



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 01st April, 2024

Pronounced on: 7th May, 2024

+ C.S.(OS) 90/2017, I.A. 7070/2018, I.A. 7849/2018, I.A. 1299/2019

MRS. AMITA GANDOAK

W/o Shri Ravinder Singh Gandoak,
R/o M-77, Greater Kailash Part-1,
New Delhi-110048.

..... Plaintiff

Through: Mr. Jai Sahai Endlaw and Mr. Karan
Kumar, Advocates.

Versus

1. **SHRI HARKIRAT SINGH SODHI**

S/o Late Sardarni Surinder Kaur Sodhi,
R/o 210A, Golf Links,
New Delhi-110003.

2. **SHRI MAHESH INDER SINGH SODHI**

R/o E-2, East of Kailash,
New Delhi-110065.

.....Defendants

Through: Ms. Neelima Tripathi, Sr. Advocate with
Mr. Shankar, Mr. Shivain, Mr. Lalit and
Mr. Rajat, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

I.A.6028/2017

1. An application under *Order VII Rule 11 read with Order 12 Rule 6 CPC, 1908* has been filed by the defendants for rejection of the suit.
2. The defendant has submitted that the suit filed by the plaintiff for



Partition of ancestral family property by metes and bounds, is completely barred by *Section 6 of the Hindu Succession Act, 1956*.

3. Additionally, in the present case, a Final Compromise Consent Decree dated 10.09.1985, under *Order XXIII Rule 3 of CPC, 1908*, with respect to the suit properties, has already been passed in *Civil Suit No.1937/1984* titled as '*Shri Harkirat Singh Sodhi vs. Harbhajan Singh Sodhi & Ors.*', which was filed by the Defendant No.1 against his father and grandparents, *for Partition and Rendition of Accounts*. The requisite stamp duty has been paid by defendant No.1 and the Final Compromise Decree has been duly passed/prepared as well as acted upon. The plaintiff, therefore, cannot seek any partition as has been sought by way of present plaint.

4. It is further asserted that the properties got allocated to defendant No.1 in terms of Compromise Decree dated 10.09.1985 and now these properties belong exclusively to defendant No.1. Even otherwise, the suit properties do not belong to the coparcenary qua the plaintiff and since, the defendant No.2, the father of the plaintiff and defendant No.1, is alive, the plaintiff cannot claim any right in the properties during the lifetime of the father and thus, the present suit is not maintainable.

5. The present suit is also claimed to be barred on the principles of *Estoppel* as defined under *Section 115 of the Indian Evidence Act, 1872*. The plaintiff is estopped from challenging the exclusive and absolute title of defendant No.1 in respect of the suit properties since she was fully aware about the *Civil Suit No.1937/1984* initiated by defendant No.1. Additionally, she was not only aware of the compromise *inter-se* the parties in the said suit, but was also a signatory to the application, bearing



I.A. No.4606/1985, dated 17.08.1985, filed under *Order XXIII Rule 3 of CPC 1908*, in the said Civil suit, for bringing the compromise on record. The compromise application was also duly supported by the *Affidavit* of the plaintiff/Amita Gandoak, reflecting that she was not only aware of the suit but also of the compromise inter-se the parties. It is further asserted that the consent Decree was in the form of *Memorandum of Family Settlement*, which has been completely acted upon and it cannot be disturbed in any subsequent proceedings.

6. The suit is also barred under *Order XXIII Rule 3A CPC, 1908* as any challenge to the earlier Partition Decree cannot be made by any independent suit as has been done by the plaintiff. No appeal is maintainable against the Consent Decree which is specifically barred under *Section 96(3) CPC, 1908*. To avoid a consent decree, the party could have only approached the same Court which had recorded the compromise and made a decree. The same cannot be challenged by way of a separate suit. It is, therefore, submitted that the present suit is an abuse of process of law and does not disclose any cause of action. It is liable to be rejected out rightly.

7. Further, the final Decree of Partition dated 10.09.1985 is binding on the principles of *res judicata*. The rights of the parties stand crystallized by the Consent Decree dated 10.09.1985 and the same cannot be re-opened by way of present suit, after 31 years. The plaintiff had not sought any relief for Declaration of alleged rights, entitlements and without challenging the final Partition Decree dated 10.09.1985, the present suit is not maintainable.

8. It is argued that, she cannot seek partition of the property which



have been exclusively and individually allocated to defendant No.1 in terms of final Decree dated 10.09.1985. There was *no HUF or HUF properties* ever existing in respect of which the partition can be sought by the plaintiff. Rather, admissions have been made by the plaintiff in the earlier suit for partition bearing No.1937/1984 which are fully binding on the plaintiff.

9. It is submitted by Defendant No. 2/Sh. Mahesh Inder Singh that that all the properties and specifically, property mentioned at ***Serial No. (ii), of Para 1 of Plaintiff i.e. E-2 East of Kailash, New Delhi measuring 500 sq. yds***, are his individual / self-acquired properties.

