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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 17th November, 2025***

+ CS(OS) 234/2023 with I.A. 6925/2023, I.A. 26018/2023, I.A. 4080/2024, I.A. 6502/2024, I.A. 37245/2024 & I.A. 38252/2024

ARUN KUMAR

.....Plaintiff

Through: Mr. Arun Kumar, Plaintiff through VC.

versus

SUBHASH CHAND & ORS.

.....Defendants

Through: Mr. Mahmood Hasan, Md. Shoaib Mahmood and Ms. Nazia Khan, Advocates for D-1 and D-2.
Mr. Amit Mishra, Advocate for D-6.
D-6 present-in-person.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

I.A. 26018/2023 (u/O-VII Rule 11 of the CPC)

1. The present application has been filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter 'CPC') on behalf of the defendants no.1 and 2 seeking rejection of plaint.
2. Notice in this application was accepted by the plaintiff appearing in person on 22nd January 2024.
3. Reply has been filed on behalf of the plaintiff.
4. The present suit has been filed *inter alia* seeking reliefs of declaration and partition of the movable properties including gold articles and vehicles



and various immovable properties.

5. The defendants no.1 and 2 are the plaintiff's father and mother respectively and the defendants no.3 to 5 are his sisters. The plaintiff seeks partition of the aforesaid movable and immovable properties on the ground that the said properties are joint family properties.

6. The ground taken on behalf of the defendants no.1 and 2 in the present application is that the plaint does not disclose any cause of action for the reliefs claimed against the defendants inasmuch as there are no pleadings in the plaint with regard to the creation, existence and continuity of a Hindu Undivided Family (hereinafter 'HUF'). Thus, the suit properties cannot be regarded as HUF properties.

7. It is the case of the plaintiff that the property bearing no. X/2195, *Mahila Colony, Geeta Colony, Delhi – 110031* belonged to the great grandfather of the plaintiff who had purchased the same in the year 1954.

8. It is stated that the great grandfather of the plaintiff died intestate on 28th October, 1983 and after his death, 50% share of the said ancestral property came to the share of the plaintiff's grandfather. The grandfather of the plaintiff thus became *Karta* of the joint Hindu family, including the village properties and also succeeded to the money left by the plaintiff's great grandfather in the common stock.

9. It is further stated that the grandfather of the plaintiff died intestate on 17th September, 1998 and his grandmother died intestate in 2005. After the death of the plaintiff's grandfather, the defendant no.1 became the *Karta* of the HUF and the defendant no.1, along with the defendant no.2, took control of the aforesaid ancestral property.

10. It is stated that the defendant no.1 sold his share in the ancestral



property i.e. X/2195, Raghubar Pura No.1, Gali No.1, Mahila Colony, Geeta Colony, Delhi - 110031 to the defendants no.6 and 7 on 4th December, 2001.

11. It is averred that the defendant no.1 subsequently purchased the following immovable properties in his name and in the name of the defendants no.2, 4 and 5 from the money which had been left behind by plaintiff's grandfather and from the sale proceeds of the aforesaid ancestral property:

- (i) B-108, Main Road, Rani Garden, Geeta Colony, Delhi-110031
- (ii) 38, Gali No.2, Mandawali Fazalpur, Delhi-110092
- (iii) 41A, Gali No.2, Mandawali Fazalpur, Delhi-110092
- (iv) B-31, Street No.6, Rajgarh Colony, near Mother Dairy, Delhi-110031
- (v) 8A/62, Ground Floor, Geeta Colony, Delhi-110031
- (vi) 13/23, Braham Puri, WEA Karol Bagh, New Delhi
- (vii) C-11, Ground Floor and First Floor, Rani Garden, Geeta Colony, Shastri Nagar, Delhi
- (viii) 8-A, Upper Ground Floor and First Floor, Rani Garden, Shastri Nagar, Delhi
- (ix) A-1/13, Rani Garden, Shastri Nagar, Delhi-110031

12. I have heard counsel for the parties.

13. To sum up, it is the case of the plaintiff that all the properties which are subject matter of the present suit were purchased by the defendant no.1 out of the sale proceeds of aforesaid ancestral property as well as from the joint family funds. Hence, the aforesaid properties qualify as joint family properties.



