



2025:DHC:9526-DB



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

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Judgment reserved on: 15.10.2025
Judgment pronounced on: 31.10.2025

+ **FAO (OS) 289/2016**

HEMANT KUMAR & ANR.

.....Appellants

Through: Mr. Madan Lal Sharma, Ms. Vidhi Kumar, Mr. Ashish Bhardwaj, Ms. Tejaswini Verma, Mr. Pankit Bhardwaj, Ms. Manika Gaba, Mr. Vikrant Malwal and Mr. Abhay Singh, Adv.

versus

SATYA DEV BHARREL & ORS

.....Respondents

Through: Mr. S. K. Bhaduri and Ms. Neetu Gupta, Adv. for R-13 to R-16.

+ **RFA(OS) 82/2016**

HEMANT KUMAR & ANR.

.....Appellants

Through: Mr. Madan Lal Sharma, Ms. Vidhi Kumar, Mr. Ashish Bhardwaj, Ms. Tejaswini Verma, Mr. Pankit Bhardwaj, Ms. Manika Gaba, Mr. Vikrant Malwal and Mr. Abhay Singh, Adv.

versus

SATYA DEV BHARREL & ORS.

.....Respondents

Through: Mr. S. K. Bhaduri and Ms. Neetu Gupta, Adv. for R-13 to R-16.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR



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JUDGMENT

ANIL KSHETARPAL, J.

1. With the consent of learned counsel representing the parties, two connected Appeals, namely, FAO (OS) 289/2016 and RFA(OS) 82/2016, shall be disposed of by this common order, as both these appeals arise from a common order passed by the learned Single Judge, while dismissing not only the application filed under Order VI Rule 17 [hereinafter referred to as 'Amendment Application'] of the Code of the Civil Procedure, 1908 [hereinafter referred to as 'CPC'], but also dismissing the suit, i.e., CS(OS) 2073/2002, without permitting the parties to lead evidence.

2. Herein, the parties shall be referred to by their ranking and status in the suit.

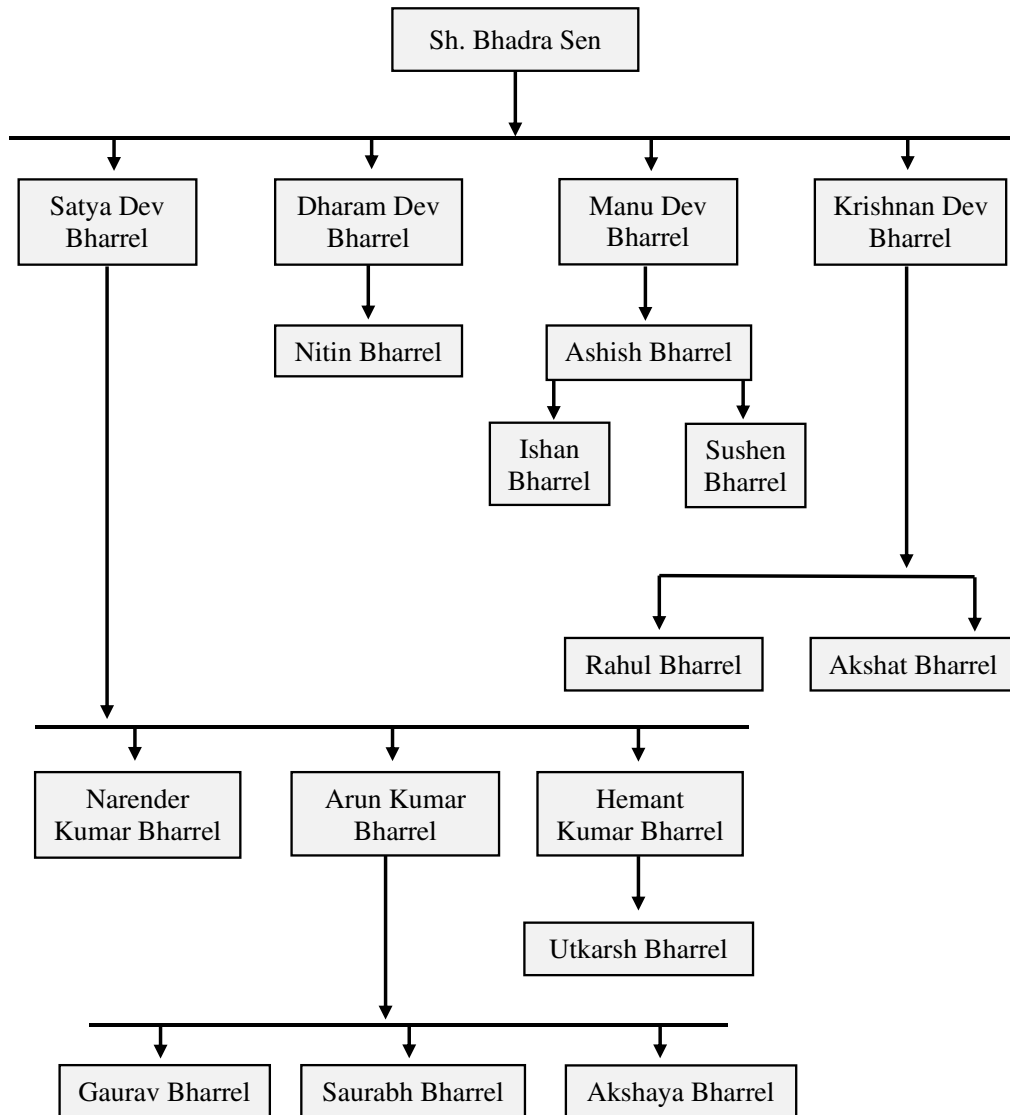
FACTUAL MATRIX:

