



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

% *Date of decision: 20th September, 2022*

+ **CS(OS) 1214/2014 & I.A. 2273/2018 (O-XIV R-5 of CPC), I.A. 16621/2021 (u/s 151 of CPC)**

RAJEEV CHAWLA Plaintiff
Through: Mr. Tanmaya Mehta and Mr. Manan
Batra, Advocates along with
Mr. Surinder Kumar Chawla, father of
the plaintiff

versus

DEEPAK CHAWLA Defendant
Through: Ms. Shoba Ramamoorthy, Mr. Shilp
Vinod, Mr. M.A. Karthik, Ms. Ritika
Rao, Mr. Nawaz Sherif, Advocates
along with defendant in person

**CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL**

AMIT BANSAL, J. (Oral)

I.A. 3676/2021 (O-XII R-6)

1. The present application has been filed under Order XII Rule 6 read with Order VI Rule 4 of the Code of Civil Procedure, 1908 (CPC) seeking a judgment in favour of the plaintiff on the basis of admissions made by the defendant in his pleadings.
2. Notice in the present application was issued on 10th March, 2021 and reply has been filed on behalf of the defendant.
3. Brief facts leading to the filing of the present application are set out



below:

- i) The property bearing No.E-64 Greater Kailash Enclave-I, New Delhi (suit property) was purchased in 1994 in the joint names of the plaintiff, the defendant and their father, Shri Surinder Kumar Chawla.
 - ii) Subsequently, the father of the parties transferred his 1/3rd share in favour of the plaintiff vide Gift Deed dated 11th June, 2010. Thereupon, the plaintiff became entitled to 2/3rd share in the suit property.
 - iii) Accordingly, the present suit has been filed seeking relief of partition of the suit property along with other consequential reliefs.
4. In the written statement filed on behalf of the defendant, the main defence taken on behalf of the defendant is that:
- i. A joint Hindu Undivided Family (HUF) exists, of which the plaintiff, the defendant and their father, are coparceners.
 - ii. The suit property was purchased from the funds derived by selling another ancestral property owned by the grandfather of the parties.
 - iii. The intention of the family was throughout that the suit property shall be divided equally between the plaintiff and the defendant.
 - iv. There are other properties that are part of the HUF and have not been included in the present suit.
 - v. The defendant reserves its right to challenge the Gift Deed dated 11th June, 2010 executed by the father in favour of the plaintiff.
5. The defendant had earlier filed an application being I.A. No.15084/2017 under Order VI Rule 17 of the CPC for amendment of the written statement for seeking relief of partition in respect of Shop bearing



No.152, Bhagat Singh Market, Connaught Place, New Delhi and Shop bearing No.F-71, Bhagat Singh Market, Connaught Place, New Delhi. The said application was dismissed vide order dated 19th March, 2018.

6. Appeal against the said order was dismissed by the Division Bench vide judgment dated 8th February, 2019. Even the Special Leave Petition (SLP) against the order of the Division Bench was dismissed by the Supreme Court vide order dated 26th July, 2019 with the following observations:

"We are not inclined to interfere in this Special Leave Petition. The Special Leave Petition is dismissed accordingly.

However, it will be open to the petitioner to persuade the Trial Court that the written statement on record is comprehensive enough to consider, granting of relief to the petitioner at the end of the trial.

Pending applications, if any, stand disposed of."

7. I.A. 15083/2017 was also filed by the defendant for impleadment of the parents of the parties. Relying upon the judgments of this Court in ***Surender Kumar v. Dhani Ram and Ors***, 2016 SCC OnLine Del 333, and ***Rajeev Tandon & Anr. v. Rashmi Tandon***, 2019 174 DRJ 158, a coordinate bench rejected the application for impleadment vide judgment dated 11th February, 2020. The observations of the Court as contained in paragraph 13 of the judgment dated 11th February, 2020 are set out below:

"13. The clear legal position is that a particular property is joint family property must specifically plead the origin of the HUF, whether pre 1956 or post, 1956, and give sufficient particulars as to the creation of the HUF as well as the ownership of the property by the HUF. The pleadings contained in the written



statement in the present case are insufficient to meet this standard even for the purposes of a prima facie determination. Further, as mentioned hereinabove, the defendant in the written statement has specifically reserved his right to initiate action in respect of the gift deed dated 11.06.2010, and the two properties being Shop No.F-71 and Shop No. 152. This has in fact been reiterated in paragraph 6 of the preliminary submissions extracted above, as well as in paragraphs 5 and 8 of the reply on merits. The defendant's attempt to expand the scope of the present suit by impleadment of the parents is inconsistent with this reservation contained in the written statement, of which amendment has been specifically disallowed.

