



2024:DHC:7210



\$~34

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 18.09.2024***+ **CS(OS) 585/2024 & I.A. 34426/2024****MRS. SHUMITA SANDHU**PlaintiffThrough: Mr.Hukam Chand Sukhija,
Mr.Alok Gupta and Ms.Anurag
Vashishtt, Advs.

versus

TANI SANDHU BHARGAVA & ORS.DefendantsThrough: Mr.Laksh Khanna, Ms.Diksha
Suri and Ms.Smriti
Maheshwari, Advs. for D-1.
Mr.Rajan Narain and
Ms.Mohini Narain, Advs. for
D-3 & D-4.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This suit has been filed by the plaintiff praying for the following reliefs:

“a. to pass a preliminary decree of partition in favour of the Plaintiff and against the defendants determining and declaring the respective shares of the parties to the extent of 1/3rd share for the plaintiff, 1/3rd share for defendant No.1, 1/6th share for defendant No.3, well as 1/6th share for defendant No.4, in the Suit Property bearing No.202, Jor Bagh, New Delhi comprising of ground floor, basement floor and a servant quarter on the top of the building besides parking rights, garden and other common facilities in the said building, shown in red colour on the site plan



2024:DHC:7210



of the suit property filed with the plaint, and to have the Plaintiffs share in the suit property separated and segregated for her separate enjoyment in the manner provided by law. It is further submitted that because physical partition of the suit property by metes and bounds is not possible therefore, the suit property may be partitioned by sale of the suit property and sale proceeds thereof to be distributed amongst the parties according to their respective share;

b. a Local Commissioner may be appointed and directed to submit the plan of mode and method of partition about the manner in which the Suit Property bearing No.202, Jor Bagh, New Delhi comprising of ground floor, basement floor and a servant quarter on the top of the building besides parking rights, garden and other common facilities in the said building, shown in red colour on the site plan of the suit property filed with the plaint, should be sold and sale proceeds thereof should be distributed amongst the parties according to their respective shares;

c. on receipt of the report of the Local Commissioner about the mode and manner for partition of the said property, final decree be kindly passed for partition of the Suit Property bearing No.202, Jor Bagh, New Delhi comprising of ground floor, basement floor and a servant quarter on the top of the building besides parking rights, garden and other common facilities in the said building, shown in red colour on the site plan of the suit property filed with the plaint, in favour of the plaintiff and against the Defendants.

d. decree of permanent injunction be kindly passed in favour of Plaintiff and against the defendants or against such of the defendants as may be found liable in the facts and circumstances of the present case, restraining the defendants, their agents, employees and servants etc from creating any third party interest in the suit property comprising of property No.202, Jor Bagh, New Delhi



2024:DHC:7210



comprising of ground floor, basement floor and a servant quarter on the top of the building besides parking rights, garden and other common facilities in the said building, shown in red colour on the site plan of the suit property riled with the plaint or any part thereof and from interfering with the peaceful possession and enjoyment by the plaintiff in respect of portions shown in red color in the site plan of ground floor of the Suit .Property and in the common user of servant quarter on top floor of the building, user of garden and of parking space, right of ingress and egress, which arc in actual user and possession by the plaintiff on the ground floor of the said property till such time the separate allocated portions of the said property are allotted to the plaintiff in implementation of the decree for partition or till the entire ancestral property at 202, Jor Bagh, New Delhi belonging to the parties is sold by the parties jointly or through the assistance of Local Commissioner to be appointed by the Hon'ble Court for carrying out the implementation of the decree for partition to be passed by this Hon'ble Court in the above suit.

e. Costs of the suit may also be awarded in favour of the plaintiff and against the defendants or against such of the defendants who may be found liable for the same."

2. Before filing of the present suit, the defendant no.1 had filed a Civil Suit, being CS(OS) 452/2019, titled ***Tani Sandhu Bhargava v. Shumita Didi Sandhu***, contending therein that the suit property, that is, property bearing Block No.172, Plot No.202, Jor Bagh, New Delhi-110003, was purchased by the mother of the defendant no.1, namely, Late Mrs.Sheila Sandhu, vide a Registered Sale Deed dated 06.05.2005. Ground Floor of the said property was subsequently gifted by her to the defendant no.1 by way of a Registered Gift Deed



2024:DHC:7210



dated 29.01.2008. The same was in the occupation of the plaintiff and, therefore, the suit was filed seeking *inter alia* possession thereof.

