Lalsa Prasad Singh vs.chanderwala & Anr

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SooperKanoon Citation : sooperkanoon.com/1209571

Court : Delhi

Decided On : Oct-10-2017

Appellant : Lalsa Prasad Singh

Respondent : Chanderwala & Anr

Judgement :

* + % LALSA PRASAD SINGH IN THE HIGH COURT OF DELHI AT NEW DELHI RFA No.852/2017 10th October, 2017 ..... Appellant Through: Mr. Bipin Kumar Jha, Advocate. versus CHANDERWALA & ANR. .....

... RESPONDENTS
CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) C.M. Appl. Nos. 36273-74/2017 (for exemptions) Exemptions allowed, subject to all just exceptions. The applications stand disposed of. C.M. Appl. No.36275/2017 (for exemption) Exemption allowed, subject to all just exceptions. On receipt of certified copy of the judgment, the same be filed in this Court. The application stands disposed of. C.M. Appl. No.36272/2017 (for delay) This is an application seeking condonation of delay of 37 days in filing the appeal. RFA No.852/2017 Page 1 of 15 For the reasons stated in the application the same is allowed and the delay of 37 days in filing the appeal is condoned. C.M. stands disposed of. RFA No.852/2017 1. This Regular First Appeal under Section 96 Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning

the judgment of the trial court dated 27.4.2017 by which the trial court has dismissed the suit as being barred by the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as the Benami Act). The suit has been dismissed by rejecting the plaint at the stage of pleadings and without evidence having been led by the parties.

2. The property in dispute is plot No.37A, Khasra No.164, Revenue Estate, Village Dindarpur, Delhi, also known as Shyam Vihar, Block E, Najafgarh, Delhi. The plot area is 75 sq. yards. Appellant/plaintiff as per the plaint pleaded that though the suit property was purchased by means of usual documentation being the Agreement to Sell, Power of Attorney, Will, possession letter, etc dated 6.7.2002 in the names of the wives of his nephews, being the defendants, but it was the appellant/plaintiff who had paid the complete consideration amount from his own funds. It was pleaded RFA No.852/2017 Page 2 of 15 that the appellant/plaintiff and respondents/defendants were members of a Joint Hindu Family and therefore out of love and affection the documents dated 6.7.2002 were executed in the names of the wives of the nephews of the appellant/plaintiff being the defendants in the suit. Accordingly, in the suit reliefs of declaration, partition, permanent injunction, etc with respect to the suit property were prayed.

3. The trial court has by the impugned judgment dismissed the suit by placing reliance upon Sections 3 and 4 of the Benami Act. The relevant paras of the judgment of the trial court are paras 5 to 11 and 13 and which paras read as under:-

"5. under:-

"Section 3 of BTA prohibits benami transactions and reads as (1) No person shall enter into any benami transaction. (2) Nothing in this sub-section (1) shall apply to the purchase of the property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter. (3) Whoever enters to any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,

an offence under this section shall be non-cognizable and bailable. 6. Section 4 of BTA, reads as under:-

"(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property. (2) No defence based on any right in respect to any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. RFA No.852/2017 Page 3 of 15 (3) Nothing in this section shall apply- (a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family. (b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such fiduciary capacity. It is apparent that as per clause (1) of section 4 of BTA, no suit to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie on the plea that the property is held benami, with the exception that where the person, in whose name the property is held, is a coparcener in the Hindu Undivided Family and the property is held for the benefit of the coparceners of the property or where the person in whose name the property is held is a trustee or stands in a fiduciary capacity to another.

7. From a reading of Section 4 of the Act, it is obvious that for a valid claim raised by the plaintiff, to bring the case in the exception provided in clause (a) of sub-Section (3) of Section 4 of the BTA, following three requisites are essential to be pleaded:-

"Existence of a Hindu Undivided Family; (i) (ii) Defendants in whose name the suit property are held, are a coparceners of the said Hindu Undivided Family; and (iii) Suit property is held by the defendants for the benefit of the coparceners in the family.

8. In the instant case, the defendants are the wives of the nephew of the plaintiff and thus they are not the coparceners under the definition of Hindu Undivided Family and thus exception carved out by the BTA is not available to the plaintiff in the present case as the exception contained in Section 4 (3) (a) of the BTA restricts its benefits only to property held by a coparcener in a Hindu Undivided Family as opposed to any Member of such family. It is so, because coparceners are recognized by law to jointly by birth inherit rights in the joint property of the family property and in the event such property stands in one of their names for the benefit of others, the BTA is declared to not come in the way. Such benefit however cannot be extended to all/any members of such family who do not have any vested right in the property. The plaintiff, being the brother of deceased father in law of the defendants is not a coparcener in the Hindu Undivided Family of his deceased brother. In view of the fact that requisite (ii) noted above is not fulfilled, exception contained in Section 4(3)(a) of the Act has no application in the instant case.

9. Now it has to be seen whether the case of the plaintiff is covered under the second exception relating to plea of benami ownership contained in Section 4(3)(b) of BTA. For the suit/claim of a plaintiff to fall in the exception provided in clause (b) of sub-Section (3) of Section 4 of BTA, the plaintiff has to plead/establish that:-

"RFA No.852/2017 Page 4 of 15 (i) Defendants in whose name the suit property is held are trustees or are otherwise standing in a fiduciary capacity towards the plaintiff; and (ii) Suit property is held by the defendants for benefit of plaintiff for whom they are trustees or towards whom they stand in a fiduciary capacity.

10. The pleadings made in the plaint by the plaintiff as noted above do not contain even a whisper that the defendants in whose name the suit property is held are trustees or were otherwise standing in a fiduciary capacity towards the plaintiff and suit property was held by them for benefit of plaintiff for whom they, are the trustee or towards whom they stands in a fiduciary capacity.

