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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **CS(OS) 567/2023, I.A. 17916/2023, I.A. 24362/2023 and I.A. 3657/2024**

MRS POOJA WASAL
D/O SH. RAMESH GROVER
R/O B-5/204, SAFDARJUNG ENCLAVE,
NEW DELHI-110029

....PLAINTIFF

.

(Through: Ms. Azra Rehman, Ms. Zahara Sheikh and Mr. Saif Tanveer, Advs.)

Versus

1. SH RAMESH GROVER,
S/O LATE SH. RAM LAL GROVER
RIO C-7, GREEN PARK (MAIN),
NEW DELHI- 110016

....DEFENDANT NO. 1

2.SH. RAJESH GROVER
S/O SH. RAMESH GROVER
R/O C-7, GREEN PARK (MAIN),
NEW DELHI - 110016 ....DEFENDANT NO. 2

3. SH. SANDEEP GROVER
S/O SH. RAMESH GROVER
R/O 907 B-1 BEST RESIDENCY, PLOT NO.1
SECTOR 19-B DWARKA, NEW DELHI- 110075

....DEFENDANT NO. 3

4. MS. REENA GROVER,
W /O SH. RAMESH GROVER
R/O C-7, GREEN PARK (MAIN),
NEW DELHI **:**110016
PRESENTLY AT :-
B-5/204, SAFDARJUNG ENCLAVE,
NEW DELHI-110029 ….DEFENDANT NO.4

(Through: Mr. Sarad Kumar Sunny and Mr. Keshav Mann, Advs. for D-1 and 2. Mr. Suhail Sehgal and Mr. Prashant Drolia, Advs. for D-4.)

% Reserved on: 08.04.2025
Pronounced on: 07.05.2025

JUDGMENT

I.A. 24363/2023 (By defendant no. 1 and 2 – Under Order 7 Rule 11 – for rejection of plaint)

The present application has been filed by defendant nos. 1 and 2, seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (*hereinafter referred to as CPC)*.

2. The instant plaint has been filed by the plaintiff, seeking the relief of declaration, partition, possession, and permanent as well as mandatory injunction, with respect to certain immovable and movable properties. The plaintiff asserts entitlement to the movable and immovable properties based on her status as a coparcener in the purported joint Hindu family and her consequential right(s) in the ancestral estate of her father, i.e., defendant no.1, namely, Ramesh Grover.

3. The plaintiff herein, being the daughter of defendant no.1, claims to be a coparcener and a Class-I legal heir under the Hindu Succession Act, 1956 (*hereinafter referred to as the Act of 1956*). Defendant nos. 2 and 3 are her brothers, and defendant no.4 is her mother.

4. The case of the plaintiff in essence is that the parties, as mentioned in the plaint, constitute a joint Hindu family, which is governed under the Mitakshara School of Hindu Law, and according to her, no partition, either oral or written, has taken place till date, thus rendering the entire ancestral estate undivided.

5. A perusal of the plaint would indicate that the paternal grandfather of the plaintiff, late Sh. Ram Lal Grover, and his wife, late Smt. Usha Grover, passed away intestate. According to the plaintiff, they have left behind a substantial ancestral estate, comprising, *inter alia*, immovable properties and a family-owned business enterprise known as *Grover Steels*. Upon their demise, the said estate devolved upon defendant no.1, the plaintiff's father, by virtue of survivorship and inheritance, and the properties so inherited continued to form part of the joint family estate.

6. The immovable properties, as delineated in the plaint, comprise of:

a. Residential house bearing no. C-7, Green Park (Main), New Delhi;
b. Plot no.4, Loha Mandi, Naraina, Delhi;
c. Property no.39, Shradhanand Marg, Ajmeri Gate, Delhi; and
d. Residential premises at B-5/204, Safdarjung Enclave, stated to have been acquired from the *Stridhan* of defendant no.4 as well as joint family funds (*hereinafter referred to as the suit properties*).

7. It is the case of the plaintiff that she had made repeated oral requests to the defendants for an amicable and just division of the joint Hindu family estate. However, such entreaties were met with complete disregard and refusal by the defendants. It is specifically averred by the plaintiff that defendant no.2, in active collusion with defendant no.1, has employed coercive and oppressive tactics to exclude the plaintiff from enjoying her share. Furthermore, defendant no.2 is alleged to have exerted undue influence upon defendant no.1 to usurp the suit properties by seeking their unilateral transfer in his own name, in addition to misappropriating income arising therefrom for his exclusive benefit.

8. Furthermore, it is also the case of the plaintiff that whenever she has asserted her rights or challenged the oppressive conduct of defendant no.2, she has been subjected to threats, including to destabilise her matrimonial life. It is further stated in the plaint that the conduct of the defendants, as they are in physical possession of the suit properties, gives rise to a reasonable apprehension that they may alienate, encumber, or otherwise create third-party interests in the suit properties, thereby, causing grave and irreparable prejudice to the proprietary and coparcenary rights of the plaintiff.

