Sangeeta vs.ramphool @ Bobby

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Court : Delhi

Decided On : Oct-27-2016

Appellant : Sangeeta

Respondent : Ramphool @ Bobby

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % SANGEETA RSA No.205/2015 27th October, 2016 Through: Mr. Shiv Kumar Sharma, Advocate ..... Appellant with Mr. Ashok Jain, Advocate. versus RAMPHOOL @ BOBBY CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA Through: Mr. Munish Kumar, Advocate. ..... Respondent To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the First Appellate Court dated 4.2.2015 whereby the first appellate court dismissed the suit by reversing the Judgment of the Trial Court dated 1.7.2014 by which the trial court had decreed the suit for possession, damages, mesne profits etc with respect to the suit property being plot no.58, House no.716, Main Road, Village Alipur, Narela Road, Delhi.

2. The facts of the case are that the appellant/plaintiff is the real sister of the respondent/defendant. The father of the parties is one Sh. RSA No.205/2015 Page 1 of 19 Bhawani. The case of the appellant/plaintiff was that the father was the

owner of the suit property and she purchased rights in the same by virtue of the usual documentation dated 30.9.2004 being agreement to sell, general power of attorney etc as Ex.PW
to Ex.PW
after paying consideration of Rs.30,000/- to the father. The further case of the appellant/plaintiff was that since the respondent/defendant was her brother, she allowed the respondent/defendant to stay as a licencee in the suit property and since the nature of the respondent/defendant and his wife was quarrelsome, accordingly, the licence of the respondent/defendant was terminated vide Notice dated 8.4.2009/Ex.PW1/8. The subject suit came to be filed thereafter. The respondent/defendant contested the suit and pleaded that the suit property was purchased by the father Sh. Bhawani from the funds derived from the sale of the ancestral property situated at Village Sailarpur, Dadari, Greater Noida, UP. The respondent/defendant also pleaded that the joint family members earnings were utilized for purchase of the suit property by the father. Accordingly, the respondent/defendant claimed co- ownership and coparcenery rights in the suit property and hence prayed for dismissal of the suit.

3. After pleadings were complete, the trial court framed the following issues:-

"1. Whether the plaintiff is entitled for a decree of possession as prayed?. (OPP) RSA No.205/2015 Page 2 of 19 2. Whether the plaintiff is entitled for damages, if so, at what rate and for what period?. (OPP) 3. Whether the plaintiff is entitled for relief of permanent injunction as prayed?. (OPD) 4. Whether suit property is joint property owned by all the coparcener, if so, its effect?. (OPD) 5. Relief. 4. Both the parties led evidence and the trial court has referred to this with respect to the witnesses who deposed and the documents exhibited in paragraphs 5 and 6 of its judgment and which paras 5 and 6 read as under:-

"5. Thereafter, plaintiff examined herself as PW1 who deposed on the lines of the plaint & tendered her evidence by way of affidavit Ex. PW1/A. She has also relied upon document Ex.PW
to Ex.PW1/10 i.e. agreement to sell, receipt, possession letter and Will all dt. 30.09.2004 Ex.PW

to Ex.PW1/5, blue print of the site plan Ex.PW1/6, copy of complaint made to police dt. 04.04.2009 Ex.PW1/7, compute print of the legal notice Ex.PW1/8, receipt of AD Post Ex.PW
and receipt of UPC Ex.PW1/10. Thereafter, plaintiff examined PW2 Sh. Bhawani who tendered his evidence vide affidavit Ex.PW2/A and PW3 Smt. Khazani who tendered her evidence by way of affidavit Ex.PW3/A, PW4 Sh. Deep Chand who tendered his evidence vide affidavit Ex.PW4/A and all the witnesses relied upon the documents already exhibited during examination of PW1. Thereafter PE was closed.

