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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **RFA(OS) 17/2023 & CM APPL. 48346-48348/2023****DEEPAK CHAWLA**

..... Appellant

Through: Mr. Lalit Gupta, Dr. Atul Singh, Mr. Aditya Dhankar, Mr. Anmol Ghai, Mr. Priyansh Jain, Advocates along with appellant in person

versus

RAJEEV CHAWLA

..... Respondent

Through: Mr. Tanmaya Mehta, Mr. Manan Batra, Advocates

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Date of Decision: 20th September, 2023**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****MINI PUSHKARNA, J: (ORAL)**

1. The present appeal challenges the judgment and decree dated 20th September, 2022 passed by the learned Single Judge in *CS (OS) No. 1214/2014*, by which the respondent/plaintiff has been declared as 2/3rd shareholder and appellant/defendant has been declared as 1/3rd shareholder in the property bearing no. E-64, Greater Kailash Enclave – I, New Delhi ('suit property').
2. Facts in brief are that, respondent/plaintiff filed a suit for partition being *CS(OS) No. 1214/2014* for partition of the suit property on the premise that father of the parties had transferred his 1/3rd share in favour of the respondent/plaintiff vide gift deed dated 11th June, 2010. Thus, it was



contended that respondent/plaintiff became entitled to $2/3^{\text{rd}}$ share in the suit property.

3. It is the case on behalf of appellant/defendant that the suit property had been purchased in the year 1994 jointly in the name of the respondent/plaintiff, appellant/defendant and their father. All were joint owners of the suit property having $1/3^{\text{rd}}$ undivided share each therein.

4. Appellant/defendant filed his written statement in the suit, wherein it was pleaded that a joint Hindu Undivided Family (HUF) exists, of which the respondent/plaintiff, the appellant/defendant and their father were coparceners. The intention of the family throughout was that the suit property shall be divided equally between the appellant and the respondent herein. It was further pleaded that the appellant/defendant reserves his right to challenge the gift deed dated 11th June 2010 executed by the father in favour of respondent/plaintiff.

5. An application was filed on behalf of the respondent/plaintiff before the learned Single Judge being *I.A. No. 3676/2021*, under Order XII Rule 6 read with Order VI Rule 4 of the Code of Civil Procedure, 1908 (CPC) for seeking a judgment in his favour on the basis of admissions made by the appellant/defendant in his pleadings.

6. By judgment dated 20th September, 2022, learned Single Judge allowed the application of the respondent/plaintiff. Learned Single Judge held that 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. Thus, learned Single Judge passed a preliminary decree of partition declaring the share of appellant/defendant and respondent/plaintiff as $1/3^{\text{rd}}$ and $2/3^{\text{rd}}$ respectively in the suit property.



Since submission was made on behalf of the counsel for the parties that property cannot be physically divided by metes and bounds, a final decree of partition was also passed directing sale of the suit property and distribution of the sale proceeds between the parties as per their shares. Further, the parties were also granted the option of making inter se bids for purchase of share of each other in respect of the suit property. Hence, the present appeal has been filed.

7. On behalf of the appellant, it is submitted that reading the written statement as a whole discloses sufficient details of the HUF, property owned by it and the time when such property was acquired for the HUF. The appellant had set out the details and documentary evidence of throwing his own self earnings of Rs. 10,00,000/- (Rupees Ten Lakh) in the common hotchpotch on 29th September, 2002, towards the business of a chemist shop in the name and style of Rakheja Chemists at Kalkaji, Delhi which operated as a family business.

8. It is contended that running of businesses demonstrated a community of interest peculiar to an HUF, to be established further by a complete trial. Father of the parties continued to pay the taxes towards the entire suit property. This reinforces the position that the suit property continued to be treated as one with a community of interest, for several decades after it had been purchased. It is contended that a complete and meaningful reading of the written statement sufficiently demonstrated the mutual and common understanding of the appellant, respondent and their father to acquire and hold properties and to run business with a commonality of interest. However, appellant was deprived of the opportunity to establish his case on account of the suit being brought to a premature end, without being



permitted an opportunity to lead evidence.

