



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 1st November, 2023
Pronounced on: 15th January, 2024*

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CS(OS) 6/2019

VIJAY KUMAR BANSAL

..... Plaintiff

Through: Mr. R.K.Jain, Mr. Umesh Sharma and
Mr. Mayank Bansal, Advocates.

versus

BHIMSEN BANSAL & ORS.

..... Defendants

Through: Mr. Anurag Bhatt, Mr. Lokesh
Pathak, Mr. Ankur Gupta, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 1962/2023 (under Order VII Rule 11 CPC, 1908) and I.A. 16121/2019 (under Order XII Rule 6 CPC, 1908 read with Section 151 CPC, 1908) with CS(OS) 6/2019

1. The plaintiff has sought decree of suit based on admissions under Order XII Rule 6 read with Section 151 of the CPC in the suit for Declaration, Partition, Possession and Permanent Injunction filed by him.
2. On the other hand, the defendants have sought rejection of the suit of the plaintiff application under Order VII Rule 11 of the Code of Civil Procedure, 1908, (*hereinafter referred to as "CPC"*).
3. The plaintiff has sought the partition in respect of following nine properties claiming to have been purchased from the joint works/business of



the parties. The nine properties mentioned are as under:

Table A

S.No	Property No.	Plaintiff's assertion
a.	Property No.3G, Jawahar Nagar, Delhi	occupation of defendants No. 1 to 3 jointly since 1995
b.	Property No.5/3, Roop Nagar, Delhi- 110007	by defendant No. 2&3,
c.	Property No.118E, Kamla Nagar, Delhi- 110007	since 2000 jointly by defendant no. 2&3
d.	Property No. 133-D, 2nd & 3rd Floor with Terrace, Kamla Nagar, Delhi,	by the plaintiff since 2012
e.	Property No.89E, Kamla Nagar, Delhi- 110007	Holding since 2009? of plaintiff's Wife and son
f.	Property No.39/14, Shakti Nagar, Delhi- 110007	by defendant No.2
g.	Property No.174-D, which is a shop in Kamla Nagar, Delhi-7	by defendant No.1,
h.	Property No.147E, Kamla Nagar, Delhi- 110007 (garage)	holding by plaintiff
i.	Property bearing No.148E (Garage), Kamla Nagar, Delhi	holding by defendant No.2

4. The defendants have essentially not disputed the names in which the suit properties stand today, but has seriously refuted that these properties have been purchased from the joint funds. It has been explained that the joint family business which the parties were running under a Partnership Deed, was admittedly dissolved on 31.08.1982 and all the accounts *qua* the joint family business, were settled *inter-se* and released each other therefrom and from all proceedings, costs, claims and expenses in respect thereof.

5. Pertinently, the suit properties have all been purchased in the year 1987 onwards, i.e. after about 6 years of dissolution of the joint family



business. Therefore on the face of it, the allegations of the property having been purchased from all joint family funds/business, is not tenable. This is evident from the Memo of parties filed by the plaintiff in the captioned suit, where it is categorically reflected that the defendants have their own separate businesses. In fact, this amounts to an admission on the part of the plaintiff that the defendants as well as the plaintiff have their own independent business and no business is being run jointly.

6. The defendants further asserted that no documents have been placed on record to prove that the property had been purchased from the income derived from the joint family business.

7. It is thus asserted, that none of the properties were jointly owned but are individually owned by the parties and purchased from their own individual funds. The defendants have explained their ownership in respect of *six properties* as under:

Table B

S.No.	Description of property	Date of purchase	Owned by as per Registered documents submitted in the Court
i.	Property No. 3G, Jawahar Nagar, Delhi	2.12.1987- Sale Deed dated 25.02.1988	Sh. Ram Kumar Bansal (Defendant No.2) and Sh. Sushil Kumar Bansal (Defendant No.3)
ii.	Property No. 5/3, Roop Nagar, Delhi	Sale Deeds dated 1.8.2000 and 2.8.2000	Sh. Ram Kumar Bansal (Defendant No.2) and Sh. Sushil Kumar Bansal (Defendant No.3)
iii	Property No. 118-E, Kamla Nagar, Delhi	Sale Deed dated 28.3.2021, 5.4.2003 and	Sh. Ram Kumar Bansal (Defendant No.2), Sh. Sushil Kumar Bansal



