

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

% ***Pronounced on: November 15, 2022***
Reserved on: October 11, 2022

+ **RFA(OS) 51/2016, CM APPLs.22066/2022 & 41780/2022**

SAROJ SALKAN

..... Appellant

Through: Ms. Malvika Rajkotia, Sr.
Advocate with Mr. Mayank
Grover and Ms. Saroj Sahan,
Advocate.

versus

HUMA SINGH & ORS.

.... Respondents

Through: Mr. Arvind Chaudhary and Mr.
Jatin Dua, Advocates for R-1.
Mr. Purushottam Sharma
Tripathi, Advocate for R-2.
Mr. Prabhakar, Advocate for
R-3 & 4.
Mr. K.K. Sharma, Senior
Advocate with Ms. Bhanita
Patowany, Advocate for R-6.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. Appellant/ original plaintiff vide present appeal seeks to set-aside the Impugned Judgment and Decree dated 05.05.2016¹ whereby the learned Single Judge, exercising powers under *Order XII rule 6* of the

¹ Hereinafter referred as “**Impugned Judgment**”

Code of Civil Procedure, 1908² passed a decree dismissing the suit of appellant as per *Section 2(2)*, of the Code with respect to all the five ancestral properties detailed hereinafter, save and except, granting liberty to appellant, being a daughter of late Gen. Budh Singh³, owner of the Barota, Sonapat land, for approaching the competent court qua one of said the property situated beyond jurisdiction of this Court and also held the suit being barred by the Benami Transactions (Prohibition) Act, 1988, as admitted and/ or undisputed position of the pleadings and documents did not show existence of HUF and its properties.

2. Parties herein are lineal descendants of late General as appellant and respondent no. 6/ original defendant no. 6 are his daughters whereas respondent nos. 1 to 5/ original defendant nos. 1 to 5 are the legal heirs of late Mr. Anup Singh, son of late General and brother of appellant and respondent no. 6.

3. Appellant herein instituted a '*Suit for Partition, Rendition of Accounts and Permanent Injunction*' against the aforesaid respondents claiming partition of her 1/4th undivided share in the ancestral properties of the late General HUF as she is a coparcener therein under The Hindu Succession Act, 1956 (as amended in 2005)⁴ and alternatively sought partition of her share in the following *five* ancestral properties of the late General being (a) 72 acres farmhouse in Barota land, Sonapat⁵; (b) 11 acres Kalupur land, Sonapat⁶; (c) 8 bigha Dairy plot, Sonapat⁷; (d) 30

² Hereinafter referred as "**Code**"

³ Hereinafter referred as "**late General**"

⁴ Hereinafter referred as "**Succession Act**"

⁵ Hereinafter referred as "**Barota land**"

⁶ Hereinafter referred as "**Kalupur land**"

⁷ Hereinafter referred as "**Dairy plot**"

acres Bhatgaon land⁸; and (e) House no. C-38, Anand Niketan, New Delhi⁹, acquired out of the funds of the joint family barring the Anand Niketan property, which was said to have been purchased from the sale of Barota Land.

4. As per pleadings, prior to institution of the afore-mentioned suit, parties herein were entangled in various litigations, amongst them, the two earlier suits relevant for the purposes of adjudication of the present dispute are detailed as under:-

Suit No. 67/1/1972: Suit for declaration qua Barota land {appellant, respondent nos. 1, 2 & 6 vs. late General & late Mr. Anup Singh} before Sub-Judge, 1 st Class, Sonapat ¹⁰	Rights in favour of appellant amongst others, in Barota land were declared vide judgment dated 06.04.1972.
Suit No. 66/1977: Suit for declaration qua Barota land {late General vs. appellant & respondent no. 6} before Sr. Sub-Judge, Sonapat ¹¹	Based on admission in written statement by appellant, late General was declared as owner of Barota land vide judgment dated 08.03.1977.

5. Thereafter, *Suit No. 219/1978* and *Suit No. 622/1984* were also instituted inter-se the late General, respondent nos. 1 to 5 and their father late Mr. Anup Singh, but as they were instituted after declaration of late General as the owner of Barota land vide judgment dated 08.03.1977 in Suit II on the basis of the admission of appellant and respondent no. 6, they are not relevant for the purposes of adjudication of the present dispute

⁸ Hereinafter referred as “**Bhatgaon land**”

⁹ Hereinafter referred as “**New Delhi house**”

¹⁰ Hereinafter referred as “**Suit I**”

¹¹ Hereinafter referred as “**Suit II**”

and are hence being ignored.