9. In the light of the foregoing facts and circumstances, the plaintiff has prayed for a decree of partition in respect of the suit properties, declaration that the plaintiff's entitlement to 1/5th share therein as a coparcener and Class-I heir, permanent injunction restraining the defendants from selling, transferring, alienating, or creating any third-party interest in the suit properties, and direction to the defendants to make full and complete disclosure of any other ancestral or jointly held properties within their knowledge and possession.

Submissions

10. Mr. Sarad K. Sunny, learned counsel for the defendant nos. 1 and 2, at the outset, submits that the instant suit is wholly misconceived and devoid of merit. He contends that the suit is based on the false premise that the suit properties are joint family properties or ancestral properties forming part of a purported Hindu Undivided Family (*hereinafter referred to as an HUF*), which the plaintiff claims entitlement to as a coparcener. According to him, the plaint so presented by the plaintiff fails to satisfy the essential legal requirements for establishing the existence of an HUF or joint family property.

11. It is further submitted by Mr. Sunny that the plaint is liable to be rejected on the following grounds:-

(i) There is a complete absence of specific averments in the plaint regarding the date, month, or year on which the suit properties were allegedly thrown into the common hotchpotch, which is *sine qua non* for a property to attain the character of joint family property under Hindu law post the enactment of the Act of 1956.

(ii) Furthermore, he also submits that the plaintiff has failed to plead the source of any joint family nucleus or funds through which the suit properties were purchased. In fact, learned counsel avers, there is no pleading or material assertion of the existence or formation of an HUF, nor is there any indication of the purported HUF holding the suit properties in common.

(iii) Learned counsel further submits that each of the suit properties has a distinct and documented lineage of self-acquisition. He avers that

the Green Park property (*suit property at serial no. 'a' hereinabove*) was purchased by the late Smt. Usha Grover from her own funds and bequeathed to defendant No. 1 through a registered Will dated 28.07.1993. Further, it is stated that the sisters of defendant No.1 subsequently executed a registered relinquishment deed in his favour. Thereafter, learned counsel submits that defendant No. 1 gifted some portion of the Green Park property to defendant No. 2. Similarly, the Ajmeri Gate property (*suit property at serial no. 'c' hereinabove*) was purchased by the late Sh. Ram Lal Grover, from his own funds and bequeathed the same to defendant No. 1 by a Will. Similarly, according to him, all suit properties are demonstrably self-acquired properties of defendant no. 1, and thus, not liable to any partition.

(iv) Learned counsel further contends that the plaintiff has misrepresented certain facts and is therefore guilty of *suppressio veri*. The assertion of the plaintiff regarding gifting of the Safdarjung Enclave property (*suit property at serial no. 'd' hereinabove*) by defendant no. 1 to defendant no.2, according to Mr. Sunny, is entirely baseless, as there is no gift deed in her favour. On the contrary, it is contended that defendant no. 1 has instituted proceedings for the recovery of possession of the said property from the plaintiff.

(v) Another contention advanced by the learned counsel for defendant no.1 and 2 is that the plaintiff has not valued the suit properties correctly, for the purpose of the Court Fee and pecuniary jurisdiction.

(vi) Furthermore, another crucial contention advanced by the learned counsel is that a bare perusal of the plaint would indicate that the plaintiff has herself admitted to being a Class-I legal heir. According to him, one person can not simultaneously assert to be a Class-I legal heir and coparcener when the underlying suit properties are not established to be ancestral in nature.

12. Based on the broad contentions advanced as noted afore, Mr. Sunny, learned counsel, submits that the plaint fails to disclose the cause of action along with the material particulars as stipulated under Order VI Rule 4 of CPC. According to him, the suit, being vexatious, speculative, and an abuse of the process of law, is liable to be rejected under the provisions of Order VII Rule 11 of CPC. Learned counsel has also placed reliance upon the decision of the Supreme Court in ***Govindbhai Chhotabhai Patel & Ors. v. Patel Ramanbhai Mathur bhai***,[1] the decision of the Division Bench in ***Neeraj Bhatia v. Ravinder Kumar Bhatia & Ors.***[2] , and the decisions of this Court in ***Sh. Surender Kumar v. Sh. Dhani Ram & Ors***[3]***, Sh. Deepak Aggarwal v. Sh. Raj Goyal & Ors***.[4]***, Mrs. Saroj Salkan v. Mrs. Huma Singh & Ors.***[5], ***Arjun Singh Gupta (Deceased) &Anr. v. Ajay Kumar Gupta &Anr***.[6], in support of his submissions.