10. Further, rights in properties at ***serial no. (ii), (vi) and (vii) Para 1 of the Plaintiff*** were never transferred to defendant No.1/Harkirat Singh and the status of these properties is not known to him. With respect to property mentioned at ***serial no. (iv)***, it is explained by Defendant No. 1/ Harkirat, that this was ancestral property, owned by their grandfather/ Sh. Haravtar Singh Sodhi and his brother/ Shri Harbhajan Singh Sodhi. After the partition of the Haveli, "*Haveli Androoni*" fell in the share of his father/ Defendant No. 2 after the demise of Sh. Haravtar Singh Sodhi, and Defendant No. 1 became individual and exclusive owner of by virtue of the Consent Decree dated 10.09.1985. However, the remaining portion of the property, which includes Haveli, shops and buildings, was never given to defendant No.1 and the same is presently, jointly owned by class 1 heirs of Late Sh. Haravtar Singh Sodhi i.e. Defendant No. 2/ Shri. Mahesh Inder Singh along with class 1 heirs of Late Shri. Harbhajan Singh Sodhi i.e. his two sons, namely HMJ (Retd.) R.S. Sodhi and Mr. Vikram Nath Sodhi and his widow, Mrs. Parminder Kaur Sodhi. However, none of the



Class I heirs of Late Shri. Harbhajan Singh Sodhi, i.e. his sons and wife have been made a party to the suit, thus, the suit is also bad for *non-joinder/mis-joinder of the parties*.

11. The defendant has further asserted that the plaintiff is admittedly not the recorded co-owner of any of the suit properties and has no right to seek any partition whatsoever which is available only to a co-owner. The suit is barred under *Prohibition of Benami Property Transactions Act, 1988 (As amended up to date)*.

12. Additionally, the suit is *barred by limitation*. The plaintiff was never in possession, control, use or occupation of any part of the suit property. The plaintiff stands completely ousted to her knowledge and consent/acquiescence since at least 10.09.1985 till date. The present suit is dated 21.02.2017 which is squarely barred by limitation and is liable to be dismissed under *Section 3 of the Limitation Act, 1963*.

13. It is claimed that plaintiff never had any right, title or interest in the suit property and she has been completely ousted of the physical possession. Further, plaintiff has not denied that she has not been getting any part of the rent which the suit properties are fetching. The plaintiff, therefore, never exercised any right of ownership/co-ownership in regard to the suit properties and the suit is liable to be rejected.

14. It is asserted that plaintiff admittedly being out of possession of all the properties, is liable to pay ad-valorem court fees on the present suit. Since the requisite court fees has not been paid, the suit is liable to be rejected.

15. Furthermore, the plaintiff has valued the property bearing No.E-2, East of Kailash, New Delhi at Rs.1 Crore only. This property falls in 'C'



category for the purpose of circle rates which is Rs.1,59,840/- per square meter. Furthermore, it is a commercial property where a Hotel/ Guest House is being run and the land rates would be three times as compared to the land rates for the residential properties. The valuation of the suit property is not less than Rs.21,91,50,396/- and the property has not been valued according to the prevailing market rate and on this ground as well the suit is liable to be rejected.

16. The defendant has further claimed that the suit is barred by *Order II Rule 2 CPC, 1908*. The plaintiff had never made the claims as agitated in the present suit in *Test Case No.42/2014* and, therefore, the suit is barred.

17. Thus, the Defendants have sought rejection of the Suit for Partition on the above mentioned grounds. To buttress the arguments advanced, learned Counsel for the Defendants has placed reliance upon *Dahiben v. Arvindhai Kalyanji Bhanusali (Gajra)*, (2020) 7 SCC 366; *T. Arivandandam v. TV Satyapal* (1977) 4 SCC 467; *Sagar Gambhir v Sukhdev Singh Gambhir* (2017) 162 DRJ 575; *Renu Khullar v Aaron @ Arun Bhandari & Ors* (2018) 170 DRJ 268; *CS Ramaswamy vs. VK Senthil & Ors.* 2022 SCC Online SC 1330; *Sarjit Singh Awla v. Kuldeep Singh Awla* (2015) DLT(CNA) 13; *Sarita Dua vs. Gautam Dev Sood & Ors.*, RFA (OS) 27/2022, dated 04.07.2023; *Sopan Sukhdeo Sable v. Assistant Charity Commissioner* 2004 (3) SCC 137; *N Kasturi v. D Ponnammal* (1961) 3 SCR 955; *Om Prakash Arora v. Meenakshi Sardana* (2022) SCC OnLine Del 2234; *Hardeep Singh vs. Baldev Singh & Ors.* CM (M) No. 476/2013, dated 01.12.2014; *Church Of Christ Charitable Trust And Educational Charitable Society Vs Ponniamman Educational*



Trust. (2012) 8 SCC 706; T. Arivandandam Vs T.V. Satyapal And Another (1977) 4 SCC 467; Raghwendra Sharan Singh Vs Ram Prasanna Singh Air (2019) SC 1430; G.M. Singh (Dr.) Vs Trilochan Singh (Dr.) Others (2022) LawPak Delhi 89437; Roop Lal Sathi V. Nachhattar Singh Gill (1982) 3SCC 487; Triloki Nath Singh Vs Anirudh Singh (2020) 6 SCC 629; Byram Pestonji Gariwala Vs Union Bank Of India And Others AIR 1991 SCC 2234; R. Janakiammal v. S.K. Kumarasamy (2021) 9 SCC 114; Sree Surya Developers & Promoters v. N. Sailesh Prasad, (2022) 5 SCC 736; Ranganayakamma And Another Vs K.S. Prakash (Dead) By Lrs. And Others (2008) 15 SCC 673; and Sakina Sultanali Sunesara (Momin) & 3 Ors. Vs Shia Imami Ismaili Momin Jamat Samaj & 3 Ors, C/AO/33/2017 Judgment Dated 28/08/2019.