6. Thereafter, in support of his case defendant appeared himself in the witness box and tendered his evidence by way of affidavit Ex.DW1/A including document D(cid:173)1. Thereafter, defendant examined DW2 Sh. Murli Singh who tendered his evidence by way of affidavit Ex.DW2/A and DW3 Sh. Mahender Singh who tendered his evidence by way of affidavit Ex.DW3/A. No other defence witness was examined by the defendant. 5. A reading of the aforesaid paras 5 and 6 of the judgment of the trial court shows that besides the appellant/plaintiff proving the documents RSA No.205/2015 Page 3 of 19 of transfer of rights in her favour in the suit property by virtue of documents Ex.PW
to PW
dated 30.9.2004, the father Sh. Bhawani himself appeared as PW2 and supported the stand of the appellant/plaintiff. The mother of the appellant/plaintiff Smt. Khazani also appeared as PW3 and supported the case of the appellant/plaintiff. The defendant stepped into the witness box for proving his case and also led the evidence of one Sh. Murli Singh as DW2 and all of which evidence is oral deposition without any documentary proof.

6. The trial court in view of the aforesaid evidence decreed the suit by making the following salient observations:-

"(i) Appellant/plaintiff is proved to have purchased rights in the suit property by virtue of the documents Ex.PW
to Ex.PW
dated 30.9.2004. Also, the father Sh. Bhawani deposed as PW2 and affirmed to

the transfer of rights in the suit property to the appellant/plaintiff by the documents Ex.PW
to Ex.PW1/5. The validity of these transfer documents therefore could not be questioned by the respondent/defendant and in fact the respondent/defendant did not even put any question in cross- examination of PW1 and PW2 with respect to non-execution of the documents Ex.PW
to Ex.PW1/5. RSA No.205/2015 Page 4 of 19 (ii) The respondent/defendant gave a suggestion in the cross-examination to PW1 that the suit property was not purchased by the father Sh. Bhawani in his own name, but, this suggestion was totally against the stand in the written statement that the suit property was purchased by the father in his name, however the same was coparcenery property as the same was purchased by funds available of the ancestral property received by the father Sh. Bhawani from sale of the ancestral property situated at village Sailarpur, Dadari, Greater Noida, UP. (iii) Respondent/defendant miserably failed to prove that the father Sh. Bhawani ever owned any ancestral property in the village Sailarpur because except self-serving statement in the deposition of the respondent/defendant, no documentary evidence whatsoever was filed and proved to show that the father Sh. Bhawani even at all received any ancestral property at village Sailarpur. In fact, the respondent/defendant expressed his ignorance as to when the said ancestral land in the village Sailarpur was sold and for what amount. Not only that respondent/defendant admitted that his father was the step son of his grandfather and was expelled from the ancestral property by his grandfather and that whereafter the father Sh. Bhawani arrived at Delhi and stayed in a rented accommodation and the father had in fact purchased the property in question while the father was working as a mason in Delhi. RSA No.205/2015 Page 5 of 19 (iv) Though there was no case set up of an alleged oral family settlement of December, 2001 in the written statement of the respondent/defendant, however for the first time in the cross-examination of PW1 a document Ex.D1 was confronted to say that an oral family settlement took place in the year 2001 and the document to this effect was prepared on 18.12.2007. Trial court has accordingly held that no amount of evidence can be looked into in the absence of any such pleading which was not put forth of any alleged oral family settlement and the trial court hence discarded the document Ex.D1 dated

18.12.2007 that the same created any rights in favour of the respondent/defendant with respect to the first floor in the suit property. Trial court further noted that the alleged document dated 18.12.2007 was said to be signed by the father Sh. Bhawani but the father Sh. Bhawani denied his signatures on this document and no experts evidence/report or any other evidence was led by the respondent/defendant to prove that the signatures of the father Sh. Bhawani were his genuine signatures on the document Ex.D1 dated 18.12.2007.

7. suit.

