$~

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

Reserved on: 29th August, 2024

Date of Decision: 12th December, 2024

\+ CS(OS) 335/2022 & I.A. 16798/2022

ANCHIT SACHDEVA & ANR. .....Plaintiffs

Through: Mr. Kuldeep Kumar Gurnani, Adv. with plaintiff(s) in person

versus

SMT SUDESH SACHDEVA & ORS. .....Defendants

Through:

Mr. Anish Chawla, Adv. for D-1, 2 and 4

Mr. Vaibhav Dubey, Adv. for D-3 with D-3 in person

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

I.A. 16798/2022 (Application under Order VII Rule 11 CPC)

1. The captioned interlocutory application has been filed by defendant nos. 1, 2, and 4 under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC'), seeking rejection of the present plaint on the ground of non-disclosure of a cause of action.

2. Plaintiff nos. 1 and 2 are children of defendant no. 2 and one Ms. Himani Sachdeva. Defendant no. 2 and Ms. Himani Sachdeva are embroiled

in matrimonial disputes. Ms. Himani Sachdeva is not a party to the present suit.

3. The plaintiffs have filed the present suit seeking partition and other ancillary reliefs in respect of the estate of their grandfather late Sh. Kewal Kishan Sachdeva. The plaintiffs have asserted their right to the said estate on the plea that the character of the immovable properties owned by late Sh. Kewal Kishan Sachdeva were coparcenary properties and the suit has been filed invoking Section 6 of the Hindu Succession Act, 1956 ('Act of 1956').

4. It is stated in the plaint that the grandfather of plaintiffs i.e., late Sh. Kewal Kishan Sachdeva, during his lifetime, established a business dealing in the sale of electrical goods, which was subsequently joined by his two sons, i.e., defendant no. 2 (father of plaintiffs) and defendant no. 3 (uncle of the plaintiffs). It is further stated that with the funds earned from the said electrical goods business, multiple immovable properties were purchased and the suit has been filed for partition of the said immovable properties. The details of the immovable properties are set forth in paragraph no. 2 of the plaint, which is reproduced below:

> "2 That the deceased grandfather of the plaintiffs during his lifetime established business of dealing in electrical goods. ln due course of time he was joined by his two sons i.e. defendant no.2 & 3. With joint labour and fund, the business was expended and various immoveable properties were purchased, details of which is given below

S. No.	**PARTICULARS OF PROPERTIES**	**DETAILS OF TITLE**
1	House Property No. N-168, Panchsheel Park, New Delhi. (measuring 253.4 sq. mtrs.)	Kewal Kishan Sachdeva vide conveyance deed bearing document no.3421, Addl. Book No.l, Vol. No.964 at

		page'125 to 127 dated 1 '1-08- 2003 registered in the office of S.R.Vll, New Delhi.
2	Commercial Property / Shop bearing property no.8, Bharat Nagar, New Friends Colony, New Delhi.	Kewal Kishan Sachdeva
3	Commercial Property / Shop bearing property no.79, Bharat Nagar, New Friends Colony, New Delhi.	Vinay Sachdeva
4	Property No. J-2/26, DLF Phase -II, Gurgaon(Haryana)	Vinay Sachdeva
5	Property No. J-2/25, DLF Phase -II, Gurgaon(Haryana)	Kewal Kishan Sachdeva
6	Property No. J-2/23, DLF Phase -II, Gurgaon(Haryana)	Deepak Sachdeva
7	Commercial Property No.105, Central Arcade, DLF Phase-ll, Gurgaon, (Haryana)	Deepak Sachdeva
8	Property No.H-182, DLF New Town Heights, Sector-86, Gurgaon, (Haryana)	Deepak Sachdeva
9	Property No.C-229, Block-C, Sector-105, Noida, (UP).	Vinay (sic) Sachdeva

……..”

5. Mr. Vinay Sachdeva is the uncle of the plaintiffs and impleaded as defendant no. 3. Mr. Deepak Sachdeva is the father of the plaintiffs and is impleaded as defendant no. 2. Thus, on the plaintiffs own showing the title of the immovable properties enlisted at serial no. 3, 4, 6, 7, 8 and 9 vests in defendant no. 2 and defendant no. 3 respectively.

