



2024:DHC:10087



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 7th October, 2024**Date of Decision: 10th December, 2024*

+ CS(OS) 806/2024 & I.A. 41552/2024, I.A. 41553/2024

SMT. SAMTA

.....Plaintiff

Through: Mr. Vedant, Advocate (Through VC)

versus

SH. SUDEEPAK KUMAR RAJAN AND ORS

.....Defendants

Through: None

CORAM:**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J:**

1. The present suit has been filed seeking a decree of partition of the house property i.e., built up property bearing House H.No.500/2-B, Block-30, 60 Ft. Road, Street No.6 & 7, Vishwas Nagar, Delhi-110032 admeasuring 200 sq. yards ('suit property'). The suit also seeks a decree for permanent injunction against the defendants from creating any third-party interest in the suit property.

1.1. It is stated in the plaint that the suit property was purchased by Sh. Daulat Ram ('deceased') in 1990s. It is stated that Sh. Daulat Ram expired on 12.03.2023 and he died intestate.

1.2. It is stated that plaintiff is the grand-daughter of Sh. Daulat Ram. Defendant no. 1 is the father of the plaintiff and son of Sh. Daulat Ram. Defendant no. 6 is the brother of the plaintiff and son of defendant no. 1.

Signature Not Verified

Signed By: RASHMI DABAS

Signing Date: 26.12.2024
02:17:30

CS(OS) 806/2024

Page 1 of 12



2024:DHC:10087



Defendant nos. 2 to 4 are other sons of late Sh. Daulat Ram and thus uncles of the plaintiff. Defendant no. 5 is the wife of late Sh. Daulat Ram and the grandmother of the plaintiff.

1.3. The plaintiff has filed the present suit claiming 1/15th share in the suit property on the plea that the suit property was a joint Hindu family property as it was purchased from joint Hindu family funds.

Arguments on behalf of the counsel for the plaintiff

2. Learned counsel for the plaintiff states that the plaintiff verily believes that the suit property was purchased by late Sh. Daulat Ram from joint Hindu family funds in 90's, therefore, the said property is a joint Hindu family property.

2.1. He states that there are matrimonial disputes pending between the plaintiff's parents and the suit property was purchased by late Sh. Daulat Ram prior to the marriage of the parents of the plaintiff.

2.2. He fairly states that the plaintiff doesn't have in her possession any documents to substantiate the oral plea that the suit property is a Hindu Undivided Family (HUF) property; however, she has been orally informed that indeed the property is an HUF property.

2.3. He states that the suit property was also the matrimonial home of the plaintiff's mother and the mother's income has also been used in reconstruction of the entire suit property in the mid-year of 2001. He states that upon these pleas, the present suit has been filed seeking partition of the suit property as a HUF property.

2.4. He states that there is no dispute that the suit property stands in the individual name of late Sh. Daulat Ram.

2.5. He states that the plaintiff is not aware as regards to the name of the



2024:DHC:10087



HUF or whether any taxing entity by the name of the said HUF exists.

2.6. He further contends that the suit property was in the individual name of late Sh. Daulat Ram and he has died intestate, however, as the suit property is ancestral, therefore, the plaintiff herein has rights by birth in the suit property.

Findings and Analysis

3. This Court has considered the submissions of the learned counsel for the plaintiff and perused the record.

4. The plaintiff has filed the present suit seeking 1/15th share in the suit property standing in the name of late Sh. Daulat Ram on the plea that the suit property was purchased by him from joint Hindu family funds. The relevant pleading in the plaint is at paragraph '4' and paragraph '18' of the plaint, which reads as under:-

"4. That the grandfather of the plaintiff and father of defendants no. 1 to 4 and husband of defendant no.5 namely **Late Sh. Daulat Ram purchased the suit property and maintained the same as Hindu joint family property in 90's from joint Hindu family funds**, the suit property comprises of four shops at ground floor, ground floor, first floor and second floor, most specifically shown red in the site plan attached herewith.

