

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on : 16th November, 2022
Judgment Delivered on : 1st December, 2022

+ CS(OS) 236/2020

INDU RANI @INDU RATHI Plaintiff

Through: Ms.Kajal Chandra, Ms.Perna
Chopra, Mr.Divye Puri and
Ms.Sakshi Anand, Advocates.

versus

PUSHPA & ORS. Defendants

Through: Mr.Madan Lal Sharma and
Ms.Tejaswini Verma, Advocates for
defendant No.1.
Mr. A.K. Sen, Advocate for
defendant No.2.
Mr.S.S.Rana, Advocate for defendant
No.3.
Ms.Vandana Khurana, Advocate for
defendant No.4.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

I.A. 12065/2020 (of defendant no.2 under O-VII R-11 of CPC) and I.A. 1647/2021 (of the defendant no.1 under O-VII R-11 of CPC)

1. By way of this judgment, I shall decide the applications filed on behalf of the defendant no.1 and the defendant no.2 under Order VII Rule 11 of the Civil Procedure Code, 1908 (CPC) seeking rejection of plaint.

PLEADINGS IN THE PLAINT

2. The pleadings in the plaint relevant for deciding the present applications are set out hereinafter:

- I. Plaintiff's father, late Shri Ram Gopal was the owner/*Bhumidar* of the land measuring 41 bighas and 9 biswas bearing Khasras no.20/6/1 (4-14), 20/20 (4-16), 21 (4-16), 32/1 (4-9), 10 (4-12), 4 (4-9), 5 (4-12), 6 (4-11), 7 (4-9), 26 (0-1), in the revenue estate of Village Iradat Nagar, Naya Bans, Delhi- 110082 ('suit land'), which was an ancestral land.
- II. Plaintiff's father died *intestate* on 7th March, 1993 leaving behind his wife and three children, the plaintiff and her two brothers, late Shri Priyavarat Mann and Raghuvinder Mann.
- III. Shri Priyavarat Mann expired on 27th November, 2015. Defendant no.1 is his wife and defendants no.5, 6 and 7 are his children. Defendant no.4, Raghuvinder Mann is the unmarried brother of the plaintiff. Mother of the parties expired *intestate* on 23rd July, 2010.
- IV. On 3rd March, 2011, the plaintiff discovered that the suit land had been clandestinely mutated by her brothers in their favour on 29th June, 1994, soon after her father's death, without her knowledge and consent.
- V. Portion of the suit land admeasuring 4 bighas 14 biswas bearing khasra no.20/6/1 (4-14) was sold by the brothers of the plaintiff to the defendant no.3 company vide Sale Deed dated 16th November, 1995. Another portion admeasuring 14 bighas 1 biswas bearing khasras no. 20/20 (4-16), 21 (4-16), 32/1 (4-9) was sold to the defendant no.2 company vide Sale Deed dated 11th July, 2007 for a sum of

Rs.1,16,80,000. Remaining portion of the suit land admeasuring 22 bighas 14 biswas bearing khasras no. 32/10 (4-12), 33/4 (4-9), 5 (4-12), 6 (4-11), 7 (4-9), 26 (0-1) was sold to the defendant no.1 vide Sale Deed dated 11th July, 2007 for a meagre sum of Rs.4,90,000.

VI. On 2nd July, 2012, the plaintiff filed a suit under Section 55 of the Delhi Land Reforms Act, 1954 ('DLR Act') before the SDM seeking partition of the suit land. In the said suit, an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 was filed on behalf of the defendant no.2 on 28th March, 2017 on the ground that the SDM did not have the jurisdiction to entertain the suit. The application of the defendant no.2 under Order VII Rule 11 of the CPC was allowed by the SDM vide order dated 4th December, 2019.

3. Accordingly, the present suit was filed on behalf of the plaintiff seeking the following reliefs:

"a) Pass a decree for Declaration, declaring the alleged Sale Deed dated 16.11.1995 in favour of the Defendant No. 3 as illegal, invalid, null and void.

b) Pass a decree for Declaration, declaring that the alleged Sale Deeds dated 11.07.2007 in favour of the Defendant No.1 and 2 as illegal, invalid, null and void.

c) Pass a decree for Declaration that the Plaintiff is legally entitled to one-third share, right, title and interest in the suit land being one of the legal heirs of her late father Shri Ram Gopal.

