



2025:DHC:2499



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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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CS(OS) 382/2021

1. JIYA SHARMA (MINOR)

THROUGH HER MOTHER & NEXT FRIEND

MRS. KALA SHARMA

W/O DEEPAK SHARMA,

R/O HOUSE NO.213 BRAHMAN PADA,

KHASRA NO. 146,

LANDMARK E222, VILLAGE BURARI,

NEW DELHI-11 0084

....PLAINTIFF NO.1

2. MRS. KALA SHARMA

W/O DEEPAK SHARMA,

R/O HOUSE NO.213 BRAHMAN PADA,

KHASRA NO. 146, LANDMARK E222,

VILLAGE BURARI,

NEW DELHI-11 0084

....PLAINTIFF NO.2

(Through: Mr. Aditya Dewan and Mr. Udit Singh, Advs.)

Versus

1. MR. DEEPAK SHARMA,

S/O MR. BHIM SINGH

R/O HOUSE NO.213

BRAHMAN PADA, KHASRA NO. 146,

LANDMARK E222, VILLAGE BURARI,

NEW DELHI-110084

Signature Not Verified
Signed By:PRIYA
Signing Date:09.04.2025
18:47:03

Signature Not Verified
Signed
By:PURUSHAINDRA
KUMAR KAURAV



2025:DHC:2499



ALSO AT:
KIEFHOLZSTRASSE 183, BERLIN
GERMANY 12437

.... DEFENDANT NO. 1

2. MR. BHIM SINGH,
(INDIVIDUAL AS ALSO KARTA OF BHIM SINGH HUF)
S/O LATE SH. RAM SINGH,
R/O HOUSE NO.213 BRAHMAN PADA,
KHASRA NO. 146, LANDMARK E222,
VILLAGE BURARI,
NEW DELHI-110084

.... DEFENDANT NO. 2

3. MR. MOHIT SHARMA,
S/O MR. BHIM SINGH
R/O HOUSE NO.213 BRAHMAN PADA,
KHASRA NO. 146, LANDMARK E222,
VILLAGE BURARI,
NEW DELHI-110084

.... DEFENDANT NO. 3

4. MR. PAWAN SHARMA,
S/O MR. BHIM SINGH
R/O HOUSE NO.213 BRAHMAN PADA,
KHASRA NO. 146, LANDMARK E222,
VILLAGE BURARI, NEW DELHI-110084

....DEFENDANT NO.4

5. MRS. POOJA SHARMA,
D/O MR. BHIM SINGH
R/O PRAHALADPUR, ROHINI,
NEW DELHI-110042

....DEFENDANT NO.5

6. RAM PHAL,
S/O LATE SH. RAM SINGH,
R/O HOUSE NO. 213,
BRAHMAN PADA KHASRA NO. 146,
VILLAGE BURARI DELHI-110084

....DEFENDANT NO.6

7. KARAM SINGH
S/O SH. RAM SINGH



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R/O HOUSE NO. 213,
BRAHMAN PADA KHASRA NO. 146,
VILLAGE BURARI DELHI-110084

..... DEFENDANT No.7

8. SANTRA DEVI
W/O SH. RAKESH
R/O HOUSE NO. 213,
BRAHMAN PADA KHASRA NO. 146,
VILLAGE BURARI DELHI-110084.

..... DEFENDANT No.8

9. UDAY SINGH
S/O LATE SH. RAM SINGH
R/O FLAT NO.7, IIIrd FLOOR,
KHASRA NO.686, BABA COLONY,
BURARI, DELHI-110084

.....DEFENDANT No.9

(Through: Mr. Udaibir Singh Kochar, Ms. Tulna Rampal and Mr. Pushkar Khanna, Advs. for D-1 to 5.

Mr. K.K. Tyagi, Mr. Iftexhar Ahman and Ms. Garima Tyagi, Advs. for D-6.)

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Reserved on: 20.03.2025

Pronounced on: 08.04.2025

JUDGMENT

I.A. 19175/2023

The instant application has been filed on behalf of defendant Nos. 1 to 5 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for rejection of the plaint.