8. The aforesaid judgment was challenged by the defendant before the Division Bench. The appeal was dismissed by the Division Bench vide order dated 16th November, 2021 with the following observations:

“Learned counsel for the appellant, at the very outset states that the appellant does not challenge the entirety of the impugned order and has a limited grievance in respect of observations made by learned Single Judge in para 13 of the impugned order, wherein, the learned Single Judge has recorded the legal position as understood by him and thereafter made observations with regard to the appellant's pleading in his written statement. She submits that these observations would hurt the cause of the appellant/defendant in the trial of the suit and the final disposal thereof. She also submits that the cost of Rs.30,000/- imposed upon the appellant may be waived.

....

We have heard the submissions of learned counsels. We dispose of this appeal by observing that the observations made by the learned Single Judge in para 13 of the impugned order have been made in the context of the application under Order I Rule 10 CPC decided by him and it shall be open to the parties to advance their submissions on merits of their respective cases at the final hearing



of the suit post trial.”

9. On the basis of the aforesaid pleadings and proceedings in the suit, the counsel appearing on behalf of the plaintiff has made the following submissions:

- i. The entire defence of the defendant in the written statement is based on the suit property being an HUF property. However, no details have been provided about the creation of the HUF, such as, who founded the HUF, who are its members/coparceners, who is the *Karta*, the date of its creation.
- ii. The observations made by the Court in its judgment dated 11th February, 2020 as set out above are fully applicable to decide the present application as well.
- iii. The registered Gift Deed dated 11th June, 2010 executed by the father in favour of the plaintiff has till date not been challenged by the defendant.
- iv. Reliance is placed on the judgment of this Court in ***Surender Kumar*** (supra) and ***Rajeev Tandon*** (supra) where in similar cases, the Court was pleased to pass a decree under Order XII Rule 6 of the CPC.
- v. Reliance is also placed on the judgment of the Division Bench in ***P.P.A Impex Pvt. Ltd. v. Mangal Sain Mittal***, 166 (2010) DLT 84 to submit that if a defence amounting to moonshine has been presented, it should be summarily dismissed by not granting leave to defend and by decreeing the suit forthwith under the Order XII Rule 6 of the CPC.

10. Counsel for the defendant has made the following submissions:



- i. The written statement in the present suit was filed on 10th November, 2014, before the legal position with regard to HUF was propounded by this Court in ***Sunny (minor) v. Raj Singh***, 225 (2015) DLT 211.
 - ii. The present application has been filed belatedly on behalf of the plaintiff.
 - iii. Challenge as to the validity of the aforesaid Gift Deed has been made in the written statement filed on behalf of the defendant. Therefore, trial would be required to prove the validity of the Gift Deed.
11. I have heard the counsels for the parties.
12. The issue to be decided in the present suit is whether clear and categorical admissions have been made on behalf of the defendant in the written statement, so as to amount to admissions for grant of decree in favor of the plaintiff. In this regard, reference may be made to paragraph 6 of the written statement, which is set out below:

“6. That there exists a joint Hindu undivided family. That the suit property was purchased from the funds derived by selling ancestral property bearing no. B-54, Kalkaji, New Delhi of the grandfather of the parties namely Late Sh. TC. Chawla, further Late Sh. TC. Chawla left over the jewellery, cash etc. all of these funds came into the HUF. That the intentions of the parties were through out to be undivided family for that purpose the property was purchased in the joint name further in order to get the tax benefits. That the nucleus of the family always existed as the property was of joint name. The father of the parties was given the agency of Bombay region but to keep the family intact the father came back to Delhi and purchased the property bearing no. 152 Bhagat Singh Market, Connaught Place New Delhi out of the Hindu Undivided family funds to run the family business of lotteries. That it is also worth to state that the property was purchased in the name of the plaintiff whereas the agency was in the name of the defendant and the name of the agency was Deepak



agency.

....That through out the intention of the family was that the present suit property will be given fifty - fifty to both the plaintiff and defendant.

*...Apart from the above facts, it is also pertinent to point out that the property bearing No. E-64, Greater Kailash-I, New Delhi was renovated, constructed & free hold out of the efforts & funds exclusively provided by the Defendant herein and neither the Plaintiff, nor the father of the parties, Sh. Surinder Kumar Chawla had made contribution towards renovation construction & free hold on the suit property. That the plaintiff and the father of the parties admitted in the alleged gift deed that the present property is undivided property. Thus the property being undivided from the undivided family can not be gifted without the consent of the defendant. **The gift deed itself is null and void ab intio and can not be relied upon. That the defendant reserve its right to initiate the action against the gift deed and these two properties i.e. F-71 Bhagat Singh Market, Connaught Place New Delhi a 152 Bhagat Singh Market, Connaught Place New Delhi .** That the present suit is also barred by order 2 rule 2 CPC as the relief qua these properties were not demanded by the plaintiff. That the sale deed in the name of the mother is hit by the Benami transaction prohibition act 1988.”*

13. As is evident from the paragraph extracted above, the entire defence of the defendant is premised on the existence of an HUF and the suit property being owned by the said HUF. The issue with regard to the pleadings required to be made in support of the existence of a HUF is no longer *res integra*.

