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

+ **RFA(OS) 37/2020**

SHRI RAVI NARAYAN AGARWAL Appellant

Through: Mr. Navaniti Pd. Singh, Senior
Advocate with Mr. Vishnu Mehra,
Mr. Karan Mehra and Mr. Anant
Mehrotra, Advocates.

versus

SHRI SUSHIL KUMAR AGARWAL & ORS. Respondents

Through: Mr. Jai Sahai Endlaw, Advocate for
respondents No.1 to 4.
Mr. Shashank Khurana, Advocate for
respondents No. 5A, 5B, 5D to 5G &
6 to 16.

Reserved on : 09th November, 2020

Date of Decision: 16th December, 2020

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CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J:

CM APPL. 28498/2020, 28499/2020, 28500/2020, 28502/2020

Allowed, subject to just exceptions.

RFA(OS) 37/2020 & CM Appls. 28497/2020, 28501/2020

1. Present appeal has been filed by appellant-Shri Ravi Narayan Agarwal, who was defendant no.1 in CS(OS) 224/2017 before the Trial Court, challenging the judgment and preliminary decree dated 13th March,

2020, passed by the learned Single Judge in CS(OS) 224/2017. The relevant portion of the impugned judgment is reproduced hereinbelow:-

“9. Other than defendants No.1 and 4 none of the defendants have opposed the present suit.

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13. The matter was fixed for framing of issues. On 6.8.2018 this court passed the following order:-

“Learned counsel appearing for the plaintiff submits that the only defendants who are opposing partition are defendant No.1 and 4. He further submits that in the written statement of defendant No.1 there is a clear admission that the plaintiffs are entitled to respective shares in the suit property.

Learned counsel appearing for defendant No.1 has raised the following objections:-

- (i) He submits that the HUF of respective parties has also to be impleaded as a necessary party.*
- (ii) He submits that there has been demarcation of shares and parties are occupying the demarcated areas since 1954.*
- (iii) He further submits that defendants No.5, 6 and 8 being lady members are not entitled to any share in the suit property.*

List for framing of issues and arguments on 29.10.2018.”

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19. I may note that there is no averment in the written statement that a partition took place and the parties subsequent to the partition have continued to occupy the area that fell to their share. There are also no documents filed by any of the defendants to support the plea that any partition took place amongst the co-owners or that the parties agreed that the demarcated area that

they are occupying, are their respective shares from the property in question.

20. It also cannot follow that mere long occupation of a particular area by a co-owner implies that a partition has taken place amongst the co-owners.

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22. Hence, being in possession of a part of the property does not ipso facto mean that any partition has taken place. In fact no partition has been pleaded in the written statement. Hence, mere long occupation of certain areas by a co-owner does not debar the filing of a partition suit.

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24. The defendant No.1 is making contradictory submissions and statements. At one place it is pleaded that partition has already taken place and parties are occupying their respective areas which were demarcated and have fallen to their shares since 1954. On the other hand in paragraph 14 of the written statement defendant No.1 pleads that the actual share of eligible co-owners is 1/4th to Sushil Kumar Agarwal, HUF 1/4th to Shri B.S. Agarwal, HUF, 1/4th to Shri Chand Ratan Agarwal, HUF and 1/4th to Shri Suraj Narayan Agarwal. Hence, he claims that the respective HUFs of the four sons of late Shri Narayan Agarwal are the joint owners of the properties.

25. I may only note that existence of the HUF is neither pleaded nor in any manner sought to be shown by any documentary evidence. In fact defendant No.1 has not filed any documents. I may note that it is settled position of law that as to how a property came to be an HUF has to be stated so in the pleadings.

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27. ...It is clear that as already noted above, defendant No.1 in the written statement has not elaborated as to how he claims that the property is an HUF property in the hands of the four sons of late Shri Narayan Agarwal.

28. It follows that other than a bald averment in the written statement there is nothing to show that the property in question vests in the HUF's of the respective parties. On the other hand the documents filed by the plaintiffs which have been admitted by defendants No.1 and 4 accept the status of the suit property as that of the self owned property of the four sons of late Shri Narayan Agarwal.