6. Upon a conjoint reading of paragraphs 2 to 4 and 10 of the plaint, it is evident that the plaintiffs, assuming that all nine (9) suit properties listed in

paragraph 2 of the plaint belonged to the late Sh. Kewal Kishan Sachdeva and are coparcenary in nature, contend that they have, by birth, acquired joint rights, title, and interest in these properties. Consequently, they have filed the present suit for partition. The relevant paragraphs 3, 4, and 10 are as follows:

> "3. That according to the amending Act of 2005, in a joint Hindu family governed by the Mitakshra Law, the daughter of the coparcener also by birth become a coparcener in her own right in the same manner as the son. A daughter now have the same right in the coparcenary property as she would have had she been a son. The law was made effective from 09-09- 2005 as per the gazette notification. **Hence, the defendant no.4 has also been arrayed as necessary party being daughter / coparcener alongwith the male members i.e. plaintiff and defendants**.
> 4. **That the plaintiffs thus acquire joint right title and interest in the coparcenary properties left by the deceased and also right to seek partition, notwithstanding the title in favour of any particular coparcener**. The defendants, despite demand raised failed to produce the copies of the title deeds of the immoveable properties to the plaintiffs which the plaintiffs are entitled jointly with the other coparcener / defendants.
> …
> 10. **That the cause of action arose at the first instance in January, 2022 when the plaintiffs demanded partition of the joint properties**. It further arose on 28-01-2022 when the demand of partition was again made on which the defendant no.2 resorted to violence leading to filing of criminal complaint. The cause of action is of continuous nature."

(Emphasis supplied)

Submissions of Applicants

7. The defendant nos. 1, 2 and 4 have filed the captioned application seeking rejection of the plaint on the plea that the suit properties are the individual properties of late Sh. Kewal Kishan Sachdeva, defendant no. 2 and defendant no. 3 and thus the suit for partition for the immovable assets

individually owned by defendant no. 2 and defendant no. 3 is without any cause of action. Similarly, with respect to the immovable assets owned by late Sh. Kewal Kishan Sachdeva, the said properties were his individual properties and have devolved upon his Class-I legal heirs as per Section 8 of the Act of 1956 and thus the plaintiff has no cause of action qua the estate of late Sh. Kewal Kishan Sachdeva.

8. It is stated that the plaint fails to provide any particulars of the alleged Hindu Undivided Family ('HUF') of the late Sh. Kewal Kishan Sachdeva, as required under Order VI Rule 4 of the CPC, to disclose a cause of action for maintaining the claim regarding the existence of the HUF and its coparcenary properties.

9. Mr. Anish Chawla, learned counsel for the applicant/defendant nos. 1, 2 and 4 stated that the Plaintiffs have failed to comply with the mandate of Order VI Rule 4 CPC, which obligates them to furnish in the plaint all factual details of the cause of action as regards the existence of the HUF. He stated that Plaintiffs are under an obligation to make precise averments regarding the date of the creation of HUF, the act of property being contributed to the common hotch-potch, and a factual reference for each property claimed as HUF property, explaining how it qualifies as such.

10. He stated that the plaint contains no specific averments evidencing the alleged existence of a HUF. He stated that admittedly the funds generated by late Sh. Kewal Kishan Sachdeva by conducting the business of sale of electrical goods was his individual income and such an individual income cannot be termed as a coparcenary nucleus on the facts set out at paragraph nos. 2 to 4 of this plaint. He stated that the averments made at paragraph no. 2 to 4, even on a demurer, would not give any cause of action to the

plaintiffs to allege that individual properties owned by late Sh. Kewal Kishan Sachdeva and/or defendant no. 2 and defendant no. 3 are coparcenary properties.