6. While dealing with the Barota land, learned Single Judge, placing reliance upon *Section 74* of The Indian Evidence Act, 1872, in view of the earlier judgments in Suit I and Suit II noted that appellant along with respondent no. 6 gave up their rights in the same Barota land. Thus, negating the argument of learned counsel for appellant to the effect that both judgments in Suit I and Suit II were collusive and not binding upon appellant, learned Single Judge held that averring about something which happened in 1977 in a suit instituted after 30 years in 2007 (before him) provided no help to appellant as the late General was the owner of the Barota Land and also that the appellant was debarred from raising such argument in view of *Article 59* of The Limitation Act, 1963¹². In view thereof, learned Single Judge held that the Barota land belonged to the late General and that it was not a HUF property. Being barred by limitation in view of *Article 59* of the Limitation Act, challenge to the earlier judgment dated 08.03.1977 passed in Suit II by appellant on the ground of it being collusive and not binding, also failed.

7. Furthermore, after discussing the concept of HUF both pre 1956 and post 1956, i.e. since the enactment of Succession Act and the requirements thereof with respect to a cause of action pleaded in such a suit, learned Single Judge observed that mere mentioning of ancestral properties falling in HUF does not mean existence of an HUF as post 1956, HUF exists only under two circumstances, *firstly* if any HUF was already existing prior to 1956 or *secondly* when the properties in the hands of one are thrown into a

¹² Hereinafter referred as “**Limitation Act**”

common hotchpotch. The same require specific pleadings but the appellant failed to show both the creation and the existence of an HUF prior to 1956 or that the properties were put in the common hotchpotch because of which the specific properties were inherited by the late General. Thus, learned Single Judge found that no trial, thus, was required as the case of appellant did not follow the mandate of *Order VI rule 4* of the Code as the evidence sought to be led was beyond pleadings and the case of appellant was based on totally vague averments and totally self-serving documents, thereby concluding that there is no cause of action.

8. Thence, after discussing the concept of HUF and the law laid down qua HUF in *Surender Kumar vs. Dhani Ram and Ors.*¹³; *Sunny (minor) & Anr. Sh. Raj Singh and Ors.*¹⁴; *Yudhishter vs. Ashok Kumar*¹⁵ and *Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Ors*¹⁶, wherein it has been held that after passing of the Succession Act inheritance by a person of an ancestral property would not be HUF in his hands but instead would be a self-acquired property and that mere mentioning about the existence of ancestral properties cannot mean existence of HUF thereof. Being bereft of any pleadings, i.e., details/particulars necessary for the purposes of an HUF and the existence of the ancestral properties claimed, the case of appellant failed qua all the three remaining properties, i.e., Barota land, Bhatgaon land and Anand Niketan property.

9. Qua the Anand Niketan property, learned Single Judge after noting

¹³ 227 (2016) DLT 217

¹⁴ 225 (2015) DLT 211

¹⁵ (1987) 1 SCC 204

¹⁶ (1986) 3 SCC 567

that though it was initially purchased by late General in 1968, it was soon transferred to his son/ brother of appellant, late Mr. Anup Singh in 1970 itself during his lifetime, thus declaring him as the rightful owner thereof and noting that the only exception allowing existence thereto is under *Section 4(3)* of the Benami Act, 1988, held that the present case was not a case falling thereunder. As the title deeds qua the Anand Niketan property were admittedly in the name of father of respondent nos. 1 to 5, late Mr. Anup Singh, the claim qua it was held to be barred by *Section 4(1)* of the Benami Act.

10. Based on the aforesaid, learned Single Judge concluded that no details/ exact particulars/ documents required under *Order VII rule 1*, *Order VII rule 3* read with *Order VI rule 4* of the Code qua Kalupur land and Dairy Plot were provided; similarly, no details qua the existence of HUF and its properties acquired by the late General were pleaded. That being so, the only way appellant could have inherited such ancestral properties prior to 1956 was if the late General had thrown them into a common hotchpotch, which admittedly was not the case before learned Single Judge. Lastly, according to respondents, late General expired leaving a Will dated 03.11.1987 and as the Barota land was situated in Sonapat, Haryana, therefore the suit was not maintainable before this Court.

11. Accordingly, exercising powers under *Order XII rule 6* of the Code, the learned Single Judge passed a decree of dismissal of the suit as per *Section 2(2)* of the Code with respect to all the ancestral properties except the Barota land giving liberty to appellant to initiate appropriate steps qua

that.

12. It is to be noted, that based on the pleadings of the parties, finding no details qua two ancestral properties, being Kalupur land and Dairy plot, by appellant and denial of the same by respondents, learned Single Judge vide the impugned Judgment dismissed the suit of the appellant qua the said two properties *in limine*, which has not been challenged before this Court. Similarly, qua the Barota land also, appellant during the course of arguments and in written submissions submitted as under:-

“With regard to the plea of the land Barota being agricultural property and covered by the Punjab Land Revenue Act It is stated that since the defendant have propounded a will the matter has to be adjudicated in court the legal consequences of which will bear upon the said property.”

13. Meaning thereby, this Court is not called upon to adjudicate qua the Kalupur land, the Dairy plot and the Barota land, which leaves only the remaining two ancestral properties, being the Bhatgaon land and the Anand Niketan property to be adjudicated upon.