29. I may note that on 05.03.1962 L&DO had written to the parties/predecessors stating that the properties have been mutated in the joint names of the four brothers. There is no reference to the mutation being in favour of any HUF. The mutation has been done in the individual names. I may note that defendant no.1 and defendant no.4 have admitted this letter in admission/denial.

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33. The admitted fact is that the suit property was not bought in the name of Shri Narayan Agarwal but was bought in the name of his son Shri Chand Ratan Agarwal. The property continued to remain undivided despite partition of the rest of the estate of Shri Narayan Agarwal. The LR's of Late Sh. Narayan Agarwal remained co-owners of the said property. There is in fact as noted above, nothing to show that the property was ever treated as an HUF property by the four brothers i.e. the sons of Shri Narayan Agarwal. It is only a desperate defence raised by defendant No.1 to prolong the suit. As CS(OS)224/2017 Page 13 has been pointed out by learned counsel for the plaintiff, it is defendant No.1 who is occupying a major portion of the suit property and is hence adopting dilatory tactics to delay the partition.

34. Coming to the main plea about the lady members of the family, the plea raised by defendant No.1 in the written statement in paragraph 9 is that the daughters of late Shri Chand Ratan Agarwal, in paragraph 10 that the daughters of late Shri Bishanswarup Agarwal do not have a share in the suit property and also the plea in para 12 of the written statement that defendants No.2 and 5 do not have a share in the suit property is misplaced and contrary to the statutory provisions, namely, the

Hindu Succession Act, 1956. Even assuming that the HUF of the father of defendant No.1 Shri Suraj Narayan Agarwal, HUF had a share in the suit property as has been vaguely pleaded by defendant No.1 in the written statement, Shri Suraj Narayan Agarwal had died intestate on 25.1.2001. Assuming that the unamended provisions of section 6 of the Hindu Succession Act apply the defendants No.2 and 5, namely, the mother and sister of defendant No.1 would still have a right in the suit property. Reference may be had to section 6 of the Hindu Succession Act as it stood prior to the amendment of 2005....

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36. Hence, in terms of the unamended section 6 of the said Act on the death of Shri Suraj Narayan Agarwal on 25.1.2001 his alleged share in the HUF would devolve through intestate succession and not by survivorship. The said defendants No.2 and 5 will continue to have a share in the suit property in terms of the said statutory provisions. The defendant No.1 by pleading that defendants No.1 and 5 have no share in the said property is only making vague submissions which are on the face of it are contrary to the statutory provisions. This plea of defendant No.1 that defendant No.2 and 5 have no share in the suit property is vague and is completely without merits.

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39. Keeping in view the above discussions, as stated, it is manifest that the parties are not at variance on any material proposition of law or fact, therefore, no issues can be framed.

40. A preliminary decree is passed holding the share of the parties to be in terms of para 14 of the plaint.”

2. The paragraph no.14 of the plaint specifying the shares of the various parties is also reproduced hereinbelow:-

“14. That as such, the shares of the parties in the Suit Property is as under:-

<i>NAME</i>	<i>SHARE</i>
<i>Sushil Kumar Agarwal</i>	$1/4^{\text{th}}$
<i>Rajesh Agarwal</i>	$1/4^{\text{th}}$
<i>Dhiraj Agarwal</i>	$1/12^{\text{th}}$
<i>Subhash Agarwal</i>	$1/12^{\text{th}}$
<i>Ashok Agarwal</i>	$1/12^{\text{th}}$
<i>Sushila Agarwal</i>	$1/24^{\text{th}}$
<i>Ravi Narayan Agarwal</i>	$1/24^{\text{th}}$
<i>Hari Narayan Agarwal</i>	$1/24^{\text{th}}$
<i>Shiv Ratan Agarwal</i>	$1/24^{\text{th}}$
<i>Madhu Agarwal</i>	$1/24^{\text{th}}$
<i>Reshmi Chand Agarwal</i>	$1/72^{\text{nd}}$
<i>Roshini</i>	$1/72^{\text{nd}}$
<i>Rishan Chandra Agarwal</i>	$1/72^{\text{nd}}$

ARGUMENTS ON BEHALF OF THE APPELLANT

3. Mr. Navniti Pd. Singh, learned senior counsel for the appellant submitted that the main issue in the present case was whether the Suit Property is a Hindu Undivided Family (hereinafter referred to as “HUF”) or coparcenary property. According to him, the answer to this issue determines which parties are entitled to what share in the Suit Property.

