

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Pronounced on: 17<sup>th</sup> January, 2023

+ C.S.(OS) No. 270/2022

**SH. VED PARKASH**

R/o F-59, Lado Sarai Village,  
Delhi-30.

..... Plaintiff

Through: Mr. Suman Chaudhary,  
Advocate.

versus

1. **SH. NARESH KUMAR**  
R/o F-59, Lado Sarai Village,  
Delhi-30.
2. **SH. ISHWAR KAUR**  
R/o F-59, Lado Sarai Village,  
Delhi-30.
3. **SMT. RAJNI**  
R/o H.NO. 62, 5<sup>th</sup> floor, Ber sarai,  
New Delhi.
4. **SMT. RAJBALA**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.
5. **SH. AMIT**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.
6. **MS. DEEPA**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.
7. **SMT. HARNANDI**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.
8. **SH. MAHINDER SINGH**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.

9. **SH. VIRENDER SINGH**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.
10. **MS. RATI DEVI**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.
11. **SMT. ANJU**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.
12. **SH. LUCKY**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.
13. **SH. KUNAL**  
R/O F-59/1, Lado Sarai Village,  
Delhi-30.
14. **SMT. SHEELA**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.
15. **SH. KUSHAL**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30
16. **BHAWNA**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.
17. **MS. RATNA**  
R/o F-59/1, Lado Sarai Village,  
Delhi-30.
18. **SH. PANKAJ**  
R/o F-59/E, Lado Sarai Village,  
Delhi-30.
19. **SH. RAMBIR**  
R/o F-59/E, Lado Sarai Village,  
Delhi-30.
20. **SMT. BIMLA**  
R/o F-59/E, Lado Sarai Village,  
Delhi-30.
21. **SMT. SUNITA**  
R/o F-59/E, Lado Sarai Village,

Delhi-30.

22. **SH. SUNIL KUMAR DHANKAR**  
R/o E-14, SAKET, NEW DELHI

..... Defendants

Through: Mr. Rishikesh Kumar, ASC,  
GNCTD, Mr. Muhammad Zaid  
& Ms. Sheenu Priya, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G E M E N T**

**NEENA BANSAL KRISHNA, J.**

1. A suit for Partition, Declaration and Permanent Injunction has been filed by the plaintiff in respect of 162 sq yards out of the suit property measuring 2 Bighas and 8.5 Biswas in Khasra No. 265 on the ground that the suit property originally belonged Shri Ram Lal, the great grandfather of the plaintiff which was inherited by his deceased father Late Shri Maha Singh as a HUF property. He therefore has a share in the property by virtue of being a coparcener.

2. **Submissions heard as to the maintainability of the suit.**

3. The facts as narrated by the plaintiff are that late Shri Ram Lal, great grandfather of the plaintiff was the sole owner of land admeasuring 4 Bigha 17 Biswa having Khasra No. 265 in Village Saidula Jab, Tehsil Mehrauli, Delhi. After the demise of late Shri. Ram Lal (who died before 1956), the property came into the possession of his two sons namely late Shri. Chotte and late Shri. Lajje Ram. Since late Shri. Ram Lal had died before 1956, it came in the hands of the successors as HUF Property. The Half share of the Khasra No. 265 which is 2 Bigha and 8.5 Biswa which came to Shri Chottey, was sold

by his wife Smt. Ms. Sarti Devi, to some persons who are in its possession as is shown in yellow colour in the site plan. The other half of the suit property measuring 2 Bigha and 8.5 Biswa as shown red in the site plan, came to the share of late Shri. Lajje Ram as Hindu Undivided Family Property.