		7.4.2003	(Defendant No.3)
iv	Property No. 39/14, Shakti Nagar, Delhi	Sale Deed dated 18.3.2013	Sh. Bhim Sen Bansal (Defendant No.1) and Smt. Kamla Bansal (Wife of Defendant No.1)
v	Property No. 171-D, Kamla Nagar, Delhi	Sale Deed dated 22.7.2010	Sh. Bhim Sen Bansal (Defendant No.1) and Sh. Balbir Bansal (Son of Defendant No.1)
vi	Property No. 148-E (Garage), Kamla Nagar, Delhi.	Sale Deed dated 9.12.1999	Sh. Ram Kumar Bansal (Defendant No.2)

8. It is claimed that all the aforementioned these properties are owned by the defendants as is mentioned against each property and the relevant documents have also been executed in favour of the defendants in this regard. Furthermore, these properties have been purchased after the dissolution of the Joint Family business in the year 1982. The properties are in the possession of the defendants.

9. The defendants have further explained that *the plaintiff and his wife and children are the owners of the three properties*, the details of which are given as under:-

Table C

S.No.	Property description	Owned by
1 (a)	2 nd Floor 133-D, Kamla Nagar	Vijay Kumar Bansal (plaintiff)
1 (b)	3 rd Floor, 133-D, Kamla Nagar	Aruna Bansal (plaintiff's wife)
2.	Property No.147E (Garage) Kamla Nagar	Vijay Kumar Bansal (plaintiff)
3.	89-E, Kamla Nagar, Delhi-110007	Aruna Bansal Gaurav



		Bansal and Mayank Bansal (plaintiff's wife and children)
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10. This is corroborated by the fact that plaintiff had executed a registered Will in regard to the property bearing No. 133-D, 2nd Floor, Kamla Nagar, Delhi and 147E, Kamla Nagar, (Garage), Delhi-110007 wherein he had mentioned that he is the sole owner of the two properties. This information in the Will is also in the knowledge of Smt. Aruna Bansal, the wife of the plaintiff, who also has executed a Will in regard to the other properties namely 89E, Kamla Nagar and 3rd Floor of property No. 133D, Kamla Nagar in the same year. Having themselves claimed to be the owners of these properties, the plaintiff is falsely claiming these three properties also to be the Joint Family properties. Thus, the entire suit is based on falsehood and is liable to be rejected.

11. The defendants have further taken a defence that even if the claim of the plaintiff was to be accepted, the purchase of the suit properties would constitute *Benami* transactions, which is ***barred under Section 4 of Benami Transaction (Prohibition) Act, 1988*** (hereinafter referred to as the “Act, 1988”).

12. The defendants have further asserted that the plaintiff has failed to pay the ***requisite court fees*** as per the law. The plaintiff has valued the suit at Rs.116.9 crores approximately being the market value but the court fee has not been paid on the requisite valuation. It is asserted that though the plaintiff has claimed that he is in the joint and constructive possession of the properties and thus no court fees is payable; however, the plaintiff has failed to place on record any document to show that he is the owner or is in



actual/constructive possession of the suit property. The properties as described in Table B, are exclusively in the name of the defendants and their family members as is mentioned therein and has been purchased from their separate/individual funds. They are also in the exclusive possession of these properties. Therefore, the plaintiff is liable to pay the court fees in accordance with Section 7 (4) (b) of the Court Fees Act, 1870 for which reliance has been placed on Sudershan Kumar Seth v. Pawan Kumar Seth, 124 (2005) DLT 305.

13. The defendants have thus, sought rejection of the suit under Order VII Rule 11, CPC as it is false, fictitious and without any cause of action.

14. The learned counsel for the defendants has placed reliance on the case of Sakshi & Anr v. Darshan Singh (Deceased) thr Lrs 2019 SCC OnLine Del 10980; Dr. G.M. Singh v. Dr. Trilochan Singh and Others 2022 SCC OnLine Del 3514; Indu Rani v. Pushpa & Ors. 2022 SCC OnLine Del 4173; Surender Kumar Khurana v. Tilak Raj Khurana (2016) 155 DRJ 71 (DB); and Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) (D) thr LRs & Ors. (2020) 7 SCC 366.

15. The plaintiff did not file any formal reply to this application under Order VII Rule 11 CPC but only a synopsis wherein he denied all the averments made in the application under Order VII Rule 11 read with Section 151 CPC.