8. Accordingly, the trial court, in my opinion, rightly decreed the The first appellate court by its impugned judgment has set aside the judgment of the trial court by giving two conclusions. The first conclusion was that these documents Ex.PW
to Ex. PW1/5do not bear RSA No.205/2015 Page 6 of 19 the number of the concerned notary public and secondly, that these documents are hit by Section 17(b) of the Registration Act, 1908.

9. For the purpose of disposal of this Regular Second Appeal, the following substantial questions of law are framed:-

"1. Whether the first appellate court has not committed a complete and gross illegality and perversity in discarding the documents only for the reason that the same did not bear the number of the notary public although the documents were duly proved and admitted to be executed by the parties to the documents, namely the father Sh. Bhawani as the transferor and the appellant/plaintiff/daughter as the transferee?.

2. Whether the first appellate court has not fallen into a complete and gross illegality and perversity in applying the provision of Section 17(b) of the Registration Act, because, the issue in the case besides of entitlement of the appellant/plaintiff to possession of the suit property as the owner was also to the effect that the appellant/defendant had a better title and right to possession in the suit property than the respondent/defendant inasmuch as admittedly the father Sh. Bhawani was said to be the owner by virtue of title documents in his name, and the father Sh. Bhawani admitted to execution of the documents Ex.PW

to Ex.PW
by which the appellant/plaintiff had claimed rights in the suit property?. I may clarify that the second question of law is on the basis that the trial court has rightly found that the suit property is not coparcenery/HUF property. RSA No.205/2015 Page 7 of 19 10. Both the above said questions of law are answered in favour of the appellant/plaintiff and against the respondent/defendant for the reasons given hereinafter.

11. To the extent that the suit property was purchased in the name of the father is not in issue because this was specifically admitted by the respondent/defendant in his written statement. The only defence of the respondent/defendant in his written statement was that the suit property was an ancestral property and therefore coparcenery property/HUF property inasmuch as the same was purchased out of the funds of the sale of the ancestral property of Village Sailarpur in Greater Noida. Admittedly, except a self-serving deposition, no documentary evidence or any other evidence of any worth whatsoever was led and proved by the respondent/defendant to show that the father Sh. Bhawani ever owned any property at Village Sailarpur, much less that this Silarpur property was inherited by the father Sh. Bhawani from his paternal ancestors. Clearly therefore, the respondent/defendant had miserably failed to discharge the onus that the suit property was coparcenery/HUF property. In fact, as per the admissions made in the deposition of the respondent/defendant DW1, it was clear that the father Sh. Bhawani was only a step son of his father and in fact the father had thrown out Sh. Bhawani from the ancestral house and that Sh. Bhawani thereafter had come to Delhi where he lived in a rented RSA No.205/2015 Page 8 of 19 accommodation and had purchased the property while working in Delhi as a Mason. Therefore, the first appellate court could not have set aside the judgment of the trial court simply by discarding the documents Ex.PW
to Ex.PW
merely on the ground that these documents did not contain the stamp of the notary public and which is really an infructuous finding because both the parties to the documents being the appellant/plaintiff and the transferor/father/Sh. Bhawani admitted to the execution and validity of the transfer documents. No doubt these documents Ex.PW

to Ex.PW
have been executed after 24.9.2001 when by Act of 48 of 2001, Section 53A of the Transfer of Property Act, 1882 was amended along with related Sections of the Indian Stamp Act, 1899 and whereby the agreement to sell in the nature of part performance under Section 53A of the Transfer of Property Act cannot be looked into unless it is stamped and registered, however, even if we take that position that the documents Ex.PW
to Ex.PW
did not transfer any title or rights in the nature of part performance under Section 53A of the Transfer of Property Act, surely by these documents the appellant/plaintiff had an entitlement to possession because once father Sh. Bhawani was the owner and the father Sh. Bhawani admitted to the entitlement of the appellant/plaintiff to take possession of the suit property, the issue in the suit ultimately boils down to the appellant/plaintiff having a better right to the possession of the suit property RSA No.205/2015 Page 9 of 19 than the respondent/defendant who had no legal right whatsoever, including the right to possession, in the suit property.