3. This Court, by its Judgment dated 01.08.2024 passed in the above-referred suit, allowed an application filed by the defendant no.1 under Order XII Rule 6 of the Code of Civil Procedure, 1908, and passed a decree directing the defendant therein/plaintiff in the present suit to hand over the vacant physical possession of the above-referred property to the defendant no.1.

4. In the said suit, the plaintiff herein had taken pleas, which are similar to the present suit, which is her claim that the suit property belongs to the HUF of the great-grandfather of her husband and, therefore, Late Mrs.Sheila Sandhu did not have any exclusive right or title over the said property.

5. This Court found no merit in the said claim of the plaintiff herein, and rejected the same, while observing as under:

“30. In the present case, as is evident from the submissions of the learned senior counsels for the parties, the only defence of the defendant to the suit is that the Suit Property is an HUF property, though purchased in the name of late Mrs.Sheila Sandhu. The existence of the HUF and how the said property can be claimed to be an HUF property is detailed by the defendant in her written statement as under:

“I. FACTUAL MATRIX

*It is relevant to present the brief factual matrix about the family background of the parties to the litigation and the nature of the Hindu Undivided family property:-
(a) That the parties to this litigation are the successors in*

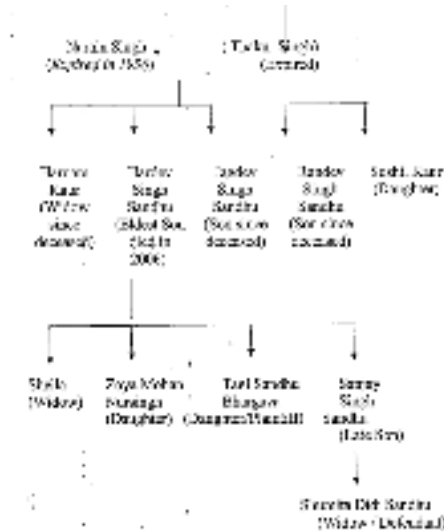


2024:DHC:7210



interest of their ancestors as is clear from the- family tree given below:

Jhanda Singh
(Great Grand Father of Sanjay Singh Sandhu since deceased-expired prior to 1912)



(b) Admittedly, Ms. Shumita Didi Sandhu alias Sumita Sandhu is the widow of Shri Sanjay Singh Sandhu and daughter-in-law of the late Hardev Singh Sandhu & Smt. Sheila Sandhu. Late Shri Jhanda Singh Sandhu was the great grandfather of Shri Sanjay Singh Sandhu and Shri Narain Singh was his grand father. The Plaintiff and Zoya Mohan Nursingh are the daughters of the late Hardev Singh Sandhu & Smt. Sheila Sandhu.

(c) That the Sandhu family belongs to the Mitakshara school of Hindu law, accordingly, deceased Husband of the Defendant was a co-parcenor in the ancestral HUF properties and had a birth right in HUF property as has also been upheld by the Hon'ble Supreme Court in Civil Appeal No. 5124 of



2024:DHC:7210



2019 titled as 'Arshnoor Singh Vs. Harpal Kaur' decided on 01.07.2019.

(e) That the great grand-father of Shri Sanjay Singh Sandhu had big estates in district Lahore in the form of agricultural lands which were inherited by his sons Shri Naraian Singh Sandhu & Shri Thakur Singh. Late Shri Jhanda Singh is understood to have expired prior to 1912 and from the income of inherited properties the grandfather of Shri Sanjay Singh Sandhu acquired properties bearing No. 81G, 82G & 83G in Model Town, Lahore. Shri Naraian Singh expired in or about the year 1936 and ancestral properties fell into the hands of his sons and widow namely Shri Hardev Singh Sandhu etc and Harnam Kaur in Model Town Society regarding property No. G-81. The nomination of Smt. Harnam Kaur, wife of late Shri Naraian Singh was recorded in the records of Model Town Cooperative Society, Lahore in respect of his membership of the Society and in respect of Property no. 81-G, Model Town, Lahore as the representative of late Sh. Naraian Singh Sandhu's family.

(f) That after partition of the country, Urban Claim Compensation of Rs. 1 Lakh (One Lakh) was determined by the Settlement Officer on 17.01.1952 in the name of Smt. Harnam Kaur who, was the manager of the family property and that via Rural Claims agricultural lands were allotted to the three sons of Shri Narain Singh Sandhu.