18. That **the cause of arose when grandfather of petitioner purchased the suit property from Hindu family funds in 90's** and cause of action further arose when the petitioner's married to defendant no. 1 and petitioner born out of wedlock and further cause of action arose when the petitioner & her mother thrown out of suit property on 11.09.2012 with malice that petitioner will not get her share in the suit property, and cause of action further arose when the petitioner got married and entire expenses born by the petitioner's mother alone, and cause of action further arose when the grandfather namely Sh. Daulat Ram was expired on 12.03.2023 and dies intestate, and cause of action further arose when the defendant no. 1 with concurrence of his family members filed false case against the



2024:DHC:10087



petitioner's mother and hon'ble court rejected the plaint of the defendant no. 1 and cause of further arose when defendant no. 1 deliberately mentioned wrong facts in the petition rejected by the Hon'ble court only to make disentitlement of share of petitioner in the suit property, hence still subsisting."

(Emphasis Supplied)

5. On a prima facie consideration of materials placed on record with the suit, it would be pertinent to note that neither any title documents pertaining to the suit property nor documents evidencing the source of the funds alleged to form the corpus of the joint Hindu family funds have been placed on record in support of the plea that joint Hindu family funds were used for purchasing the suit property by late Sh. Daulat Ram.

6. Moreover, the learned counsel for the plaintiff during arguments sought to alter the stand by alleging that the suit property is an HUF property. However, learned counsel fairly admitted that the plaintiff is not aware as regards the existence of any HUF entity of late Sh. Daulat Ram.

7. In this regard it would be relevant to note that ordinarily a HUF has a name and is also recognized as a separate taxing entity under the Income Tax Act, 1961. If an HUF owns properties, it would ordinarily have an independent Permanent Account Number (PAN) and bank accounts in the name of the HUF. The existence of the PAN and bank accounts in the name of the HUF would all show its existence. The inability of the plaintiff to state the name of the alleged HUF leads to the inescapable conclusion that no HUF of late Sh. Daulat Ram exists.

8. The use of the phrase Hindu joint family property in the captioned plaint is inaccurate. In law, the correct nomenclature is coparcenary



2024:DHC:10087



property¹. In law, Hindus can own two types of properties known as coparcenary property or personal property. The incidence of ownership of coparcenary property and personal property are distinct. The personal property of a Hindu includes his/her self-acquired property and property inherited from an ancestor to hold as his/her personal property. The coparcenary property is a distinct species of property which belongs to a coparcenary in which the Hindu acquires interest by birth as a coparcener and receives share in the property upon partition.

9. In view of the pleaded facts, wherein the suit property came into existence in 1990s as per the plaint, it would be relevant to recall that there is no presumption attached to creation and existence of an HUF upon purchase of a property by a male Hindu or such a property being considered as a coparcenary property in the hands of the lienal descendants upon death of the title holder after the coming into force of Section 8 of Hindu Succession Act, 1956 ('Act of 1956').

10. In this regard it would be relevant to firstly refer to the judgments passed by the Supreme Court in **Yudhishter v. Ashok Kumar**² reiterating the legal position held in **Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors.**³ wherein it has been observed that after coming into force of Section 8 of the Act of 1956, inheritance of ancestral property does not result in creation or existence of an HUF property and such property inherited by the son retains the character of a separate property taken in its individual capacity.

¹ Neeraj Bhatia v. Ravindra Kumar Bhatia (2024 SCC OnLine Del 4894) [Paragraph 38]

² (1987) 1 SCC 204

³ (1986) 3 SCC 567



2024:DHC:10087



11. It has been further explained by the Coordinate bench of this Court in **Aarshiya Gulati (Minor) Through Next Friend and Others v. Kuldeep Singh Gulati and Others**⁴ that in regards to the claim of property being a HUF property it is not simply enough to aver in the plaint that the subject property is a Hindu Joint Family Property or that there exists a HUF. The operative portion to this aspect reads as under:

“ORDER 6 RULE 4 CPC IS ATTRACTED TO SUITS WHERE THE PLAINTIFF CLAIMS THAT A COPARCENARY OR HUF EXISTS, AS AFTER COMING INTO FORCE OF THE HINDU SUCCESSION ACT, 1956, THERE IS NO PRESUMPTION AS TO THE EXISTENCE OF AN HUF.