3. In order to comprehend the issues involved in the present case, the brief facts of the case are required to be noticed.

4. Late Sh. Bhadra Sen [hereinafter referred to as 'Sh. Bhadra'], who was born in the year 1901, had four sons, namely Sh. Satya Dev Bharrel, Sh. Dharam Dev Bharrel, Sh. Manu Dev Bharrel and Sh. Krishan Dev Bharrel. Plaintiffs are the grandson and great-grandson of Sh. Bhadra. The pedigree table of the family is as follows:



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5. At this juncture, it is imperative to refer to Paragraph Nos. 3, 4, 5, 6, 7, 9, 10, 11, 15 and 17 of the plaint. The same are extracted as under:

“3. That the parties are Hindu by religion and was governed by the Mitakshra School of Hindu Law.

4. That in the year 1911 the lands of late Shri Hari Singh son of Sh. Pran Sukh situated in village Raiseena were acquired for the development of the National Capital at New Delhi and in lieu thereof late Shri Bhadra Sen and his brother were allotted



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agricultural land in Tehsil Khanewal, District Multan (Now in Pakistan) by means of a certificate of right of cultivation granted in the name of Sh. Brij Bhushan and Late Shri Bhadra Sen both sons of Late Shri Hari Singh (that at the time of acquisition of the land of late Sh. Hari Singh late Shri Bhadra Sen was of less than 11 years of age).

5. That after the creation of the Union of India and the Pakistan Late Shri Bhadra Sen was allotted agricultural lands in village Alipore, Delhi being about 125 Bighas of agricultural land in lieu of the lands left by Late Shri Bhadra Sen in Pakistan as mentioned above.

6. That late Shri Bhadra Sen and Shri Brij Bhushan were also awarded compensation for the lands acquired by the British Government in Village Raiseena for the purposes of establishing the National Capital of India in addition to the lands allotted in District Multan, Tehsil Khanewal (Now in Pakistan).

7. That all the properties which were possessed by Late Shri Bhadra Sen during his life time were the outcome of the compensation awarded to them as referred to above and they have their nucleus in ancestral properties inherited by Late Shri Bhadra Sen from his father late Shri Hari Singh son of Shri Pran Sukh. Same is the position in respect of House No. 85, Gautam Nagar, New Delhi. The properties subject matter of the present partition suit are detailed in Schedule attached to the plaint.

9. That as per Mitakshra Law a co-parcenary was formed on the birth of Master Gaurav who was born on 4.6.1988 and as such the consequence of his birth was that Late Shri. Bhadra Sen lost his absolute right to dispose of the properties by way of sale, mortgage, gift or Will except for legal necessities none of which existed.

10. That one of the Defendants i.e. Defendant No. 7 herein filed a suit for partition in this Hon'ble Court having been registered as Suit No. 858/1987 titled as Wing. Cdr. Dharam Dev Bharrel Vs. Shri Bhadra Sen and others and the same was compromised vide I.A. No. 11372/1991 in Suit No. 858/1987 in which the properties mentioned therein namely agricultural lands 125 Bighas in Village Alipore Delhi, House No. 85, Gautam Nagar, New Delhi and House No. 74, Village Masjid Moth, New Delhi were held self acquired properties of Late Shri Bhadra Sen and the said compromise was signed by the Defendant No. 1, Defendant No. 7, Defendant No. 13 and Late Shri Bhadra Sen.