4. Shri. Lajje Ram was survived by three sons namely, late Shri. Maha Singh, late Shri. Suraj Singh and late Shri. Bhim Singh. Plaintiff is the son of late Shri. Maha Singh. It is asserted by the plaintiff that since the property was inherited from his great grandfather, late Shri. Ram Lal, he became part of the Hindu Undivided Family as a coparcener and became co-sharer in the suit property that is 2 Bigha and 8.5 Biswas in Khasra No. 265 in Village Saidula Jab, Tehsil Mehrauli, Delhi. It is asserted that the suit property was never divided amongst the three sons of late Shri. Lajje Ram and has a status of Hindu Undivided Property.

5. The plaintiff has explained that he and defendant nos. 1 to 6 are the Legal Heirs of late Shri Maha Singh. Defendants Nos. 7 to 17 are Legal Heirs of late Shri Suraj Singh and defendant nos. 18 to 21 are the Legal Heirs of late Shri Bhim Singh. It is asserted that the plaintiff along with defendant nos. 1, 3 and 4 remained co-sharer in the suit property till the death of Shri Maha Singh on 15.02.2015.

6. The plaintiff has further stated that late Shri Maha Singh entered into an Agreement to Sell dated 24.04.2006 for sale of entire 815 sq. yds. with defendant no. 22 for a total consideration of Rs. 24,45,000/-. It is claimed that late Shri. Maha Singh had no authority to execute the Agreement to Sell in respect of the share to the extent of 162 sq yards of

which the plaintiff was the owner being a part of the HUF. Thus, the Agreement to Sell along with Special Power of Attorney, Affidavit, Undertaking, Possession Letter, Receipt all dated 24.04.2006, the Will dated 04.05.2006 and GPA dated 21.04.2006 are all null and void to the extent of the share of the plaintiff i.e. 162 Sq. Yards.

7. It is further submitted that Shri Maha Singh died on 1<sup>st</sup> February, 2015. The plaintiff and other co-sharers acquired a title in the suit property by their birth as coparceners and Shri Maha Singh was only entitled to transfer his own share i.e. 1/18<sup>th</sup> share in 2 Bighas 8.5 Biswas in Khasra No. 265 being a coparcener. Therefore, the Agreement to Sell dated 24<sup>th</sup> June, 2006 would be deemed to be executed only in respect of 1/18<sup>th</sup> share of Maha Singh i.e. 136 Sq. Yards and not 815 Sq. Yards.

8. The plaintiff has asserted that after the amendment of the Hindu Succession Act, 1956 in 2005, the daughters along with the sons have been made the coparceners. This implies that Maha Singh as Karta/Manager of HUF had no authority to transfer the HUF property without the consent of other coparceners and without any legal necessity. It is claimed that the suit property has never been partitioned amongst the plaintiff and other co-sharers/defendants till date and thus, the possession of the property had remained joint with other co-sharers.

9. Moreover, till date no Sale Deed has been executed in favour of defendant No. 22 with regard to 815 Sq. Yards purported to be the share of Late Shri Maha Singh. It is settled law that without a registered Sale Deed, no title can be transferred in favour of the party.

10. The plaintiff had filed a suit No. 397/2021 titled as Ved Prakash

vs. Naresh Kumar & Ors. which was returned by the Court of learned ADJ-III, South District, Saket Courts, New Delhi *vide* Order dated 22<sup>nd</sup> October, 2021 on the ground of pecuniary jurisdiction being more than Rs. 2 Crores. Hence, the present suit has been filed in this Court.

11. As per the narration in the plaint, the plaintiff has claimed that the suit property is a HUF property since it was originally owned by Shri Ram Lal, great grandfather of the plaintiff from whom it was inherited by his two sons Chote Lal and Lajje Ram as HUF property. Ram Lal is claimed to have died before 1956. It is the case of plaintiff himself that Smt. Sarti Devi wife of Chotte Lal had sold her half share in the property in question admeasuring 2 Bighas 8.5 Biswas which was in her possession. The balance half share came to Lajje Ram who died in 1971. Lajje Ram was survived by three sons namely Maha Singh, Suraj Singh and Bhim Singh. According to the plaintiff who is son of Maha Singh, since the property had devolved from Late Shri Ram Lal who had died before 1956, the property is claimed to be an HUF/ Joint Hindu Family Property, with the plaintiff who is the third generation acquiring a share by birth, being a coparcener.