40. A learned Single Judge of this Court in the case of *Surender Kumar v. Dhani Ram*, 227 (2016) DLT 217 has **held that Order 6 Rule 4 CPC is attracted to suits where the plaintiff claims that a coparcenary or HUF exists, as after coming into force of the Hindu Succession Act, 1956 (hereinafter referred to as Act, 1956)**, there is no presumption as to the existence of an HUF. Consequently, detailed facts have to be averred. The 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. The relevant portion of the said judgment is reproduced hereinbelow:—

“9. I would like to further note that it is not enough to aver a mantra, so to say, in the plaint simply that a joint Hindu family or HUF exists. Detailed facts as required by Order 6 Rule 4, CPC as to when and how the HUF 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 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 ratios of the judgments of the Supreme Court in the cases of *Chander Sen* (supra) and *Yudhister* (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

⁴ 2019 SCC OnLine Del 6867



2024:DHC:10087



or existence of HUF properties inasmuch as it is necessary for existence of an HUF and its properties that 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.”

(emphasis supplied)

41. A Division Bench of this Court in Sagar Gambhir v. Sukhdev Singh Gambhir, 241 (2017) DLT 98 has endorsed the said view. The relevant portion of the Division Bench's judgment is reproduced hereinbelow:—

5. The defendants filed IA No. 1325/2012 invoking Order VII Rule 11 of the Code of Civil Procedure pleading that the averments in the plaint did not disclose a cause of action.

6. Vide impugned order dated May 06, 2016, relying upon the decision of the Supreme Court reported as (1987) 1 SCC 204 Yudhihster v. Ashok Kumar, and two decisions of this Court reported as 225 (2015) DLT 211 Sunny (Minor) v. Sh. Raj Singh and 227 (2016) DLT 217 Surinder Kumar v. Dhani Ram the learned Single Judge has held that the pleadings were illusory and did not disclose a cause of action. The suit has been dismissed, and we treat this to be a misnomer for the reason if a plaint does not disclose a cause of action it has to be rejected. Qua challenge to the will, the learned Single Judge has held that this would be a separate cause of action and a separate suit could be filed.

11.the Supreme Court laid emphasis that Courts must accord due attention to the pleadings, and in civil cases pertaining to property, must accord the necessary consideration to the admitted documents filed by the parties and highlighted that this care would prevent many a false claims from sailing beyond the stage of issues. In paragraph 73 to 79 of the opinion, the Supreme Court highlighted that suspicious pleadings, incomplete pleadings and pleadings not supported by documents would not even warrant issues to be settled. Thus, the said observations of the Supreme Court would be very relevant in the instant case.

.....
.....

THERE IS A PRESUMPTION THAT EVERY HINDU FAMILY WHICH IS JOINT IN FOOD AND WORSHIP IS A HINDU JOINT FAMILY; BUT THERE



2024:DHC:10087



IS NO PRESUMPTION THAT THE ESTATE IS JOINT OR THE PROPERTY IS THE HINDU JOINT FAMILY PROPERTY. THE PARTY WHO ASSERTS THAT THE PROPERTY IS HINDU JOINT FAMILY PROPERTY HAS TO PROVE IT.

48. In the opinion of this Court, there is a presumption that every Hindu Family which is joint in food and worship is a Joint Family; but there is no presumption that the Estate is joint or that the properties of the family members belong to the Hindu Joint Family. The party who asserts that the property is joint family property has to prove it.