11. That after the death of Late Shri Bhadra Sen the plaintiffs came to know that Late Shri Bhadra Sen had executed a Will dated 26th July, 1994 whereby he had in his Will accepted that property No. 74, Masjid Moth, New Delhi, Property No. 85, Gautam Nagar, New Delhi and agricultural land situated in Revenue Estate of Village Alipore, Delhi, agricultural land at Bahadurpur, Patti Pahari, District Alwar, Rajasthan, House No. 216-A, Gautam Nagar have been disposed of by the said Will. It had also transpired that after 8th June, 1988 or even after 29th day of October, 1991 late Shri Bhadra Sen sold agricultural lands situated in Revenue Estate of Village Alipore, Delhi and invested the amount in the two factories run under the name and style of RAHUL PACKAGING & PRIYA DAIRY PRODUCTS and also in the purchase of lands in Village Bahadurpur, Patti Pahari, Distt. Alwar Rajasthan and the plaintiffs are entitled to claim partition as the coparcenary was formed on 8th June, 1988 and every great grand son of Shri Bhadra Sen born even thereafter and a right by birth in all the properties and the said properties devolved on the plaintiffs and Defendants by survivorship and not by succession.

15. That RAHUL PACKAGERS & PRIYANKA DAIRY PRODUCTS were the family business of the Co-parcenary as they were established/financed by Late Shri Bhadra Sen, Benami in the name of his grand son Defendant No. 15 and Priyanka the daughter of Defendant No. 13 all the parties have undivided equal shares in the running businesses and they are also entitled to share in incomes grabbed by Defendant No. 13, 14, 15 and 16.

17. That the Co-parcenary being a creation of law and not by consent of parties. The compromise in suit No. 858/1987 (Wing Cdr. D.D. Bharrel Vs. Shri Bhadra Sen and Anr) shall have no bearing on the rights of the parties to this suit. The plaintiffs maintain the property being No. 85, Gauram Nagar, New Delhi is also ancestral property because late Shri Bhadra Sen had no means to purchase and construct the said property out of his own personal income which was meager as he was also only a Patwari having four sons, three daughters to feed and educate."

6. Further, the following reliefs have been sought by the Plaintiffs in the suit:

“(a) This Hon’ble Court be pleased to pass a Preliminary Decree of partition of the estate of Late Shri Bhadra Sen into 17



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equal parts each share allotted to the plaintiffs and Defendants No. 1 to 15;

(b) This Hon'ble Court be further pleased to pass a final decree of partition by metes and bounds;

(c) This Hon'ble Court be further pleased to pass decree for Rendition of Accounts by Defendant No. 13 to 16 and partition the moveable assets of Late Shri Bhadra Sen in the hands of Defendants No. 13 to 16 in equal shares between the plaintiffs and Defendants No. 1 to 16;

(d) This Hon'ble Court be further pleased to pass Decree of Declaration that no female member of the family of Late Shri Bhadra Sen including his daughters and their Wards have any share in the Co-parcenary property;"

7. It is stated that late Sh. Bhadra died on 08.01.2000, whereas the suit came to be instituted on 08.05.2002. Further, two separate written statements were filed on behalf of the Defendants — one jointly by Defendant Nos. 1 to 12 and another by Defendant Nos. 13 to 16. In substance, Defendant Nos. 1 to 12 admitted the claim of the Plaintiffs, while Defendant Nos. 13 to 16 contested the same. A Replication was thereafter filed by the Plaintiffs to the Written Statements.

8. It may be noted that the issues in the suit were framed on 25.01.2010. Plaintiff No. 1 filed his affidavit in lieu of examination-in-chief; however, the same was never tendered in evidence. Further, *vide* order dated 02.08.2010, the learned Single Judge observed that the plaint was lacking in material particulars with regard to the agricultural land situated at Patti Pahari, District Alwar, Rajasthan inasmuch as the plaint does not mention the Khasra number of the agricultural land.

9. At that stage, based on the observations made on 02.08.2010,



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the Plaintiffs preferred the Amendment Application on 29.07.2011. In substance, by way of the Amendment Application, the Plaintiffs sought to incorporate details of the land allegedly purchased by the late Sh. Bhadra in Village Bahadurpur, Patti Pahari, District Alwar, Rajasthan, and further to elaborate their assertions regarding the formation of the coparcenary and the manner in which the sale consideration of one property was utilized for acquiring another property.