11. He stated that the properties enlisted in the table at paragraph no. 2 of the plaint are the self-acquired properties of late Sh. Kewal Kishan Sachdeva and defendant nos. 2 and 3, respectively. He stated that late Sh. Kewal Kishan Sachdeva was an income tax payee, and the rental income from house property enlisted at serial no. 1 of the aforesaid table was duly disclosed in his individual Income Tax Return ('ITR') for the assessment year ('AY') 2009-10. The said ITR is taken on record.

12. He stated that there is no taxing entity of any HUF of late Sh. Kewal Kishan Sachdeva. He states that the plaint also does not give any details of any alleged HUF and therefore, the averments in the plaint claiming that the suit properties are coparcenary properties is without any legal basis.

13. He stated that the present suit has been filed by the plaintiffs with a malafide intention to delay the adjudication of matrimonial disputes pending adjudication between the parents of plaintiffs i.e. defendant no. 2 and Ms. Himani Sachdeva.

14. Applicants have filed their written submissions on 14.12.2023 and relies upon the Judgments of **Sunny (Minor) v. Sh. Raj Singh**[1], **Surender Kumar v. Dhani Ram**[2] and **Master Ansh Kapoor v. K.B Kapur**[3] .

[1] 2015:DHC:9359.
[2] AIR 2016 Del 120.
[3] 2021:DHC:510.

Submissions of Plaintiffs

15. In reply, Mr. Kuldeep Kumar Gurnani, learned counsel for the Plaintiffs stated that as far as existence of HUF is concerned, it is a 'settled presumption' that in the Hindu Families, the HUF is in existence and the contrary has to be proved by the party, who is claiming that HUF is not in existence. He stated that the onus is on defendants to prove that the HUF does not exist and therefore, the provisions of Order VI Rule 4 CPC is not applicable.

16. He stated that defendant nos. 2 and 3 were working with late Sh. Kewal Kishan Sachdeva in latter's business of sale of electrical goods and all the monies originated from the said business were used to purchase the suit properties enlisted in paragraph no. 2 of the plaint. He fairly stated that plaintiffs have no documents or facts to substantiate the said plea.

17. He stated that the issue whether HUF exists or not is a matter to be decided at trial.

18. He stated that since defendant nos. 2 and 3 were not gainfully employed at the relevant time when the suit properties were acquired in their respective names, it indicates the existence of a HUF and use of common funds provided by late Sh. Kewal Kishan Sachdeva. He stated that these facts will be established through evidence during trial and therefore, present plaint cannot be rejected under Order VII Rule 11 CPC.

19. He fairly admitted that plaintiffs are not aware of any taxing entity in the name of late Sh. Kewal Kishan Sachdeva's HUF. He also did not dispute the assertion of the defendants that the house property enlisted at serial no. 1

was declared by late Sh. Kewal Kishan Sachdeva as his individual property in his ITR.

20. He stated that late Sh. Kewal Kishan Sachdeva was the grandfather of the plaintiffs, who died intestate and upon his death plaintiffs have a right to inheritance in his estate.

21. He stated that though the plaint is silent with respect to the share of the plaintiffs in the suit properties, it is plaintiff's claim that they are entitled to the suit properties through defendant no. 2. He stated that defendant no. 2 has 1/4th share in the suit properties and accordingly, the plaintiffs have 1/3rd share each in the 1/4th share of defendant no. 2.

22. He relied upon the Judgement of this Court in the case of **Ms. Ilaria Kapur v. Sh. Rakesh Kapur**[4] wherein this Court held that the son can ask for the partition of the Joint Hindu Family property for the father during his lifetime. He also relied upon the judgments of **Ms. Ilaria Kapur (Supra), Gurdev Singh v. Harvinder Singh**[5]**, Hansa Place Art Furniture Pvt. Ltd v. Dilip Kumar Shatma**[6]**, Ramesh B Desai v. Bipin Vadilal Mehta**[7]**, Chhotanbehn v. Kiritbhai Jalkrushnabhai Thakkar**[8]**, Saleem Bhai v. State of Maharashtra**[9]**, Sachin Gupta v. B.S. Gupta**[10]**, Nanak Chand v. Chander Kishore**[11]**, Mr. Ajay Batra v. Mr. Y.P. Batra**[12]**, Arshnoor Singh v. Harpal Kaur**[13]**, Vineeta Sharma v. Rakesh Sharma**[14]**, Master Gaurav Sikri v. Smt. Kaushalya Sikri**[15]**, Rajinder**