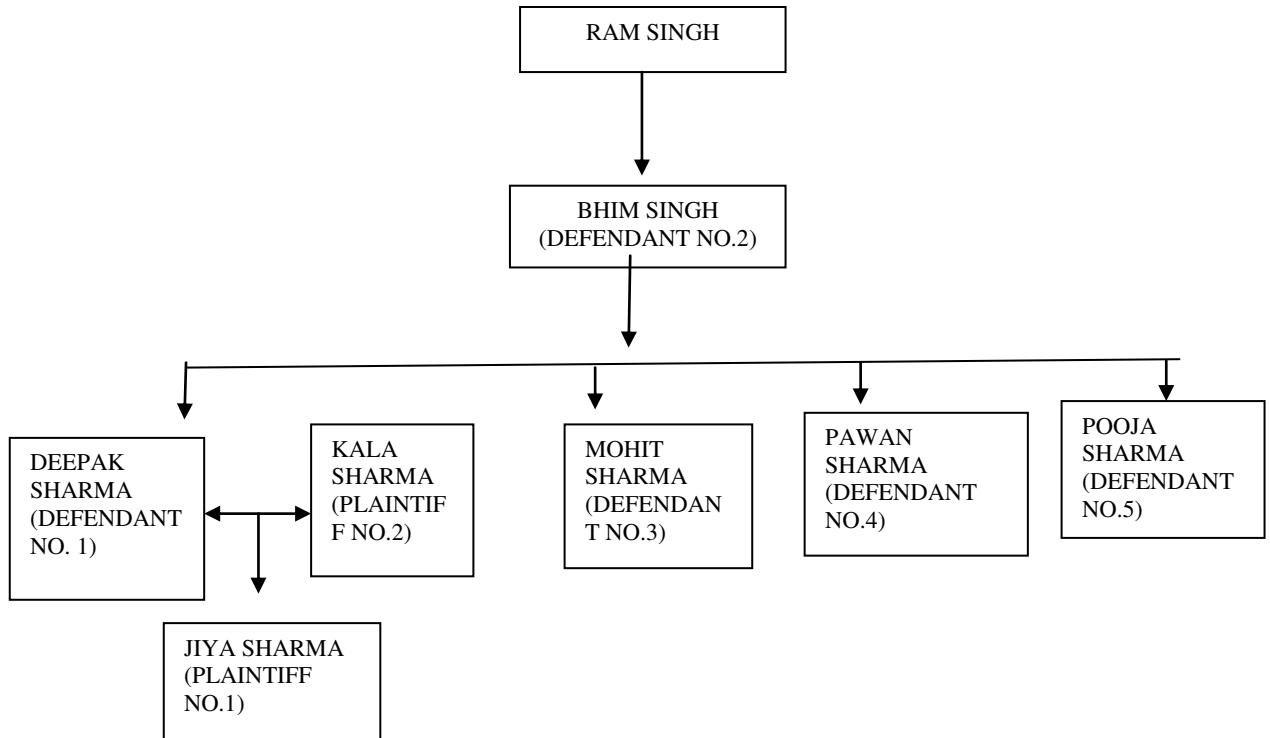
2. The present suit is filed by the plaintiffs for partition, rendition of accounts, permanent and mandatory injunction with respect to the immovable properties and business of *Bhim Singh* (Hindu Undivided



Family) (*hereinafter referred to as the suit properties*).

Brief facts

3. The description of the parties is charted as under: -



4. The factual matrix, as stated in the plaint, is as follows

- (i) Defendant No.1 is the eldest son of defendant No. 2 and grandson of late Sh. Ram Singh. Defendant Nos. 3, 4, and 5 are siblings of defendant No.1 and children of defendant No.2. Further, defendant nos. 6 to 9 are children of late Sh. Ram Singh and siblings of defendant No.2.
- (ii) Plaintiff No.2 is a citizen of the United Kingdom who arrived in India in the year 2009. During her stay in India, she was employed with Genpact. On 04.02.2013, plaintiff No.2 solemnized a legally valid



marriage with defendant No.1 in Delhi, in accordance with Hindu rites and customary ceremonies.

(iii) Out of their wedlock, plaintiff No.1 was born on 30.10.2014 in Leicester, United Kingdom, and, by virtue of birth, was granted British citizenship. Subsequent to the birth of plaintiff No.1, both plaintiffs returned to India in 2015 and began residing in the joint Hindu family premises of defendant No.1 located in Burari, Delhi.

(iv) Thereafter, in January 2016, the plaintiffs and defendant No.1 jointly relocated to Germany, where they resided for a certain duration.