14. At the outset, a reference may be made to the judgment of a Coordinate Bench of this Court in **Sunny (Minor) v. Sh. Raj Singh**¹, the relevant paragraphs of which are set out below:

“7(i). As per the ratio of the Supreme Court in the case of Yudhishter (supra) after passing of the Hindu Succession Act, 1956 the position which traditionally existed with respect to an automatic right of a person in properties inherited by his paternal predecessors-in-interest from the latter's paternal ancestors upto three degrees above, has come to an end. Under the traditional Hindu Law whenever a male ancestor inherited any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him had a right in that property equal to that of the person who inherited the same. Putting it in other words when a person ‘A’ inherited property from his father or grandfather or great grandfather then the property in his hand was not to be treated as a self-acquired property but was to be treated as an HUF property in which his son, grandson and great grandson had a right equal to ‘A’. After passing of the Hindu Succession Act, 1956, this position has undergone a change and if a person after 1956 inherits a property from his paternal ancestors, the said property is not an HUF property in his hands and the property is to be taken as a self-acquired property of the person who inherits the same. There are two exceptions to a property inherited by such a person being and remaining self-acquired in his hands, and which will be either an HUF and its properties was existing even prior to the passing of the Hindu Succession Act, 1956 and which Hindu Undivided Family continued even after passing of the Hindu Succession Act, 1956, and in which case since HUF existed and continued before and after 1956, the property inherited by a member of an HUF even after 1956 would be HUF property in his hands to which his paternal successors-in-interest upto the three degrees would have a right. The second exception to the property in the hands of a person being not self-acquired property but an HUF property is if after 1956 a person who owns a self-acquired property throws the self-acquired property into a common hotchpotch whereby such property or properties thrown into a common hotchpotch become Joint Hindu Family properties/HUF properties. In order to claim the properties in this second exception position as being HUF/Joint Hindu Family properties/properties, a plaintiff has to establish to the satisfaction of the court that when (i.e date and year) was a particular property or properties thrown in common hotchpotch and hence HUF/Joint Hindu Family created.

¹ 2015 SCC OnLine Del 13446



9. Onus of important issues such as issue nos. 1 and 2 cannot be discharged by oral self-serving averments in deposition, once the case of the plaintiffs is denied by the defendants, and who have also filed affidavit of DW1 Sh. Ram Kumar/defendant No. 2 in the amended memo of parties for denying the case of the plaintiffs. An HUF, as already stated above, could only have been created by showing creation of HUF after 1956 by throwing property/properties in common hotchpotch or existing prior to 1956, and once there is no pleading or evidence on these aspects, it cannot be held that any HUF existed or was created either by Sh. Tek Chand or Sh. Gagan Singh. In my opinion, therefore, plaintiffs have miserably failed to discharge the onus of proof which was upon them that there existed an HUF and its properties, and the plaintiffs much less have proved on record that all/any properties as mentioned in para 15 of the plaint are/were HUF properties.

[emphasis supplied]

15. The judgment in *Sunny (Minor)* (supra) was followed in *Surender Kumar Khurana v. Tilak Raj Khurana & Ors*². Both the aforesaid judgments were followed by me in *Dr. G.M. Singh v. Dr. Trilochan Singh and Others*³.

