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

Date of Decision: 2nd August, 2021

+ CS(OS) 295/2021

HARBANT KAUR & ORS. Plaintiffs

Through: Mr. Pramod Ahuja, Advocate.

versus

RANJEET SINGH @ RANJIT SINGH & ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

I.A. 9380/2021 (for passing appropriate order after preponing the case & for passing appropriate orders on the application moved under Order 39 Rule 1 & 2 i.e. I.A. 7871/2021)

1. By way of this application, the Plaintiffs seek early hearing of the suit and the application for interim reliefs. For the grounds and reasons stated therein, the application is allowed. Plaintiff's counsel has been called upon to address the court on the maintainability of the suit.

2. The application is disposed of.

CS(OS) 295/2021 & I.As. 7871/2021 (u/Order 39 Rule 1 & 2) & 7872/2021 (condonation of delay in re-filing)

Who are the parties to the Suit?

3. The case, as set out in the plaint, is that Late Mr. Ujagar Singh – father of Defendant No. 1 and grandfather of the Plaintiffs herein – passed away sometime in the year 1982. On his death, properties owned by him including the suit properties, devolved upon his children, which included *inter alia*, Defendant No. 1.

4. The Plaintiffs herein (Ms. Harbant Kaur, Ms. Manmohan Kaur and Mrs. Gurmeet Kaur) are daughters of Defendant No. 1 (Mr. Ranjeet Singh). Defendant No. 1 has two other surviving children – Defendant No. 2 (son, Mr. Manmohan Singh) and Defendant No. 7 (daughter, Ms. Amarjeet Kaur). Defendant No. 1 had another son, since deceased – Late Mr. Harbant Singh – his legal heirs are impleaded as Defendant No. 3 (widow, Ms. Mahender Kaur), Defendant No. 4 (son, Mr. Gurnam Singh) Defendant No. 5 (son, Mr. Amarjit Singh), and Defendant No. 6 (daughter, Ms. Kamaljeet Kaur). Defendants No. 8 to 16 are stated to be the occupants of the suit properties which form subject matter of the present suit.

What is the suit for?

5. The Plaintiffs seek partition of the following properties which are in the hands of Defendant No. 1:

- (i) Property bearing No. F-38, in Khasra No. 586 admeasuring 1200 sq. yard in Chhattarpur Extension, New Delhi.
- (ii) Property bearing No. E-120, Khasra No. 879, admeasuring 300 sq. yards Chhattarpur Extension, New Delhi.

(iii) Property bearing No. E-133 in Khasra No. 877, admeasuring 217 sq. yards in Chhattarpur Extension, New Delhi.

6. Plaintiffs contend that they have been repeatedly requesting Defendant No. 1 for partition, but he has refused to do so. As legal heirs, they seek share in the properties of their deceased grandfather, which are now in the hands of their father.

Whether the suit is misconceived?

7. The plaint, as framed, for asserting the Plaintiffs' right to partition, is based on the following averments:

"4. That as on date the Defendant No. 1 is owning three properties in village Chhattarpur Extension their number as on date is F-38, in Khasra No. 586 which is measuring 1200 sq. yard and the profit of the said property is earned by the Defendant No. 4 and 5 while parking the Villages cars and they are charging getting approximately Rs. 2000/- per car for one month time. Approximately 25 to 30 cars are being parked daily by the villagers and the defendant No. 4 & 5 at the instance and instructions of the Defendant No. 1 have been earning approximately profit of Rs. 60,000/- per month from the Villagers who are parking their cars in the open area. The plaintiffs are also moving a separate application to this effect with the prayer to the Hon'ble High Court that the profit which they are having from the parking of the cars. The plaintiffs are also entitled to have a share in the said earning from the joint Properties from where they are earning approximately Rs.60,000/- per month in which Properties. The Plaintiffs have also got the share which money/amount the Defendant No. 1,4 & 5 are usurping/eating/depriving the plaintiffs legal and lawful rights in the said properties.

5. That the Defendant No. 1 is also owning a property bearing No. E-133 in Khasra No. 877, which is measuring 217 sq. yards which is also at Chhattarpur Extension, New Delhi which is occupied mostly by the tenants from whom the defendant No. 1 has been getting huge sum of amount as rent from the tenants and Plaintiffs have also got their right, title and interest Share and are entitled to have their share in the rent so received

by the Defendant No. 1 from various tenants. The details of which is being furnished by the Plaintiffs in the separate application which is being moved by the Plaintiffs. The Defendant No. 1 is also owning another property bearing No. E-120, Khasra No. 879, Chhattarpur Extension, New Delhi and is in occupation of Defendant No. 2 and his family members in which residential rooms have been constructed and approximately details of the same have been mentioned in each and every plan of the respective property in the each separate plans annexed with the present plaint wherein the portion has been shown red in the Plan as Annexure-A.