49. Mulla in his Treatise Hindu Law states as under —:

“Para 231-Mulla's Hindu Law – 21st Edition

- 1) Presumption that a joint family continues joint - Generally speaking, the normal state of every Hindu family is joint. Presumably every such family is joint in food, worship and estate. In the absence of proof of division, such is the legal presumption.
- 2) No presumption that a joint family possesses joint property - **There is no presumption that a family, because it is joint, possesses joint property or any property.** When in a suit for partition, a party claims that any particular item of the property is joint family property, or when in a suit for a mortgage, a party contends that the property mortgaged is joint family property, the burden of proving it rests on the party asserting it.

(emphasis supplied)

50. In Makhan Singh (Dead) By LRs. v. Kulwant Singh, (2007) 10 SCC 602, the Apex Court has held as under:—

“7.In this connection the judgment in D.S. Lakshmaiah case becomes relevant. It had been observed that a property could not be presumed to be a joint Hindu family property merely because of the existence of a joint Hindu family and raised an ancillary question in the following terms : (SCC p. 314, para 7)

“7. The question to be determined in the present case is as to who is required to prove the nature of property whether it is joint Hindu family property or self-acquired property of the first appellant.”

8. The query was answered in para 18 in the following terms: (SCC p. 317)

“18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family



2024:DHC:10087



property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”

(emphasis supplied)

9. The High Court has also rightly observed that there was no presumption that the property owned by the members of the joint Hindu family could a fortiori be deemed to be of the same character and to prove such a status it had to be established by the propounder that a nucleus of joint Hindu family income was available and that the said property had been purchased from the said nucleus and that the burden to prove such a situation lay on the party, who so asserted it. The ratio of K.V. Narayanaswami Iyer case [AIR 1965 SC 289 : (1964) 7 SCR 490] is thus clearly applicable to the facts of the case. We are therefore in full agreement with the High Court on this aspect as well. From the above, it would be evident that the High Court has not made a simpliciter reappraisal of the evidence to arrive at conclusions different from those of the courts below, but has corrected an error as to the onus of proof on the existence or otherwise of a joint Hindu family property.

(emphasis supplied)

51. A Division Bench of this Court in Ravi Shankar Sharma v. Kali Ram Sharma, 2014 I AD (Delhi) 609 has held that there is a body of authority to the effect that though the family might be joint, yet there is no presumption that property of someone is Hindu Undivided Family property.

HOWEVER IF SUFFICIENT NUCLEUS/INCOME OF HINDU JOINT FAMILY IS SHOWN AND PROPERTY HAD BEEN PURCHASED FROM THE SAID NUCLEUS, THEN EVEN IF OWNERSHIP STANDS IN THE NAME OF ONE OF ITS MEMBERS, IT CAN BE PRESUMED TO BE HINDU JOINT FAMILY PROPERTY

52. However, if sufficient nucleus/income of Hindu Joint Family is shown and property had been purchased from the said nucleus, then even if ownership stands in the name of one of its members, it can be presumed that property is owned by the Hindu Joint Family. Even in the judgment of Appasaheb Peerappa Chamdgade (supra) cited by the plaintiffs, there were Hindu Joint Family properties and the business was started from the Hindu Joint Family funds. The said judgment categorically holds that proof of nucleus/sufficient income of a Hindu Joint Family as well as purchase from the said nucleus is a must.

53. In Ms. Ilaria Kapur v. Sh. Rakesh Kapur (supra), it was also held that if nucleus whereof was generation of funds from Hindu joint family business for the



2024:DHC:10087



purchase of properties, then it is immaterial whether the name of one of the family members appears on a document by which the said property was purchased by the joint family.”