(v) Late Sh. Ram Singh, during his lifetime, acquired various immovable assets, including, *inter alia*, agricultural lands situated at Khasra Nos. 11/2 and 11/3, Shastri Park, Nathupura, Burari, New Delhi, and a residential house bearing municipal identification as House No. 213, Brahman Pada, Khasra No. 146, Village Burari, New Delhi. Additional properties forming part of the estate are detailed in Schedule 1 appended to the plaint.

(vi) Upon the demise of Late Sh. Ram Singh, the aforesaid properties devolved upon his legal heirs, defendant No.2 being one of them. Thereafter, by way of partition among the co-heirs, suit properties devolved upon defendant No.2. Defendant No. 1 is the son of defendant No.2, and plaintiff No.1 is the granddaughter of defendant No.2 (*see family chart hereinabove*).

(vii) It is further stated that plaintiff No.1 is entitled by birth to coparcenary rights under the Mitakshara school of Hindu law in the



ancestral and joint family properties forming part of the Hindu Undivided Family (*hereinafter referred to as HUF*)

Submissions made by the parties

5. *Mr. Udaibir Singh Kochar*, learned counsel appearing for defendant Nos. 1 to 5, incipiently submits that the instant suit deserves to be dismissed on the ground that no cause of action subsists in favour of the plaintiffs against the defendants to seek partition. Learned counsel further submits that the prayer of the plaintiffs is premised solely on a bald averment that the suit properties constitute an HUF, without disclosing any specific particulars in the plaint as to how or in what manner these properties form part of the HUF estate. Thus, *Mr. Kochar* states that unless the plaintiffs clearly and unequivocally set up their case by specifically stating therein that the suit properties form part of an HUF to which the plaintiffs are the members, they do not have any right to seek partition of the suit properties.

6. Learned counsel for the defendants places reliance on the decision of the Supreme Court in the case of *Yudhishter vs. Ashok Kumar* ¹, the decisions of this Court in the cases of *Sunny (Minor) & Anr. Vs. Sh. Raj Singh & Ors.* ², *Sagar Gambhir vs. Sukhdev Singh Gambhir (Since Deceased) Thr His Legal* ³, *Mrs. Anita Gandoak vs. Shri Harkirat Singh Sodhi & Anr.*, ⁴, *Neeraj Bhatia vs. Ravindra Kumar Bhatia and Ors.*, ⁵,

¹ (1987) 1 SCC 204

² 2015 SCC OnLine Del 13446

³ RFA(OS) 46/2016 dated 06.03.2017

⁴ 2024 DHC 381 passed in CS(OS) 90/2017

⁵ 2024 SCC OnLine Del 4894



Anchit Sachdeva & Anr. Vs. Smt. Sudesh Sachdeva & Ors ⁶, and ***Harmanpreet Kaur Dhir vs. Pritam Singh Bhatia*** ⁷.

7. The aforesaid submissions are vehemently opposed by *Mr. Aditya Dewan*, learned counsel appearing for the plaintiffs, who contends that the application under Order VII Rule 11 is misconceived as there are unequivocal pleadings and averments in various paragraphs of the plaint explicitly indicating that the HUF was originally constituted by the late Sh. Ram Singh, and upon the partition of *Ram Singh HUF*, a separate HUF under the name and style of *Bhim Singh HUF* came into existence. It is further submitted by learned counsel that, therefore, plaintiff No.1, being a coparcener and a member of the said *Bhim Singh HUF*, is legally entitled to seek partition and claim her rightful share in the joint family properties.

8. Learned counsel further invites the attention of this Court to various paragraphs of the plaint, wherein it has been averred that plaintiff No.1 is a minor, and owing to her limited means and resources, she has been able to gather only limited information regarding the properties forming part of the *Bhim Singh HUF*. In this context, it is further submitted that Schedule A appended to the plaint contains a list of properties currently known to the plaintiffs as forming part of the estate of *Bhim Singh (HUF)*. It is also submitted that an application under Order XI Rule 12, read with Rule 14 of CPC for discovery and inspection of documents, has duly been filed and is presently pending adjudication. Therefore, according to learned counsel, should such an application be allowed and further particulars of the purported HUF properties come to light, the plaintiffs reserve the right to

⁶ 2024 DHC 9629

⁷ 2025 DHC 1787 passed in CS(OS) 261/2024



suitably amend the plaint under Order VI Rule 17 of CPC to include any such additional properties.