14. Coming back to the pleadings in the present appeal, learned counsel for appellant, amongst various grounds pleaded, has primarily argued qua existence of an HUF and that being a daughter of late General, she has an inherent right over the ancestral properties which fell into his share. Learned counsel for appellant submitted that previous litigations inter-se the parties have been wrongly ignored by learned Single Judge; exact details qua existence of HUF under the harsh realities of the Indian society have been overlooked; ground of limitation despite specific pleading to the effect that respondent nos. 1 to 5 even after the demise of the late General

continued to give money to appellant treating the properties as ancestral/ HUF has been ignored; lack of particulars is a procedural law not directory in nature; conclusion of inheritance of ancestral properties after 1956 is wrong; appellant was not called for producing better particulars; as appellant and all her siblings were born prior to 1956, they have interest in the ancestral properties of the late General who inherited properties prior to 1956 and the HUF was automatically created when the said late General inherited the said ancestral properties; lastly admitting that appellant came to know about the existence of judgments in Suit I and Suit II only in 2005.

15. Additionally, during the course of rejoinder arguments, learned counsel for appellant, though not pleaded anywhere in appeal, has also submitted *for the first time* that the ancestral properties were thrown into the common hotchpotch of the joint family property; late mother of respondent nos. 1 to 5 had acknowledged share of appellant in the ancestral properties and had been giving cash compensation from time to time; Anand Niketan property was purchased from the sale of the Barota land; contrary to before, submitted that previous judgments passed in Suit I and Suit II had no legal effect on title and beneficial interest of appellant and that they were not covered by the principle of *res judicata* as there is no adjudication and have no substantive legal consequences; relying upon ***Vinita Sharma vs. vs. Rakesh Sharma***¹⁷ contended that when a purported petition is proven to be sham, effect thereof is that the same is considered in a joint family property; and lastly principles of *Order XII rule 6* of the

¹⁷ (2020) 9 SCC 1

Code have been wrongly invoked while deciding an application under *Order VII rule 11* of the Code and there is a glaring infirmity and the finding of admissions therein is erroneous.

16. Barring aforesaid, learned counsel for appellant has neither pleaded nor advanced any arguments nor thrown any light over the legal position nor cited any case laws regarding any of the issues/ grounds, especially the relevant quoted provisions of the Code and the Limitation Act, recourse whereunto form the very basis of dismissal of suit of appellant by the learned Single Judge under *Order XII rule 6* of the Code vide the impugned judgment. In support of her contentions, though learned counsel for appellant has relied upon more than 30 judgments with respect to the law expounded qua HUF, ancestral property, coparcenary, joint family property, so on and so forth but we are afraid the learned counsel for appellant has failed to draw our attention or cite any law regarding the two fundamental issues of pleadings and limitation for maintainability of the present appeal. Appellant, thus failing to cross over the main obstacles is unable to counter the basic essence of the impugned judgment.

17. Contrary thereto, separate learned counsels representing respondent nos. 1 to 5, voicing the same concern, have supported the impugned judgment in view of the pleadings of appellant before the learned Single Judge, though understandably there was no rebuttal by the respondent no. 6, who, we think and we are correct in assuming is supporting the case of the appellant tooth and nail. Essentially, learned counsels for respondent nos. 1 to 5 have argued that the plaint was lacking in material particulars and was not in accordance with the mandatory requirements of *Order VI*

Rule 4 of the Code; relying upon the replication filed by appellant before learned Single Judge wherein it was averred that the Barota land was a grant by way of Gallantry Award given to the late General, it was contended that meaning thereby it was a self-acquired property and not HUF property or which was common part of the hotchpotch; most importantly neither any material particulars were given qua the HUF or the three ancestral properties comprising of Barota Land, Bhatgaon Land and Anand Niketan property nor the title deed qua the Anand Niketan property in favor of the father of respondent nos. 1 to 5 was challenged within the stipulated period as per *Section 59* of the Limitation Act. To buttress aforesaid contentions, learned counsels for respondent nos. 1 to 5 have, amongst other judgments, relied upon few judgments to contend that based on the findings recorded in the Impugned Judgment the suit of the appellant has been rightly dismissed vide the impugned judgment by the learned Single Judge.

18. We have heard the learned counsel for all the parties concerned at great length and after going through all the documents, pondered upon the position of law qua pleadings and the rights of a party like the appellant herein. Since the disputes in this appeal are arising out of and primarily revolving around a '*Suit for Partition*', this Court deems it prudent to, before venturing into the factual interpretation of the disputes involved, give an overview of the law involved in such suits, especially like the present one involving issues like partition. A party approaching a Court of law has to base its claim upon the twin pillars comprising of *law of pleadings* and *law of limitation* at the very inception so as to lay a platform for moving ahead towards the desired/ final decision. Both *law of*

pleadings and *law of limitation* are the guiding factors and form the basic essence for such party approaching the Court.

