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

% **Date of Decision : 14th November, 2022**

+ **CS(OS) 241/2020 & I.A. 7515/2020(O-XXXIX R-1 & 2 of CPC),
I.A. 2844/2022 (O-VIII R-1 of CPC), I.A. 7065/2022(O-VIII R-1)**

HARJINDER KAUR

..... Plaintiff

Through: Mr. Kishore M. Gajaria and
Mr. Aayush B. Paranjpe, Advocates

versus

PARAMJIT SINGH JAUHAR & ORS.

..... Defendants

Through: Mr. Bahar U. Barqi, Advocate for
defendant No.1
Mr. Nishit Kush and Ms. Mercy
Hussain, Advocates for defendant
No.2
Mr. Praveen Kapoor, Advocate for
defendant No.3

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

I.A. 8771/2022 (O-VII R-14(3) of CPC)

1. For the reasons stated in the application, the same is allowed.

I.A. 5684/2022 (of the defendants no.2 and 3 u/O-VII R-11 of CPC)

2. The present application has been filed on behalf of the defendants no.2 and 3 seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC), on the ground that the suit does not disclose any cause of action.

3. Notice in this application was issued on 12th April, 2022. On 27th July,

2022, last opportunity was given to the plaintiff to get the objections removed and have the reply placed on record, failing which the matter would be heard in the absence of reply. Still, the reply filed on behalf of the plaintiff is lying under objections. Therefore, I have proceeded to hear the present application without the said reply.

4. The present suit has been filed seeking relief of partition along with other ancillary reliefs in respect of the following two properties:

- (i) 16/329, Khajoor Road, Joshi Road, Karol Bagh, New Delhi-110005 admeasuring 518 sq. yards (Khajoor Road property)
- (ii) A-11, Naraina Industrial Area Phase-I, New Delhi admeasuring 400 sq. yards (Naraina property)

5. The plaintiff is the daughter of Late Sh. Narotam Singh Jauhar and Late Smt. Jaiwanti, and the sister of Late Sh. Harwantbir Singh Jauhar and Late Sh. Ravinder Singh Jauhar, the father of the defendants no.1 to 3.

6. The case set up by the plaintiff in the plaint is that:

- (i) The mother of the plaintiff, Late Smt. Jaiwanti was the owner of the Khajoor Road property.
- (ii) Late Smt. Jaiwanti executed a Will dated 13th December, 1961, in terms of which, the plaintiff claims right in the Karol Bagh property.
- (iii) Both the brothers of the plaintiff entered into a partnership and carried on the business in the name of M/s H.B. Packwell Industries, from the Naraina property. The finances for running of the partnership business was provided by the father of the plaintiff.
- (iv) Since the Naraina property was purchased from the funds provided by the father of the plaintiff, the plaintiff seeks share in the said property.

7. At the outset, a reference may be made to relevant clauses of the Will

executed by the Late Smt. Jaiwanti, relied upon by the plaintiff:

“ 2. That three of my daughters named Narinder Kaur, Surinder Kaur, and Pritinder Kaur are already married. I have already performed their marriage as decently as I could and I feel that they have already got reasonable share of our property. The fourth daughter Harjinder Kaur, is yet to be married. Her marriage shall also be performed in the same way as that of her elder sisters by me and my husband and by her brothers if we do not live by that time. She will also, therefore, get due share of our property.

4. That my sons Ravinder Singh and Harwantbir Singh, are yet under education and their marriage have also yet to be performed. These items involve sufficient expenditure. Moreover, the above-mentioned house is hardly enough to accommodate more than two families and any further partitioning of it would make living inconvenient and difficult. I, therefore, by this will, declare that after my death, if I am survived by my husband, Shri Narotam Singh, the possession of this house at no. 16/329, Khajoor Road, Karol Bagh, New Delhi shall vest in my husband and after him both of my sons Ravinder Singh and Harwantbir Singh shall be the sole owners of this house (16/329) and by virtue of this will, no one else could hold any claim over this.

5. That this is my self-acquired property and I have a right to give it to whomsoever I like. This will is therefore unchallengeable, indisputable and irrevocable and should take effect as laid down here by me and my husband.”

8. In respect of the aforesaid properties, another suit for partition being CS(OS) 626/2017 was filed by the defendants no.2 and 3 herein against the defendant no.1 herein, in which a preliminary decree of partition was passed on 18th May, 2018 and subsequently, a final decree of partition has been passed on 3rd June, 2022 dividing the aforesaid properties by metes and

bounds between the defendants no.1, 2 and 3. In the said suit, an application under Order I Rule 10 of the CPC was filed on behalf of the plaintiff for impleadment. The aforesaid application was dismissed by me vide order dated 30th May, 2022 holding that the Will of Late Sh. Jaiwanti Devi did not create any right, title or interest in the Khajoor Road property in favour of the plaintiff herein. The relevant observations contained in paragraphs 8 and 9 of the said order are set out below:

“8. I have heard the counsels for the parties. In my view, Clause 2 of the Will does not create any right, title or interest in the Khajoor Road property in favour of the applicant. The clause 2 of the will is vague and does not provide what would be the share being bequeathed in favour of the applicant. Reading of the clause 2 suggests that there was no definite intention on the part of the testator to grant a particular share in favour of the applicant in the Khajoor Road Property. Therefore, the said clause is hit under Section 89 of the Indian Succession Act, 1925. There is merit in the submission of the plaintiff that clause 2 would not even come into effect in view of the fact that the applicant was married during the lifetime of her father.