18. ***The plaintiff has contested this application*** and submitted that she was not a party to the earlier suit for partition and, therefore, any Consent Decree passed in the said Case is not binding upon her. She has further asserted that her signatures on the Compromise, were obtained by misrepresentation on the pretext of she being a witness to the said settlement. She signed the application in good faith and it cannot tantamount to giving up of her share in the suit properties.

19. The plaintiff has argued that any interest/share in the immovable property can be transferred only by way of registered document or a registered Decree. Neither any document has been executed nor has the decree been registered and thus, any decision/compromise in the litigation to which she was not a party cannot be held legally binding against her.

20. It is further contended that even if it is assumed, though not accepted, that she had surrendered/relinquished her share in the suit



properties, in that event also the relinquishment was in favour of her brother and mother. The plaintiff has become entitled to 50% share out of the mother's share and she is entitled to claim partition in respect of the suit properties.

21. The plaintiff has also contended that the Will dated 13.01.1987 of the mother Smt. Surinder Kaur, which has been projected by defendant No.1, was revoked *vide* Deed of Revocation dated 05.06.2004, though the registered Revocation Deed is not traceable in the Office of Sub-registrar for which the plaintiff has already made a complaint and *vide* Order dated 21.01.2017 passed in *Crl. Rev. No.13/2016* by the Special Judge, CBI, an FIR has been directed to be registered to investigate the disappearance of such document. The *Test Case No.38/2014* in respect of Will dated 13.01.1987 is subjudice and no Probate is likely to be granted in respect of the Will because of its revocation *vide* Revocation Deed dated 05.06.2004.

22. It is, therefore, submitted that the plaint discloses a cause of action and the application is without merit and is liable to be rejected. In support of the pleadings, Ld. Counsel for the Plaintiff has relied upon *Shobha Jolly v. Suraj S. J. Bahadur* (2013) SCC OnLine Del 4106; *Atma Singh and Anr. V. Prem Singha and Ors.* (2022) SCC OnLine Del 2563; and *Krishna Gupta and Anr. V. Rajinder Nath and Co. HUF and Ors.* 2013 (134) DRJ 246.

23. **Submissions heard and record as well as judgements relied by both the parties, have been perused.**

24. Admittedly, the suit properties are *ancestral family properties*, originally owned by Shri Harbhajan Singh Sodhi and his wife Smt.



Kuldip Kaur Sodhi, who are the paternal grandparents of the Plaintiff and Defendant No. 1. Shri Harbhajan Singh Sodhi and Smt. Kuldip Kaur had one son, Shri Mahesh Inder Singh Sodhi/defendant No.2. Shri Mahesh Inder Singh Sodhi was married to Smt. Surinder Kaur and had two children namely plaintiff/ the daughter and Sh. Harkirat, defendant No.1/ the son.

25. The plaintiff has asserted that the suit properties are ancestral family properties devolving from the grandfather and thus, she is entitled to a share in the ancestral properties.

26. Aside, from these properties inherited from the paternal grandfather (Dada), she also has some properties from her maternal grandfather i.e. immovable property bearing No.210-A, Golf Links, New Delhi admeasuring 376.90 square meters and other movable properties, in respect of which Test Case No.38/2014 has been filed by the defendant No.1 and Test Case No.42/2014 by the plaintiff, which are pending adjudication in this Court. *The plaintiff has not included the properties from the maternal side in the present suit which is confined only to the properties inherited from the paternal side.*

27. Smt. Surinder Kaur, mother of the plaintiff has died on 31.12.2013 while her father i.e. defendant No.2/Shri Mahesh Inder Singh is still alive.

28. The plaintiff has admitted that somewhere in the year 1984, defendant No.1/Harkirat had filed a *Suit No.1937/1984 for Partition and Rendition of Accounts* against their father and grandparents to claim partition and 1/9th share in the ancestral properties. The plaintiff, despite being an interested party, was not impleaded in the said suit. Smt. Surinder Kaur, mother of the plaintiff, had filed a Written Statement in



aforesaid suit and had admitted that the plaintiff/Amita also had a share in the suit properties or was at least entitled to be compensated to the extent of the amount spent on her education, wellbeing, etc. before she got married.

29. Though, Defendant No. 1/Harkirat had admitted that the subject matter of that partition suit were the family properties and that the plaintiff/ Amita had a share in the properties, he did not make Plaintiff/Amita a party because of his dishonest intentions and to prevent her from contesting the suit. However, there was a clear admission in the Written Statement of their mother, to the effect that plaintiff had a rightful share in those suit properties.