19. *Law of pleadings* in a suit of the aforesaid nature require the party, while approaching the Court to comply with the basic parameters set out in *Order II rules 1, 2 and 4* of the Code whereby such party is required to frame the suit in such a manner that it makes out proper grounds for enabling the Court to arrive at a final conclusion over the issues under challenge so as to prevent any further litigation. It is also mandatory for such party to, in such suit, include the whole of the claim to which it is entitled in respect of the whole of the cause of action, subject to relinquishing any portion of the claim for the purposes of jurisdiction. Lastly, such party shall not be allowed to join a cause of action qua certain relief(s) of mesne profits, arrears of rent, damages for breach or such other without leave of the Court.

20. *Law of pleadings* also requires that in terms of *Order IV rule 1* of the Code every plaint shall comply with what is contained in *Order VI and VII* of the Code. *Order VI rules 2, 4, 7 and 9* of the Code require that every suit, instituted by a party in the form of a plaint, shall contain a concise form of statement qua the material facts, but not the evidence which are to be proved, on which such party approaching claims to rely upon and in all such cases like the present one, the plaint should compulsorily contain all the relevant particulars i.e. basic details and essentials involved. Lastly, such party approaching a Court of law shall not raise any new ground of claim or contain any allegation of fact inconsistent with the pleadings made by it previously and shall state the

effect of the contents of any significant document if the precise words used therein are material.

21. *Law of pleadings* further requires that in terms of *Order VII rules 1 and 3* of the Code every plaint shall always contain the requisite particulars, amongst others, most importantly the facts constituting the cause of action and when it arose, along with a description of the property sufficient to identify it, as would be, where the subject matter in the suit is pertaining to an immoveable property.

22. In addition to all the above, *law of limitation* in a suit of the aforesaid nature requires the party approaching to comply with the basic parameters set out in *Section 3* and the *Article 59* of the Limitation Act, 1963¹⁸.

23. It is only after a platform has been successfully laid over the pivotal twin pillars by the party approaching, that the Court proceeds for settlement of issues under *Order XIV rule 1* of the Code to determine the suit before it. Such issues are based upon either a material proposition of fact, being ‘issues of fact’ or a material proposition of law, being ‘issues of law’, which have to be specifically alleged by the party approaching the Court and which, are though affirmed by such party are denied by the other party. In essence, there has to be a triable issue raised for the Court to proceed for pronounce a decision after going through the rigors of the procedures involved.

24. It is again reiterated that learned counsel for appellant has neither placed on record nor filed any judgments to overcome the mandatory twin

¹⁸ Hereinafter referred as “**Limitation Act**”

hurdles qua *law of pleadings* and *law of limitation*. No doubt, the legal submissions advanced by learned counsel for appellant sound very impressive but for consideration thereof appellant has to first stand on her own legs by making out a good case on merits maintainable in law and on facts. Regrettably, appellant has failed to overcome that.

25. Applying the aforesaid *law of pleadings* and *law of limitation* in the perspective of the present case, as to whether pleadings made by appellant before the learned Single Judge were within the contours of the aforesaid provisions of the Code and the Limitation Act, a reading of the plaint reveals that appellant has all along been under an apprehension that each of the *five* properties in the hands of late General were ancestral as there is no specific and/ or even vague averment regarding the lineage, time or like. Not only that, though appellant for the first time has pleaded at the time of rejoinder arguments that the five properties were thrown into the common hotchpotch. The same is again missing qua any particulars, if the ancestral properties were put in the common hotchpotch then they were self-acquired property in whose name, when were they put in the common hotchpotch and how were they put in so. In any event it is not clear as to were the *five* ancestral properties actually ancestral in the hands of the late General as in either case, appellant has failed to disclose anything qua the name/s, timeline/s, property details or like details thereof. Plaint neither carries any averments nor is accompanied by any documents exhibiting the mandatory specifications, i.e., details/ particulars qua any of the ancestral properties nor any documents qua them. So much so, though appellant claims to always have been in discussions with the late General, her brother late Mr. Anup Singh and his family members from time to

time but, once again, the same is without any particulars, i.e., details/particulars or any documents. On one hand, appellant claims to be in regular touch with all of them but on the other hand claims to be oblivious even of the existence of previous judgments in Suit I and Suit II until 2005, claiming they are collusive and not binding upon appellant, despite she was herself a party to both the proceedings and she has not challenged them before a Court of law.

26. *Law of pleadings* in suits is ‘what was’ and directly proportional to ‘what will be’. It is akin to ‘you reap what you sow’ as the outcome of a suit depends upon what was pleaded by the party approaching the Court at the time of initiation of a suit. In a suit of present nature, the plaint should be accompanied with clear specific and categoric pleadings qua each one of the *five* properties. Appellant ought to have taken better measures at the time of institution of the suit for getting a desired result/ decision by giving a layout as per *law of pleadings* and setting out the dimensions as per *law of limitation*. Too bad that a party like appellant who instituted the suit cannot go beyond the pleadings set out and that too at appellate stage without seeking any permission to do so. Appellant cannot be permitted to build a new case on the old foundation. As discussed in detail hereinabove, the *law of pleadings* forms the very backbone of a litigation and it is the bounden duty of any party approaching the Court to aver the basic essentials in the plaint. The Hon’ble Supreme Court in ***Maria Margarida Sequeria Fernandes and Ors. vs Erasmo Jack de Sequeria(Dead) through L.Rs.***¹⁹ has held as:-

¹⁹ (2012) 5 SCC 370

“53. Pleadings are the foundation of litigation. In pleadings, only the necessary and relevant material must be included and unnecessary and irrelevant material must be excluded. Pleadings are given utmost importance in similar systems of adjudication, such as, the United Kingdom and the United States of America.