12. To understand the assertions of the plaintiff, it is relevant to understand the scheme of inheritance under The Hindu Succession Act, 1956 which did away with the concept of ancestral property, as existed prior thereto, as explained in Neelam v. Sada Ram 2013 SCC OnLine Del 384. It was clarified that after the Act coming into force thereof, the property inherited by a male from his father is held as self acquired property in which children of that male do not acquire any right by birth. On the demise of a Hindu male the property devolves in

accordance with the rules of succession.

13. To understand the extent of the import of the Act, it is first significant to consider the concept of coparcenary and Joint Hindu Family. A Joint Hindu Family consists of all persons who lineally descend from the common ancestor and includes their wives and unmarried daughters. It is one in worship and holds joint assets. After separation of assets, the family ceases to be joint. Mere severance in food and worship is not treated as a separation, as observed in Sri Raghunadha vs. Sri Brozo Kishore, 1876 (1) Madras 69.

14. Bhashyam Ayyangar J. in Sundaranam Maistri vs. Harasimbhulu Maistri & Another (1902) ILR 25 Madras explained the legal position. He stated that the Mitakshara doctrine of joint family property is founded upon the existence of an undivided family as a corporate body and the possession of the property by such corporate body. The first requisite therefore, is the family unity and the second requisite is the possession of property by it. The conception of a Hindu family is a common male ancestor with his lineal descendants in the male line, and so long as that family is undivided, it forms a corporate body, which is purely a creature of law and cannot be created by act of parties save in so far by adoption, a stranger may be affiliated as a member of that corporate body.

15. *Hindu coparcenary* is a narrower concept and consists of propositus and three lineal descendants. Before Amendment in Hindu Succession Act, 1956 in 2005, it included only those persons like sons, grandsons, and great-grandsons, who were the holders of joint property. It is only on demise of the son i.e. first generation that the next lineal

descendant would get included in the coparcenary. Further, all the three male lineal descendants acquired interest in the property by birth. The right in the property of the coparcenary was thus protected upto the third generation and extended on the death of any such male lineal descendants to the next generation. As per the old Law, a woman could not be a coparcener, but she could still be a joint family member.

16. In Controller of Estate Duty, Madras vs. Alladi Kuppuswamy, (1977) 3 SCC 385 it was explained that until partition, each member has got ownership extending over the entire property, conjointly with the rest and so long as no partition takes place, it is difficult for any coparcener to predictate the share which he might receive. The result of such co-ownership is that the possession and enjoyment of the property is common.

17. Therefore, the sons and daughters of a coparcener become coparceners by virtue of birth. Devolution of coparcenary property is the later stage of and a consequence of death of a coparcener. The first stage of a coparcenary is obviously its creation while the second stage is inheritance, which can be availed of by any coparcener.

18. The Hindu Succession Act, 1956 (hereinafter referred to as the HSA) was passed and came into force on 17.06.1956. The preamble of the HSA emphasized that it was an Act to amend and codify the law relating to intestate succession among Hindus.

19. The Supreme Court in the case of Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. 1986 3 SCC 567, had observed that after the passing of Hindu Succession Act, 1956, the traditional view that on inheritance of an immovable property from

parental ancestors upto three degrees automatically becomes an HUF, no longer remains the legal proposition in view of Section 8 of Hindu Succession Act, 1956.

20. In the case of Yudhishter v. Ashok Kumar, (1987) 1 SCC 204 the Supreme Court reiterated the legal position that after coming into force of Section 8 of the Hindu Succession Act, 1956, inheritance of ancestral property after 1956 does not create an HUF property and inheritance of ancestral property after 1956 does not result in creation of an HUF property.