30. It is further claimed that defendant No.1/Harkirat, brother of the plaintiff, had entered into a collusive settlement with his parents and grandparents and filed an application bearing *I.A. No.4606/1985* under *Order XXIII Rule 3 CPC, 1908* and a Consent Decree dated 10.09.1985 was passed in terms of the settlement, whereby the properties were divided *inter-se* the parties to the suit. Some properties came to the share of defendant No.1 and their mother Smt. Surinder Kaur. It is further recorded in the said settlement that the plaintiff/Amita Gandoak, sister of defendant No.1, had surrendered and relinquished all her right, title and interest in the suit properties and by way of inheritance. The plaintiff has admittedly signed the said settlement but asserted that her signatures were taken on the last page of the application by deception and misrepresentation, on the pretext of their signatures are required to be the witness. The true facts, however, have been placed by the plaintiff at the earliest opportunity in *Test Case No.38/2014*.



31. The plaintiff has asserted that she is the co-owner of the suit properties as has also been admitted by her mother in her Written Statement filed in the earlier suit. Till the mother was alive, there was no dispute about the co-ownership of the suit properties irrespective of the mutation of the properties in the names of the parties.

32. The plaintiff has further clarified that her mother Smt. Surinder Kaur, had been pressurized by defendant No.1 to execute a Will dated 13.01.1987 in respect of Golf Links property bequeathing the same to defendant No.1, but the said Will got revoked and the Test cases in respect of the said Will of the mother, are pending.

33. The plaintiff is a co-owner of the properties mentioned above and she along with her brother/ Defendant No. 1, father/ Defendant No. 2 and mother, each had 25% share in the properties. The plaintiff has asserted that after the demise of her mother, she has become entitled 50% share of her mother's 25% share and is thus entitled to a total of 37.5 % share and is thus, claiming partition by metes and bounds of the suit properties.

34. In view of the above, the *edifice of the plaint*, which emerges from the pleadings, is that the present suit pertains to the paternal ancestral family properties, which are enumerated as under:

- (i) Property No. N-8, Greater Kailash Part-I, New Delhi-110048, measuring 200 sq. yds.
- (ii) Property No. E-2, East of Kailash, New Delhi-110065, measuring 500 sq. yds.
- (iii) Property No. A-22, Neb Sarai, Neb Valley, New Delhi-110068, having been purchased by the defendant No.1 out of the sale proceeds of land measuring 16 acres,



1 Bigha 5 Biswas in PunchiGujra, Tehsil Ganaur, Distt. Sonapat (Haryana), falling under Khatauni No. 197(56/1, 56/10, 56/1 1) Khatauni No. 793(56/17, 70/4, 71/1), Khatauni No. 1056(57/4, 57/5, 57/6, 57/7, 57/14, 57/15, 57/16, 57/24,57/25), Khatauni No. 1000(56/20, 56/21, 70/5, 70/3)

(iv) Property (Haveli, shops, building) in Anandpur Sahib

(v) Plot in Anandpur Sahib

(vi) Agricultural land in Lodhipur, Anandpur, Chak

(vii) House property and 6 shops in Anandpur Sahib.

35. The plaintiff has herself stated in her plaint that Defendant No. 1 her brother had filed a Suit bearing No. 1937/1984 for Partition and Rendition of Accounts against the parents and the grandparents' way back in the year 1984 in respect of the family properties in the Delhi High Court. The said Suit was settled and an application under Order XXIII Rule 3 CPC, 1908 bearing I.A. No. 46085/1985 was filed and a consent Decree was made as per the following terms: -

“ **Para 1:-** That the parties to the above suit have amicably settled the subject matter of this suit between themselves. In pursuance of this settlement a scheme of Division of assets / properties is arrived at between the parties. The share which is being provided to the Plaintiff is for himself and his mother Defendant No. 4. **The properties that are being given to these persons are by way of full and final settlement of all their rights and interests, whether on inheritance, partition and / or otherwise, in the family and / or individual estates of the Defendant Nos. 1 to 3. The plaintiffs group of family, including his sister Amita Gandoak, as aforesaid, shall henceforth, never claim or be entitled to anything in the family of the Defendant**



Nos. 1 to 3 & vice versa. These persons have signed this application also in token of having relinquished and surrendered their rights as aforesaid.

Para 2: That Mrs. Amita Gandoak sister of the Plaintiff surrenders & relinquishes all her rights, titles or interests in the properties in the suit and by way of inheritance.

Para 3: That under the Compromise and or Settlement the Following properties are given and / or surrendered to the Plaintiff & defendant No. 4 by defendant Nos. 1 to 3:-

(a). The agricultural farm land at Panchi Gujran with all out houses etc. measuring about 16 Acres One bighas and five biswas and comprises in KhatuniNos.197 (56/1, 56/10, 56/11), 793 (57/17, 70/4, 71/1), 1056 (57/4, 57/5, 57/6, 57/7, 57/14, 57/15, 57/16, 57/24, 57/25), 1000 (56/20, 56/21, 70/5, 70/3) and presently owned by Smt. Kuldeep Kaur Sodhi in her individual name. Smt. Kuldeep Kaur has given the said land on lease to Shri Mahesh Inder Singh. It is agreed that the lease in favour of her son Shri Mahesh Inder Singh will stand terminated on signing of this compromise and the possession of the land, crops and out houses etc. **will be handed over to Harkirat Singh Sodhi** within 2 weeks from the signing of this application. Harkirat Singh will be entitled to get the land mutated in his name in the relevant records of title and to do all such acts as may be necessary to complete his titles and possession. The value of this land as per her Wealth Tax Assessment is Rs. 1,50,000/-.