9. Furthermore, it is averred by learned counsel for the plaintiffs that once the existence of an HUF has been pleaded in the plaint, the veracity and authenticity of such a claim is a matter of trial, and the suit, in such cases, cannot be summarily dismissed. According to him, the Courts have consistently held that the determination of the existence of an HUF and the properties belonging thereto necessarily involve factual adjudication, which can only be undertaken upon allowing the parties to lead evidence. Therefore, at this preliminary stage, any dismissal of the suit would result in grave and irreparable prejudice to the legal and substantive rights of the plaintiff.

10. Learned counsel has attempted to distinguish the decisions relied upon by the learned counsel for defendants and additionally places reliance on the decision of the Supreme Court in the case of *V.S. Achuthanandhan vs. P. J. Francis and Anr.*⁸, the decision of this Court in *Ms. Ilaria Kapur vs. Sh. Rajesh Kapur & Ors.*⁹, and in *Manjeet Singh Anand vs. Sarabjit Singh Anand and Ors.*¹⁰ He also places reliance on the decision of this Court in the case of *Harmanpreet Kaur Dhir*, more importantly, paragraph no. 49 of the said decision.

11. *Mr. Dewan* further submits that the plaint cannot be read in piecemeal, and on conjoint reading of the plaint, schedule, and the documents attached thereto, it would undoubtedly appear that the necessary pleadings have been made.

⁸ 1999 2 SCR 99

⁹ 2012 SCC OnLine Del 3115



12. I have heard learned counsel appearing for the parties and have perused the record.

13. Before adjudicating the instant application on merits, the Court is conscious of the gravity of invoking the provisions under Order VII Rule 11 of CPC in rejecting a suit at a nascent stage. The rejection of a plaint constitutes a substantive judicial action, which must strictly adhere to the statutory conditions enumerated under Order VII Rule 11 of CPC. This provision is not to be invoked merely to test its applicability; rather, it requires a thorough examination of the averments within the plaint to ascertain whether the necessary requirements of the plaint are present or not.

14. Furthermore, it may be observed that ordinarily, a suit should advance to trial, taking into consideration the restricted scope of power under Order VII Rule 11 of CPC. The remedy contemplated under Order VII Rule 11 of CPC constitutes a distinct and autonomous procedural mechanism, enabling the Court to summarily reject a plaint at the preliminary stage, without recourse to a full-fledged trial or the recording of evidence. The underlying intent of this provision is to obviate the continuation of meritless litigation, preclude abuse of judicial process, curtail avoidable litigation expenses, and facilitate the optimal utilization of judicial resources to matters warranting substantive adjudication. In *Dahiben v. Arvinbhai Kalyanji Bhanusali*¹¹, the Supreme Court delineated the circumstances warranting the rejection of a plaint under this Rule. It was held that rejection is warranted in cases where the plaint (i) does not disclose a cause of action; (ii) is undervalued and the plaintiff fails to rectify the valuation despite direction from the

¹⁰ FAO (OS) 83/2008.

¹¹ (2020) 7 SCC 366



Court; (iii) is insufficiently stamped and the deficiency is not cured within the time granted; (iv) is barred by any law; (v) is not filed in duplicate; or (vi) where there is non-compliance with mandatory procedural requisites under CPC.

15. The Supreme Court reiterated the aforesaid principles in *Shri Mukund Bhavan Trust vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle*¹², emphasizing the imperative upon the Courts to deter vexatious or frivolous claims at the threshold to preserve judicial economy and uphold the integrity of judicial proceedings.

16. Recently this Court in *Harmanpreet Kaur Dhir*, in paragraph no. 49, unequivocally observed that the question as to whether the suit property forms part of an HUF or is the exclusive self-acquired property of a party is a triable issue, necessitating adjudication on the basis of evidence led by both parties. The Court also held that a determination which involves rival and contested claims regarding the legal character of the suit property cannot be adjudicated at an incipient stage under Order VII Rule 11 of CPC.

17. The Court further highlighted that the exercise of jurisdiction under Order VII Rule 11 of CPC results in the summary termination of proceedings without granting the plaintiff an opportunity to establish their claim through evidence. This extraordinary power is to be invoked sparingly and with caution, and only in cases where it is manifestly evident from the averments in the plaint that either no cause of action is disclosed, or that the suit is clearly barred by law.