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57. After enactment of the Civil Procedure Rules 1998, much greater emphasis is given on pleadings in the United Kingdom. Similarly, in the United States of America, much greater emphasis is given on pleadings, particularly after two well known decisions of the US Supreme Court, viz., Bell Atlantic Corporation et al. v. William Twombly [550 U.S. 544, 127 S.Ct. 1955] and John. D. Ashcroft, Former Attorney General, et al. v. Iqbal et al. [556 U.S. 662, 129 S.Ct.1937].

58. In Bell Atlantic (supra), the Court has observed that factual allegations must be enough to raise a right to relief above the speculative level. The pleadings must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action.

59. In Ashcroft (supra) the majority Judges of the U.S. Supreme Court observed as under: “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as a true, we are not bound to accept as true a legal conclusion couched as a factual allegation only a complaint that states a plausible claim for relief survives a motion to dismiss.”

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61. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question.

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68. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title holder’s claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the Court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

69. The person averring a right to continue in possession shall, as far as possible, give a detailed particularized specific pleading along with

documents to support his claim and details of subsequent conduct which establish his possession.

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71. Apart from these pleadings, the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents.

72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

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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.

75. 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.”

27. In the present case, there is no evident cause of action arising or which has arisen or which is live in favor of appellant from the pleadings, especially qua the Barota land as based on the admissions made by appellant and respondent no. 6, however, the issue of ownership in favor of the late General has already been settled way back on 08.03.1977 at the time of disposal of Suit II, which admittedly, has neither been challenged nor set aside or modified or appealed by anyone, much less the appellant before us. Thus, a decree by a Court of law is for all purposes final and binding upon all parties, including the appellant, involved therein. Such a decree, if not set aside, is for perpetuity and is a judgment in rem. We find support of the same in ***M. Meenakshi & Ors. vs Metadin Agarwal (D) By***

LRs. & Ors.²⁰ wherein it is held as:-

“17. The competent authority under the 1976 Act was not impleaded as a party in the suit. The orders passed by the competent authority therein could not have been the subject-matter thereof. The Plaintiff although being a person aggrieved could have questioned the validity of the said orders, did not chose to do so. Even if the orders passed by the competent authorities were bad in law, they were required to be set aside in an appropriate proceeding. They were not the subject matter of the said suit and the validity or otherwise of the said proceeding could not have been gone into therein and in any event for the first time in the Letters Patent Appeal.

18. It is a well-settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in absence of the authorities who were the authors thereof. The order passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities.”

28. Facts of the present case reveal that admittedly, late General transferred the Anand Niketan property in the name of his son/ brother of appellant and respondent no. 6 late Mr. Anup Singh during his lifetime in 1970 and thereafter after 18 years he expired in 1988, till then he never challenged the ownership of his son Mr. Anup Singh. In fact, the title deeds in favour of late Mr. Anup Singh stood the test of time until his own demise in 1989. Reliance is placed upon ***Ramti Devi Vs. Union of India***²¹ wherein it is held as under: -

“2. The question is whether the suit is within limitation. In the evidence, it was admitted that she had knowledge of the execution and registration of the sale deed on 29-1-1947. Initially a suit was filed in 1959 but was dismissed as withdrawn with liberty to file fresh suit. Admittedly, the present suit was filed on 30-7-1966. The question, therefore, is whether the suit is within limitation. Article 59 of the Schedule to the Limitation Act, 1963, relied on by the appellant herself, postulates that to cancel or set aside an instrument or decree

²⁰ (2006) 7 SCC 470

²¹ (1995) 1 SCC 198

or for the rescission of a contract, the limitation is three years and it begins to run when the plaintiff entitles to have the instrument or the decree cancelled or set aside or when the contract rescinded first became known to him. As seen, when the appellant had knowledge of it on 29-1-1949 itself the limitation began to run from that date and the three years' limitation has hopelessly been barred on the date when the suit was filed. It is contended by Shri V.M. Tarkunde, learned Senior Counsel for the appellant, that the counsel in the trial court was not right in relying upon Article 59. Article 113 is the relevant article. The limitation does not begin to run as the sale deed document is void as it was executed to stifle the prosecution. Since the appellant having been remained in possession, the only declaration that could be sought and obtained is that she is the owner and that the document does not bind the appellant. We are afraid that we cannot agree with the learned counsel. As seen, the recitals of the documents would show that the sale deed was executed for valuable consideration to discharge pre-existing debts and it is a registered document. Apart from the prohibition under Section 92 of the Evidence Act to adduce oral evidence to contradict the terms of the recital therein, no issue in this behalf on the voidity of the sale deed or its binding nature was raised nor a finding recorded that the sale deed is void under Section 23 of the Contract Act. Pleading itself is not sufficient. Since the appellant is seeking to have the document avoided or cancelled, necessarily, a declaration has to be given by the court in that behalf. Until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties.”