(b). The built up premises / house at N-8, Greater Kailash Part 1, situated on an area of 200 sq.yards with a basement and 2 1/2 storeyed construction and presently owned by Mahesh Inder Singh Sodhi. A major portion of this house is on rent fetching Rs. 2600/- as the monthly rent. The possession of the vacant portion **will be handed to the Plaintiff** as within 2 weeks of the signing of this application. The tenant will be asked by Mahesh Inder Singh Sodhi in writing to attorn to the Plaintiff hence-forth with effect from 1.9.85 and the Plaintiff will be entitled to have the property mutated in his name. The value of N-8 Greater Kailash as per Wealth Tax Assessment is



Rs.2,64,881/-.

*(c). One plot for shop measuring about 12 x 45 ft. at Anandpur Sahib and presently owned by Shri Harbhajan Singh Sodhi in his individual name. The possession of the plot **will be handed over to the Plaintiff** within 2 weeks of the signing of this application and the Plaintiff will be entitled to have his name recorded as owner thereof. The value of this plot as per Wealth Tax Assessment is Rs.25,000/-.*

*(d). All that portion of Haveli / the ancestral family house at Anandpur Sahib as is described as '**Haveli Androoni**' and which fell to the share of Shri Harbhajan Singh Sodhi in the partition effected on 4.8.45 between him and his younger brother Shri Haravtar Singh Sodhi. The possession of the same **will be handed over to the plaintiff** within 2 weeks of the signing of this application and the plaintiff will be entitled to get his name recorded as owner of the same in the relevant records. A rough sketch plan demarcating the areas of Haveli Androoni is hereby surrendered is enclosed herewith. In the plan, it is bounded by letters A to L. The value as per Wealth Tax Assessment is Rs.40,000/-.*

(e). Over and above the immovable properties given to plaintiff and defendant No. 4, as hereinabove, they would also be paid a sum of Rs. 1,38,000/- by defendants 1 to 3. Out of this Rs.38,000/- will be paid by a Bank Draft before the court on the date when orders on this application is made and the balance Rs. 1,00,000/- will be paid within two weeks from the date of the order of the Court as stated above.

(f). The family had some properties at Amritsar which stood in the name of Shri Harbhajan Singh Sodhi. These properties were acquired by the Government a long time back. Its compensation received under the Original Award has already been accounted for in the division of the assets as given hereinabove. However, a reference for enhancement of its compensation is still pending before the Appropriate Forum. In case any compensation is received by way of enhancement, then the parties of the 2nd part / plaintiff, defendant No.4, shall be given a share of 22.25% in it after deducting the expenses of the



otherwise in pursuing this matter. Other than the above, there is nothing that has fallen to the share of parties of the second part / plaintiff and defendant No. 4."

36. It emerges from a bare perusal of the terms of the Compromise Decree that certain ancestral properties, which are also the subject matter of the present Suit for Partition, were also included in the previous *Suit No. 1937/1984*, which was Decreed on 10.09.1985. Thus, it would be imperative to deal with these properties separately, to effectively analyse the maintainability of the Suit with respect to the properties already covered under the Compromise Decree dated 10.09.1984 and the properties which do not find mention in the above decree.

Properties included in the Consent Decree dated 10.09.1985, (Serial no. (i), (iii), (iv) and (v) - Para 1 of the Complaint):

37. The plaintiff has asserted that *Civil Suit No.1937/1984* was a collusive Suit as she was not a party to the said Suit.

38. However, the plaintiff was fully aware about the *Civil Suit* initiated by defendant no.1. which is evident from the admitted fact that she was also a signatory to the application, bearing *I.A. No. 4606/1985*, dated 17.08.1985, filed under Order 23 Rule 3 of CPC, 1908, in the said Civil suit, for bringing the compromise on record.

39. She has taken a plea that her signatures were obtained on the last page of the application by deception and misrepresentation on the pretext that the said application was required to be witnessed by the plaintiff and without smelling any foul play and under good faith, she signed the application without going through its contents.

40. The plaintiff, at the time of signing of this Settlement, was about 30



years old and was also married. Additionally, being a student of Delhi University, she was an educated woman who could write and understand English language. Thus, her plea, that she signed without reading the contents is not tenable because being an educated/intelligent person, having signed the application, she is bound by the consequences of the contents therein.

41. Pertinently, not only was the Settlement admittedly signed by her, but the compromise application was also duly supported by the *Affidavit* of the plaintiff/Amita Gandoak, reflecting that she was not only aware of the suit but also of the compromise *inter-se* the parties since then and was aware of the consequences of her relinquishing and surrendering all her rights, title or interest in the suit properties.