16. In *Surender Kumar Khurana* (supra), the suit was rejected and it was held that clear pleadings need to be made in the plaint with regard to existence and creation of an HUF including its date of creation, its Karta and coparceners and in the event the HUF was created after 1956, when the property claimed to be an HUF property was put in common hotchpotch. The observations of the Court in *Surender Kumar Khurana* (supra) are set out below:

“7. On the legal position which emerges pre 1956 i.e before passing of the Hindu Succession Act, 1956 and post 1956 i.e after passing of the Hindu Succession Act, 1956, the same has been considered by me recently in the judgment in the case of *Sunny (Minor) v. Sh. Raj Singh*, CS (OS) No. 431/2006 decided on 17.11.2015. In this judgment, I have referred to and relied upon the ratio of the judgment of the Supreme

² 2016 (155) DRJ 71

³ 2022 SCC OnLine Del 3514



Court in the case of *Yudhishter (supra)* and have essentially arrived at the following conclusions : -

- (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."***

[emphasis supplied]

17. The conclusion of the Court in ***Surender Kumar Khurana*** (supra) is



set out below:

“9. Accordingly, the following conclusions are arrived at:-

(i) The plaint only talks of ‘joint funds’, ‘joint properties’ and ‘working together’ without the necessary legal ingredients averred to make a complete existence of a cause of action of joint Hindu family/HUF with its properties and businesses.

(ii) Joint funds, joint businesses or working together etc. do not mean averments which are complete and as required in law for existence of HUF and its properties have been made, and, joint funds and joint properties do not necessarily have automatic nexus for they being taken as with joint Hindu family/HUF properties.

(iii) In view of the specific bar contained in Sections 4(1) and (2) of the Benami Act, once properties in which rights sought by the plaintiff are not by title deeds/documents in the name of the plaintiff but are in the name of defendants, the plaintiff is barred under Section 4(1) of the Benami Act from claiming any right to these properties and the only way in which the right could have been claimed was if there was an existence of an HUF and its properties, but, the plaint does not contain the legally required ingredients for existence of HUF and its properties.

(iv) With respect to the properties lacking in exact details with the complete address, no reliefs can be claimed or granted with respect to the vague properties.

10. In view of the above, the suit plaint does not contain the necessary averments as required by law for existence of joint Hindu family/HUF properties and its businesses and thus in fact the suit plaint would be barred by Section 4(1) of the Benami Act as the necessary facts to bring the case within the exceptions contained in Section 4(3) of the Benami Act are not found to be pleaded/existing in the plaint.”

[emphasis supplied]

18. The legal position emerging from the abovementioned judgments is that the plaint has to contain positive statements and a reference to proper documentation with regard to creation and existence of an HUF. There also needs to be detailed and specific descriptions of properties claimed as HUF assets. In the event the HUF is stated to have existed prior to 1956, it has to be averred that the said HUF continued and in the event the HUF came into existence after 1956, the details with regard to creation of HUF including the



date it was created have to be pleaded.

19. At this stage, it may be relevant to note the pleadings made by the plaintiff in the plaint:

"1. That the plaintiff is a peace loving and law abiding citizen of India and is residing at the above mentioned address. The plaintiff born on 13.01.1990 and since his birth the plaintiff resides along with his parents i.e. Defendant No.1 & 2 as a coparcener of joint Hindu Family...

*3. That the Great Grandfather (Late Sh.Lal Singh) of plaintiff had purchased the ancestral property bearing No. **X/2195, Mahila Colony, Geeta Colony, Delhi-110031** with the aid of his funds and the funds accumulated by the farming and cattle business at the village property and from selling the properties in his native village and since purchasing the above mentioned ancestral property, both Great Grandfather (Late Sh.Lal Singh) and Great Grandmother (Smt. Phoolaniya) of plaintiff used to reside along with all their sons namely 1. Shiv Dayal 2. Ram Prasad 3.Murari Lal 4. Shankar Lal 5. Suresh Kumar at the address mentioned above as the Great Grandfather of the plaintiff was the owner of the **property bearing no. X/2195 Raghubar pura no.1,Gali no.1, Mahila colony, Geeta colony Delhi-110031** (Copy of the address proof along with ration card, voter list, House tax receipt etc. is enclosed herewith along with English Translated copy) and **the properties kahsra No.056 & 166 measuring area around 10 bigha situated at village Rudri, P.O. Raniavali, Distt, Bulandashahr, D.P. (Copy of Khasra/Khatauni Documents along with English Translated copy is enclosed herewith).***