18. In *Harmanpreet Kaur Dhir*, upon perusal of the factual matrix from paragraph no. 41 onwards, this Court noted that the averments in the plaint,



coupled with the documentary evidence placed on record, *prima facie* reflected the intention of defendant No. 1 to treat the subject property therein as part of the HUF corpus, thereby relinquishing any claim of exclusive ownership as self-acquired property. In light of such *prima facie* material suggesting a plausible cause of action and triable issues, the Court found that the threshold requirements for rejection of the plaint under Order VII Rule 11 CPC were not satisfied, and accordingly, the application for rejection was dismissed. The relevant extract of the aforementioned decision is reproduced hereunder: -

“49. However, it be noted that whether the suit property is actually an HUF or not is a triable issue, to be dealt with after both parties have led evidence to that effect. The same cannot be effectively looked into at this stage when there are rival claims with respect to the status of the suit property. While exercising the power under Order VII Rule 11 of CPC, the Court must remain alive to the fact that the invocation of this power amounts to a summary dismissal of the suit, merely on the basis of the pleadings, and without affording an opportunity to prove a case. It is a patent dismissal and this power must be exercised only when it is absolutely certain from the pleadings that no cause of action arises or a legal bar is unequivocally apparent from a reading of the pleadings. If the plaint gives rise to issues of a triable nature, it could only be determined upon a thorough appreciation of evidence and not in a summary manner, as sought in the instant case.”

19. The power and scope of Order VII Rule 11 of CPC have also rightly been considered by the Division Bench of this Court in the case of **Manjit Singh Anand**. It was held that recourse to Order VII Rule 11 of CPC ought not to be undertaken in a cursory manner. To determine the applicability of Order VII Rule 11, the Court is required to conduct a careful scrutiny of the averments in the plaint to ascertain whether the suit falls within its jurisdiction, whether it is barred by any statutory provision, or whether the

¹² 2024 SCC OnLine SC 3844



plaint fails to disclose a cause of action. The following observations were made by the Court in paragraph No. 24 of the decision in **Manjit Singh Anand**: -

“24. To ascertain whether the plaint discloses cause of action or not, the averments made in the plaint only have to be seen. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence. Whether a plaintiff discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is, if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed or not. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations, a cause of action is shown...”

20. More importantly, it is a settled position in law that an HUF could come into existence prior to the enactment of the Hindu Succession Act, 1956 (*hereinafter referred to as the Act of 1956*) by way of inheritance of ancestral property from paternal ancestors within four degrees. However, post-1956, the mere fact of inheritance of ancestral property does not, in itself, give rise to the creation of an HUF. The aforesaid position has been reiterated by the Supreme Court in **Commissioner of Wealth Tax, Kanpur & Ors. v. Chander Sen**¹³, and subsequently in **Yudhishter**. The Supreme Court has held that with the coming into force of Section 8 of the Act, the traditional notion that ancestral property devolving upon a male Hindu automatically becomes HUF property stands abrogated. Consequently, post-



1956, an HUF can only be constituted if an individual voluntarily impresses their self-acquired property with the character of HUF property by throwing it into a common hotchpotch.

21. This Court in *Surinder Kumar v. Dhani Ram & Ors.*¹⁴, after exhaustively analyzing the binding precedents in *Chander Sen* and *Yudhishter*, has laid down the following principles: -

“5. The Supreme Court around 30 years back in the judgment in the case of Commissioner of Wealth Tax, Kanpur v. Chander Sen, (1986) 3 SCC 567, held that after passing of the Hindu Succession Act, 1956 the traditional view that on inheritance of an immovable property from paternal ancestors up to three degrees, automatically an HUF came into existence, no longer remained the legal position in view of Section 8 of the Hindu Succession Act, 1956. This judgment of the Supreme Court in the case of Chander Sen (supra) was thereafter followed by the Supreme Court in the case of Yudhishter v. Ashok Kumar, (1987) 1 SCC 204 wherein the Supreme Court reiterated the legal position that after coming into force of Section 8 of the Hindu Succession Act, 1956, inheritance of ancestral property after 1956 does not create an HUF property and inheritance of ancestral property after 1956 therefore does not result in creation of an HUF property.

6. In view of the ratios of the judgments in the cases of Chander Sen (supra) and Yudhishter (supra), in law ancestral property can only become an HUF property if inheritance is before 1956, and such HUF property therefore which came into existence before 1956 continues as such even after 1956. In such a case, since an HUF already existed prior to 1956, thereafter, since the same HUF with its properties continues, the status of joint Hindu family/HUF properties continues, and only in such a case, members of such joint Hindu family are coparceners entitling them to a share in the HUF properties.