10. During the pendency of the suit, *vide* order dated 25.09.2012, the learned Single Judge observed that the property inherited by a male after passing of the Hindu Succession Act, 1956, is self-acquired and not ancestral. It was further noted that Defendant No. 1, through whom the Plaintiff claims, had admitted in prior judicial proceedings that the suit properties were the self-acquired properties of Sh. Bhadra. Consequently, the Court held that the suit, on both counts, may not lie. The aforesaid order is reproduced thereof:

*“1. The subject suit is a suit for partition filed by the plaintiffs claiming that the suit properties are ancestral properties belonging to late Sh. Bhadra Sen who expired in the year 2000. The defendant no.1 is the father of the plaintiff no.1 and plaintiff no. 2 is the son of plaintiff no.1. The only cause of action pleaded in the plaint is that the coparcenary came into existence on account of the fact that the properties were ancestral properties. The Supreme Court has now in the judgments reported as **Commissioner of Wealth Tax, Kanpur etc. v. Chander Sen AIR 1986 SC 1753** and **Yudhishter v. Ashok Kumar AIR 1987 SC 558** clarified that after passing of the Hindu Succession Act, 1956 if any male member inherits property from his paternal ancestors, then in his hands the property is self-acquired property and not an ancestral property. Further, I may note that defendant no.1, and through whom the plaintiffs claim, has admitted in judicial proceedings in Suit No. 858/1987 that the suit properties are the self*



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acquired properties of the father-Sh.Bhadra Sen.

2. *In view of the above, on both the counts of the suit not being maintainable after passing of the Hindu Succession Act, 1956 and the judicial admission made by the defendant no.1 in the Suit No. 858/1987, the suit may not lie. Counsel for the plaintiff at this stage requests for adjournment.*

3. *List on 5th October, 2012.*

4. *It is made clear that no adjournment shall be granted on the next date of hearing."*

11. Further, *vide* order dated 12.08.2016, the learned Single Judge dismissed the Amendment Application on the following grounds:

(i) Plaintiffs, despite filing the suit on 08.05.2002, removed the defects pointed out by the office finally on 31.08.2002, enabling the Court to issue notice only on 11.12.2002.

(ii) The Amendment Application has been pending for nearly four years, but documents in support of the constitution of the coparcenary have not been filed.

(iii) As per the Proviso to Order VI Rule 17 of CPC, an amendment after commencement of trial is not permissible.

(iv) There is an interim order in favour of the Plaintiffs and vacation of the same would not help because the principle of *lis pendens* will continue to apply. Further, there is a *mala fide* action on the part of the Plaintiffs, which cannot be allowed.

(v) Last but not least, the Plaintiffs are not prepared to deposit the tentative cost of Rs. 10 lakhs to compensate the Defendants in the eventuality of dismissal of their suit. Thereafter, as already noticed, the learned Single Judge proceeded to dismiss the suit with cost of



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Rs.1 lakh, payable by the Plaintiffs.

CONTENTIONS OF THE PARTIES:

12. Heard learned counsel representing the parties at length and, with their able assistance, perused the paper book along with the scanned copy of the record of the suit.

13. Learned counsel representing the Plaintiffs/Appellants, while relying upon the judgment in *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.*¹, contends that the Amendment Application shall be allowed as it is necessary to determine the question in controversy.

14. *Per contra*, learned counsel representing the Defendant Nos. 13 to 16/Respondent Nos. 13 to 16 has made the following contentions:

i. The Plaintiffs have preferred the present Amendment Application after a lapse of ten years from the institution of the suit and after the filing of evidence by way of affidavit by Plaintiff No. 1, manifestly with the object of causing delay in the disposal of the present proceedings.

ii. Defendant No. 1, through whom the Plaintiff claims, had admitted in prior judicial proceedings that the suit properties were the self-acquired properties of Sh. Bhadra. Hence, the claim of the present Appellant through his father is *mala fide*.

iii. Issues were also framed in the suit and the Plaintiff No. 1 had

¹ AIR 2022 SC 4256.



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filed his evidence by way of affidavit before the learned Single Judge and as such trial has commenced. Hence, in view of the Proviso to Order VI Rule 17 of CPC, the Amendment Application is not maintainable.

15. No other submissions have been made by the counsel representing the parties.

ANALYSIS AND FINDINGS:

16. At the outset, it will be noticed that the enabling power of the Court to reject the plaint is regulated by Order VII Rule 11 of CPC, which enlists limited grounds for the rejection of the plaint. Undoubtedly, the Court, in exercise of its inherent powers, is entitled to dismiss the suit if its continuation would result in abusing the process of the court. However, such power should be exercised only in rare and exceptional cases where the Court finds that there are no absolute chances of success for the Plaintiffs.