*4. That the Great Grandfather of the plaintiff had died interstate on 28.10.1983 (copy of **Death record is annexed herewith alongwith English translated copy**) and after his death, the grandfather of the plaintiff succeeded the half portion of the property i.e.. **No.X/2195, Mahila Colony, Geeta Colony, Delhi-110031** and half of the portion of the said property goes to Sh. Ram Avtar S/o Sh. Shiv Dayal and the grandfather of plaintiff became the Karta of the Joint Hindu family including the properties of village and also successes the handsome money which was left by the plaintiffs great Grandfather in the common stock.*

5. That the grandfather and Grandmother of the plaintiff was working in MCD and they have died during the course of service in the MCD (Grandfather died in the year 1998 and grandmother was also died in the 2005) and both grandfather and grandmother of plaintiff used to earn handsome salary and they had also been enjoying the rent of patta amount comes from the village's agricultural land since the death of plaintiffs great grandfather and the plaintiffs grandfather used to put all



the earnings in his common stocks. (**Photocopy of job proof of both deceased is enclosed herewith**) and the defendant No.2 joined the HUF at the time of her marriage with the defendant No.1 on 27.11.1988.

6. That since the death of plaintiffs great grandfather in 1983 till his death, the grandfather of plaintiff remained the karta of HUF. **On 17.09.1998** grandfather of plaintiff died intestate at the above mentioned address i.e, X/2195 Mahila Colony, Geeta Colony, Delhi-II 0031 (**Photocopy of Death certificate of plaintiffs' Grandfather is enclosed herewith**) and left behind huge money including gold articles etc. which he had succeeded from plaintiffs great grandfather, from village properties rent and his salaries in common stock. Later on, the grandmother of plaintiff along with other legal heirs namely 1. Subhash Chand 2. Sunita 3. Sangeeta 4. Sarita filed the **petition Vis 372 of Indian Succession Act (Succession Certificate Case No.802/99)** for the recovery of plaintiff Grandfather's service benefits i.e. Pension, Leave Encashment, Gratuity, GPF etc...

7. **That later on, after the death of grandfather of plaintiff on 17.09.1998, then the plaintiff was eight years and nine months old at the time of death of his grandfather. The Defendant No.1 became the karta of the HUF and the Defendant No.1 along with the Defendant No.2 had taken over control of all the ancestral properties documents, assets etc. and destroyed the records of all the ancestral properties document and immediately taken into custody of all the movable and immovable assets left behind the grandfather of the plaintiff in common stocks and thereafter on 21.11.2000, the Defendant No.1 purchased the property bearing No.B..108, Rani Garden, Geeta Colony, Delhi..."**

[emphasis supplied]

20. A reading of the plaint would show that there are no averments in the plaint that an HUF existed prior to the year 1956. Even thereafter, neither there are any pleadings as to when and how an HUF was created nor any pleadings with regard to the aforesaid ancestral property being put into the common hotchpotch. The plaint only contains bald averments that all the properties detailed in paragraph 11 above have been purchased out of ancestral funds and sale proceeds of the aforesaid ancestral property.

21. It is also an admitted position that both the plaintiff's great grandfather and grandfather died after the enactment of the Hindu



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Succession Act in 1956. Thus, it cannot be disputed that the defendant no.1 inherited the aforesaid ancestral property after the year 1956 and the same would qualify as a self-acquired property in the hands of the defendant no.1. Therefore, the *dicta* of the aforesaid judgements are fully applicable to the facts of the present case.

22. In view of the legal position obtaining above, the plaint fails to disclose any cause of action.

23. Accordingly, the plaint is rejected under Order VII Rule 11 of the CPC.

24. All pending applications stand disposed of.

AMIT BANSAL, J

NOVEMBER 17, 2025

Vivek/-