16. Further, the plaintiff vide I.A. 16121/2019 filed an application under Order XII Rule 6 read with Section 151 CPC for the suit to be decreed. In the application, he has explained that Sh. Ladli Prasad Bansal, father of the parties was carrying on a provisional store namely Bansal Store at 39, UB, Jawahar Nagar, Delhi-110007. It was subsequently taken over by



the parties to the suit *vide* Partnership Deed dated 13.07.1966 and they all started working together under the partnership.

17. The mother of the parties executed a Will dated 12.06.1975, whereby bequeathing all her movable and immovable properties in favour of all the parties to the present suit.

18. The plaintiff has asserted that as per the admission of the defendants in paragraph 3 on the merits of the Written Statement, the properties were purchased from the joint work/business and were held jointly and severally. Therefore, admittedly the properties mentioned in Schedule A attached with the plaint, are the joint holding of the parties. These admissions are sufficient for the suit for partition to be decreed and each party be given 1/4th share in the property.

19. **The defendants *vide* their Reply to the application under Order XII Rule 6** read with Section 151 CPC, have explained that there is no admission of the properties being the joint property of the parties. It has been asserted that the detailed status of each property has been mentioned in the Written Statement. The plaintiff has failed to show existence of any joint funds and the claim is based on bald assertions which have been explained in detail by the defendants in their Written Statement. They were no joint funds as has been alleged in the plaint and the suit is liable to be rejected.

20. **On merits**, it is admitted that father of the parties had a Grocery Store in the name and style of 'Bansal Store' but it is denied that the same was taken over jointly by the defendants and the plaintiff in the year 1966 through a Partnership Deed. It is explained that the partnership was formed by the defendant Nos. 1 and 2 in the year 1966 to run the business and subsequently the defendant No. 3 and the plaintiff joined as partners in the



year 1975. The defendant Nos. 1 and 3 and the plaintiff took retirement from the partnership business on 31.08.1982 and the partnership was dissolved *vide* Dissolution Deed dated 31.08.1982. The business was thereafter, shifted to 148E, Kamla Nagar, Delhi-110007 and the defendant No. 2 became the sole proprietor of the business. Thereafter, no joint business remained or continued to exist with the plaintiff after 1982.

21. It is asserted that there was only one joint family business and that too was closed in the year 1982, as stated above. The properties have been purchased thereafter from the independent funds by the persons as indicated in the Table B & C in the application filed under Order VII Rule 11 read with Section 151 CPC.

22. The defendants have admitted that their mother had executed a Will dated 12.06.1975 distributing all her movable and immovable properties *qua* all her children. However, the mother was owner of only one property bearing No.36-UA (Municipal No. 6010), Jawahar Nagar, Delhi which was constructed in the year 1970 out of the funds withdrawn from the 'Bansal Store' and the funds were taken out from the partnership business of defendant Nos. 1 and 2 as that was the only source of income of the family at that time. The separate portions were occupied by the respective parties i.e. the plaintiff and defendant Nos. 1, 2 and 3. The property was later sold in portions and the sale consideration was shared by all the brothers as the purchasers gave four cheques, one in the name of each of the brothers, including the plaintiff. Thus, the parties have already got their share in the said property and this issue cannot be raked up again in the present suit. It is, therefore, submitted that there are no admissions made by the defendants; rather the suit of the plaintiff is liable to be rejected.



23. **The plaintiff stated in his Rejoinder** to the Application under Order XII Rule 6, CPC, explained that Late Sh. Ladli Prasad Bansal, their father was carrying on one shop bearing No.39, UB since 1958 in the name of ‘Bansal Store’ and later on he had introduced defendant Nos. 1 and 2 as partners in his firm in the year 1962. Subsequently, all the parties became partners in this business. *In the year 1982, this business of provisional store was closed.*

24. The property No.39, UB was used to start the cloth business of ‘Shiva Selection’ and after 1982 only the Cloth shops setup by the father, were continued, as mentioned below:

- (i) In the year 1974, the father used to run the business of ‘*Print Centre and Suiting House*’ from the Part-1 and Part-2 of the shop bearing No. 3G, Jawahar Nagar, Delhi, taken on rent *and the wife of the plaintiff was inducted as a partner instead of the plaintiff.*
- (ii) In the year 1979, the father also started his business of clothes from another shop No. 33-E, Kamla Nagar, Delhi in the name of ‘*Shirting House*’.