---

[4] 2023:DHC:001605.
[5] 2022 SCC OnLine SC 2193.
[6] 2019:DHC:1286.
[7] (2006) 5 SCC 638.
[8] (2018) 6 SCC 422.
[9] (2003) 1 SCC 557.
[10] 1986 SCC Online Del 182.
[11] AIR 1982 Delhi 520.
[12] 2013 SCC OnLine Del 3709.
[13] 2019 SC 3098.
[14] (2020) 9 SCC 1.
[15] AIR 2008 Delhi 40.

Kumar v. R.K. Bajaj[16], Ganduri Koteshwaramma v. Chakiri Yanadi[17], Harbant Kaur v. Ranjeet Singh @ Ranjit Singh[18] and Tikka Shatrujit Singh v. Brig. Sukhjit Singh[19].

Analysis and findings

23. This Court has heard the submissions advanced by the learned counsel for the parties and perused the record.

24. The gravamen of the claim of the plaintiffs is set out at paragraphs nos. 2, 3, 4 and 10 of the plaint, which has been reproduced above. The plaintiffs at paragraph no. 2 of the plaint have enlisted nine (9) immovable properties and seek a partition of the said properties on the claim that they are coparceners in the said properties.

25. The plaintiffs admit that the nine (9) immovable properties stand in the individual names of late Sh. Kewal Kishan Sachdeva, defendant no. 2 and defendant no. 3 respectively.

26. The plaintiffs are admittedly not the Class-I legal heirs of late Sh. Kewal Kishan Sachdeva and are not entitled to any rights in the estate of the deceased under Section 8 of the Act of 1956.

27. So also, the plaintiffs are not entitled to any rights in the immovable property standing in the name of defendant no. 2, i.e., their father during his life time even though otherwise they are his Class-I legal heirs.

28. Similarly, the plaintiffs are not entitled to any rights in the immovable property standing in the name of defendant no. 3, i.e., their uncle as they are not his Class-I legal heirs.

---

[16] 1993 (3) Current Civil Cases 127.
[17] AIR 2012 SC 169.
[18] 2021 SCC OnLine Del 3929.
[19] 1995 SCC OnLine Del 272.

29. The plaintiffs are conscious of the fact that they cannot maintain any claim in the estate of late Sh. Kewal Kishan Sachdeva, defendant no.2 and defendant no. 3, if they admit that the immovable properties enlisted in paragraph no. 2 are their individual properties.

30. The plaintiffs have thus to create an illusion of cause of action alleged that the aforementioned immovable properties are coparcenary properties of late Sh. Kewal Kishan Sachdeva and seek their rights in the properties by invoking Section 6 of the Act of 1956.

31. The plaintiffs however admit that they are not aware of any taxing HUF entity of late Sh. Kewal Kishan Sachdeva of which he was a Karta. The plaintiff admits that they are not aware of any official documents, which record the said immovable properties as coparcenary properties of any HUF. The plaintiff admits that there is no declaration in the income tax records by the late Sh. Kewal Kishan Sachdeva that the immovable properties are properties belonging to any HUF.

32. The plaintiffs also admit that they do not have any documents in their possession which show that the funds for purchase of these immovable properties though standing in the name of defendant nos. 2 and 3 respectively were provided by late Sh. Kewal Kishan Sachdeva.

33. In these facts, even if this Court were to assume the averments made in paragraph 2 of the plaint to be absolutely correct i.e., that the monies for purchase of immovable properties though standing in the name of defendant nos. 2 and 3 were actually funded by late Sh. Kewal Kishan Sachdeva, the same would not change the character of the ownership of these properties from personal to coparcenary. The properties would still be considered as the

individual properties and not be converted into the character of a coparcenary property.