2024:DHC:7210



(g) That the amount of compensation mentioned above constituted the corpus of the HUF and from the said corpus interim compensation was also received in the name of Smt. Harnam Kaur from which eventually after juggling names to their convenience through some manipulations and Exchange Deeds the family acquired property No. C-109, South Ext. Part-II, New Delhi for Rs. 5000/- (Rupees Five Thousand only) in 1959 in the name of Smt. Sheila Sandhu.

(h) As the Karta of the HUF Shri Hardev Singh Sandhu held General Power of Attorneys both from his mother and from his wife as early as 1959 and 1960 and managed the HUF properties by himself or in their names. Properties were purchased from 1959 onwards in the name of Mr Hardev Singh Sandhu's wife Smt Sheila Sandhu after separating the interests of Sh. Jagdev Singh Sandhu and Sh. Randev Singh Sandhu from the joint family properties of HUF.

(i) That residential plot No. V-B/8, Faridabad and the commercial plot No. 8 at Block B, NH-5, Faridabad were allotted to the family in the name of Smt. Harnam Kaur and the value whereof was adjusted against the said compensation claim.

(j) That from the sale proceeds of South Extension property and from the income generated from the corpus of HUF funds – properties bearing plot Nos. 33 & 18A Ring Road, Lajpat Nagar,



2024:DHC:7210



New Delhi were purchased by the karta of the family Shri Hardev Singh Sandhu in the name of his wife Smt. Sheila Sandhu in the year 1961.

(k) That with the corpus of HUF assets originating from determined rehabilitation claims compensation of Rs.1,00,000/- (Rupees one lakh only) Sh. Hardev Singh Sandhu organized to purchase a good number of Insurance policies in the Joint names of himself and his wife based on them as collateral and guarantee - funds were also subsequently raised and arranged by the HUF family for development and construction of Property No. 18-A, Ring Road Lajpat Nagar, New Delhi vide a Mortgage Deed.

(1) The said plots in Faridabad are understood to have been disposed off by the Karta and consideration received there from is also understood to have been utilized by the family for purchase or improvement of joint family/ancestral properties.

(m) The Jor Bagh property bearing No. 202 consisting of Ground Floor cum Basement having the status of an HUF property was purchased after selling the previous HUF property the Sandhu Family residence namely 18 Ring Road Lajpat Nagar by the karta of the family Shri Hardev Singh Sandhu in the name of his wife Smt. Sheila Sandhu. It would not be out of place to mention here that initially for purchase of Jor Bagh Property, in anticipation of sale of HUF properties, Sh. Sanjay Singh Sandhu had also arranged funds



2024:DHC:7210



from his friend Sh.Harjinder Singh Deol of Dehradun in the name of Smt.Sheila Sandhu and those funds were utilized for payment of the initial amounts to the seller of Jor Bagh Property to the family. Subsequently it is understood that some part payment has been made to Sh.Harjinder Singh Deol and substantial part thereof has not been refunded to him by the family till date.

(n) That it would not be out of place to mention here that till about 1972 Sh.Hardev Singh Sandhu also used to put his personal earnings as well in the hotchpotch of the Hindu Undivided Family (HUF). That considered from any view point the Jor Bagh Property retains the status of an HUF family property.”

31. From the above pleadings, the claim of the defendant that the Suit Property is an HUF property stems out of her plea that the great-grandfather of her husband had a big estate in District Lahore in form of an agricultural land which was inherited by his sons, Sh.Naraian Singh Sandhu and Sh.Thakur Singh. She also asserts that from the income of the inherited properties, Late Sh.Naraian Singh Sandhu, the grandfather of her husband, purchased properties in Model Town, Lahore, though in the name of his wife, Late Smt. Harnam Kaur. However, from her own documents, it is seen that the property was purchased by Sh.Naraian Singh Sandhu in his own name and not in the name of an HUF. There is also no document to support the plea that there ever existed an HUF between Sh.Jhanda Singh, great-grandfather of the husband of the defendant, and his sons. Merely because Sh.Naraian Singh Sandhu sought to nominate his three sons as his nominees in the said



2024:DHC:7210



property, does not give rise to even an inference or an assumption that the property was an HUF property. In any event, on an objection raised by the Society, Late Sh.Naraian Singh Sandhu nominated only his wife, namely, late Smt.Harnam Kaur as the nominee for the said properties.