d) Pass a decree of Cancellation of the sale deeds dated 16.11.1995 and 11.07.2007 in favour of the Plaintiff and against the Defendant Nos.1, 2 & 3 and the Defendant No. 8/Sub Registrar of the concerned area may be directed to

cancel the aforesaid sale deeds dated 16.11.1995 and 11.07.2007 executed in favour of the Defendant Nos.1, 2 and 3 respectively in his records.

e) Pass a decree for Permanent Injunction in favour of the Plaintiff and against the Defendant Nos.1 to 7 and their representatives, associates, agents and assignees etc. thereby directing the said defendants to refrain from parting with the possession or creating any third party interests or rights with respect to suit land.

f) Pass a decree for partition in favour of the Plaintiff and against the Defendant Nos.1, 4, 5, 6 & 7 and their representatives, associates, agents and assignees etc. thereby affecting partition of the suit land by metes and bounds.

g) Pass a decree for physical possession of the one-third portion of the suit land in favour of the Plaintiff.

h) Pass a decree for Mesne Profits alongwith interest with effect from 08.03.1993 when the father of the Plaintiff died intestate and the Plaintiff became entitled to her share in the suit land, till partition of the suit land by metes and bounds is completed and physical possession of the share of the Plaintiff is lawfully handed over to her.”

PROCEEDINGS IN THE SUIT

4. Summons in the suit were issued on 28th August, 2020 to the defendants and the defendants were restrained from creating any further third party right in respect of the suit land.

5. Subsequently, I.A. 12065/2020 and I.A. 1647/2021 were filed on behalf of the defendant no.2 and the defendant no.1 respectively under Order VII Rule 11 of the CPC. Notice in I.A. 12065/2020 was issued on 15th December, 2020 and notice in I.A. 1647/2021 was issued on 7th April, 2021.

Pursuant thereto, replies have been filed on behalf of the non-applicant/ plaintiff to both the applications. Rejoinder thereto has been filed on behalf of the defendant no.1. The counsels for the parties were heard on 16th November, 2022 and the judgment was reserved.

SUBMISSIONS OF THE DEFENDANTS NO.1 AND 2

6. The defendants no.1 and 2 filed the present applications under Order VII Rule 11 of the CPC raising the following grounds:
 - A. Under the provisions of DLR Act, a daughter is not entitled to succeed to the *Bhumidari* rights of the deceased *Bhumidar*. Therefore, Mitakshara Hindu Law relating to ancestral/coparcenary property and other provisions of Hindu Succession Act are not applicable. Hence, the present suit filed by the plaintiff is barred in terms of Section 50 of DLR Act.
 - B. The succession in respect of *Bhumidhari* rights of late Shri Ram Gopal stood settled and crystalized on 7th March, 1993 and the same cannot be unsettled on account of subsequent change of law i.e., the amendments to the Hindu Succession Act in 2005. The present suit is barred under Schedule 1 of Section 185 of the DLR Act. Provisions of the special act i.e. DLR Act shall prevail over a general act i.e. Hindu Succession Act.
 - C. Upon the death of Shri Ram Gopal on 7th March, 1993, the *Bhumidari* rights in the suit land, as per Section 50 of the DLR Act devolved upon his male descendants, namely, Raghvinder Mann and late Shri Priyavarat Mann to the exclusion of the plaintiff and the mother of the plaintiff. Hence, Raghvinder Mann and late Shri Priyavarat Mann

applied for mutation and the suit land was duly mutated in their favour on 29th June, 1994. Till date, the plaintiff has failed to challenge the aforesaid mutation order and therefore, the same has attained finality.

- D. The suit land has been sold to the defendant no.2 in the year 2007 by the two brothers of the plaintiff on the basis of rights acquired by the said brothers in the year 1993.
- E. For Section 6 of the Hindu Succession Act as amended in 2005, to apply, existence of Mitakshara Joint Hindu Family/coparcenary property is a *sine qua non*. No pleadings have been made in the plaint with regard to existence of a coparcenary property. Reliance is placed on judgments in *Sunny (Minor) & Anr. v. Raj Singh & Ors.*, 225 (2015) DLT 211 and *Surender Kumar v. Dhani Ram*, 2016 SCC OnLine Del 333.