21. The above judgments were referred in the case of Sunny (Minor) v. Sh. Raj Singh, CS(OS) No.431/2006 decided on 17.11.2015 by this Court which 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”*

22. It was further explained in Sunny (Minor) (Supra) that it is not enough to simply aver in the plaint that the subject property belongs to Hindu Joint Family or that there exists a HUF. The detailed facts as required by Order VI Rule 4 CPC as to when and how the 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 a 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 ratio 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. 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.

23. In Surender Kumar v. Dhani Ram and Ors. 2016 SCC OnLine Del 333 after referring to the entire aforementioned law it was concluded that for an HUF and its properties to come into existence it has to be first pleaded to exist as per the judgments of the Chander Sen (Supra) and Yudhishter (Supra) of Supreme Court of India in terms of Order VI Rule 4 CPC.

24. Having understood the incidents of coparcenary, it needs to be now considered whether plaintiff is entitled to a share in the property inherited by his father Shri Maha Singh. Applying the law as discussed above, it is the averment of the plaintiff himself that Shri Ram Lal had died before 1956 and the property was inherited by his two sons Chotte Lal and Lajje Ram. Smt. Sarti Devi w/o Chotte Lal had sold half of the property in question of which she was in possession. Likewise, Shri Lajje Ram inherited half share. He died in 1971. It is evident that the property got divided amongst the two sons of late Shri Ram Lal and they were in possession of their respective half shares and Smt. Sarti Devi sold the half share inherited by her husband Chotte Lal. The averments made in the plaint itself reflect the division of property after the demise of Late Sh. Ram Lal and respective shares of two sons got defined and they came in possession of their respective shares. There can be no inference drawn that the property ever came to the hotch pot of HUF, in the absence of any averment to this effect. Except the bald assertion that the two sons of Sh. Ram Lal inherited the property as HUF after his demise before 1956, does not ipso facto lead to creation

of HUF. The property may have been inherited but that in itself does not make it HUF property. As already discussed above, the concept of it family and coparcenary is distinct when the creation of HUF is not made out in the plaint, the plaintiff cannot claim the incidents/ benefits of a coparcener, who become entitled to a share in HUF property by birth.

25. As per the averments of the plaint, the share of Lajje Ram was inherited by his three sons i.e. Maha Singh, Suraj Singh and Bhim Singh. The property in the hands of Lajje Ram was only half share of what was originally owned by his father Ram Lal. On his demise in 1971, the property was inherited by his three sons by way of succession. Section 8 of Hindu Succession Act, 1956 reads as under:

*“8. General rules of succession in the case of males — The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—*

*(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;*

*(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;*

*(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and*

*(d) lastly, if there is no agnate, then upon the cognates of the deceased.”*

26. Any devolution after 1956 is in accordance with laws of inheritance as defined in the Hindu Succession Act, 1956 and not by way of survivorship.

27. The assertions made by the plaintiff that by virtue of being a coparcener in the HUF property, he became entitled to 1/5<sup>th</sup> share by birth is an erroneous claim based on misconception of law. There is no pleading to the effect that there was ever any coparcenary of his father Lajje Ram. Rather, his own averments establish that he is asserting rights in the property of his father and not in any HUF.

28. The entire edifice of the claim of the plaintiff rests on the foundational premise of their being an HUF but there is not an iota of pleading in this regard. Merely because he is the third generation of Late Shri Ram Lal is not sufficient to assert any rights by claiming to be a coparcener unless the existence of HUF is established. The entire pleadings even if admitted in toto, the foundational facts to establish the HUF status of the suit property is entirely missing leading to the crumbling of the edifice of the entire claim of the plaintiff. The property would devolve upon the plaintiff in accordance with rules of succession under Section 8 of Hindu Succession Act which provides for General Rules of Succession as discussed above and explained in the case of Sunny (Minor) (Supra).