4. He stated that after hearing the parties, the learned Single Judge vide order dated 6th August, 2018 had directed the issues to be framed. However,

he pointed out that instead of framing the issues, the learned Single Judge erred in passing the impugned judgment and preliminary decree holding that the suit property was self-owned property of the four sons of the late Shri Narayan Agarwal.

5. He further stated that the suit property was acquired by the grandfather of the appellant – late Shri Narayan Agarwal, who died intestate in January, 1947 – well before the Hindu Succession Act, 1956 came into force – leaving behind four sons and his widow. He submitted that the property that devolves upon the legal heirs prior to 1956 is either an HUF property or a coparcenary property but it cannot be self-owned property as held by the learned Single Judge in the impugned judgment. He pointed out that the law of inheritance in case of intestate death of a male Hindu prior to 1956 had been explained by a Single Bench of this Court in ***Sushovanpal vs. Sharmistha Pal @ Sharmistha Mazumdar & Anr. (2018) SCC OnLine Del 10082*** and the judgment by Division Bench of this Court in ***Sagar Gambhir vs. Sukhdev Singh Gambhir, 2017 SCC OnLine Del 7305***.

6. Learned senior counsel for the appellant repeatedly emphasised that if a person dies before 1956, his property shall be treated as HUF property and consequently, the suit property in the present case was HUF property. He emphasized that in para 5 of the plaint the plaintiff/respondent No.1 had admitted that the suit property was an HUF property. He pointed out that throwing of a property into a common hotchpotch was not required for a property in order to be treated as HUF in a case governed by the pre-1956 law. Consequently, according to him, defendant no.5/respondent no.8 (married sister of the appellant) would not be entitled to any share.

7. He also pointed out that the 'family tree' filed by the plaintiff-respondent no.1 before the learned Single Judge was incomplete inasmuch as it did not mention the two sons of the plaintiff-respondent no.1 and the relevant HUFs had not been impleaded.

8. He lastly stated that all the co-owners are in possession of their demarcated portion of the suit property and that the same was not denied by the plaintiff-respondent no.1 as well.

ARGUMENTS ON BEHALF OF RESPONDENTS

9. Mr. Jai Sahai Endlaw and Mr. Shashank Khurana, learned counsel for respondents stated that it was an admitted case of the parties that the suit property was a self acquired property of late Shri Narayan Agarwal and all his four sons had one-fourth ($1/4^{\text{th}}$) share in the suit property in their individual capacities. In support of their contention, they relied upon paragraph no. 14 of appellant's written statement wherein he had admitted that his father i.e. Late Shri Suraj Narayan Agarwal had a one-fourth ($1/4^{\text{th}}$) share in his individual capacity. They emphasised that there was no mention of any HUF of Late Shri Suraj Narayan Agarwal in the appellant's written statement.

10. They also relied upon paragraph nos. 28 to 30 of the impugned judgment wherein the learned Single Judge had observed that the appellant had admitted, in an earlier letter dated 5th March, 1962 addressed to the Land and Development Office, that the suit property had been mutated in the names of all four sons of Late Shri Narayan Agarwal in their individual capacities and not in favour of any HUF of Late Shri Narayan Agarwal.