6. xx ... xx ... xx

7. That the plaintiffs have been requesting the defendant No. 1 who is their father to give appropriate and proper due share to the each of the Plaintiff in the properties mentioned above. The Defendant No. 1 has clearly refused to give the appropriate share in the property & has also refused to Partition the Properties who are his daughters in which they have also got legal and lawful rights in the above-mentioned properties left by their Garand Father which fell to the share of Defendant No. 1."

8. In view of no discernible right of the Plaintiffs in the pleading, Mr. Pramod Ahuja, counsel for the Plaintiffs, sought time to examine the law relating to right of inheritance of grandchildren over the properties of grandfather. Today, on the issue of maintainability, he submits that the suit properties were joint family properties. Along with the application for early hearing, he has filed a judgment of the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma & Ors.***¹ On that basis, he contends that the Plaintiffs, living in a joint family setup, are co-parceners in a Hindu Undivided Family (HUF), and by virtue of the above judgment, have a share in the properties which are in the hands of Defendant No. 1, and are thus entitled to seek a partition thereof. On another query by this court, he asserts that a grandchild can have a right over her grandfather's ancestral property, and that such right would accrue by birth.

¹ (2020) 9 SCC 1.

Analysis:

9. The Court is unable to understand as to what right vests in the grand-children over self-acquired properties of their late grandfather, that have devolved upon their father through succession. The law in this regard is no longer *res integra*. A joint family does not equate to the existence of an HUF. It has been settled by the Supreme Court in the case of ***Yudhishter v. Ashok Kumar***,² that after coming into force of Section 8 of the Hindu Succession Act, 1956, inheritance of ancestral property does not automatically result in the creation of an HUF. This Court, in ***Sunny (Minor) v. Raj Singh***,³ has explained that the existence of an HUF has to be specifically pleaded in the plaint by showing its date/month/year of formation, and/or its continued existence since prior to 1956. This position in law has been crystalized in ***Surender Kumar v. Dhani Ram***,⁴ in the following words:

*“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) & Anr. v. Sh. Raj Singh & Ors.**, 225 (2015) DLT 211=CS(OS) No. 431/2006 decided on 17.11.2015. In this*

² (1987) 1 SCC 204

³ 225 (2015) DLT 291.

⁴ 217 (2016) DLT 227.

*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 hotch-potch. Also, once a property is thrown into a common hotch-potch, 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 hotch-potch have to be clearly pleaded and mentioned and which requirement is a legal requirement because of Order 6 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 hotch-potch, 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."* [Emphasis supplied]

10. The said position in law, with respect to an HUF, has also been followed in the judgment of **Vineeta Sharma** (supra) which has been incorrectly relied upon by the Plaintiffs. Therein, a 3-member bench of the Supreme Court answered a reference made to it concerning the interpretation of the amended Section 6 of the Hindu Succession Act, 1956 which deals with

devolution of interest in coparcenary property. This judgment is wholly inapplicable in the facts of the present case, as the Plaintiffs have not pleaded the existence of an HUF even once in the present plaint.

11. Late Mr. Ujagar Singh admittedly expired after the passing of Hindu Succession Act, 1956. There was no HUF existing at the time of his death, nor have the Plaintiffs pleaded the existence of any. Thus, inheritance of Late Mr. Ujagar Singh's immovable properties, by his successors-in-interest i.e Defendant No. 1, though undoubtedly the inheritance of an 'ancestral' property, is, in his hand, is seen as a 'self-acquired property'.

12. The assertions in the plaint do not suggest that the suit properties are HUF/joint family properties, as is sought to be canvassed by Mr. Ahuja. There is no material on record in the form of pleadings or documents that can even remotely indicate that the properties of Late Mr. Ujagar Singh created an HUF or that after his death, Mr. Ranjit Singh has created an HUF and put the properties inherited by him into a common hotch-potch. The self-acquired properties of Late Mr. Ujagar Singh, by law, could have only passed onto his class-1 heirs, which includes, *inter alia*, Ranjit Singh, but no right accrues to any grandchild in the said properties. Therefore, during the lifetime of Ranjit Singh, the Plaintiffs do not have any right to seek partition of his self-acquired properties. Law governing testamentary/intestate succession will be applicable to such properties.

13. In view of the above, and in the absence of pleadings to show the Plaintiffs' right to seek partition, the suit is misconceived and is not

maintainable.

14. Accordingly, the present suit is dismissed along with pending applications.

15. The dated already fixed i.e. 23rd August, 2021 stands cancelled.

AUGUST 2, 2021

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SANJEEV NARULA, J