9. Learned counsel for appellant relied upon the judgment in the case of ***Thamma Venkata Subbamma Vs. Thamma Rattamma and Others, (1987) 3 SCC 294*** to contend that a gift by a coparcener of his undivided interest in the coparcenary property is void.

10. On the other hand, learned counsel appearing for the respondent justified the impugned judgment passed by the learned Single Judge. It is submitted that the gift deed in favour of the respondent is a registered document that has not been challenged by the appellant. He submitted that the judgment by the learned Single Judge is of the year 2022 and the present appeal has been filed belatedly. Further, the appellant has filed a suit for partition with respect to various properties including the suit property herein, which is pending adjudication. It is submitted that no HUF ever existed. Thus, it is prayed that the present appeal be dismissed.

11. We have heard learned counsel for the parties and perused the record.

12. Perusal of the documents on record shows that the defence put up by the appellant in the suit proceedings to resist partition of the suit property, was existence of an HUF and the suit property being owned by the said HUF. However, there is no document on record to show the existence of HUF or that the suit property was owned by the said HUF. The fact that the property tax for the suit property was being paid by the father of the parties does not in any manner establish the existence of any HUF. On a pointed query by this Court as regards any document pertaining to income tax return or any other document showing the suit property as HUF, learned counsel for appellant was unable to show any document in this regard.

13. Similarly, the contention on behalf of the appellant that he had



invested his own self earnings of Rs. 10,00,000/- (Rupees Ten Lakh) in the in the common hotchpotch on 29th September, 2002 towards the business of chemist shop which was operated as a family business, also holds no water. Learned counsel for the appellant was not able to point out any document which showed that the said amount was transferred by the appellant to any HUF account.

14. Law in this regard is well established that by mere use of the words Joint Hindu Family or Coparceners, a Hindu Undivided Family (HUF) or a Coparcenary does not come into existence. There is no presumption of communal or common property existing as HUF property after coming into force of the Hindu Succession Act, 1956. Though the suit property is stated to have been purchased in the year 1994, i.e., much after the coming into existence of the Hindu Succession Act, 1956, no details have been given as to when the property was thrown into the hotchpotch of HUF. As noted by the learned Single Judge, 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.

15. This Court also notes that the appellant herein has not challenged the gift deed dated 11th June, 2010 in favour of respondent duly executed by the father of the parties. In order to satisfy himself as regards the authenticity of the gift deed in favour of respondent, the learned Single Judge had examined father of the parties on oath under Order X of the CPC, wherein he admitted that the gift deed dated 11th June, 2010 had been duly executed by him in respect of the suit property in favour of the respondent herein to the exclusion of the appellant. The father of the parties had further deposed that he had executed the said gift deed of his own freewill and volition.



16. At this stage it is also relevant to note that during the pendency of the suit, appellant/defendant filed an application being *I.A. No. 15084/2017* under Order VI Rule 17 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. The appeal against the said order was dismissed by the Coordinate Bench vide judgment dated 08th February, 2019. The Special Leave Petition (SLP) against the same was also dismissed by the Supreme Court vide order dated 26th July, 2019.

17. The appellant/defendant had also filed an application being *I.A. No. 15083/2017* for impleadment of his parents as parties to the suit. Learned Single Judge by judgment dated 11th February, 2020 dismissed the said application, by holding as follows:

“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”



18. Appeal against the aforesaid judgment was also dismissed by the Coordinate Bench of this Court.

19. Reliance on the judgment in the case of *Thamma Venkata Subbamma* (supra) by learned counsel for the appellant is misplaced, as in the present case, the appellant has not been able to establish that the suit property was an HUF property and that the appellant was a coparcener in the said property.

20. In view of the aforesaid detailed discussion, no infirmity is found in the judgment of the learned Single Judge. The present appeal is accordingly dismissed along with the pending applications.

MINI PUSHKARNA, J

MANMOHAN, J

SEPTEMBER 20, 2023

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