11. They contended that the appellant had merely raised a bald plea unsupported by any documentary evidence to show the existence of HUF. They also stated that a perusal of the Written Statement as well as the appeal filed by the appellant would clearly show that the entire defense of the appellant was built on false and frivolous pleas. According to them, in a case where proposed issues were based on pleas unsubstantiated by any documentary evidence, the learned Single Judge was not bound to frame any issue. In support of their submission, they relied upon the judgment of this Court in ***Kawal Sachdeva vs Madhu Bala Rana 2013 SCC OnLine Del 1479.***

12. They pointed out that the appellant had admitted the individual shares of the parties as the appellant had admitted the Memorandum dated 5th August, 2013 issued by Department of Urban Development, Land and Development Office. Consequently, according to them, the appellant cannot be allowed to approbate and reprobate at the appeal stage.

13. Mr. Jai Sahai Endlaw stated that a plain reading of the plaint filed before the Trial Court would show that there was an oral agreement of 1947 and a subsequent declaration deed of 1960 which pertained to other properties and not the suit property.

14. Mr. Shashank Khurana submitted that the contention of the appellant that there had been demarcation of shares and parties were occupying the demarcated areas since 1954, was wholly without merit inasmuch as possession of one co-sharer in the eyes of law, was possession of all and mere occupation of large portion or even the entire property did not amount to ouster or proof of partition. In support of his submission he relied upon the judgment of this Court in ***Rajbir vs Padma Devi (2008) 155 DLT 577.***

15. He lastly submitted that since admittedly Late Shri Suraj Narayan Agarwal had no HUF and he died intestate, all the female heirs i.e. Defendant No. 5 (Respondent No. 8 herein), Defendant No. 6 (Respondent No. 9 herein) and Defendant No. 8 (Respondent No. 11 herein) would be entitled to their respective shares in the suit property.

COURT'S REASONING

IT IS NEITHER PARTY'S CLAIM THAT SHRI NARAYAN AGARWAL HAD AN HUF WITH HIS SONS, OR THAT THE SUIT PROPERTY WAS PART OF A COMMON HUF. THIS COURT IS IN AGREEMENT WITH THE FINDINGS OF THE TRIAL COURT THAT UPON THE DEATH OF SHRI NARAYAN AGARWAL, HIS FOUR SONS INHERITED THE SUIT PROPERTY IN EQUAL SHARE AND NOT AS AN HUF PROPERTY.

16. Having heard the learned counsel for the parties and having perused the paper book, this Court finds that it is an admitted position that the Suit Property was acquired by Shri Narayan Agarwal, prior to 1956, in the name of his eldest son, Chand Ratan Agarwal.

17. Further, Shri Narayan Agarwal died intestate prior to 1956, leaving behind his wife and four sons as his only legal heirs. From a reading of the plaint including its para 5, it is apparent that the suit property remained the joint property of the sons of Late Shri Narayan Agarwal. Vide a 'DECLARATION' dated December 1960 / 04th January, 1961 all the four sons of Late Shri Narayan Agarwal admitted that they were the owners of the suit property in equal shares as joint tenants and not as members of an HUF having an unpredictable and fluctuating interest. The relevant portion of the 'DECLARATION' is reproduced hereinbelow:-

“(6) It appears that the said property, both in records of Rights and the property register of the New Delhi Municipal Committee still continues to stand in the name of Chandratan Shrinarayan Agarwal, the declarant No.3 herein, in whose name our father Late Lala Shrinarayan Ramchand Agarwal had originally purchased the said property.

(7) We all the four declarants do hereby solemnly affirm and say and declare that we are the owners of the said property in equal shares as Joint tenants.

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*Solemnly declared at Bombay
by the Within named Bishansarup
S/o Lala Shrinarayan this 31st
Day of December 1960*

*Solemnly declared at
by the within named Surajnarayan
S/o Lala Shrinarayan this
Day of 4th Jan. 1961.*

*Solemnly declared at
by the Within named Chandratan
S/o Lala Shrinarayan this
Day of 4th Jan. 1961.*

*Solemnly declared at Bombay
by the Within named Sushil Kumar
S/o Lala Shrinarayan this 31st
day of December 1960.”*