11. I may note that the judgment of the first appellate court does not at all touch upon the valid conclusion of the trial court with respect to the respondent/defendant having failed to lead any evidence whatsoever with respect to the suit property being an HUF property, inasmuch as, neither the father Sh. Bhawani was shown to be the owner of any property at Village Sailarpur and much less of the property at Sailarpur being the ancestral property, and which facts are to be taken with the additional fact that the respondent/defendant admitted that the father Sh. Bhawani was thrown out by his own father and Sh. Bhawani thereafter came to Delhi and made his living as mason and then he purchased the suit property.

12. There is another reason for sustaining the averments of the trial court and setting aside the findings of the first appellate court, and this additional reasoning I am giving in exercise of my powers under Order XLI Rule 24 CPC read with the ratio of the recent judgment of the Supreme Court in the case of Lisamma Antony and Another Vs. Karthiyayani and Another (2015) 11 SCC782 This additional

reason is that the defence of the respondent/defendant of the existence of an HUF property was in fact one being not a legal cause of action of defence of existence of the suit property as an HUF property/coparcenery property because after passing of RSA No.205/2015 Page 10 of 19 the Hindu Succession Act, 1956, inheritance of the ancestral property from paternal ancestors would not make the property inherited as an HUF property in the hands of the person who inherits the same vide the ratios of the judgments of the Supreme Court in the cases of Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, (1986) 3 SCC567and Yudhishter Vs. Ashok Kumar, (1987) 1 SCC204 The way in which the suit property can be an HUF property is if the property was inherited by a person, Sh.Bhawani in this case, before 1956 but the written statement of the respondent/defendant shows that it is not the case of the respondent/defendant that the father Sh. Bhawani inherited the property at Sailarpur (assuming any such property existed) from the father of Sh. Bhawani before 1956. In the absence of any such pleading of the Sailarpur property having not been inherited before 1956, this Sailarpur property cannot be an HUF property. Also, there is no case set up in the written statement of any HUF being created for the first time after 1956 by the father Sh. Bhawani by throwing the property into a common hotchpotch. In the facts of the present case the suit therefore need not have gone to trial and the suit should have been decreed at the stage of framing of the issues itself because there was no legal cause of action averred of a valid legal defence of the suit property being an HUF property. What are the requirements of pleadings to succeed on the ground that the property is an HUF has been RSA No.205/2015 Page 11 of 19 considered by this Court in detail in the judgment in the case of Surinder Kumar Vs. Dhani Ram and Others, 227 (2016) DLT217by referring to the ratio of the judgment of the Supreme Court in Yudhishters case (supra) and the relevant paras of which judgment read as under:-

"4. Plaintiff claims that as a son of defendant no.1 and as a grandson of late Sh. Jage Ram, plaintiff is entitled to his share as a coparcener in the aforesaid suit properties on the ground that the properties when they were inherited by late Sh. Jage Ram were joint family properties, and therefore, status as such of these properties as HUF properties have continued thereby entitling the plaintiff his rights in the same as a coparcener.

5. The Supreme Court around 30 years back in the judgment in the case of Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, (1986) 3 SCC567 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 Vs. Ashok Kumar, (1987) 1 SCC204wherein 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) & Anr. vs. Sh. Raj Singh & Ors., 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 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 RSA No.205/2015 Page 12 of 19 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 individuals 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. 8.The relevant paragraphs of the judgment in the case of Sunny (Minor) (supra) are paragraphs 6 to 8 and which paras read as under:-

"6. At the outset, it is necessary to refer to the ratio of the judgment of the Supreme Court in the case of Yudhishter Vs. Ashok Kumar, (1987) 1 SCC204and in para 10 of the said judgment the Supreme Court has made the necessary observations with respect to when HUF properties can be said to exist before passing of the Hindu Succession Act, 1956 or after passing of the Act in 1956. This para reads as under:-