SUBMISSIONS OF THE PLAINTIFF

- 7. Counsel appearing on behalf of the plaintiff has made the following submissions:
 - A. After the omission of the Sub section (2) of Section 4 of the Hindu Succession Act, the rule of succession as contained in Section 50 of the DLR Act has been eclipsed and thus, after 9th September, 2005 provisions of the Hindu Succession (Amendment) Act, 2005 would have an overriding effect. The suit land was urbanised in the year 2006, and the rights of the parties over the suit land are governed by the Hindu Succession (Amendment) Act, 2005.
 - B. As regards the mutation in favour of the brothers of the plaintiff, the mutation does not vest any right or title in the suit land. The right and

title in a property can only be transferred through a title deed, which is to be duly registered as per Section 17 of the Registration Act.

C. The sale to the defendants no.1, 2 and 3 is illegal, in view of the amendment to the Hindu Succession Act coming into force and the plaintiff being entitled to her 1/3rd share in the suit land belonging to her father in terms of the Section 6 of the Hindu Succession (Amendment) Act, 2005.

D. Since, no partition has taken place in respect of the suit land, therefore, in terms of the judgment in ***Vineeta Sharma v. Rakesh Sharma***, (2020) 9 SCC 1, the plaintiff is entitled to her share in the suit land.

ANALYSIS AND FINDINGS

8. I have heard the counsels for the parties.

9. At the outset, it may be relevant to set out Section 50 of the DLR Act.

Section 50 of the DLR Act is set out below:

“50. General order of succession from males. - Subject to the provisions of sections 48 and 52, when a Bhumidhar or Asami being a male dies, his interest in his holding shall devolve in accordance with the order of the succession given below:

(a) male lineal descendants in the male line of the descent:

Provided that no member of this class shall inherit if any male descendant between him and the deceased is alive:

Provided further that the son or sons of a predeceased son howsoever law shall inherit the share which would have devolved upon the deceased if he had been then alive:

(b) widow;

(c) father;

(d) mother, being a widow;

(e) step mother, being a widow;

- (f) *father's father;*
- (g) *father's mother, being a widow;*
- (h) *widow of a male lineal descendant in the male line of descent;*
- (i) *unmarried daughter;*
- (j) *brother being the son of same father as the deceased;*
- (k) *unmarried sister;*
- (l) *brother's son, the brother having been a son of the same father as the deceased;*
- (m) *father's father's son;*
- (n) *brother's son's, son;*
- (o) *father's father's son's son;*
- (p) *daughter's son."*

10. A perusal of Section 50 of the DLR Act set out above shows that the provisions with regard to succession of the interest of a *Bhumidhar* is quite different from the provisions of the Hindu Succession Act, 1956. As per the rule of succession under Section 50, the male lineal descendants take priority over other categories. Therefore, in terms of Section 50 of DLR Act, the male children of the plaintiff's father i.e. Raghvinder Mann and late Shri Priyavarat Mann would have interest in the father's holdings to the exclusion of the plaintiff.

11. Now, I shall examine the judgments relied upon by the counsel for the defendants.

12. In ***Hatti v. Sunder Singh***, AIR 1971 SC 2320, a Division Bench of this Court while construing provisions of the DLR Act observed that the DLR Act is a complete Code and anyone seeking a declaration of his right as a *Bhumidhar* has to approach the Revenue Assistant under Item 4 of the

First Schedule of this Act and a Civil Court has no jurisdiction to go into this issue.

13. In **Ram Mehar v. Smt. Dakhan**, 1973 Rajdhani Law Reporter 279 (DB), the issue raised before a Division Bench of this Court was whether the rule of succession in the DLR Act would prevail over the rule of succession provided in the Hindu Succession Act, 1956. After examining the various provisions of the Act, the Division Bench concluded that the DLR Act was saved by Sub-Section (2) of Section 4 of the Hindu Succession Act and therefore, the rule of succession governing *Bhumidhar* would be governed by Section 50 of DLR Act and not the Hindu Succession Act, 1956. It was also observed by the Division bench that the rule of succession would depend upon the prevailing law at the time of death of the *Bhumidhar*. Paragraph 21 of the said judgment is set out below:

“21. In view of the conclusion that Delhi Land Reforms Act provided for the prevention of fragmentation of agricultural holdings and also dealt with the devolution of tenancy rights on such holdings, it must be held that this law was saved by Section 4(2) of the Hindu Succession Act and this would mean that the rule of succession governing Bhumidars is to be found in Section 50 of the Delhi Land Reforms Act and not in the Hindu Succession Act, 1956.”

14. Judgments of this Court in **Hatti** (supra) and **Ram Mehar** (supra) were followed by another Division Bench of this Court in **Nathu v. Hukam Singh and Ors.**, AIR 1983 Delhi 216 where the Division Bench observed that the provisions of customary law relating to restrictions on transfer do not apply to the transfer of the *Bhumidhari* rights.