42. Further, as per her own averments, she had claimed in her Reply to the Petition bearing *Test.Case No. 38/2014* filed by defendant No. 1, that her signatures had been obtained by Defendant No.1 by playing a fraud. She had stated in *Para 3* of her Reply that she was pressurized and fraudulently persuaded by Defendant No. 1 *to execute a formal Relinquishment of Rights Deed*, who singularly took a large share of their father's properties which included an entire commercial building at N-8, N - Block Market, Greater Kailash-1, New Delhi, land at Panchi Gujran, Haryana and a part of an ancestral haveli in Anandpur Sahib, Punjab. However, the plaintiff has taken a plea in her plaint in the present suit that the Defendant No. 1 realising his mistake, never persuaded Plaintiff No. 1 to execute any documents which is absolutely contradictory. Rather, her own reply in the *Test.Case No. 38/2014* reflects her admission that the Consent Decree was acted upon and she even executed Relinquishment



Deeds which have never been challenged by her.

43. The plaintiff has further asserted that the Compromise Decree was not registered and thus, no rights can be divested or even relinquished on the basis on an unregistered document.

44. It is pertinent to mention that this contention is not tenable for the simple reason that in the earlier Suit of Partition bearing No. 1937/1984 in *Paragraph 2*, the plaintiff had categorically stated that she has surrendered and relinquished her share of her rights, title in the Suit Property and the Decree dated 10.09.1985, prepared by the High Court of Delhi, had been duly stamped and executed. The Settlement as recorded in the application under Order XXIII Rule 3 CPC, 1908 which formed part of the Decree itself, was a document of partition and nothing further was required to be executed. Therefore, relinquishment of her shares in the Property already stood finalised and she now cannot agitate that no requisite documents were executed by her.

45. Additionally, the Decree was acted upon way back in 1985 itself as the properties stand mutated in the name of defendant no. 1 in the Municipal Records, in accordance with the consent Decree dated 10.09.1985, making him the exclusive owner of the properties, mentioned therein.

46. At this juncture it also becomes apposite to understand the procedure to challenge any consent decree passed under ***Order XXIII Rule 3 CPC, 1908***.

47. In the case of, *Pushpa Devi Bhagat v. Rajinder Singh* (2006) 5 SCC 566, the Apex Court noted the provisions of Order 23 Rule 3 and Rule 3-A and concluded in the following words :



“17. The position that emerges from the amended provisions of Order 23 can be summed up thus:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3)CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.”

48. Thus, it is settled law that challenge to a Consent Decree cannot be made by filing any independent suit, as has been sought to be done by the plaintiff. Further, no appeal is maintainable against a Consent Decree, which is specifically barred under *Section 96(3) CPC, 1908*. Thus, to avoid a Consent Decree, the only remedy available to the aggrieved party is to approach the same court which had recorded the compromise and made a Decree, by filing an appropriate application under *Order XXIII Rule 3A, CPC, 1908*, as held in a catena of cases such as *Banwari Lal v. Chando Devi* (1993) 1 SCC 581, *Pushpa Devi* (Supra), *Horil v. Keshav* (2012) 5 SCC 525, *R. Rajanna v. S.R. Venkataswamy* (2014) 15 SCC 471, *R. Janakiammal* (Supra) and recently in *Sree Surya Developers* (Supra).

49. Even if all the contentions of the plaintiff are accepted that her



signatures on the Compromise Decree were taken fraudulently and by misrepresentation, and she was made to relinquish all her interests in the Suit properties, she as per her own submissions became aware of these alleged facts way back in 2014, when her brother filed the *Test. Case 38/2014*.

50. However, till date she has not initiated any proceedings or exercised her statutory remedies to challenge the Consent Decree by alleging it to be fraudulent, nor has she challenged the Mutations which have already been affected in the name of Defendant No. 1.

51. The only step she has taken is by filing of the present Suit after *almost 31* years, in 2017, in an attempt to challenge the Consent Decree 10.09.1085, which is not only the incorrect remedy as per law but also blatantly time barred.

52. According to *Section 27 of the Limitation Act, 1963*, at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished. Thus, a suit seeking possession of a property cannot be filed after the title of another has been perfected, by virtue of *Section 27 of Limitation Act, 1963* as held in the case of *Bailochan Karan vs Basant Kumar Naik and Anr.* (1999) 2 SCC 310.

53. Similarly, in the case of *Lata Chauhan vs L.S. Bisht & Ors.* 2010 (117) DRJ 715, this court had observed that where the Plaintiff has failed to seek appropriate relief of Declaration or alternatively, cancellation of the Registered Lease Deed, such relief cannot be granted, because the period of limitation prescribed in this regard by *Articles 58 and 59* mandates that suits in regard to such declaration, are to be instituted



within three years after the cause of action arises.

54. In terms of *Section 27 of the Limitation Act, 1963* even if the plaintiff had any cause of action to even challenge the mutation proceedings, the same stands now extinguished after 31 years.

55. In *Anita Anand Vs. Gargi Kapur*, 2018 SCC OnLine Del 11372, the Coordinate Bench of this Court had observed the plaintiff shall not be entitled for partition till he challenges the Gift Deed. Relief of partition would be consequential to the Declaration of the Gift Deed as illegal. Likewise, in *Ramti Devi (supra)*, the Supreme Court held that unless a validly executed and registered document is cancelled by proper Declaration by the Court, the said document remains valid and binds the parties.