29. Further, it is an averment made in the plaint itself that Maha Singh had entered into an Agreement to Sell dated 24<sup>th</sup> April, 2006 with defendant No. 22 and that Maha Singh has died on 15<sup>th</sup> February, 2015. The plaintiff, had admittedly filed a Civil Suit No. 611/2008 against his father Late Shri Maha Singh and other co-sharers for partition and

injunction of the suit land which was dismissed after about ten years, by the learned ADJ *vide* Order dated 06<sup>th</sup> February, 2018 on the ground that the suit did not disclose any cause of action. The plaintiff filed an Appeal against the Order before this Court which was also dismissed by holding that the suit has been rejection for lack of cause of action and the plaintiff can in accordance with law including the aspect of limitation as specified under Order VII Rule 13 of the CPC, can file a fresh suit by averring in the plaint the necessary averments for legal cause of action.

30. The plaintiff in the present suit has sought to avoid the Agreement to Sell dated 24<sup>th</sup> April, 2006 as null and void by claiming that his father Shri Maha Singh had no right, title or interest to enter into the Agreement to Sell in respect of 815 Sq. Yds. of the suit property claiming to be its owner. First and foremost, Maha Singh along with his two brothers had inherited by way of succession, 1/3<sup>rd</sup> share each in 2 Bighas 8.5 Biswas from his father Lajje Ram on his demise in 1971. As already explained in the case law referred above, the property having been inherited by Shri Maha Singh in 1971, did not come by way of survivorship but by way of inheritance and thus, it was not an HUF property, as asserted. There is no averment as to how the property became HUF in the hands of Shri Maha Singh in whose hands the property came only in 1971. He thus acquired ownership in 815 Sq. Yards of the land by inheritance for which he had absolute right to enter into an Agreement to Sell with defendant No. 22. The claim of the plaintiff that Maha Singh did not have the ownership in 815 Sq. Yards of land is totally misconceived as Shri Maha Singh having inherited this

property as separate property by way of succession, was well within his right to enter into an Agreement to Sell with defendant No. 22. Interestingly, this transaction which was entered into in 2006, was never challenged by Maha Singh during his life time, who was a party in the earlier suit filed by the plaintiff claiming similar relief.

31. These facts have been mentioned by the plaintiff in his earlier Civil Suit No. 611/2008. The Agreement to Sell and other documents were thus well within the knowledge of the plaintiff. Even if the contention of plaintiff is accepted that Maha Singh did not has ownership to the extent of 162 Sq. Yards(which is being claimed by the plaintiff as his share), then too the Agreement to Sell and other documents could have been challenged by the plaintiff within three years of their execution or they having come to the knowledge of the plaintiff. The validity of these documents was never challenged.

32. The plaintiff has not been able to show any cause of action for challenging the Agreement to Sell dated 24<sup>th</sup> April, 2006 executed in favour of defendant No. 22 on the ground of Maha Singh not having a share in the property so sold under the Agreement to Sell. Also, the challenge to the validity of Agreement to Sell is hopelessly barred by Limitation. Any claim for possession of suit property from Defendant no. 22 being in possession for more than twelve years, is also barred by limitation in addition to the possession being protected under Section 53A of the Transfer of Property Act.

33. The other relief which has been sought by the plaintiff is partition. His claim to the property is through Maha Singh, his father and he can claim right to property through succession only if it

continues to exist in the name of the father. Admittedly, he has already entered into an Agreement to Sell with defendant No. 22 and having entered into the Agreement to Sell way back in 2006, the plaintiff has not been able to show any independent right to claim his ownership of the property which was exclusively owned by his father and who dealt with the same during his life time.

34. The plaintiff has failed to disclose any cause of action in his suit for partition or for cancellation of the Agreement to Sell dated 24<sup>th</sup> April, 2006 executed in favour of defendant No. 22 of for relief of Injunction. The suit is hereby rejected.

35. Pending applications, if any, stands disposed of.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**JANUARY 17, 2023**  
**va/pa**

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