14. The observations of this Court in the judgment in ***Sunny (minor)*** (supra) have been reiterated and reaffirmed in a number of judgments. In fact, while rejecting the I.A. No.15083/2017 under Order I Rule 10 of the



CPC filed on behalf of the defendant, the predecessor Bench of this Court had placed reliance on paragraph 7 of the judgment in ***Surender Kumar*** (supra), wherein the observations of this Court in ***Sunny (minor)*** (supra) have been reiterated. Paragraph 7 of ***Surender Kumar*** (supra) is set out below:

“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.”

15. The legal proposition that emerges from a reading of the aforesaid paragraph is that a party setting up an HUF has to plead and give details in respect of the date when the HUF was created, who were its members/coparceners, who was the *Karta* and if the HUF was created after 1956 and when was the property put into the common hotchpotch of the HUF.

16. It is clear from the reading of the written statement that no such averments have been made in the written statement filed on behalf of the defendant. Only vague and unsubstantiated pleas with regard to the suit property being part of the HUF have been made without any particulars or documents in support thereof. Admittedly, the suit property was purchased after 1956, yet no details have been given as to when the property was



thrown into the hotchpotch of HUF.

17. Though the counsel for the defendant contends that when the written statement was filed, the legal position with regard to the pleadings required for making a case of HUF had not been elucidated. In my view, this cannot be a ground for the written statement not containing the aforesaid pleadings. Nothing prevented the defendant from amending the written statement after the legal position became clear in light of the judgments in *Sunny (minor)* and *Surender Kumar* (supra). In fact, the defendant did seek an amendment in the written statement so as to bring other properties within the ambit of the suit. However, the said amendment was declined right up to the Supreme Court.

18. As regards the contention with regard to delay in filing the present application, it is a settled position of law that an application under Order XII Rule 6 of the CPC can be filed at any stage, as the purpose of the same is to cut short the trial and pass a judgment on those aspects, wherein the parties are not at issue.

19. A Division Bench of this Court in *P.P.A Impex* (supra) has observed that the approach to be taken under Order XII Rule 6 of the CPC is akin to that to be taken while considering a leave to defend application in an Order XXXVII suit. If a defence amounting to moonshine has been presented, it should be summarily dismissed by not granting leave to defend and by decreeing the suit forthwith.

20. In *Rajeev Tandon* (supra), a Co-ordinate Bench of this Court has observed that for the purposes of passing a decree under Order XII Rule 6 of the CPC, the admissions can be in the pleadings or in the documents filed on behalf of the parties. The admissions can also be constructive admissions,



which can be inferred from the vague and evasive denial in the written statement.

21. It has been submitted on behalf of the defendant that even if the suit property is not taken to be an HUF property, the plaintiff would still be required to prove the Gift Deed dated 11th June, 2010 in favour of the plaintiff in the trial.

22. At this stage, it may be relevant to refer to the averments made in the written statement with regard to Gift Deed:

“6. *The gift deed itself is null and void ab initio and cannot be relied upon. That the defendant reserves its right to initiate the action against the gift deed...*

....

8. *That the present suit is not maintainable and is liable to be dismissed as the plaintiff has mentioned that he allegedly acquired one third share in the property from his father by virtue of an alleged Gift Deed dated 11.06.2010. It is an admitted fact that the father namely Sh. SurinderKumar Chawla is a senior citizen, who has every right to cancel the alleged Gift Deed by virtue of Senior Citizen Act, 2007.*

23. A perusal of the aforesaid paragraphs of the written statement would show that the defendant was conscious of the fact that the aforesaid Gift Deed, which is a registered Gift Deed executed on 11th June, 2010, had to be challenged by the defendant by way of a separate suit. Admittedly, no such suit has been filed on behalf of the defendant till date. If any such suit is filed at this stage, the same would be clearly barred by limitation.

24. Nevertheless, to satisfy the conscience of the Court, this Court has examined Shri Surinder Kumar Chawla, the father of the plaintiff and the defendant, on oath under Order X of the CPC and his statement has been



recorded, wherein he has admitted that the Gift Deed dated 11th June, 2010 has been executed by him in respect of the suit property in favour of the plaintiff and to the exclusion of the defendant. It has also been admitted by the father of the plaintiff and the defendant that the said Gift Deed was executed out of his own free will and volition and the same was duly registered.

25. In view of the aforesaid discussion, the defendant has failed to make out a case of the suit property being an HUF property or that the Gift Deed executed by the father of the plaintiff and the defendant in favour of the plaintiff, being invalid.