18. Further, the appellant along-with his written statement had himself filed a copy of the letter dated 05th March, 1962 issued by the Land and Development Officer addressed to the four sons of late Sh.Narayan Agarwal wherein it had been stated that in accordance with their letter dated 03rd

October, 1961, the suit property had been mutated in their names jointly in the records. The said letter is reproduced hereinbelow:-

“No.Allot.4/88(9)/60

Dated the 5 MAR 1962

From:

*Shri K. B. Menon,
Land & Development Officer,
New Delhi – 1*

To:

*Shri Chandrattan Shrinarayan Agarwal,
Shri Bishansarup Shrinarayan Agarwal,
Shri Surajnarayan Shrinarayan Agarwal,
Shri Sushilkumar Shrinarayan Agarwal,
18, Doctors Lane, New Delhi*

*Sub: Premises situated on plot No.9 in Block 88 known
As 18, Doctors Lane, New Delhi.*

Dear Sirs,

With reference to your letter dated 3rd October, 1961 I am directed to inform you that the property mentioned above have been mutated in your names jointly in the records of this office. You are all now jointly bound by the terms and conditions of the original Perpetual lease.

Yours faithfully,

Sd/- 3/3

(K.B. Menon)

Land and Development Officer”

19. Consequently, it is neither party's claim that Shri Narayan Agarwal had an HUF with his sons, or that the Suit Property was part of a common HUF. In fact, it is not the appellant's case that there was a composite overarching HUF comprising four sons (namely Chand Ratan Agarwal, Bishan Swaroop Agarwal, Suraj Narayan Agarwal and Sushil Kumar

Agarwal) of the deceased Shri Narayan Agarwal. Instead, the appellant's case in appeal is that all the four sons of late Shri Narayan Agarwal had separate and independent HUFs.

20. The family members of the other three sons of late Shri Narayan Agarwal (excluding the appellant's father) i.e. Chand Ratan Agarwal, Bishan Swaroop Agarwal and Sushil Kumar Agarwal have given their no objection to the present suit being decreed.

21. Even in the appellant's family faction, the appellant and his brother (defendant No.4 before the trial Court) were the only parties contesting the present suit and the appellant is the only one who has filed an appeal against the preliminary decree. The remaining heirs of late Suraj Narayan Agarwal (father of appellant) have denied the factum of an overarching composite HUF and have supported the present suit being decreed.

22. In the appellant's own written statement there is no averment that his family faction comprising children of late Suraj Narayan Agarwal had any HUF. This is apparent from para 14 of the written statement filed by the appellant, which is reproduced hereinbelow:-

“14. That the contents of Para 14 of the Plaint are wrong and denied. The actual share of the eligible co-owners in the Suit Property is provided as under:-

NAME OF THE PARTIES	SHARE IN THE PROPERTY
<i>Sushil Kumar Agarwal HUF</i>	<i>1/4th</i>
<i>Bishen Swarup Agarwal HUF</i>	<i>1/4th</i>

<i>Chand Ratan Agarwal</i> <i>HUF</i>	<i>1/4th</i>
<i>Suraj Naryan Agarwal</i>	<i>1/4th</i>

23. In oral arguments, learned senior counsel for appellant had stated that there was a typographical error in the aforesaid chart. However, the said ground had not been taken before the learned Single Judge or even in the appeal. Consequently, this Court cannot accept the bald statement made by the learned senior counsel for appellant at this stage.

24. Keeping in view the aforesaid factual scenario, this Court is in agreement with the findings of the Trial Court that upon the death of Shri Narayan Agarwal, his four sons inherited the Suit Property in equal shares but not as an HUF property.