9. On the other hand, Clause 4 of the Will clearly states that Late Shri Ravinder Singh Jauhar and Harwant Bir Singh Jauhar shall be the sole owners of the Khajoor Road property and no one else can claim a share in the Khajoor Road property. After the Khajoor Road property fell to the share of Late Shri Ravinder Singh Jauhar and Harwant Bir Singh Jauhar, the Khajoor Road property was partitioned amongst them vide registered Partition Deed dated 23rd April, 2007.”

9. The aforesaid order has not been challenged by the plaintiff. Since the entire case of the plaintiff in respect of the Khajoor Road property is entirely premised on the aforesaid Will, the observations made in the order dated 30th May, 2022 are squarely applicable to the present case as well. Therefore, no

cause of action arises in favour of the plaintiff in respect of the Khajoor Road property.

10. As regards the Naraina property, it is an admitted position that the said property was owned by the partnership firm M/s H.B. Packwell Industries, of which the two brothers of the plaintiff, Late Sh. Ravinder Singh Jauhar and Late Sh. Harwantbir Singh Jauhar, were the only partners. It is also an admitted position that the Naraina property was divided between the two brothers of the plaintiff vide registered Partition Deed dated 7th September, 2012.

11. There is no challenge in the present suit to the title documents in respect of the Naraina Property in favour of the two brothers of the plaintiff. Only a bald averment has been made in the plaint that the father of the plaintiff had provided funds to the two brothers of the plaintiff to purchase the Naraina property, and this fact has been admitted by the brothers of the plaintiff in the Partnership Deed dated 31st December, 1966. No averment has been made in the plaint that the said property was owned by the father of the plaintiff or with regard to the existence of an HUF property or a joint hindu family property.

12. In ***Surender Kumar Khurana v. Tilak Raj Khurana***, (2016) 155 DRJ 71 (DB), 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 conclusion of the Court, as contained in paragraph 9 of the judgment, is set out below:

“9. Accordingly, the following conclusions are arrived at:-

(i) The plaint only talks of ‘joint funds’, ‘joint properties’ and ‘working together’ without the necessary legal ingredients

averred to make a complete existence of a cause of action of joint Hindu family/HUF with its properties and businesses.

(ii) Joint funds, joint businesses or working together etc. do not mean averments which are complete and as required in law for existence of HUF and its properties have been made, and, joint funds and joint properties do not necessarily have automatic nexus for they being taken as with joint Hindu family/HUF properties.

(iii) In view of the specific bar contained in Sections 4(1) and (2) of the Benami Act, once properties in which rights sought by the plaintiff are not by title deeds/documents in the name of the plaintiff but are in the name of defendants, the plaintiff is barred under Section 4(1) of the Benami Act from claiming any right to these properties and the only way in which the right could have been claimed was if there was an existence of an HUF and its properties, but, the plaint does not contain the legally required ingredients for existence of HUF and its properties.

(iv) With respect to the properties lacking in exact details with the complete address, no reliefs can be claimed or granted with respect to the vague properties.

10. In view of the above, the suit plaint does not contain the necessary averments as required by law for existence of joint Hindu family/HUF properties and its businesses and thus in fact the suit plaint would be barred by Section 4(1) of the Benami Act as the necessary facts to bring the case within the exceptions contained in Section 4(3) of the Benami Act are not found to be pleaded/existing in the plaint.”

13. Similar view was also expressed by the 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.”

14. The aforesaid judgments were followed by me in **Dr. G.M. Singh v. Dr. Trilochan Singh and Others**, 2022 SCC OnLine Del 3514.

15. The present case is squarely covered by the dicta of the aforesaid judgments. As observed above, the averments with regard to the joint funds used for purchase of the property does not lead to the existence of HUF and its properties. Specific pleadings have to be made in the plaint with regard to existence and creation of an HUF, 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 common hotchpotch.

16. The suit of the plaintiff is also hit by the bar contained in Sections

4(1) and 4(2) of the Prohibitions of Benami Property Transactions Act, 1988 (Benami Act) as the title deeds of the Naraina property are in the name of the two brothers of the plaintiff. No pleadings have been made in the plaint to bring the Naraina property within the exception contained in Section 4(3) of the Benami Act. Hence, the plaintiff is barred under Section 4(1) of the Benami Act from claiming any right in the Naraina property.

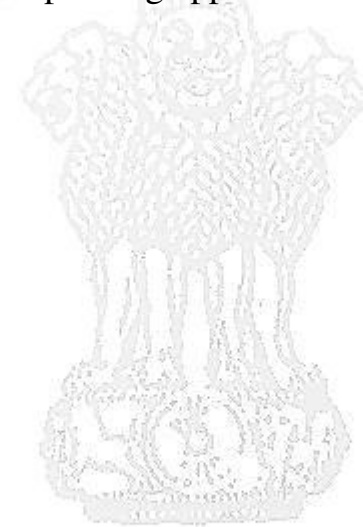
17. In view of the discussion above, the present application is allowed and the plaint is rejected under provisions of Order VII Rule 11 of the CPC.

18. The suit along with all pending applications stand disposed of.

NOVEMBER 14, 2022

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AMIT BANSAL, J.



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