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

¹³ (1986) 3 SCC 567

¹⁴ 2016 SCC OnLine Del 333



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."

22. Therefore, as laid down in *Surinder Kumar*, upon the demise of an individual post-1956, in the absence of a pre-existing HUF, any inherited immovable property, though ancestral, does not, thus, acquire the character



of HUF property. An HUF can only be said to have come into existence thereafter if the individual expressly blends the property into a common hotchpotch. For a plaintiff to claim any rights as a coparcener in an HUF, pleadings must disclose with specificity the constitution of the HUF, in strict compliance with Order VI Rule 4 CPC. In the absence of such pleading, no right in HUF property can be claimed.

23. The Court further clarified that even prior to the enactment of the Act of 1956, an HUF could be formed independently of inheritance, by way of a voluntary act of blending self-acquired property into a joint family nucleus. In such cases, if an HUF continued post-1956, the coparceners would retain their rights. The Court also opined that in cases where defendants seek rejection of a plaint under Order VII Rule 11 of CPC on the ground of non-existence of HUF, the Court must scrutinize the pleadings to ascertain whether requisite material particulars substantiating the claim of HUF status and creation have been pleaded. Paragraph nos. 12 and 13 of the decision rendered by the Court in **Surinder Kumar**, reads as under: -

"12. This Court is inundated with litigations wherein the plaint merely contains bald, self-serving assertions about the existence of an HUF and an individual's status as a coparcener, without disclosing the essential factual substratum necessary in law. In light of the judicial pronouncements in Chander Sen and Yudhishter, the distinction between pre- and post-1956 positions must be clearly articulated. Mere invocation of the term 'HUF' without a factual narrative evidencing its constitution, either pre-1956 or by way of a post-1956 act of blending, is legally insufficient.

13. In such circumstances, the Court treated the application under Order VII Rule 11 CPC as one under Order XII Rule 6 CPC, given that the admitted facts in the plaint did not disclose the existence of an HUF or any properties forming part thereof. There were no averments indicating that Late Sh. Jage Ram inherited ancestral properties from paternal ancestors prior to 1956. Nor was there any assertion that he threw his self-acquired property into the common hotchpotch post-1956. In the absence of these mandatory averments, the plaint was held



to be legally untenable for failing to disclose a complete cause of action in support of the claim of HUF status."

24. In the context of the instant dispute, reference must also be made to the decision in ***Sunny***, wherein a suit for partition and rendition of accounts was filed by the plaintiffs against their grandfather and uncles, alleging that various properties were HUF assets and asserting a one-fifth share therein. The Court, relying on the ratio in ***Yudhishter***, opined that inheritance of ancestral property post-1956 does not automatically convert it into an HUF property unless (i) an HUF pre-existed, or (ii) the property was voluntarily thrown into a common hotchpotch. As the plaintiffs therein failed to establish either requirement, the Court dismissed the suit for want of a valid cause of action concerning the existence and constitution of an HUF.

25. This Court in ***Sagar Gambhir***, relied upon by Mr. Kochar, learned counsel appearing for the defendants, dismissed an appeal, affirming the findings of a Coordinate Bench of this Court. It was held that the plaint filed by the appellant therein failed to disclose a cause of action. The principal contention of the appellant therein was that the suit property therein situated in Rajinder Nagar was ancestral and had been acquired from the funds of a family firm, allegedly established by his grandfather using proceeds from properties left behind in Pakistan following partition. The aforementioned contention was found to be devoid of material particulars or supporting documentary evidence, as opined by the Court.