15. Now, a reference may be made to Section 4 of the Hindu Succession Act, as it stood prior to its amendment in 2005. The same is set out below:

“4. Over-riding effect of Act.—

(1) Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.”

16. Pursuant to the amendment, Sub Section (2) of Section 4 Hindu Succession Act was deleted. Further, Section 6 of the Hindu Succession Act, 1956 was amended so as to give a share to the daughter in the coparcenary property.

17. Counsel for the plaintiff has placed reliance on **Nirmala & Ors. v. GNCTD & Ors.**, 2010 SCC OnLine Del 2232, where the Division Bench has held that in view of deletion of sub-section (2) of Section 4 of Hindu Succession Act, 1956 the rule of succession provided in the Hindu Succession Act would prevail over the rule of succession in Section 50 of the DLR Act.

18. Counsel for the plaintiff has also relied upon the judgment of the Supreme Court in *Vineeta Sharma* (supra) to submit that in view of the amendment of Section 6 of the Hindu Succession Act, 1956 with effect from 9th September, 2005, the plaintiff as a daughter would have the status of a coparcener and would have the same rights as a male coparcener by birth. Since, no partition has taken place in respect of the suit land, the plaintiff would have rights and interest in the suit land as a coparcener even though the father of the plaintiff had expired on 7th March, 1993.

19. In *Vineeta Sharma* (supra), the Supreme Court held that though the rights of a female coparcener under amended Section 6 of the Hindu Succession Act can be claimed from 9th September, 2005, the provisions are retrospective and would confer benefits based on antecedent events. Therefore, even if the father coparcener had expired before 9th September, 2005, the daughter can claim rights in the coparcenary property in the event no partition has taken place before 20th December, 2004.

20. The aforesaid judgment was considered by the Supreme Court in its subsequent judgment in *Har Naraini Devi v. Union of India*, 2022 SCC OnLine SC 1265, where the Supreme Court was seized with the constitutional validity of Section 50 of the DLR Act. Upholding the constitutional validity of Section 50 of the DLR Act, the Supreme Court made the following observations:

“24. Till 2005, to be specific 09.09.2005, when the Hindu Succession (Amendment) Act of 2005 was enacted, the aforesaid provision remained on the statute. It is not in dispute that the property in question is agricultural property, and therefore, in 1997 at the time when Mukhtiyar Singh died, the devolution of interest (inheritance) would be

determinable on the said date, in accordance with the law existing at that time. In 1997 Section 4(2) of the 1956 Act, was very much on the statute, its subsequent deletion would not have any impact on the rights of inheritance, which had already accrued and crystallised, prior to the amendment. Therefore, on facts deletion of Section 4(2) of the 1956 Act would not help the appellants.

...

30. *The argument advanced by the learned counsel for the appellants is that the applicability of amendment in Section 6 and the deletion of Section 4(2) from the 1956 Act would have retrospective effect, which is also of no help to the appellants. Once we are holding that succession in the present case with respect to the property in question is governed by the 1954 Act, any amendment even if it has a retrospective effect in the 1956 Act will have no bearing or impact on the provisions of succession governed by the 1954 Act. Moreover, this Court in the judgment of Vineeta Sharma has given retrospective application only to Section 6 of the 1956 Act as amended in 2005. There is no declaration regarding deletion of Section 4(2) being retrospective. This argument, therefore, also fails."*

21. A specific plea was raised before the Supreme Court in *Har Naraini Devi* (supra) as to whether in light of the judgment in *Vineeta Sharma* (supra), the repeal of Sub Section (2) of Section 4 of Hindu Succession Act would relate back. In *Har Naraini Devi* (supra), as noted in paragraph 24 set out above, the father died in 1997, when Sub Section (2) of Section 4 of the Hindu Succession Act was part of the statute. Since, the succession had opened prior to 9th September, 2005, the Supreme Court held that the rights of lineal descendants under Section 50 stood crystalised and would be unaffected by the subsequent deletion of Sub Section (2) of Section 4 of the Hindu Succession Act, 1956. It was further observed that the observations in

the *Vineeta Sharma* (supra) with regard to retrospective application were only applicable to Section 6 of Hindu Succession Act as amended in 2005 not in respect of Sub Section (2) of Section 4 of Hindu Succession Act, 1956.