29. Today also, those documents have not been challenged by appellant. For this reason, it is too late in the day for appellant to allege that the late General, her brother late Mr. Anup Singh and the respondent nos. 1 to 5 were in collusion and the previous judgment dated 08.03.1977 passed in Suit II was not binding upon appellant. Same cannot be accepted as the said judgment dated 08.03.1977 was based on admissions made by appellant herself and furthermore the same has not been challenged by appellant till now, much less within the time prescribed under *Article 59* of the Limitation Act, which is a mandate of law, as has been held in ***Md.***

Noorul Hoda vs Bibi Raifunnisa & Ors²². wherein it is held as: -

“6.....xxxx The present Article 59 of the Schedule to the Act will govern any suit to set aside a decree either on fraud or any other ground. Therefore, Article 59 would be applicable to any suit to set aside a decree either on fraud or any other ground, it is true that Article 59 would be applicable if a person affected is a party to a decree or instrument :Or a contract. There is no dispute that Article 59 would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether Article 59 gets attracted? As stated earlier, Article 59 is a general provision. In a suit to set aside or cancel an instrument, contract or a decree on the ground of fraud, Article 59 is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. Section 31 of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in Section 31 of the Specific Relief Act is wide enough to encompass person seeking derivative title from his seller. It would therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree set aside, first become known to him.”

30. Reliance is also placed upon **Sneh Gupta vs. Devi Sarup and Others**²³ wherein it has been held as under:-

“58. If the compromise has been accepted in absence of all the

²² (1996) 7 SCC 767

²³ (2009) 6 SCC 194

parties, the same would be void. But if the same having resulted in grant of a decree, the decree based on compromise was required to be set aside. The compromise may be void or voidable but it is required to be set aside by filing a suit within the period of limitation.

59. Limitation is a statute of repose. If a suit is not filed within the period of limitation, the remedy would be barred.

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67. The compromise decree, as indicated hereinbefore, even if void was required to be set aside. A consent decree, as I well known, is as good as a contested decree. Such a decree must be set aside if it has been passed in violation of law. For the said purpose, the provisions contained in the Limitation Act, 1963 would be applicable. It is not the law that where the decree is void, no period of limitation shall be attracted at all.”

31. Appellant by virtue of a fresh suit cannot be allowed to claim something contrary to what has already been adjudicated by a Court of law way back on 08.03.1977 at the time of disposal of Suit II qua the Barota land, more so, when she herself was a party who had made an admission therein. Importantly, appellant has not challenged the said judgment dated 08.03.1977 passed while disposing Suit II ever till date, neither within the stipulated time under *Article 59* of the Limitation Act nor after coming to know of the same.

32. In the wake of the unchallenged judgment dated 08.03.1977 passed while disposing *Suit No. 622/1984* and after having lost her right to exhaust the remedy qua it in view of *Article 59* of the Limitation Act, the suit instituted by appellant before the learned Single Judge seeking partition of the Barota land could not be maintainable in law and/ or on facts. Assuming appellant was unaware of the same, she never chose to exercise her right of filing application(s) under *Order XI rule 12* and *14* or *Order XII rule 8* of the Code calling for better particulars. Accordingly, the claim of appellant qua Barota land fails as there are no reasons to fault

the impugned judgment of the learned Single Judge under challenge qua this issue.

33. Similarly, the plaint was again bereft of any particulars qua the Anand Niketan property as there is nothing on record to show that to be an ancestral property. Moreover, admittedly, as established before the learned Single Judge, the late General purchased the said Anand Niketan property way back in 1968 and transferred it to his son/ brother of appellant, late Mr. Anup Singh in 1970 during his lifetime, thus declaring said late Mr. Anup Singh rightful owner thereof. Interestingly, both the aforesaid acts had already taken place even prior to passing of the unchallenged judgment dated 08.03.1977 disposing Suit II. Once again, assuming appellant was unaware of the same, which although is not her case, she never chose to exercise her right of filing application(s) under *Order XI rule 12* and *14* or *Order XII rule 8* of the Code calling for better particulars and also, never instituted another appropriate suit challenging the title of the owner, late Mr. Anup Singh of the said Anand Niketan property. Having not done so, appellant cannot seek any relief against the true owner of the said Anand Niketan property by virtue of another suit like the present one. We are refraining from commenting anything about the applicability of *Article 59* of the Limitation Act as the same is not under consideration before this Court. Accordingly, the claim of appellant qua Anand Niketan property also fails as there are no reasons to fault the impugned judgment of the learned Single Judge under challenge qua this issue too.