11. In view of the fact that there are no averments in the plaint to bring the claim raised by the plaintiff within the exception provided by clause (b) of sub-Section 3

of Section 4 of BTA, Section 4(3)(b) of BTA does not save the claim raised by the plaintiff from being barred in law. XXXXX XXXXX XXXXX13 In view of the aforesaid settled law, the defendants in whose names the suit property stands as per the pleadings of the plaintiff himself, they are absolute owners of the suit property by virtue of section 14(1) of Hindu Succession Act, 1956. The plaintiff himself has pleaded in his plaint that the suit property was purchased in the names of wives of his nephew out of love and affection and if such fact is admitted in the plaint itself, it is not necessary for this court to go on trial to find out the fact or to lift the veil to come to the conclusion which is necessary for the parties by determining the question raised in the plaint. In my considered opinion once the plaintiff has admitted in his pleadings that the property had been purchased for the benefit of the defendants, he cannot be turned around at this stage and file a suit claiming himself as real owner/co owner of the property in question. Accordingly, I hold that the suit filed by the plaintiff is barred under BTA and Order 7 Rule 11(d) CPC and thus the same is accordingly rejected. Ordered accordingly. File be consigned to record room. (underlining added) 4. I completely agree with the conclusions of the trial court contained in the impugned judgment, inasmuch as, there is no entitlement to claim a right in a property which is benami by virtue of Section 4(1) of the Act. Benami property means a property which is purchased in the name of one person and funds are paid for purchase RFA No.852/2017 Page 5 of 15 by another person with the intention that the benami owner is only a nominal owner and the actual owner is the person who has paid the funds. The Benami Act was passed in the year 1988 to nullify benami transactions as most of the benami transactions had their roots in illegalities, including existence of unaccounted or illegal moneys. The only two exceptions to the bar contained in Sub-Sections (1) and (2) of Section 4 of the Benami Act are as per Section 4 (3) of the Benami Act when firstly where there exists an Hindu Undivided Family (HUF) and the property is in the name of a coparcener and secondly where the property is purchased by a person standing in a fiduciary capacity or as a trustee. In the present case the exception which is pleaded by the appellant/plaintiff to avoid the application of the provision of Section 4(1) of the Benami Act is the existence of HUF and which will not apply because respondents/defendants being females are not coparceners and the exception under Section 4(3) of the Benami Act applies if

the property claimed to be an HUF is in the name of a coparcener.

5. Appellant/plaintiff as per the plaint pleads and has invoked the mantra of Joint Hindu Family on the ground that parties are residing together. In law, however, such pleadings do not make a RFA No.852/2017 Page 6 of 15 cause of action of existence of an HUF. HUF is a concept and HUF property is a property belonging to an HUF having a particular colour. After passing of the Hindu Succession Act, 1956 if a male person inherits the property from his paternal ancestors upto three degrees above then such inheritance is not an HUF property in the hands of the person who inherits the same and as held by the Supreme Court in the judgments in the case of Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, (1986) 3 SCC567and Yudhishter Vs. Ashok Kumar, (1987) 1 SCC204 In these judgments the Supreme Court had held that the traditional concept of Hindu Law of a male person when he inherits a property from his paternal ancestors then in such a case the inherited property becomes an HUF property is a concept which no longer prevails after passing of the Hindu Succession Act. HUF therefore comes into existence only if a person inherits the property from his male ancestor prior to passing of the Hindu Succession Act, 1956 or if HUF is created after the passing of Hindu Succession Act by a person throwing his self-acquired property/individual property in common hotchpotch. In the present case, there is no pleading of the appellant/plaintiff having inherited the suit property prior to the year 1956 and therefore the only case is of RFA No.852/2017 Page 7 of 15 existence of HUF after the year 1956 and which could have accrued only if there was a specific pleading of throwing of the individual property of the appellant/plaintiff into common hotchpotch and which is not so.

6. Proper pleading of existence of HUF is all the more so required in the present case because the HUF which is pleaded to exist is not of the appellant/plaintiff and his immediate family members being his wife or his sons or the wives of his sons, inasmuch as, the respondents/defendants are the wives of the nephews of the appellant/plaintiff. In such extended degree relationship not within the family an HUF does not come into existence merely by uttering a mantra of there being a Joint Hindu Family or Hindu Undivided Family. What are the requirements of an HUF and how an HUF property comes into existence has been dealt with by this

Court, after referring to the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhistir (supra), in the case of Surender Kumar Vs. Dhani Ram and Others, 227 (2016) DLT217 The relevant paras of the judgment in the case of Surender Kumar (supra) are paras 5 to 12 and which paras read as under:-

"5. The Supreme Court around 30 years back in the judgment in the case of Commissioner of Wealth Tax, Kanpur and Others Vs. Chander RFA No.852/2017 Page 8 of 15 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 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 RFA No.852/2017 Page 9 of 15 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. Even before 1956, an HUF can come into existence even (iv) 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. (Minor) (supra) are paragraphs 6 to 8 and which paras read as under:-

"The relevant paragraphs of the judgment in the case of Sunny 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 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 RFA No.852/2017 Page 10 of 15 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 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 RFA No.852/2017 Page 11 of 15 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 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. RFA No.852/2017 Page 12 of 15 (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.s 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 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 RFA No.852/2017 Page 13 of 15 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 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 RFA No.852/2017 Page 14 of 15 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. 7. In view of the aforesaid discussion, I

do not find an illegality in the impugned judgment by which the suit plaint has been rejected, inasmuch as, the suit was barred by Benami Act.

8. Dismissed. OCTOBER10 2017 AK VALMIKI J.