(Emphasis supplied)

12. Applying the above legal principles to the facts of the present case, the entire edifice of the claim in the plaint rests on a bald plea that the purchase of the suit property by late Sh. Daulat Ram was as joint Hindu family property and it was purchased from Joint Hindu Family Funds. However, no proof of existence nucleus/income of Hindu Joint family or particulars of the alleged nucleus have been set out in the plaint to enable this Court to frame a prima facie view of the existence of any HUF of late Sh. Daulat Ram.

13. The plaintiff has not placed on record any iota of evidence which would show that late Sh. Daulat Ram had available with him joint Hindu family funds in 1990s when he purchased the property and/or that late Sh. Daulat Ram after purchasing the suit property filed written declarations with the statutory authorities declaring the said property as a HUF property. The plaintiff has also not placed on record any evidence to show that any coparcenary existed in 1990s between Sh. Daulat Ram, his sons i.e. defendant nos. 1 to 4 and his grandchildren.

Furthermore, it is relevant to note that it is an admitted fact that the plaint has been drafted by the counsel on oral instructions of the plaintiff, as recorded in the order dated 07.10.2024. This shows that no documents exist to the knowledge of the plaintiff to substantiate her pleas in the plaint.

14. The plaintiff has filed the plaint ostensibly to make a claim of partition therein by invoking Section 6 of the Act of 1956. Section 6 of Act of 1956 applies to coparcenary property. However, there is no pleading in



2024:DHC:10087



the plaint to the effect that there was ever any coparcenary of her grandfather, late Sh. Daulat Ram. Rather, plaintiff's own averments establish that she is asserting rights in the property of her father and not in any HUF due to the matrimonial disputes arisen between her parents and with her father.

15. The oral assertions made by the learned counsel for the plaintiff that by virtue of being a coparcener in the HUF property, plaintiff became entitled to 1/15th share by birth is an erroneous claim based on misconception of law. There is no presumption in law of the existence of coparcenary and the plaintiff has failed to even show a prima facie case in her favour. The bald averments in the plaint and oral submissions are not sufficient to give rise to any presumption of the existence of the coparcenary.

16. Even if the entire pleading is considered as correct, the essential requirement to even prima facie establish the coparcenary nature of the suit property is entirely missing and thus, the claim of the plaintiff cannot be sustained and the plaint is liable to be rejected for being devoid of any cause of action.

17. Learned counsel for the plaintiff has relied upon the judgment of Supreme Court in **Vineeta Sharma v. Rakesh Sharma**⁵ to contend that the present suit is maintainable. Though, the counsel has not referred to the relevant paragraph of the judgement, however, it is assumed that the plaintiff is referring to amended Section 6 of the Act of 1956. However, for invoking the said section as well, it is essential in its first instance that there must

⁵ (2020) 9 SCC 1



2024:DHC:10087



exist a coparcenary property in order to claim a share in it. And as noted above mere bald averments cannot lead to existence of HUF and since the plaintiff has failed to discharge the burden to prove and to bring on record any facts to evidence that there existed any HUF in which late Sh. Daulat Ram was a coparcener and any evidence that the suit property formed part of such an HUF, therefore, the reliance placed on the judgement of **Vineeta Sharma** (supra) is not applicable to the facts of this case.

18. It appears from the averments in the plaint that the title documents stand in the name of late Sh. Daulat Ram. In such facts the presumption is that the suit property is the personal property of late Sh. Daulat Ram. The devolution of interest in this personal property will, therefore, be governed by Section 8 of the Act of 1956 and the property will devolve upon his Class-I legal heirs i.e. defendant nos. 1 to 5 as held by Supreme Court in **Chander Sen** (supra) and **Yudhister** (supra).

19. Accordingly, in view of the judgments noted hereinabove as well as having perused the pleas in the plaint, this Court is satisfied that the averments made in the plaint fail to evidence that the suit property was a coparcenary property or HUF property and, therefore, the plaint is without any cause of action and is accordingly rejected in exercise of the powers under Order VII Rule 11 (a) of CPC.

20. The pending applications also stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

DECEMBER 10, 2024/rhc/ms