law and fact inviting framing of any issue thereon, the shares are not in dispute and there is no impediment to a preliminary decree for partition being passed.

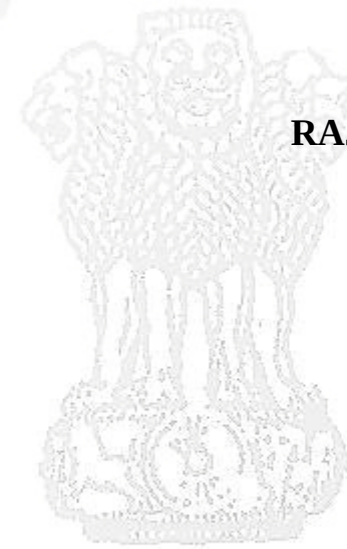
35. A preliminary decree for partition of property no.26, Friends Colony (West), New Delhi, ad-measuring 3595 sq. mts. is thus passed, declaring:

- (i) Pramod Kumar Jain, son of R.N. Jain to be having 25% share therein;
- (ii) Sunil Jain, son of N.L. Jain to be having 25% share therein;
- (iii) Ram Kali Jain, wife of J.R. Jain to be having 12.5% share therein;

- (iv) Shruti Jain, wife of Late Mukesh Jain, son of J.R. Jain to be having 12.5% share therein; and
- (v) Niti Jain wife of Rakesh Kumar Jain, son of J.R. Jain to be having 25% share therein.
36. Preliminary decree for partition be drawn up.
37. List before the Roster Bench on 6th August, 2020.

MAY 27, 2020
'gsr'..

RAJIV SAHAI ENDLAW, J.



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