25. The income so generated from all the four shops, was used by the parties for their household expenses and also for purchase of the suit properties. He has explained that the properties mentioned in Table A came to be purchased by the parties from joint funds in the following manner:

Table D

S.No	Property No.	Plaintiff's assertion in Rejoinder	Status of properties as per plaintiff
a.	Property No.3G,	Taken on Rent in 1974, by the father of	occupation of



	Jawahar Nagar, Delhi	the parties in which the wife of the plaintiff and the defendants became partners. It was purchased in the year 1987 and the business in the name of Print Centre and Suiting House, is still being run by the defendant Nos. 2 and 3 from the said property.	defendants No. 1 to 3 jointly since 1995
b.	Property No.5/3, Roop Nagar, Delhi-110007	In the year 2000, the property was purchased in which the defendant Nos. 2 and 3 are still residing. The plaintiff claims to have had paid his share <i>vide</i> Cheque No. 107492, 107493 and 107494 totalling of Rs.9,14,750/-.	by defendant No.2&3,
c.	Property No.118E, Kamla Nagar, Delhi-110007	It was purchased in 2003 from the sale proceeds of the property bearing No. 40, UB Jawahar Nagar, which was purchased in the year 1998, on floor basis, in the name of the wife of the plaintiff and son of defendant No. 1 which was sold in the year 2000. The plaintiff claims to have paid his share of Rs.1,52,500/- to defendant No. 3	Jointly by defendant No.2&3,
d.	Property No. 133-D, 2nd & 3rd Floor with Terrace, Kamla Nagar, Delhi,	Purchased from the sale proceeds of property no. 7/29, Roop Nagar, Delhi sold in the year 2013, in the name of the plaintiff. (Property No. 7/29, Roop Nagar was purchased in the name of the wives of the parties to the suit and was occupied by the plaintiff and the defendant No.1. Subsequently, the name of the wives of defendant Nos. 2 and 3 were removed and the names of the plaintiff and defendant No. 1 were brought on record. Hence, the suit property was occupied and owned by the plaintiff and defendant No. 1.)	by the plaintiff since 2012
e.	Property No.89E, Kamla Nagar, Delhi-110007	No explanation given in rejoinder	Holding since 2009 by plaintiff's wife and children
f.	Property No.39/14, Shakti Nagar, Delhi-110007	Purchased from the sale proceeds of property no. 7/29, Roop Nagar, Delhi sold in the year 2013, in the name of D1. (Property No. 7/29, Roop Nagar was	by the defendant No.1 and wife of the plaintiff



		purchased in the name of the wives of the parties to the suit and was occupied by the plaintiff and the defendant No.1. Subsequently, the name of the wives of defendant Nos. 2 and 3 were removed and the names of the plaintiff and defendant No. 1 were brought on record. Hence, the suit property was occupied and owned by the plaintiff and defendant No. 1.)	
g.	Property No.174-D, which is a shop in Kamla Nagar, Delhi-7	Shop taken on rent in 1990, cloth business in the name of 'Super Selection' by D1 and plaintiff as partners.	by defendant No.1,
h.	Property No.147E, Kamla Nagar, Delhi-110007 (garage)	No explanation given in rejoinder	holding by plaintiff
i.	Property bearing No.148E (Garage), Kamla Nagar, Delhi	No explanation given in rejoinder	holding by addressee No.2

26. The plaintiff has asserted that these details would show that the joint funds from the beginning were generated from the business of Kirana Store carried out by their father and such joint funds were used for purchasing the properties. The joint funds used are not covered under the Benami Act, as it came into force from 19th May, 1998 with prospective effect.

27. It is further asserted that all the documents of the properties are in possession of the defendants and in case, the defendants fail to produce all the documents pertaining to the transactions in respect of the suit properties which are in their possession, the plaintiff would produce the bank details of himself and also of his wife and children from the year 1982 onwards to clarify their contribution for purchase of the properties. It is submitted that the suit is liable to be decreed under Order XII Rule 6 read with Section 151



CPC.

28. **Submissions heard of both the parties on the applications under Order VII Rule 11 read with Section 151 CPC and under Order XII Rule 6 read with Section 151 CPC, filed on behalf of the plaintiff.**

29. The plaintiff had filed a suit for partition in respect of nine properties as described in Table A, claiming that they were all purchased from the funds raised from the joint family business carried out under the Partnership Deed, and has thus, sought partition of the same.