"10. This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. MANU/SC/0265/1986MANU/SC/0265/19

[1986].161ITR370(SC) 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 become 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 RSA No.205/2015 Page 13 of 19 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 Kar of his own undivided family but takes it in his individual capacity. At pages 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. pages 924-926 as well as Mayne's on Hindu Law 12th Edition pages 918-919. Shri Banerji relied on the said observations of Mayne on 'Hindu Law', 12th Edn. at pages 918-919. 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 was 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. page 919. In that view of the matter, it would be difficult to hold that property which developed on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a-vis his own sons. If that be the position then the property which developed 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 is mine) 7(i). As per the ratio of the Supreme Court in the case of Yudhishter (supra) after passing of the Hindu Succession Act, 1956 the position which traditionally existed with respect to

an automatic right of a person in properties inherited by his paternal predecessors-in-interest from the latters paternal ancestors upto three degrees above, has come to an end. Under the traditional Hindu Law whenever a male ancestor inherited any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him had a right in that property equal to that of the person who inherited the same. Putting it in other words when a person A inherited property from his father or grandfather or great grandfather then the property in his hand was not to be treated as a self-acquired property but was to be treated as an HUF property in which his son, grandson and great grandson had a right equal to A. After passing of the Hindu Succession Act, 1956, this position has undergone a change and if a person after 1956 inherits a property from his paternal ancestors, the said property is not an HUF property in his hands and the property is to be taken as a self-acquired property of the person who inherits the same. There are two exceptions to a property inherited by such a person being and remaining self-acquired in his hands, and which will be either an HUF RSA No.205/2015 Page 14 of 19 and its properties was existing even prior to the passing of the Hindu Succession Act, 1956 and which Hindu Undivided Family continued even after passing of the Hindu Succession Act, 1956, and in which case since HUF existed and continued before and after 1956, the property inherited by a member of an HUF even after 1956 would be HUF property in his hands to which his paternal successors-in-interest upto the three degrees would have a right. The second exception to the property in the hands of a person being not self-acquired property but an HUF property is if after 1956 a person who owns a self-acquired property throws the self-acquired property into a common hotchpotch whereby such property or properties thrown into a common hotchpotch become Joint Hindu Family properties/HUF properties. In order to claim the properties in this second exception position as being HUF/Joint Hindu Family properties/properties, a plaintiff has to establish to the satisfaction of the court that when (i.e date and year) was a particular property or properties thrown in common hotchpotch and hence HUF/Joint Hindu Family created. (ii) This position of law alongwith facts as to how the properties are HUF properties was required to be stated as a positive statement in the plaint of the present case, but it is seen that except uttering a mantra of the properties inherited by defendant no.1 being

ancestral properties and thus the existence of HUF, there is no statement or a single averment in the plaint as to when was this HUF which is stated to own the HUF properties came into existence or was created ie whether it existed even before 1956 or it was created for the first time after 1956 by throwing the property/properties into a common hotchpotch. This aspect and related aspects in detail I am discussing hereinafter. 8(i). A reference to the plaint shows that firstly it is stated that Sh. Tek Chand who is the father of the defendant no.1 (and grandfather of Sh. Harvinder Sejwal and defendants no.2 to