22. The present case is squarely covered by the aforesaid dicta of *Har Naraini Devi* (supra). In the present case, the father of the plaintiff expired in 1993, when Sub-Section (2) of Section 4 of the Hindu Succession Act was still in existence. Devolution of interest in respect of the suit land would be determinable in accordance with the law prevailing at the time of the death of the father of the plaintiff. Therefore, rule of succession in terms of Section 50 of the DLR Act, would prevail in the present case and the brothers of the plaintiff would acquire interest in the *Bhumidari* rights of their father in the suit land. The subsequent deletion of Sub-Section (2) of Section 4 of the Hindu Succession Act would not affect the same.

23. There is yet another aspect of the matter. Section 6 of Hindu Succession Act would apply only if there is an existence of a Joint Hindu Family and a coparcenary property. It has specifically been noted in *Vineeta Sharma* (supra) that coparcenary must exist on 9th September, 2005 to enable the daughter of a coparcener to enjoy the rights conferred on her. Paragraph 69 of the aforesaid judgment is set out below:

“69. The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9-9-2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose

daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9-9-2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).”

24. Therefore, the plaint filed in the present case would have to be examined to see if a case of existence of coparcenary/ coparcenary property has been set up or not.

25. In **Surender Kumar v. Dhani Ram**, 2016 SCC OnLine Del 333, the Court while deciding an application under Order VII Rule 11 of the CPC held that there have to be clear pleadings in the plaint with regard to existence and creation of an HUF. The relevant observations are set out below:

“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.”

26. The aforesaid observations in *Surender Kumar* (supra) were followed by a Coordinate Bench of this Court in *Ansh Kapoor v. K.B. Kapur*, 2021 SCC OnLine Del 510. Similar view was also expressed by a Division Bench of this Court in *Suraj Munjal v. Chandan Munjal And Ors.*, (2019) 257 DLT 597 (DB). The relevant observations of the Division Bench are set out below:

“9. The plea of Mr. Rustagi that the actual HUF, which was formed at the birth of the appellant on November 05, 1978 and then on the birth of respondent No. 1, who became a Member by birth in 1982 has to be read in conjunction with other averments in the plaint that the HUF was instituted with funds available in the hands of respondent No. 2, who duly

acknowledged the same in various statutory records, which records are stated to be in the exclusive custody of respondent No. 2. In other words, the funds were invested only to purchase the properties, which have been in the joint names of all the co-parceners with exception of name of respondent No. 3, is without any merit, for the simple reason, what was required to be pleaded by the appellant was that the properties were inherited before the year 1956 or the HUF being created after the year 1956 by throwing the properties into common hotchpotch, which plea admittedly has not been taken. In fact, this aspect had weighed with the learned Single Judge to conclude that the claim as HUF properties (under first and second category), was unsustainable. We agree with the said conclusion arrived at by the learned Single Judge.

27. The position which emerges from a reading of the aforesaid judgments is that specific pleadings have to be made in the plaint with regard to existence and/or creation of an HUF, i.e., the date on which the HUF was created, whether it was created after 1956, who were and are its coparceners and *karta* and in the event the HUF was created after 1956, when was the property claimed to be an HUF property, put in the common hotchpotch.

28. The dicta of the aforesaid judgment is squarely applicable in the facts of the present case. There is no averment in the plaint that late Shri Ram Gopal, father of the plaintiff inherited the property from his paternal ancestors prior to 1956 and hence, the suit land cannot be a HUF property in his hands. It has also not been pleaded that the HUF was created after 1956 by late Shri Ram Gopal by throwing the suit land into a common hotchpotch. The plaintiff has simply referred to the suit land as an ancestral property in the plaint without giving any basis for the same. While deciding an application under Order VII Rule 11 of the CPC, the issue to be

considered is not whether the plaintiff has a cause of action to file the suit, but as to whether the plaint, read as a whole, has disclosed a cause of action. In the present case, there is no cause of action which is found to exist in the plaint with respect to existence of an HUF and/or coparcenary property. The plaintiff has failed to plead a case of existence of an HUF and/or coparcenary property and therefore, the plaintiff is not entitled to benefit of the judgment passed in *Vineeta Sharma* (supra).

29. In view of the discussion above, no cause of action has been established by the plaintiff in her favour which ought to be considered in trial. Hence, the applications are allowed and the plaint is rejected under provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC).

30. The suit along with all pending applications stands disposed of.

DECEMBER 01, 2022

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AMIT BANSAL, J.