17. Further, as per the Proviso to Order VI Rule 17 of CPC, the amendment of the pleadings after commencement of trial is permissible when the party satisfies the Court that, in spite of due diligence, the party could not raise the matter before the commencement of trial. The aforesaid Proviso aims to prevent delay, discourage misuse of the process, and ensure that amendments are sought only in *bona fide* and unavoidable circumstances.

18. The Supreme Court in *Life Insurance Corporation of India (supra)* clarified the scope of amendment in pleadings. The Court



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examined the scope of the aforesaid Proviso and came to the conclusion that where the amendments are necessary for determining the question in controversy, then the amendment should be allowed, to avoid multiplicity of the proceedings, particularly when the amendment does not result in prejudice to the other party.

19. It will be noted here that the Plaintiffs, apart from furnishing details of the properties purchased in District Alwar, Rajasthan, also sought to elaborate and clarify their submissions regarding the suit property being of coparcenary nature. In this case, the trial of the suit had not yet commenced, as the issues were framed on 25.01.2010. Though Plaintiff No. 1 filed his affidavit in lieu of examination-in-chief, the same has not been tendered in evidence.

20. It is trite law that, in terms of Order VI Rule 2 of CPC, the pleadings are required to contain a concise statement of the material facts on which the parties rely for their claim or defense. The said provision draws a clear distinction between *facts constituting the cause of action or defence* and the *evidence* intended to prove those facts. The rule mandates that only material facts necessary to establish the foundation of the case should be pleaded, and not the detailed particulars of evidence which are matters of proof.

21. In the present case, a comprehensive reading of Paragraph Nos. 3, 4, 7, 8, 9, 11, 15 and 17 of the plaint would show that the Plaintiffs have claimed that the family is governed by Mitakshara and the property is coparcenary/ancestral. The Plaintiffs have also made necessary assertions with respect to the property being coparcenary



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property in Paragraph Nos. 8, 9, 11, 15 and 17 of the plaint. In these circumstances, it was not appropriate for the learned Single Judge to dismiss the suit without permitting the parties to lead evidence.

22. Further, while considering an application seeking permission to amend the plaint, the Court is required to take a holistic view of the matter and adopt a pragmatic approach. The power to allow amendment is discretionary in nature and is to be exercised with a view to advancing the cause of justice, provided such amendment does not result in introducing a completely new or inconsistent cause of action or prejudice the rights of the opposite party. The underlying object is to enable the parties to effectively place their complete case before the Court so that the real controversy between them may be adjudicated upon in its true and substantive form.

23. Similarly, learned Single Judge has also erred in dismissing the Amendment Application on the ground that a *mala fide* action on the part of the Plaintiffs cannot be perpetuated only because there is an interim order in force. Learned counsel for the Plaintiffs offered to the learned Single Judge that the interim order may be vacated, however, the learned Single Judge, without any material, held that such an amendment is a *mala fide* attempt on the part of the Plaintiffs, which was not called for in the facts and circumstances of this case.

24. Furthermore, the learned Single Judge could not, at this stage, have called upon the Plaintiffs to deposit a sum of Rs. 10 lakhs towards tentative costs in the eventuality of dismissal of the suit, particularly when the Amendment Application was still pending



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adjudication. Such a direction, issued prior to the determination of the Amendment Application, was premature and without jurisdiction, as the question of costs could only arise upon a conclusive finding on the maintainability or merits of the suit.

25. Likewise, an Amendment Application seeking permission to amend the plaint, as also the suit itself, cannot be dismissed merely on the ground that the defects in filing the suit were rectified after a period of six months. Curable defects in the presentation of the plaint do not, by themselves, affect the substantive rights of the parties or the maintainability of an amendment application, so long as the cause of action and the reliefs claimed remain within the permissible scope of law.

CONCLUSION:

26. For the reasons recorded above, both connected Appeals, namely, FAO (OS) 289/2016 and RFA(OS) 82/2016, are set aside while restoring the suit to its original number. Amendment Application filed by the Plaintiffs shall stand allowed subject to a cost of Rs. 25,000/- payable to Defendants, which shall be a condition precedent for entertaining the amended plaint.

27. Consequently, both parts of the order/judgment passed on 12.08.2016 are set aside. The parties through their counsel are requested to appear before the learned Single Judge (Roster Bench) on 11.11.2025.



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28. The present Appeals stand disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
OCTOBER 31, 2025/sp/shahid