34. Coparcenary is a creature of Hindu law and it cannot be created by an agreement of the parties. Coparcenary is a legal phenomenon which existed prior to enactment of Act of 1956 and was recognized in respect of properties inherited by a Hindu male from his male ancestors. However, after enactment of Section 8 of the Act of 1956, this position in law changed. Post 1956 individual properties inherited by a Hindu male from his male ancestors retained the character of a separate property in the hands of the Hindu male and did not acquire the character of coparcenary. Thus, after 1956 coparcenary continued only with respect to properties which were already impressed with the character of coparcenary prior to 1956 and in respect of properties which were subsequently blended by coparceners with the pre-existing coparcenary property. However, in the absence of a pre-existing coparcenary property, no coparcenary can be created after 1956 by a male Hindu on his own volition. In this regard, it would be apposite to refer to the judgment of Division Bench of this Court in **Sh. Neeraj Bhatia v. Sh. Ravinder Kumar Bhatia**[20], where the Court held that a coparcenary can only be created by operation of law. The relevant portion of the said judgment is reproduced hereinbelow:—

> "33. **In law, for the 'doctrine of blending' to apply there must necessarily pre-exist a 'coparcenary property'** as on 20th August, 1993. In the absence of the existence of a coparcenary property, late Sh. Balwant Lal Bhatia could not have blended his self-acquired subject property into a 'common hotchpotch' on 20th August, 1993 as alleged in the plaint.

[20] 2024 : DHC: 5341- DB

33.1. To appreciate this statement of law, it would be appropriate to first understand the genesis of formation of a coparcenary under Hindu Law.

33.2. First and foremost, it needs to be noted that a coparcenary is purely a creature of Hindu Law; and it cannot be created by an agreement of parties except in the cases of reunion (**Re:Bhagwan Dayal v. Reoti Devi**). Further elaborating on the said position of law, the Supreme Court in the judgment **Vineeta Sharma v. Rakesh Sharma** held as under:

….

33.3. Prior to the enactment of Act of 1956, a coparcenary was created in law if a male Hindu inherits property from his father, such a property becomes ancestral in his hand as regards his son/sons. In such a case, the son/sons become a coparcener with the father as regards the property so inherited, and the coparcenary consists of the father and the son/sons. It is not only the son/sons, but also the grandson(s) and great grandson(s), who acquired an interest by birth in coparcenary property13. This inherited property is also referred to as the ancestral property in the hands of the successor.

33.4. Mulla on Hindu Law in its 24th Edition at Page 321 at para 212 states that a coparcenary cannot be created by the act of parties and has illustrated the mode of creation of coparcenary by law and the relevant text of para 212 reads as under:

…

33.5. However, post the enactment of Section 8 of the Act of 1956 (i.e., w.e.f. 17th June 1956), the aforesaid position of law changed as regards creation of coparcenary by inheritance of property. After 1956, the self- acquired property of the father inherited by a son/sons does not result in formation of a coparcenary and the property inherited by the son/sons retains the character of a separate property in the hands of the son/sons; and consequentially, the grandson(s) and great grandson(s) do not acquire any right by birth in the inherited property (**Re. C.W.T vs. Chander Sen and Yudhishter v. Ashok Kumar**). Thus, post 1956, the self-acquired property of father inherited by a son is his separate property and does not acquire the character of coparcenary. The relevant paragraphs of the judgment of the Supreme Court in **Yudhishter (Supra)** reads as under:-

"9. ……We are of the opinion that no much support can be sought for by the appellant from the said decision. Here in the instant case, the question is whether the respondent who undoubtedly was governed by the Mitakshara school of law, had acquired a right to ancestral property by his birth. But this question has to be judged in the light of the Hindu Succession Act, 1956. Reliance was also placed on State Bank of India v. Ghamandi Ram [(1969) 2 SCC 33 : AIR 1969 SC 1330 : (1969) 3 SCR 681]. At p. 686 of the Report (SCC pp. 36-37, para 5), this Court observed that according to the Mitakshara school of Hindu law all the property of a Hindu joint family was held in collective ownership by all the coparceners in a quasi-corporate capacity. The court approved the observations of Mr Justice Bhashyam Ayyangar in Sundarsanam Maistri v. Narasimhulu Maistri [ILR (1901) 25 Mad 149, 154 : 11 Mad LJ 353]. But the question in the instant case is the position of the respondent after coming into operation of the Hindu Succession Act, 1956. Shri Banerji drew our attention to Mulla's Hindu Law 15th, Edn. at p. 924 where the learned commentator had discussed effect in respect of the devolution of interest in Mitakshara coparcenary property of the coming into operation of the Hindu Succession Act, 1956.