4) inherited various ancestral properties which became the basis of the Joint Hindu Family properties of the parties as stated in para 15 of the plaint. In law there is a difference between the ancestral property/properties and the Hindu Undivided Family property/properties for the pre 1956 and post 1956 position as stated above because inheritance of ancestral properties prior to 1956 made such properties HUF properties in the hands of the person who inherits them, but if ancestral properties are inherited by a person after 1956, such inheritance in the latter case is as self-acquired properties unless of course it is shown in the latter case that HUF existed prior to 1956 and continued thereafter. It is nowhere pleaded in the plaint that when did Sh. Tek Chand father of Sh. Gugan Singh expire because it is only if Sh. Tek Chand father of Sh. Gugan Singh/defendant no.1 had expired before 1956 only then the property which was inherited by Sh. Gugan Singh from his father Sh. Tek Chand would bear the character of HUF property in the hands of Sh. Gugan Singh so that his paternal successors-in-interest became co-parceners in an HUF. Even in RSA No.205/2015 Page 15 of 19 the evidence led on behalf of the plaintiffs, and which is a single affidavit by way of evidence filed by the mother of the plaintiffs Smt. Poonam as PW1, no date is given of the death of Sh. Tek Chand the great grandfather of the plaintiffs. In the plaint even the date of the death of the grandfather of the plaintiffs Sh. Gugan Singh is missing. As already stated above, the dates/years of the death of Sh. Tek Chand and Sh. Gugan Singh were very material and crucial to determine the automatic creation of HUF because it is only if Sh. Tek Chand died before 1956 and Sh. Gugan Singh inherited the properties from Sh. Tek Chand before 1956 that the properties in the hands of Sh. Gugan Singh would have the stamp of HUF properties. Therefore, in the absence of any pleading or evidence as to the date of

the death of Sh. Tek Chand and consequently inheriting of the properties of Sh. Tek Chand by Sh. Gugan Singh, it cannot be held that Sh. Gugan Singh inherited the properties of Sh. Tek Chand prior to 1956. (ii) In fact, on a query put to the counsels for the parties, counsels for parties state before this Court that Sh. Gugan Singh expired in the year 2008 whereas Sh. Tek Chand died in 1982. Therefore, if Sh. Tek Chand died in 1982, inheriting of properties by Sh. Gugan Singh from Sh. Tek Chand would be self-acquired in the hands of Sh. Gugan Singh in view of the ratio of the Supreme Court in the case of Yudhister (supra) inasmuch as there is no case of the plaintiffs of HUF existing before 1956 or having been created after 1956 by throwing of property/properties into common hotchpotch either by Sh. Tek Chand or by Sh. Gugan Singh/defendant no.1. There is not even a whisper in the pleadings of the plaintiffs, as also in the affidavit by way of evidence filed in support of their case of PW1 Smt. Poonam, as to the specific date/period/month/year of creation of an HUF by Sh. Tek Chand or Sh. Gugan Singh after 1956 throwing properties into common hotchpotch. (iii) The position of HUF otherwise existing could only be if it was proved on record that in the lifetime of Sh. Tek Chand a Hindu Undivided Family before 1956 existed and this HUF owned properties include the property bearing no.93, Village Adhichini, Hauz Khas. However, a reference to the affidavit by way of evidence filed by PW1 does not show any averments made as to any HUF existing of Sh. Tek Chand, whether the same be pre 1956 or after 1956. Only a self-serving statement has been made of properties of Sh. Gugan Singh being ancestral in his hands, having been inherited by him from Sh. Tek Chand, and which statement, as stated above, does not in law mean that the ancestral property is an HUF property. 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 VI 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 RSA No.205/2015 Page 16 of 19 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 Yudhishter (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 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.

10. A reference to the plaint in the present case shows that it is claimed that ownership of properties by late Sh. Jage Ram in his name was as joint Hindu family properties. Such a bald averment in itself cannot create an HUF unless it was pleaded that late Sh. Jage Ram inherited the properties from his paternal ancestors prior to 1956 or that late Sh. Jage Ram created an HUF by throwing his own properties into a common hotchpotch. These essential averments are completely missing in the plaint and therefore making a casual statement of existence of an HUF does not mean the necessary factual cause of action, as required in law, is pleaded in the plaint of existence of an HUF and of its properties.