32. The defendant has also placed on record the application filed by Late Smt.Harnam Kaur before the Claims Officer under the Displaced Person (Compensation and Rehabilitation) Act, 1954, seeking compensation for the properties left behind by her in Pakistan. The said application claims the property in Model Town, Lahore to be under the sole ownership of Late Smt.Harnam Kaur. She, in fact, categorically states in her application/affidavit in support of the application, that the said property is not an HUF property and she is not a part of any HUF. It is on this application that she alone was awarded a compensation of Rs.1,00,000/- by the Claims Officer vide its Order dated 17.01.1952. The said compensation, therefore, cannot be treated as an HUF property. The entire edifice of the defence of the defendant is, therefore, false and remains totally unsubstantiated and in fact, contradicted by her own documents.

33. Even otherwise, Late Smt.Harnam Kaur executed a General Power of Attorney dated 07.10.1960 appointing her son Late Sh.Hardev Singh Sandhu as her attorney. In the said document as well, she describes herself to be the sole owner of the plot at Faridabad. The said property was sold by Sh.Hardev Singh Sandhu, as power attorney of late Smt.Harnam Kaur, vide a Sale Deed dated 18.06.1963, describing her as the sole owner of the said property. Much prior to this sale, Late Mrs.Sheila Sandhu purchased the property bearing No.C-109, South Extension, Part-II, New Delhi vide registered Sale Deed dated



2024:DHC:7210



29.04.1959. The said property was purchased in the sole name of Late Mrs. Sheila Sandhu. The said property was, thereafter, sold by her vide a registered Sale Deed dated 02.01.1961, again describing herself as a sole owner of the said property. She then purchased the property at Lajpat Nagar in her own name, vide registered Sale Deed dated 04.02.1961. The defendant has herself placed on record a Mortgage Deed dated 15.02.1963, whereby Late Mrs. Sheila Sandhu obtained loan from the Life Insurance Corporation of India for purposes of construction over the land at Lajpat Nagar. The said property was later sold by her vide a registered Sale Deed dated 18.11.2010. She purchased the suit property vide a registered Sale Deed dated 06.05.2005, again in her individual name. All these facts are emerging from the documents filed by the defendant herself. These documents clearly show that the plea of existence of an HUF or that the Suit Property belonging to such HUF, is a total moon-shine defence.

37. In addition to the above, Section 14 of the Hindu Succession Act reads as under:

“14. Property of a female Hindu to be her absolute property.—(1)

Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in



2024:DHC:7210



any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in subsection (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

39. Though the learned senior counsel for the defendant is correct in his submission that the property inherited prior to 1956 would be governed by Mitakshara law alone and shall be a coparcenary property in the hands of the coparceners, however, the said plea has no application to the facts of the present case. As observed hereinabove, the defendant has failed to factually substantiate the plea that the suit property, in any manner, is connected with an HUF that is claimed to have existed in Pakistan."

6. This Court, in fact, found the claim of the plaintiff herein to be a moon-shine defence and not even sufficient enough for the defendant no.1 to be put through the rigors of a trial.

7. In view of the above Judgment passed by this Court on 01.08.2024, the claim of the plaintiff in the present suit cannot survive.

8. In view of the above, when the suit was listed before this Court on 09.08.2024, the learned counsel for the plaintiff prayed for an adjournment stating that the plaintiff is in the process of filing an appeal to challenge the above-referred Judgment dated 01.08.2024.



2024:DHC:7210



The said request was accepted by this Court and the suit was adjourned to 13.09.2024. On 13.09.2024, the plaintiff again made the same request and the said request was acceded to and the suit was adjourned to today.

9. The defendant no.1, in turn, has filed an Execution Petition, being Ex.P.67/2024, which also was adjourned on 05.09.2024 on the same plea. Admittedly, the appeal has not been listed till today.

10. The learned counsel for the plaintiff submits that the suit be adjourned as the appeal is likely to be listed anytime soon.

11. In my view, I have given sufficient time to the plaintiff to avail her remedies against the Judgment dated 01.08.2024 passed by this Court. Matters cannot be adjourned repeatedly only for a party to avail of her legal remedies at her own leisure and fancies.

12. I am bound by the Judgment already passed in the above-referred suit.

13. I, therefore, find no merit in the present suit. The same is dismissed. The pending application is also disposed of as infructuous. The parties shall bear their own costs.

NAVIN CHAWLA, J

SEPTEMBER 18, 2024/ns/DG

Click here to check corrigendum, if any