26. Moreover, in ***Sagar Gambhir***, the Court noted that the appellant therein had not pleaded any details regarding the nature, location, or value of the properties, purportedly left in Pakistan, nor had he established any linkage between such properties and the funds used to acquire the Rajinder



Nagar property. Upon the perusal of the plaint therein, it was further held that the pleadings lacked the requisite positive averments necessary under law to establish the existence and constitution of an HUF. It was also observed that mere assertions of the existence or continuation of an HUF were insufficient to sustain such a claim. The concluding paragraphs of the aforementioned decision are reproduced below: -

“15. The pleadings by the appellant is only to the effect that the property at Rajinder Nagar was purchased by the grandfather of the appellant from out of the funds of the firm M/s Gian Singh Sukhdev Singh which was setup by the late grandfather of the appellant and that the funds for the business came from the properties left behind in Pakistan. No details or particulars of the properties left behind at Pakistan have been pleaded. We take judicial notice of the fact that post-partition, people who migrated to India from the territories of the newly State of Pakistan were required to file claims before the custodian of evacuee properties and upon proof of properties left behind in Pakistan, compensations were assessed. These people were treated as refugees and either money or an immovable property was allotted to these refugees by the Ministry of Rehabilitation, Government of India. In the plaint the lack of pleadings to said effect cannot be overlooked. There is thus a bald assertion without any material particulars regarding the firm M/s Gian Singh Sukhdev Singh being set up by the great-grandfather of the appellant. The appellant has himself filed documents, and one of which is an income-tax assessment order for the Assessment Year 1957-58 concerning the income-tax return of the defendant No.1. The same shows that the business of M/s Gian Singh Sukhdev Singh was the sole proprietary business of defendant No.1 and the source of funds to acquire the property in Rajinder Nagar was from the income generated from the firm. This document being filed by the appellant could be looked into by the learned Single Judge and the only error in the impugned order would be one of narrative of fact wherein said document has been referred to as relied upon by the defendants. It is a case where the appellant as well as the defendants relied upon the documents.

16. The positive statements required by law to be pleaded in the plaint regarding constitution of an HUF are missing as has been rightly held by the learned Single Judge.

17. We concur with the view taken that the plaint does not disclose an actionable cause of action and we supplement by recording that the



proposed amendment of the plaint does not improve this lack of actionable pleading.

18. Defendant No.1 died during the pendency of the suit and defendant No.2 propounded a will statedly executed by defendant No.1. We agree with the view taken by the learned Single Judge that if the appellant has to challenge the will a separate cause of action has to accrue and it would be open to the appellant to claim partition of the properties as devolving upon the legal heirs through intestacy.

19. The appeal is accordingly dismissed but without any order as to costs”

27. Furthermore, in ***Harmanpreet Kaur Dhir***, the Court, after analyzing various precedents by the Supreme Court and this Court, laid down the following principles: -

“On the anvil of the aforesaid legal exposition, the following principles emerge:-

a. A Hindu Joint Family consists of lineal descendants from a common ancestor, including wives and unmarried daughters.

*b. Prior to the 2005 amendment to the Act of 1956, only male descendants up to three generations from the common ancestor were coparceners. The amendment granted equal coparcenary rights to daughters, ensuring parity with sons. It has also been held by the Supreme Court in ***Vineeta Sharma*** that marriage does not alter the status of the daughter as a coparcener. It has also been reiterated that coparcenary rights are acquired by birth, not inheritance, and persist irrespective of the father's survival on the amendment's enactment date.*

c. A HUF is primarily created for taxation purposes and the properties inherited after 1956 do not automatically assume HUF status unless an HUF pre-existed or was explicitly created by placing property into the common hotchpotch. Once the existence of an HUF is established, rights in the HUF property accrue as if the property is jointly owned by all coparceners.

d. While filing a suit for partition on the ground of coparcenary rights, the mere assertion of an HUF's existence is insufficient. The claimant is required to plead detailed pleadings establishing particulars like ancestral lineage, mode of inheritance, and specific fundamental events leading to the formation of an HUF.”

28. Therefore, in cases where a partition is sought based on claims arising from rights in an HUF, the plaint must strictly conform to the requirements



stipulated under Order VI Rule 4 of CPC. The aforementioned provision mandates that the plaintiffs must meticulously delineate all material and requisite factual particulars forming the basis of the cause of action. Specifically, in circumstances where an HUF property is alleged to exist due to the act of an individual voluntarily contributing self-acquired property into the common HUF, the plaint must comprehensively articulate the factual matrix surrounding such act, including clear and specific details regarding the creation of the HUF. Furthermore, it must substantiate the consequential entitlement of coparceners to their respective shares in the alleged HUF property. A failure to include these essential factual averments undermines the sufficiency of the plaint, rendering it procedurally and substantively inadequate under the ambit of Order VI Rule 4 of CPC.