34. The situation being the same qua the Bhatgaon land, the claim of appellant qua the said Bhatgaon land also fails as there are no reasons to

fault the impugned judgment of the learned Single Judge under challenge qua this issue also.

35. It is reiterated that the dismissal of the suit qua the three ancestral properties being Kalupur land, Dairy plot and Barota land by the learned Single Judge has not been challenged before this Court, and therefore there is no requirement for us to venture into the same. The suit of appellant qua the two ancestral properties being Kalupur land and Dairy plot, stands dismissed *in limine* vide impugned judgment of the learned Single Judge and qua the Barota land appellant has been rightly granted liberty to approach the appropriate forum at Sonapat, Haryana having appropriate jurisdiction, as in light of Section 16 of the Code, that the cause of action qua the Barota Land arises there.

36. Taking an overview of the case set up by appellant before the learned Single Judge, in furtherance of the aforesaid discussion this Court finds that the plaint based on elusive pleadings was bereft of material particulars, less a concise statement qua them and did not disclose any cause of action and the same was filed beyond the statutory timeline provided under the Limitation Act and hence was grossly barred by limitation especially as the suit was not properly instituted qua Barota land in view of the previous unchallenged judgment dated 08.03.1977 passed in Suit II and qua Anand Niketan property in view of the unchallenged title deeds in favor of late Mr. Anup Singh and qua Bhatgaon land also the position is the same. Appellant neither moved applications under appropriate provisions of law before the learned Single Judge nor challenged them before a competent Court of law. Having not done so, it is an established law that appellant is bound by the same.

37. Consequently, though there is no need to go into the aspect of a

triable issue being raised or not as it is settled position of law that statements made by a party before a Court of law in pleadings do not and in fact cannot create right in favor of such or other party save and unless the same is backed by and/ or proven, as the case may be, by documentary/ oral evidence. In the present case, appellant has not raised anything worthy of credence which would give rise to framing of any triable issue.

38. Cause of action comprises of such bundle of facts necessary and proper for determination of the real issue to adjudicate the reliefs claimed by a party. Cause of action is in fact also the back bone of a litigation which is germane to the issue on hand. In the present case, when the title of the properties has already been decided, adjudicated upon and accepted and in fact acted upon by the parties on hand, there can be no fresh cause of action. There is not even a semblance of any cause of action in the present dispute.

39. According to us, there is no fruitful purpose for a Court to proceed whence appellant had failed to establish any cause of action based on which the reliefs were claimed by her. The same, will in fact lead to more wastage of time, effort and money of the parties entangling the Court for no rhyme or reason. In such circumstances, there is nothing wrong observed by the learned Single Judge in exercising powers under *Order XII rule 6* of the Code in passing the Impugned Judgment. The law with respect to same has been discussed and laid down in *Maya (H.K.) Ltd. & Ors. vs Owners & Parties, Vessel M.V. Fortune Express & Ors*²⁴ wherein it is held as: -

“12.xxxxx A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to

²⁴ (2006) 3 SCC 100

misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.”

40. In view of the above observations, there is no need to enter into the domain of the 5 ancestral properties being a part of the late General HUF or not. Appellant has neither been able to show nor averred qua the properties being ancestral in the hands of the late General, which if she would have, could establish her case of being a coparcener or having a share in the HUF. The same need not be and in fact cannot be presumed if the situation is otherwise. Mere pleadings in such circumstances and in such situation is not sufficient. Admittedly, appellant has failed to show or aver as to how are the five properties ancestral in the hands of late General as there are no pleadings nor any documents filed in support thereof. We find support in ***Bhagwat Sharan (Dead Through Legal Representatives) Vs. Purushottam and Ors.***²⁵ wherein it has been held as :-

“21. In view of the law cited above, it is clear that not only jointness of the family has to be proved but burden lies upon the person alleging existence of a joint family to prove that the property belongs to the joint Hindu family unless there is material on record to show that the property is the nucleus of the joint Hindu family or that it was purchased through funds coming out of this nucleus. In our opinion, this has not been proved in the present case.”

41. The same view has already been expressed by the Hon’ble Supreme Court in ***Vineeta Sharma (supra)*** wherein it has been held as: -

“131. There is a general presumption that every Hindu family is presumed to be joint unless the contrary is proved. It is open even if one coparcener has separated, to the nonseparating members to

²⁵ (2020) 6 SCC 387

remain joint and to enjoy as members of a joint family. No express agreement is required to remain joint. It may be inferred from how their family business was carried on after one coparcener was separated from them. Whether there was a separation of one coparcener from all other members of a joint family by a decree of partition, the decree alone should be looked at to determine the question was laid down”

42. In view of the aforesaid, belated submission of appellant *for the first time* that the ancestral properties were thrown into the common hotchpotch carries no weight and cannot be gone into at this stage by the appellate Court. Similarly, the submission qua the late mother of the respondents nos. 1 to 5 acknowledging her share in the ancestral properties and that she was giving cash compensation from time to time is mere conjecture, based on hypothesis. There is no proof qua them. That the Anand Niketan property was purchased from the sale of the Barota land has already been answered in the negative hereinbefore. The submission qua the earlier judgement passed in Suit II *inter-se* the family members comprising of all the parties before us including the Late General and Late Mr. Anup Singh not covered by the principle of *res judicata* as there is no adjudication is again with no basis. We find no glaring infirmity in the impugned judgement passed by the learned Single Judge.