30. Order VI Rule 2 of the CPC provides for the pleading to state material facts and not the evidence. The Supreme Court in the case of Harkirat Singh vs Amrinder Singh (2005) 13 SCC, explained the expression material facts as follows-

'The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus, (Third edn.); p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.'

31. It was further observed that in accordance with the provisions of Code



of Civil Procedure, 1908 all material facts have to be stated in the petition. If the material facts are not stated, then the petition is liable to be dismissed.

32. The Supreme Court in the case of Ram Swarup Gupta (Dead) by Lrs vs Bishun Narain Inter College and Ors. (1987) 2 SCC 555, discussed the significance of material facts in a case. It was observed that all necessary and material facts should be pleaded by the party in support of the case set up by it and no party should be permitted to travel beyond its pleadings. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise.

33. In the case of Udhav Singh v. Madhav Rao Scindia [(1977) 1 SCC 511] the Apex Court culled out a distinction between ‘material facts’ and ‘material particulars’ to observe that, *‘failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.’*

34. Thus, the party setting up its case must plead all the material facts that are required and failure to do may result in rejection of suit for not disclosing a cause of action.

35. In the present case, the only averment of the plaintiff *in his plaint* was



that the properties were purchased from joint business funds. His case was that their father's business of 'Bansal Store' was taken up as a partnership business by the parties in the year 1966 which was dissolved in the year 1982, the plaintiff and defendants had any joint business. It is merely asserted that the properties mentioned in the plaint were all purchased from joint family without explaining anything further. Significantly, plaintiff is claiming joint businesses with the defendants even after 1982 but fails to give any details of these alleged businesses or file any documents of the joint business.

36. The plaintiff in his *replication to the Written Statement* has stated that in 1982, the partnership was dissolved and that the property business which had already been started by the parties from the income generated from this store and contribution from other sources, was continuing. He has stated that the modus was to purchase the property in the name of dependants. Thus, the properties were purchased jointly.

37. It is evident from the assertions of the plaintiff himself that after the dissolution of joint partnership business in 1982, the parties ventured into various businesses and also in business of purchase of the properties, but there was no joint business of all the parties to the suit. As is stated by the plaintiff himself in his plaint and reflected in Table A, three properties as highlighted in **Table C** belong to the plaintiff and his family, while the properties in **Table B** are in the names of the defendants as stated therein. Significantly, as stated by the plaintiff himself, all these properties have been purchased much after 1982.

38. It was further contended that the mother of the parties owned a property bearing No.36-UA (Municipal No. 6010), Jawahar Nagar, Delhi



which was later sold in portions and the sale consideration was shared by all the brothers. The purchasers gave four cheques, one in the name of each of the brothers, including the plaintiff however, the defendants took the cheque in the name of the plaintiff and subsequently, used the funds to purchase properties.

39. These averments of the plaintiff himself also show that the property of their mother was sold and the sale proceeds shared equally by the plaintiff and the defendants; nothing remained joint thereafter. The money so received by each party may have been invested wherever but once the money was divided, it ceased to be joint fund.

40. However, it is interesting to note that the Plaintiff gives a different explanation regarding how the properties came to be joint in his rejoinder to the application of the defendant under Order XII Rule 6, CPC which never formed part of the pleadings. He states that Late Sh. Ladli Prasad Bansal was carrying on one shop bearing No.39, UB since 1958 in the name of 'Bansal Store' and later on he had introduced defendant Nos. 1 and 2 as partners in his firm in the year 1962. In the year 1982, this business of provisional store was closed and, the property No.39, UB was used to start the cloth business of 'Shiva Selection' and after 1982 only the cloth shops mentioned below continued thereafter.