29. The aforesaid legal position has also not been disputed by learned counsel appearing for the plaintiffs. He has strongly contended that pleadings made in the instant civil suit would qualify the requirement of Order VI Rule 4 of CPC, and, therefore, at this nascent stage, the suit itself may not be dismissed.

30. In view of the aforesaid, it becomes necessary to examine the pleadings made by the plaintiffs in the instant suit. This is the only recourse that needs to be resorted to, keeping in mind the principle laid down by the Courts that at the stage of consideration application under Order VII Rule 11 of CPC, it is the plaint that has to be considered and not the written statement.

31. If the pleadings made by the plaintiffs in the plaint are examined in the right perspective, the same would indicate that it contains only vague averments asserting that the properties are part of an HUF, without



furnishing any concrete details, documentary evidence, or historical tracing of how the properties continued as HUF properties after the lifetime of late Sh. Ram Singh.

32. The Court also notes that the plaint, on its own showing, unequivocally acknowledges that subsequent to the demise of late Sh Ram Singh, the properties forming part of his estate were subjected to partition among his Class I legal heirs. It is categorically stated that defendant No. 2, received a 1/10th share pursuant to the said partition. In view thereof, this Court is of the considered opinion that the joint family status stood severed upon such partition. As a necessary corollary, the respective shares that devolved upon the legal heirs, including that of defendant No. 2, acquired the character of self-acquired property as held by various decisions discussed hereinabove.

33. The Court further notes that in terms of the settled legal position post the commencement of the Act of 1956, any property inherited by a Hindu male from his father, *albeit* ancestral in origin, does not retain its character of ancestral property in the absence of a subsisting coparcenary. In such circumstances, the inherited property stands transmuted into self-acquired property in the hands of the inheritor, unless a contrary intention is clearly established or continuity of HUF is demonstrably shown through an express act of making a common pool of such properties.

34. In the instant case, no such averment, much less substantiating material, has been placed on record by the plaintiffs. Accordingly, the share inherited by defendant No.2, as per the plaint itself, is to be treated as his separate and exclusive property, and no automatic coparcenary rights can be claimed therein by his descendants or other family members.



35. The Court also takes note of the fact that the plaintiffs have failed to place on record any material particulars or evidence to establish that defendant No. 2 held the suit properties in his capacity as the *Karta* of a continuing or reconstituted HUF. The assertion of plaintiffs on mere joint residence or familial association, without establishing jointness in estate or income, does not suffice to infer the existence of an HUF in the eyes of the law. It is trite law that mere cohabitation or joint family living does not, *ipso facto*, give rise to a presumption of an HUF or coparcenary, in the absence of a clear and unambiguous demonstration of jointness in property and intention to hold it as such.

36. Upon conducting a thorough examination of the pleadings, it is evident that the plaintiffs have failed to articulate the fundamental and requisite averment regarding the existence of *Bhim Singh HUF*. The pleadings conspicuously lack any specific and affirmative assertion that establishes the existence of *Bhim Singh HUF*.

37. While the question as to whether such a positive averment alone would suffice or require further substantiation could have been subject to further scrutiny in light of established precedents, the complete absence of such averments renders the claim deficient and unsustainable. The failure to even plead this integral element undermines the plaintiffs' position, as the determination of the sufficiency of such an averment would necessarily rest upon the aforementioned delineation of the legal principles.

38. The overall analysis of the entire pleadings conspicuously omits the integral, essential element of the existence of *Bhim Singh HUF*. There is not even a single positive statement made by the plaintiff indicating as to how and when *Bhim Singh HUF* came into existence. So far as the assertions



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with respect to the existence of *Ram Singh HUF* are concerned, the same has already been stated to be partitioned by the plaintiffs themselves.

39. In view of the foregoing observations and the noticeable absence of specific pleadings establishing the formation of the *Bhim Singh HUF*, in which plaintiff No. 1 asserts a coparcenary right, this Court finds that the plaintiffs have failed to demonstrate a valid and sustainable cause of action. The pleadings and plaint in the instant case lack the necessary material particulars to substantiate the existence and constitution of the alleged HUF. Such a deficiency, being both procedural and substantive in nature, renders the suit patently devoid of a cause of action.

40. Accordingly, the instant application under Order VII Rule 11 of CPC stands allowed.

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41. Consequently, the suit, along with pending applications, stands dismissed. No order as to costs.

PURUSHAINDRA KUMAR KAURAV, J

08, APRIL, 2025/aks/mj

Click here to check corrigendum, if any