43. In the present case, though the appellant claimed existence of an HUF, however, the same was not substantiated in any form whatsoever. Otherwise also, even during the course of pendency of the suit before the learned Single Judge, it turned out to be otherwise, no triable issue was raised. The plaint of appellant was based purely on conjectures and surmises. As such and in view of the aforesaid reasonings, the issue of existence of an HUF or a coparcenary is no more open for consideration and calls for no decision. In our view, learned Single Judge has given due weightage to the previous litigations *inter-se* the parties and not wrongly

ignored them. It is fascinating to note that before this Court, though appellant has pleaded about existence of HUF but on the contrary has tried to take shelter under the harsh realities of the Indian society qua it.

44. We note that, the appellant has interestingly been lagging far behind, as she has only now, after fifteen years since the institution of the suit before the learned Single Judge and after seven years since the passing of the impugned judgment, for the first time filed an application under *Section 152* and *Section 153* of the Code seeking the following reliefs: -

“a. Allow the present application for amending the Impugned Judgement dated 05.05.2016;

b. Allow the present application to amend Paragraph No. 2 of the Complaint in CS(OS) No.683 of 2007 and allow the amended Suit for partition, rendition of accounts and permanent injunction be taken on record.”

45. The same is grossly belated and if allowed will change the nature of the whole suit in as much as the basis of the application is itself contrary to the mandatory provisions of the Limitation Act. Under the garb of the said amendment at this stage, appellant is actually trying to improve her case by rectifying the mistakes already committed by her. It in fact shows, that appellant has not, notwithstanding belatedly, realised her mistake and the actual position of law qua pleadings and limitation. The same, does not disclose any valid reasoning and/ or explanation for the appellant rising from a slumber after these long years.

46. It is strange that appellant has tried to overcome the issue of limitation by taking cover of the vague, hypothetical and incomplete pleadings. Learned counsel is completely wrong in contending that essentiality of particulars is a procedural law not directory in nature as it is something which is against the natural principles of law and statute. Learned counsel for appellant is lastly wrong in assuming that it was for

the learned Single Judge to call for producing better particulars. Arguments addressed by learned counsel for appellant are far-fetched and go beyond the basic tenets of law. Appellant has tried to introduce a new case by contending that the ancestral properties are a part of the common hotchpotch, even though this has never been her case. That being so, the same is inconsistent with the basic premise of the case of appellant till now. In any event, had that been so, in such a scenario the said ancestral properties were in the hands of a single person and not forming a part of the joint Hindu family, which is one of the contentions raised by appellant. Once again, pleadings qua, who put such properties and when such properties were put, are missing. Appellant is seemingly guilty of shifting stands, as she seems to be shooting in the dark. Appellant has approached the Court without doing any spadework to dig out the correct position on facts and on law. Though, appellant has tried to breathe fresh air into her case by giving a new dimension to it, but it is not to any avail as she is already too late now. Moreover, the appellant first wrongly instituted the suit and then filed the present appeal to continue with the proceedings against the respondent nos.1 to 5 for depriving them from peacefully occupying and enjoying their own properties post the demise of late General and her brother late Mr. Anup Singh, all contrary to the earlier judgments inter-se them.

47. We condemn the act of appellant, who in a very half-hearted, almost callous manner, chose to initiate this luxurious litigation wasting the precious time of the legal machinery by setting it into motion without any cause or purpose. The suit contains half-baked facts which are not permissible in law. Nothing stopped appellant from filing requisite proof to establish her case qua the Barota land; to challenge the previous judgment dated 08.03.1977 passed in Suit II; to challenge the title deeds in

favor of late Mr. Anup Singh qua Anand Niketan property; take appropriate steps qua Bhatgaon land. The initiation thereof by appellant is a gross abuse of the process of law. Clever drafting and illusory basis cannot make the suit maintainable if it does not have any material basis. Learned Single Judge has rightly exercised his powers under *Order XII rule 6* of the Code by nipping it in the bud, thereby closing the chapter of disputes qua the *five* ancestral properties involved.

48. In view of the aforesaid observations, finding no infirmity, perversity or illegality in the impugned judgment and decree dated 05.05.2016 passed by the learned Single Judge, the same calls for no interference from this Court.

49. Consequently, the present appeal along with the pending application(s), if any, is accordingly dismissed with costs of Rs.50,000/- to be paid by the appellant to the respondent nos.1 to 5 each, within four weeks, save and except respondent no.6 as she has right through been supporting the case of appellant.

(SAURABH BANERJEE)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 15, 2022/rr