41. At this juncture it is pertinent to scrutinize the patent contractions made by the plaintiff in different parts of its pleadings with respect to how the properties were purchased:

Plaint	Written Statement- (of Defendants)	Replication to the Written Statement (of Plaintiff)	Rejoinder to the application under Order XII Rule VI
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			(of Plaintiff)
"2. That the parties (plaintiff and defendants No.1 to 3) are holding the following properties jointly and severally which were purchased from their joint works/ business and their own funds and therefore the following properties being the joint holding of the parties to the suit..."	"5. That the father of the parties Late Sh. Ladli Prasad Bansal had no ancestral property. He had inherited only one haveli at Pundri, Haryana from his father and had infact started a grocery store under the name and style of 'Bansal Store' on a rented accommodation bearing no.39 UB, Jawahar Nagar, Delhi 110007 in 1958 and this business was then given by the father of the parties to defendants no.1&2 who formed a partnership to run the business in the year 1966 and later defendant no.3 and plaintiff gave retirement from the said business on 3st August 1982 and a Dissolution Deed dated 31.08.1982 was duly executed. The business thereafter shifted to 148E, Kamla	"5. That the contents of Para No. 5 of the Preliminary Objections of the Written Statement is not denied to the extent that father of the parties ran a grocery store under the name and style of "Bansal Store" on a rented accommodation at 39 UB, Jawahar Nagar, Delhi- 110007 in 1958 and then the business was given by the father to the parties who formed a partnership to run the business in the year 1986 and the firm was dissolved in the year 1982. It is submitted that the Plaintiff as well as Defendants Nos.1 to 3 had already started the property business by investing the funds of partnership as well as contribution from their own sources by disposing one	"4. That in the year 1982, the provisional store was closed and the business on the other shops bearing No.3G Part-1 and Part-2 having in the name & style of PRINT CENTRE and SUITING HOUSE and Shop No.33-E, Kamla Nagar, Delhi, having in the name & style of SHIRTING HOUSE and another Shop No.39 UB Jawahar Nagar, Delhi, having in the name & style of SHIVA SELECTION, were continued as partners and income so generated from all the four shops were used by all the partners i.e. the plaintiff and the defendants No.1 to 3 for their household expenses and further purchasing other properties."



	Nagar, Delhi 110007 and had become sole proprietorship business of the defendant no.2 who ran the business for sometime and later on in 1982 closed the said business. 6. That the partnership business came to an end and the defendant no.2 had paid off the remaining amounts which were to be paid off in terms of Dissolution Deed. However, still the defendant no.2 was only liable to return the amounts along with interest as per clause 5 of the Dissolution Deed. Thereafter, no joint business remained or continued to exist with the plaintiff after the execution of Dissolution Deed as none of the partners to the said business ever had any business relation with the plaintiff."	property and purchasing another by utilizing the funds of the disposed off property so nature of the properties of Schedule-A thus became the joint properties of the Plaintiff as well as Defendants No.1 to 3 but Defendants No.1 to 3 took the benefits of the Plaintiff who was the youngest one and obeyed them like his father."	
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42. To summarize, the plaintiff had tried to explain in his replication that there was a **joint property business** between the plaintiff and the different defendants and they had jointly purchased the properties; however, in the name of different family members. However, in complete contradiction to this assertion, in the rejoinder to the application of the defendant under Order XII Rule 6 read with Section 151 CPC, the plaintiff has asserted that the father of the parties had set up various Cloth shops and after dissolution of partnership, the income and funds generated from these stores were used to open other **cloth shops** and eventually properties detailed in Table A were purchased out of these funds and hence, the properties are joint in nature.

43. The plaintiff has taken inconsistent stands about how the properties in question came to be jointly held and in regard to the continuation of joint family businesses with the defendants. Such contradictory facts and vague assertions, without any specific details reveal the frivolity of the claims of the plaintiff of there being any joint business after 1982 between any of the defendants or the plaintiff.

44. Interestingly, the plaintiff also mentions in his replication for the first time that an HUF was existing between the parties which was admittedly dissolved in 1979 after which the parties continued their joint businesses. However, there is no further details provided in respect of this assertion anywhere. Apparently, the plaintiff in his zeal to somehow sustain his suit, has forgotten the distinction between HUF and a joint business.

45. This Court in the case of Surender Kumar Khurana vs. Tilak Raj Khurana (supra) referred to the mentioning of 'joint funds', 'joint properties' and 'working together' in the plaint and observed that such terms are not averments which are required in law for existence of an HUF. Such



terms do not have the automatic nexus for them being taken as with joint Hindu family/HUF properties.

46. Thus, working together is not equivalent to existence of an HUF. Moreover, aside from claiming existence of an HUF, no particulars of the date of its creation are forthcoming. In any case as per the plaintiff himself, this alleged HUF dissolved in 1979 which implies that the unity of status ceased from the date of dissolution of alleged HUF.