11. I may note that the requirement of pleading in a clear cut manner as to how the HUF and its properties exist i.e whether because of pre 1956 position or because of the post 1956 position on account of throwing of properties into a common hotchpotch, needs to be now mentioned especially after passing of the Benami Transaction (Prohibition) Act, 1988 (hereinafter referred to as the Benami Act) and which Act states that property in the name of an individual has to be taken as owned by that individual and no claim to such property is maintainable as per Section 4(1) of the Benami Act on the ground that monies have come from the

person who claims right in the property though title deeds of the property are not in the name of such person. An exception is created with respect to provision of Section 4 of the Benami Act by its sub-Section (3) which allows existence of the concept of HUF. Once existence of the concept of HUF is an exception to the main provision contained in sub-Sections (1) and (2) of Section 4 of the Benami Act, then, to take the case outside sub-Sections (1) and (2) of Section 4 of the Benami Act it has to be specifically pleaded as to how and in what manner an HUF and each specific property claimed as being an HUF property has come into existence as an HUF property. If such specific facts are not pleaded, this Court in fact would be negating the mandate RSA No.205/2015 Page 17 of 19 of the language contained in sub-Sections (1) and (2) of Section 4 of the Benami Act.

12. This Court is flooded with litigations where only self-serving averments are made in the plaint of existence of HUF and a person being a coparcener without in any manner pleading therein the requisite legally required factual details as to how HUF came into existence. It is a sine qua non that pleadings must contain all the requisite factual ingredients of a cause of action, and once the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhishter (supra) come in, the pre 1956 position and the post 1956 position has to be made clear, and also as to how HUF and its properties came into existence whether before 1956 or after 1956. It is no longer enough to simply state in the plaint after passing of the Hindu Succession Act 1956, that there is a joint Hindu family or an HUF and a person is a coparcener in such an HUF/joint Hindu family for such person to claim rights in the properties as a coparcener unless the entire factual details of the cause of action of an HUF and each property as an HUF is pleaded.

13. In view of the above, actually the application filed under Order VII Rule 11 CPC in fact is treated as an application under Order XII Rule 6 CPC, inasmuch as, it is observed on the admitted facts as pleaded in the plaint that no HUF and its properties are found to exist. There is no averment in the plaint that late Sh. Jage Ram inherited property(s) from his paternal ancestors prior to 1956. In such a situation, therefore, the properties in the hands of late Sh. Jage Ram cannot be HUF properties in his hands because there is no averment of late Sh. Jage Ram

inheriting ancestral property(s) from his paternal ancestors prior to 1956. There is no averment in the plaint also of late Sh. Jage Rams properties being HUF properties because HUF was created after 1956 by late Sh. Jage Ram by throwing properties into a common hotchpotch. I have already elaborated in detail above as to how an HUF has to be pleaded to exist in the pre 1956 and the post 1956 positions and the necessary averments which had to be made in the present plaint. The suit plaint however grossly lacks the necessary averments as required in law to be made for a complete cause of action to be pleaded for existence of an HUF and its properties. (underlining added) 13. Therefore, besides the fact that no evidence at all was led by the respondent/defendant for the courts to come to a finding of existence of a property at Sailarpur , or the Sailarpur property being an ancestral property or the suit property having being purchased out of the funds of sale of Sailarpur property and that the suit property is an HUF property, even the pleading itself being the written statement of the respondent/defendant did RSA No.205/2015 Page 18 of 19 not lay out any legal cause of action of existence of HUF property and as explained in detail in the case of Surinder Kumar (supra).

14. In view of the above said discussion, this Regular Second Appeal is allowed. Substantial questions of law framed are answered in favour of the appellant/plaintiff and against the respondent/defendant. The Judgment of the First Appellate Court dated 4.2.2015 is set aside and the Judgment of the Trial Court dated 1.7.2014 is upheld and restored. Parties are left to bear their own costs. OCTOBER27 2016 Ne/AK VALMIKI J.

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