APPELLANT'S SUBMISSION THAT THE SUIT PROPERTY IS AN HUF PROPERTY IS UNTENABLE IN LAW IN VIEW OF THE JUDGMENT OF THE DIVISION BENCH OF THIS COURT IN SAGAR GAMBHIR (SUPRA) AND IS CONTRARY TO HIS ARGUMENT THAT PARTIES ARE RESIDING IN THEIR RESPECTIVE DEMARCATED PORTIONS. IF THE SUIT PROPERTY WAS AN HUF PROPERTY, THERE WAS NO QUESTION OF ANY MEMBER OF THE FAMILY OWNING ANY SPECIFIC SHARE, AS IT IS SETTLED LAW THAT THE ESSENCE OF JOINT HINDU FAMILY PROPERTY IS UNITY OF OWNERSHIP AND COMMUNITY OF INTEREST, AND THE SHARES OF THE MEMBERS ARE NOT DEFINED.

25. This Court is further of the opinion that the Appellant's submission that the Suit Property is an HUF property is not only contrary to facts, but untenable in law as well. At this stage, it would be apposite to quote the judgment of the Division Bench of this Court in **Sagar Gambhir** (supra),

whereby the judgment of the learned Single Judge in **Surender Kumar v. Dhani Ram 227 (2016) DLT 217** was confirmed:-

“10. In Chander Sen's case (supra), the Supreme Court held that after the promulgation of the Hindu Succession Act, 1956, the traditional view under the Hindu Law no longer remained the legal position. This decision was followed in case (supra) the Supreme Court held that after the promulgation of the Hindu Succession Act, 1956, the traditional view under the Hindu Law no longer remained the legal position. This decision was followed in Yudhishter's case (supra). We agree with the legal position noted by the learned Single Judge which flows out of the two decisions of the Supreme Court, which would be as under:—

“(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.”

26. This Court finds that appellant's reliance on **Sushovanpal** (supra) is misplaced as the parties therein were governed by the Dayabhaga School of law and there was no plea of succession prior to 1956.

27. In view of the settled law and absence of any specific pleading or evidence to the contrary, the inheritance of suit property prior to 1956 would not automatically convert the suit property into an HUF property as sought to be contended by the appellant.

28. Further, the appellant's argument that the parties are residing in their respective demarcated portions of the suit property is contrary to his primary submission of an HUF. This Court is of the view that if the suit property was an HUF property, there was no question of any member of the family being an owner or any family member owning any specific share, as it is settled law that the essence of joint Hindu family property is unity of ownership and community of interest, and the shares of the members are not defined.

THE APPELLANT HAS ADMITTED THE MEMORANDUM DATED 5th AUGUST, 2013 ISSUED BY THE MINISTRY OF URBAN DEVELOPMENT, LAND AND DEVELOPMENT OFFICE WHEREIN THE INDIVIDUAL SHARES OF THE SURVIVING HEIRS OF LATE SHRI NARAYAN AGARWAL HAVE BEEN SPECIFICALLY MENTIONED

29. Moreover, the appellant has admitted the memorandum dated 5th August, 2013 issued by the Ministry of Urban Development, Land and Development Office wherein the individual shares of the surviving heirs of late Shri Narayan Agarwal have been specifically mentioned. The relevant portion of the memorandum dated 5th August, 2013 is reproduced hereinebelow:-

“Government of India
Ministry of Urban Development
Land and Development Office
Moulana Azad Road, Nirman Bhawan
New Delhi – 110 108

NO. LDO/LS1/341	Date 05-Aug-2013
Property ID 24846	Application ID : 100026171

To,

1. Shri DHIRAJ P. AGARWAL

7-BASANT BAHAR-3 NEAR HOMEOPETHIC COLLEGE/BHOPAL
AHMEDABAD- 380058

MEMORANDUM

XXXX

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2. The property now stands in the books of this office in the name(s) of:

S. No.	Name	Sex/Age	Relation/Deceased Lessee Name	Share
1.	DHIRAJ P AGARWAL	MALE/40	SON SH. PRAKASH CHAND B AGARWAL	1/12 TH UNDIVIDED SHARE
2.	RAJESH AGGARWAL, SURAJ NARAYAN AGGARWAL, SUSHIL KUMAR AGGARWAL	MALE/40	PRESENT LESSE/SH. PRAKASH CHAND B AGARWAL	1/4 TH UNDIVIDED SHARE EACH
3.	SH.SUBHAS CHAND B AGARWAL, ASHOK B AGARWAL	MALE/0	PRESENT LESSE/SH. PRAKASH H CHAND B AGARWAL	1/12 TH UNDIVIDED SHARE EACH