47. These assertions are also belied by the fact that plaintiff has not been able to produce documents in respect of any property but has vaguely claimed that all the title documents of the properties are with the defendants. The documents in respect of the properties such as Sale Deeds being Public Documents are easily available and the copy thereof can be obtained by anyone. On the other hand, the defendants have produced the documents which show that these properties had been purchased in the names specified therein. The various documents produced by the defendants consisting of the various Sale Deeds in their favour show that the properties were purchased in their individual names or that of their family members. In any case, the plaintiff himself has admitted in his plaint and in the application under Order XII Rule 6 CPC about the names in which the nine properties stand. The only claim was that though held in different names, they were joint family properties which stands contradicted by his averments in plaint and replication.

48. The plaintiff had taken a plea that he had paid part of consideration in respect of each of the property to the concerned defendants, as has been mentioned in detail in his rejoinder to the application under Order 12 Rule 6 CPC. However, aside from his bald assertions and that too, in a rejoinder to



the application under Order 12 Rule 6 CPC, there is nothing more to support his assertions. Even if his assertions are accepted that he had given some money to the defendants for purchase of the suit properties but it is not denied that the title documents in respect of each of those six properties in Table B above, are in the name of the defendant/defendants. Section 4 of the Benami Act, 1988 provides that the person in whose name the documents stand executed shall be the owner of the property and no claim is maintainable by any other person claiming to be an owner of the property due to contribution of monies for its purchase.

49. It was explained in the case of Surender Kumar (supra) that, '*The Benami Transaction (Prohibition) Act, 1988 (hereinafter referred to as 'the Benami Act')* and which Act states that property in the name of an individual has to be taken as owned by that individual and no claim to such property is maintainable as per Section 4(1) of the Benami Act on the ground that monies have come from the person who claims right in the property though title deeds of the property are not in the name of such person. **An exception is created with respect to provision of Section 4 of the Benami Act by its sub-Section (3) which allows existence of the concept of HUF. Once existence of the concept of HUF is an exception to the main provision contained in sub-Sections (1) and (2) of Section 4 of the Benami Act, then, to take the case outside sub-Sections (1) and (2) of Section 4 of the Benami Act it has to be specifically pleaded as to how and in what manner an HUF and each specific property claimed as being an HUF property has come into existence as an HUF property. If such specific facts are not pleaded, this Court in fact would be negating the mandate of the language contained in sub-Sections (1) and (2) of Section 4 of the Benami Act.'**



50. There are neither any averment nor any document to show that these are Joint Family Properties. Thus, the claim of the plaintiff that he had paid part of consideration in respect of each of the property to the concerned defendants, is not maintainable as per Section 4 of the Benami Act, 1988.

51. The plaintiff has failed to provide necessary and material facts in respect of existence of such joint businesses and how these properties were purchased jointly or out of joint funds and the suit for partition does not disclose any cause of action. **The application of the defendants under Order VII Rule 11 CPC is allowed and the suit of the plaintiff is therefore, rejected.**

52. The plaintiff had sought a decree of admissions solely on the ground that the defendants had admitted that there was the joint family business under the partnership of all the plaintiffs and the defendants and therefore, there is an admission that all the properties are the joint family properties and the suit for partition may be allowed.

53. It is settled law that for the judgment to be based on admissions, the admissions have to be unequivocal and unambiguous leading to no other conclusion but to a decision in favour of the plaintiff.

54. The defendants in their Written Statement have clarified and admitted that out of the nine properties, the three properties as described in the Table C are the exclusive property of the plaintiff and his family members. However, the remaining six properties as mentioned in Table B, are the sole and exclusive properties of the defendants as explained therein.

55. In the present case, the plaintiff has done a selective reading of the Written Statement because it is clearly stated therein that this partnership dissolved in the year 1982. There is no averment that the parties had a joint



family business thereafter; there is no admission whatsoever in the Written Statement or otherwise on behalf of the defendants entitling the plaintiff to a decree on admissions.

56. The application under Order XII Rule 6 CPC filed on behalf of the plaintiff is hereby dismissed.

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57. Since the application of the defendants under Order VII Rule 11 CPC has been allowed, the suit is accordingly rejected.

**(NEENA BANSAL KRISHNA)
JUDGE**

JANUARY 15, 2024/RS/nk