26. The averments made in the written statement with regard to existence of an HUF and the suit property being owned by the HUF, are vague and unsubstantiated. No useful purpose would be served by sending the matter for trial. Therefore, the plaintiff is entitled to a preliminary decree of partition in terms of Order XII Rule 6 of the CPC.

27. The application is allowed.

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28. Accordingly, a preliminary decree is passed in favour of the plaintiff and against the defendant declaring the share of the plaintiff and the defendant as 2/3rd and 1/3rd respectively in the suit property.

29. Counsels for the parties submit that the property cannot be physically divided by metes and bounds.

30. In view thereof, a final decree of partition is passed directing sale of the suit property and distribution of the sale proceeds between the parties as per their shares declared above. It is further ordered that the parties shall have the option of making inter se bids for purchase of share of each other in

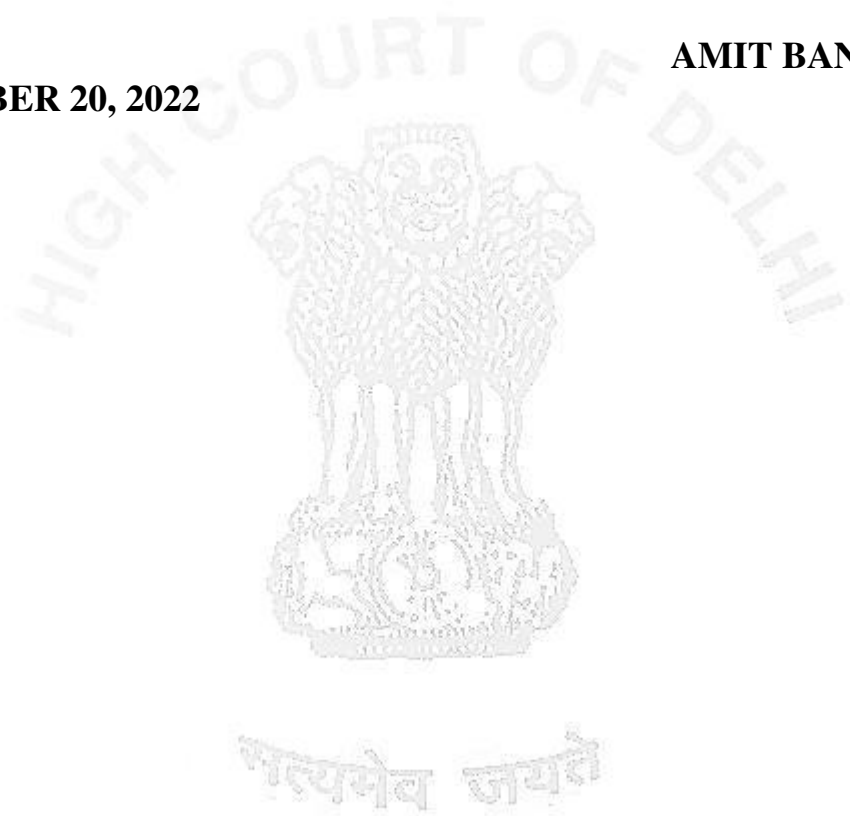


respect of the suit property. The party bidding the highest would be entitled to acquire the share of the other party by making payment of the value of the share of the other party against execution of the transfer deed.

31. Decree sheet be drawn.
32. All pending applications stand disposed of.

SEPTEMBER 20, 2022
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AMIT BANSAL, J.





CS(OS) 1214/2014

Statement of Sh. Surinder Kumar Chawla, S/o Late Sh. T.C. Chawla, aged about 86 years, resident of E-64, Greater Kailash Enclave-I, New Delhi-110048 on S.A.

Q. How old are you?

A. I am 86 years old.

Q. Where do you reside?

A. I reside in E-64, Greater Kailash Enclave-I, New Delhi

Q. Have you executed any Gift Deed in respect of the said property in favour of your son Rajeev Chawla, the plaintiff herein?

A. Yes.

Q. Is it correct that you executed this Gift Deed dated 11th June, 2010 in favour of one of your sons, Rajeev Chawla, to the exclusion of other son i.e. defendant?

A. Yes, it is correct.

Q. Does this Gift Deed bears your signatures? (Mr. Surinder Kumar Chawla is shown the Gift Deed)

A. Yes, it bears my signatures.

Q. Whether the said Gift Deed has been executed by you out of your own free will and volition?

A. Yes, the said Gift Deed was executed by me without any pressure and out of my free will.

Q. Did you get the said Gift Deed registered?

A. Yes, I went to the office of the Sub-Registrar at Mehrauli to get the said Gift Deed registered in the year 2010.

RO&AC

AMIT BANSAL, J.
20.09.2022