Sd/-

(SUMIT GAKHAR)

Deputy Land & Development Officer
For and on behalf of President of India”

30. It is relevant to mention that in the said memorandum, appellant’s share is covered within the one-fourth (1/4th) share that devolved upon Shri Suraj Narayan Agarwal (i.e. deceased father of appellant). Accordingly, this Court is of the view that assuming, without admitting, if there is any dispute vis-à-vis the branch/family faction of the appellant i.e. within the one-fourth (1/4th) share that devolved upon Late Suraj Narayan Agarwal – the same would have to be subject matter of a different partition suit and cannot hold up the present proceedings.

31. In any event, as the appellant has admitted the aforesaid document during the course of admission and denial of documents before the Trial

Court and has not challenged the said document, this Court is of the opinion that the appellant having taken benefit of mutation cannot now be permitted to approbate and reprobate. The Supreme Court in ***Bhagwat Sharan (Deceased, through LRs) v. Purushottam, (2020) 6 SCC 387*** has held as under:-

“26. It is trite law that a party cannot be permitted to approbate and reprobate at the same time. This principle is based on the principle of doctrine of election. In respect of wills, this doctrine has been held to mean that a person who takes benefit of a portion of the will cannot challenge the remaining portion of the will. In Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., this Court made an observation that a party cannot be permitted to “blow hot and cold”, “fast and loose” or “approbate and reprobate”. Where one party knowingly accepts the benefits of a contract or conveyance or an order, it is estopped to deny the validity or binding effect on him of such contract or conveyance or order.”

32. Insofar as the appellant’s contention qua impleading HUF of each son as a necessary and proper party is concerned, this Court finds that this argument has been dealt with in the impugned order, wherein the learned Single Judge has rightly held as under:-

“17. I may look at the contentions of the said defendants No.1 and 4. As far as the first plea raised by learned counsel for defendant No.1 is concerned, namely, that the HUF of respective parties have to be impleaded as necessary party, the plea is misplaced. The respective alleged coparceners of all the HUFs are admittedly parties to the present suit. Necessary and proper parties have been duly impleaded. That apart, as elaborated below the plea of there being an HUF is a vague and unsubstantiated submission which cannot be accepted. This plea is misplaced.”

33. Further, the said contention is inconsequential as the persons who would be *kartas* of such alleged HUFs are already impleaded in the Suit and have not raised any objection to the division of the property.

THE LEARNED SINGLE JUDGE WAS BOUND TO PASS THE IMPUGNED JUDGMENT AT THE STAGE OF FRAMING OF ISSUES INASMUCH AS THE GROUNDS RAISED BY THE APPELLANT WERE EITHER VAGUE OR NO LONGER RES INTEGRA AND CONSEQUENTLY, DID NOT MERIT A TRIAL.

34. While discussing the importance of giving due attention to pleadings in civil cases pertaining to property, the Supreme Court in ***Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira***, (2012) 5 SCC 370 emphasized that Courts must accord the necessary consideration to the documents filed by the parties as this would prevent many a false claims from sailing beyond the stage of issues. The relevant portion of the judgment is reproduced hereinbelow:-

“74. If the pleadings do not give sufficient details, they will not raise an issue, and the court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.”

35. Keeping in view the settled legal position, this Court is of the view that the learned Single Judge was bound to pass the impugned judgment at the stage of framing of issues inasmuch as the grounds raised by the appellant were either vague or no longer *res integra* and consequently, did not merit a trial. Even at the appellate stage, the appellant has failed to raise

any triable issue before this Court. It is also pertinent to mention that the appellant is in sole possession of the house constructed on the Suit Property.

36. Consequently, the present appeal, along with pending applications, is dismissed being bereft of any merit without any order as to costs.

MANMOHAN, J

SANJEEV NARULA, J

DECEMBER 16, 2020

js/rn