56. In *Sangeeta Sehgal v. Gautam Dev Sood*, 2022 SCC OnLine Del 2685, suit for seeking relief of Partition simpliciter, without seeking any relief in respect of cancellation of the Gift Deeds, was filed. It was held that even if the plaintiffs have questioned the authenticity and existence of the Gift Deeds or that the mother of the plaintiffs did not have the right to gift the suit property, the same could have been done by seeking a Declaration of cancellation of the said gift deeds. Till the time, the said Gift Deeds are declared to be void or unlawful by the Court, they remain valid and are binding on the parties.

57. The Division Bench of this Court in *Sanjay Roy v. Sandeep Soni*, 2022 SCC OnLine Del 1525, echoed the same view in respect of Section 27 of the Limitation act, 1963 and held that in the absence of any challenge to a registered Conveyance Deed in favour of a party within the prescribed period of limitation under Article 59 of the Limitation Act,



absolute ownership rights in the property would vest in that party.

58. Therefore, from the afore discussed judgements, it is evident that the plaintiff has failed to challenge the Consent Decree dated 10.09.1985, which has attained finality and has also been acted upon. The rights of the parties stand crystallized and the same cannot be re-opened by way of present suit, after 31 years. Defendant No. 1/ Harkirat has got the property mutated in his name and has been acting as the owner of the said Property and the plaintiff cannot upset the already defined share of defendant No.1 by way of this present suit.

59. Therefore, it is observed that ancestral properties, namely –

- a) **Serial no. (i)** *Property No. N-8, Greater Kailash Part-I, New Delhi-110048, measuring 200 sq. yds.;*
- b) **Serial no. (iii)** *Property No. A-22, Neb Sarai, Neb Valley, New Delhi-110068, having been purchased by the defendant No.1 out of the sale proceeds of land measuring 16 acres, 1 Bigha 5 Biswas in PunchiGujra, Tehsil Ganaur, Distt. Sonapat (Haryana), falling under Khatauni No. 197(56/1, 56/10, 56/1 l) Khatauni No. 793(56/17, 70/4, 71/1), Khatauni No. 1056(57/4, 57/5, 57/6, 57/7, 57/14, 57/15, 57/16, 57/24,57/25), Khatauni No. 1000(56/20, 56/21, 70/5, 70/3);*
- c) **Serial no. (iv)** *Haveli “Androoni” in Anandpur Sahib;*
- d) **Serial no. (v)** *Plot in Anandpur Sahib,*

have already been partitioned/ divested by virtue of Consent Decree date 10.09.1985 and therefore, the present Suit in respect of these properties



is not maintainable.

**Properties not covered under the Consent Decree dated 10.09.1985
(Serial No. (ii), (vi), (vii) and remaining portion of (iv)- Para 1 of the
Plaint))**

60. The plaintiff has also sought partition of the certain ancestral family properties, which do not find mention in the Consent Decree dated 10.09.1985 and did not form part of the earlier Suit for Partition bearing No. 1937/1984, namely;

- a) Serial No. (ii) Property No. E-2, East of Kailash, New Delhi-110065, measuring 500 sq. yds.,*
- b) Serial no. (iv) Property (Haveli, shops, building) in Anandpur Sahib (excluding haveli androoni)*
- c) Serial no. (vi) Agricultural land in Lodhipur, Anandpur, Chak; and*
- d) Serial no. (vii) House property and 6 shops in Anandpur Sahib. .*

61. The plaintiff has failed to explain in whose name, the above properties stand. She has made a blanket averment in *Para 10* of her plaint that she is the co-owner of the Suit Properties and the factum of her ownership/ share in respect of these Suit Properties was admitted by her Mother (Defendant No. 2) and her Brother (Defendant No. 1) of the plaintiff in their pleadings filed in the previous suit bearing *No. 1937/1984*. It was their admitted case that all the co owners/ family members were and shall be deemed to in Possession of the family properties. However, it emerges that the Suit for Partition filed in 1984



did not include the aforementioned properties, thus, there could not have been any admission with respect to these properties.

62. Apart from this, she has not uttered a whisper as to who is the owner or what is the description or details of these properties. The pleadings are absolutely silent in this regard and in absence of specifications/particulars and specific pleadings, it would be impossible to determine if the plaintiff has any right/ interest/ share in the above properties.

63. The very objective of pleadings is to clearly outline the point of dispute and the cause of action. The "rule of brevity," calls for the pleadings to be concise, clear, and limited to the interpretation that the pleader wishes to convey. Not only should the pleading be brief, but it also needs to be precise, accurate and certain and recitals in the plaint should comply with ***Order VI Rule 4 of CPC, 1908*** which mandates pleading of particulars, with dates and items and its succinct incorporation in the pleadings, specifically in cases in which such particulars would be necessary.

64. It has been explained in the cases of Sunny (Minor) & Anr. Vs. Raj Singh & Ors. (2015) 225 DLT 211, that *Order VI Rule of CPC, 1908* provides that all necessary factual details of the cause of action must be clearly stated along with the exact details and particulars of the properties sought to be partitioned. Similarly, 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 Commissioner of Income Tax, Kanpur & Ors. Vs.