10. This question has been considered by this Court in CWT v. Chander Sen [(1986) 3 SCC 567 : 1986 SCC (Tax) 641] where one of us (Sabyasachi Mukharji, J.) observed that under the Hindu law, the moment a son is born, he gets a share in father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as karta of his own undivided family but takes it in his individual capacity. At p. 577 to 578 of the Report, this Court dealt with the effect of Section 6 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th Edn., pp. 924-26 as well as Mayne's Hindu Law, 12th Edn. pp. 918-19. Shri Banerji relied on the said

> observations of Mayne on Hindu Law, 12th Edn., at p. 918-19. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12th Edn., p. 919. In that view of the matter, it would be difficult to hold that property which devolved on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-À-vis his own sons. If that be the position then the property which devolved upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house."
>
> (Emphasis supplied)
>
> 33.6. The devolution of interest of a coparcener in a coparcenary property is governed by Section 6 of the Act of 1956. With the amendment of the Act of 1956 in 2005, the daughter(s) of a coparcener are included as coparceners along with his son(s) and have same rights in the coparcenary property. The creation of coparcenary is, thus, codified in law and the identity of coparceners is also determined by law.
> 33.7**. There is no provision of law by which Hindus can create a coparcenary by an agreement. The coparcenary as discussed above is thus, created only by operation of law upon inheritance of ancestral property, prior to 1956**."
>
> (Emphasis supplied)

35. In the facts of this case, the plaintiff admits that there does not exist any coparcenary prior to 1956. The plaintiff also does not aver existence of any coparcenary on the date when late Sh. Kewal Kishan Sachdeva purchased the aforementioned properties or on the date when defendant nos. 2 and 3 purchased the aforementioned properties. Thus, the assumption of the plaintiff that there exists a coparcenary qua the aforementioned immovable properties is without any basis in law or facts.

36. The submission advanced by the learned counsel for the Plaintiff that the provisions of Order VI Rule 4 CPC is not applicable in the present case is also misconceived. A Coordinate bench of this Court in the case of **Surender Kumar v. Dhani Ram**[21] has categorically opined that there is no presumption as to the existence of an HUF and the plaintiff is obliged to give material particulars with respect to the existence of HUF and the basis of assertion that the immovable property is a coparcenary property. The said Court held that in the absence of the material particulars the plaint would be liable for rejection under Order VII Rule 11 CPC. The relevant portion of the said judgment is reproduced hereinbelow:—

> "9**. I would like to further note that it is not enough to aver a mantra, so to say, in the plaint simply that a joint Hindu family or HUF exists. Detailed facts as required by Order 6 Rule 4, CPC as to when and how the HUF properties have become HUF properties must be clearly and categorically averred. Such averments have to be made by factual references qua each property claimed to be an HUF property as to how the same is an HUF property, and, in law generally bringing in any and every property as HUF property is incorrect as there is known tendency of litigants to include unnecessarily many properties as HUF properties, and which is done for less than honest motives.** Whereas prior to passing of the Hindu Succession Act, 1956 there was a presumption as to the existence of an HUF and its properties, but after passing of the Hindu Succession Act, 1956 in view of the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhister (supra), there is no such presumption that inheritance of ancestral property creates an HUF, and therefore, in such a post 1956 scenario a mere ipse dixit statement in the plaint that an HUF and its properties exist is not a sufficient compliance of the legal requirement of creation or existence of HUF properties inasmuch as it is necessary for existence of an HUF and its properties that it must be specifically, stated that as to whether the HUF came into existence before 1956

[21] (2016) 227 DLT 217.

or after 1956 and if so how and in what manner giving all requisite factual details. **It is only in such circumstances where specific facts are mentioned to clearly plead a cause of action of existence of an HUF and its properties, can a suit then be filed and maintained by a person claiming to be a coparcener for partition of the HUF properties."**

*(*Emphasis supplied)

37. The contention of the plaintiff that there is a presumption that an HUF exists between late Sh. Kewal Kishan Sachdeva and his sons and therefore the immovable properties are presumed to be coparcenary and the legal burden to prove otherwise lies on the party denying the same is incorrect. A Coordinate Bench of this Court in **Aarshiya Gulati v. Kuldeep Singh Gulati**[22] specifically negated this submission and held that there is no presumption that the estate is joint or that the properties of the family members belong to the HUF. The relevant paras of the judgment read as under:

"THERE IS A PRESUMPTION THAT EVERY HINDU FAMILY WHICH IS JOINT IN FOOD AND WORSHIP IS A HINDU JOINT FAMILY; BUT THERE IS NO PRESUMPTION THAT THE ESTATE IS JOINT OR THE PROPERTY IS THE HINDU JOINT FAMILY PROPERTY. THE PARTY WHO ASSERTS THAT THE PROPERTY IS HINDU JOINT FAMILY PROPERTY HAS TO PROVE IT.

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

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

"Para 231-Mulla's Hindu Law - 21st Edition
1) Presumption that a joint family continues joint - Generally speaking, 'the normal state of every Hindu

[22] 2019 SCC OnLine Del 6867

family is joint. Presumably every such family is joint in food, worship and estate.' In the absence of proof of divission, such is the legal presumption.

2) No presumption that a joint family possesses joint property - There is no presumption that a family, because it is joint, possesses joint property or any property. When in a suit for partition, a party claims that any particular item of the property is joint family property, or when in a suit for a mortgage, a party contends that the property mortgaged is joint family property, the burden of proving it rests on the party asserting it."

(emphasis supplied)

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

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

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

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

> "18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available."
>
> (emphasis supplied)

9. The High Court has also rightly observed that there was no presumption that the property owned by the members of the

> joint Hindu family could a fortiori be deemed to be of the same character and to prove such a status it had to be established by the propounder that a nucleus of joint Hindu family income was available and that the said property had been purchased from the said nucleus and that the burden to prove such a situation lay on the party, who so asserted it. The ratio of K.V. Narayanaswami Iyer case [AIR 1965 SC 289 : (1964) 7 SCR 490] is thus clearly applicable to the facts of the case. We are therefore in full agreement with the High Court on this aspect as well. From the above, it would be evident that the High Court has not made a simpliciter reappraisal of the evidence to arrive at conclusions different from those of the courts below, but has corrected an error as to the onus of proof on the existence or otherwise of a joint Hindu family property.
>
> (emphasis supplied)

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

38. In the facts of this case, immovable properties enlisted at serial nos. 3, 4, 6, 7, 8 and 9 at paragraph no. 2 of the plaint are admittedly the personal properties of defendant nos. 2 and 3 and thus the plaintiffs have no right to claim any share in the said properties. Similarly, properties enlisted at serial no. 1, 2 and 5 of the paragraph 2 of the plaint were admittedly the personal properties of late Sh. Kewal Kishan Sachdeva and since plaintiffs are not the Class-I legal heirs of the deceased they have no cause of action to claim partition and thus they cannot maintain this suit.

39. In the light of above findings on facts which are discernible on the face of the record, judgements relied upon by the Plaintiffs to support its case that the children can seek partition in the joint family properties during

the lifetime of father is also of no avail in the facts of the present case as all the suit properties are the personal properties of their respective title holders. Since, the suit properties are not coparcenary in character, Section 6 of the Act of 1956 has no application and the reliance placed on the said provision for maintaining the suit is misconceived.

40. Keeping in view the aforesaid findings, the captioned application is allowed and the plaint is rejected.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 12, 2024/hp/AKT

Click here to check corrigendum, if any