Chander Sen and Ors. (1986) 3 SCC 567 and Yudhister vs. Ashok Kumar (1987) 1 SCC 204 of Supreme Court of India in terms of *Order VI Rule 4 of the CPC, 1908*. Thus, it is only in such circumstances, where specific facts are mentioned 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. It was also reiterated that it would not be enough to say in the plaint simply that a Joint Family or HUF existed. Detailed facts as required by *Order VI Rule 4 of the CPC* as to when and how the HUF properties had become so must be clearly and categorically averred. Such averments have to be made by factual reference qua each property claimed to be an HUF property as to how the same came to be an HUF property. In law, generally bringing in any and every property as HUF is incorrect as there is known tendency of litigants to include unnecessarily many properties claiming them to be an HUF.

65. ***Thus, in the present case, in the absence of any pleadings, whatsoever, disclosing the ownership of these properties which were not covered under the Consent Decree dated 10.09.1985 and in the absence of any Title documents, the plaint is absolutely vague in regard to these properties and therefore, it is liable to be rejected, at the very threshold, on this ground itself.***

66. In light of the above scenario, it also becomes germane to discuss the scheme and contours of the Hindu Succession Act, 1956 as well as the recent developments, to determine the *fundamental aspect* i.e. the nature of the property to ascertain the mode of succession and the devolution of the shares/rights in the present case.

67. In Sunny (Minor) (supra) this Court considered the judgments of



the Apex court in Yudhister (supra) and Commissioner of Wealth Tax, Kanpur (supra) and succinctly enumerated the principles relating to HUF property/ self-acquired property and its inheritance as under :

*“(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”*

68. Hence, it emerges that in the ***pre-1956 era*** when the customary Hindu was prevalent, a coparcenary with HUF properties, which came into existence prior to passing of the Hindu Succession Act, 1956 and continued even after the passing of Hindu Succession Act, 1956, then the property belonging to the HUF would be HUF property in the hands of the coparceners as the status of Joint Hindu Family/ HUF properties continues.

69. Whereas prior to passing of the Hindu Succession Act, 1956 there was a presumption as to the existence of an HUF and its properties upto three generations, 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.

70. Thus, ***post-1956***, HUF is created only when the HUF is expressly created and properties/ self-acquired property in the hands of a person are expressly thrown by him into a common hotchpotch, with an intention to make them HUF properties.

71. In order to claim the properties to be HUF post 1956 after the enactment of Hindu Succession Act, 1956 the facts as to how the properties are HUF properties, is required to be clearly stated in the plaint. It has to be specifically pleaded as to when these particular properties were thrown in common hotchpotch and hence, Hindu Undivided Family was created. Only in these cases would the devolution be in accordance with the Rules of survivorship, as each coparcener acquires right by birth in the HUF properties.

72. Axiomatically, in the present case, the entire plaint neither makes any averment in regard to creation of HUF or the properties and assets having been put in the common hotchpotch to HUF. There is no pleading to the effect that there was ever any coparcenary and therefore, there can be no automatic continuation after 1956.

73. The best case of the plaintiff is of *ancestral family property*, a concept that is different from HUF. It is simply claimed that the properties are *ancestral family properties* and thus, the Plaintiff is entitled to a share in all the properties. As already discussed above, such a vague claim which lacks even the basic facts, would not be sufficient to maintain a suit as held in the case of Sunny (Minor) (supra).

74. Further, even if there existed a Joint Family, the plaintiff does not acquire a right in the ancestral family properties. The plaintiff has claimed



a share in the property inherited by her father, which even though may have come from his father or joint family funds but by virtue of amended S.6 & 8 Hindu Succession Act, 1956 (as amended in 2005), it is his individual property which devolves in accordance with rules of succession under **Section 8 Hindu Succession Act, 1956**. The plaintiff cannot claim a share in the properties of her father during his lifetime. The plaintiff can claim a right (if any) by succession, in the self- acquired properties of Defendant No. 2, only after his demise, as his *class 1 heir*.

75. Thus, the Plaint is also not maintainable as it does not disclose any cause of action qua properties namely (ii) Property No. E-2, East of Kailash, New Delhi-110065, measuring 500 sq. yds; (iv) Property (Haveli, shops, building) in Anandpur Sahib (excluding haveli androoni); (vi) Agricultural land in Lodhipur, Anandpur, Chak; and (vii) House property and 6 shops in Anandpur Sahib, as well.

Conclusion:

76. It is thus, held that the rights of the parties *qua* properties covered under the consent decree dated 10.09.1985 stand crystalized and the present suit is not maintainable against those properties. Additionally, the plaint is bereft of details and particulars *qua* properties not covered under the Consent Decree as there is neither any pleading of there being any HUF, nor is there any specific details if the Property is ancestral Property. Further, if the properties are devolved upon Defendant No. 2/ father from his father, then also the same shall devolve according to S.6 & 8 of Hindu Succession Act, 1956 and thus, no right/share can be claimed by the plaintiff in the properties of the father/ defendant No.2, during his



lifetime.

77. Thus, the plaint does not disclose any cause of action qua the suit properties and hence, the application under Order VII Rule 11, CPC 1908 is hereby allowed and the Suit is rejected.

CS (OS) 90/2017

78. The Suit stands rejected under Order VII Rule 11 CPC, 1908 along with the pending application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

**MAY 7, 2024
Va/RS/PT**