13. *Per contra*, Ms. Azra Rehman, learned counsel appearing for the plaintiff, though has not filed any formal reply, vehemently refutes the contentions advanced on behalf of the defendant nos.1 and 2 and orally

[1](2020) 16 SCC 255
[2]2024 SCC OnLine Del 4894
[3]2016 SCC OnLine Del 333
[4]2015 SCC OnLine Del 13106
[5]2016 SCC OnLine Del 2673
[6]2017 SCC OnLine Del 7284

contends that the plaintiff, in the plaint, has categorically asserted that no formal partition of the ancestral properties has taken place between the family members. She contends that the suit properties mentioned in the plaint constitute joint ancestral properties which have devolved upon defendant No. 1 from the grandparents of the plaintiff.

14. Learned counsel further submits that the plaintiff has specifically pleaded that the suit properties, along with other movable and immovable assets which have come to her knowledge after the filing of the written statement, form part of the coparcenary estate and are liable for partition under the provisions of the Hindu law. Learned counsel also submits that the plaintiff has specifically pleaded that the suit properties have been in joint possession and enjoyment of the family members and that the plaintiff, by virtue of her birth, acquired an interest therein as a coparcener under the provisions of the Act of 1956.

15. Furthermore, according to Ms. Rehman, the plaintiff has become aware of certain additional properties for the first time based on the details mentioned in the written statement of defendant no.1 and no.2 dated 29.11.2023. She submits that the defendants have referred to several other ancestral and family assets forming part of the suit properties, including interests in various firms, bank accounts, shares, jewellery, movable properties, and immovable properties, all of which are liable to partition. It is also averred by learned counsel that the plaintiff has categorically pleaded that the title documents pertaining to the suit properties are unlawfully retained in the custody of defendant nos. 1 and 2, thereby obstructing the ability of the plaintiff to furnish complete particulars.

16. It is also submitted that the plaintiff has specifically challenged the validity, execution, and genuineness of the purported testamentary instruments allegedly executed by her predecessors-in-interest, contending that the said documents are forged, fabricated, and legally unenforceable. Learned counsel has also submitted that, without prejudice to the plea of forgery and fabrication, the plaintiff has pleaded that the said alleged testamentary instruments do not satisfy the mandatory requirements for a valid execution and attestation under the governing statute and therefore cannot derogate from the coparcenary rights of the plaintiff. Learned counsel also submits that the plaintiff, being a daughter, is entitled to an equal share in the suit properties in parity with male coparceners under the Hindu Law, as recognized by a catena of judgments by the Supreme Court, particularly following the amendment to Section 6 of the Act of 1956. It is also averred by the learned counsel that the plaintiff has annexed a complete chart of the family lineage, exhibiting the status of the plaintiff as a coparcener entitled to seek partition of the suit properties.

17. Moreover, learned counsel submits that the averments made by the learned counsel seeking dismissal of the suit at the threshold are wholly misconceived. It is submitted that the plaintiff has duly pleaded the necessary particulars regarding the joint family status, the nature of the suit properties, the fraudulent acts of the defendants leading to the institution of the instant suit, and the violation of the coparcenary rights of the plaintiff. It is also submitted that it is well-settled law that a plaint must be read as a whole and that pleadings are to be construed liberally at the initial stage, particularly in suits for partition and declaration, where the complete discovery of documents and evidence can be within the exclusive knowledge and possession of the opposing party.

18. Ms. Rehman, learned counsel, in light of the foregoing, avers that the plaint is neither vague nor devoid of material particulars, but on the contrary, meticulously pleads the ancestry, co-ownership, and entitlement of the plaintiff to seek partition of the suit properties. More importantly, it is submitted by the learned counsel for the plaintiff that the contention advanced by the learned counsel for the defendant nos. 1 and 2, seeking dismissal of the suit on the alleged ground that the plaintiff has failed to plead the formation of an HUF or the act of blending the properties into the common hotchpotch, is wholly misconceived and inapplicable to the present case as the plaintiff does not claim the suit properties as part of an HUF simpliciter, but rather asserts her entitlement to partition in her capacity as a coparcener entitled to seek partition of ancestral properties. Accordingly, learned counsel submits that the plaint does not warrant dismissal and deserves to be adjudicated on merits after framing of necessary issues and upon the appreciation of oral and documentary evidence pertaining to the suit properties.

19. I have heard the rival submissions made by learned counsel appearing for the parties and have perused the record.

20. At the outset, it is essential to reiterate that the Court is thoroughly aware of the serious implications associated with invoking the provisions under Order VII Rule 11 of CPC to reject a suit at its nascent stage. The rejection of a plaint is a substantive action that must be exercised strictly within the confines of the conditions laid down under Order VII Rule 11 of CPC. The aforementioned provision is not intended to serve as a tool for preliminary scrutiny or speculative application, rather, it necessitates a meticulous analysis of the pleadings contained in the plaint to determine whether the statutory

prerequisites for maintaining a suit have been fulfilled.

21. Additionally, it merits emphasis that ordinarily, a suit should proceed to trial, given the narrow ambit of the powers of the Courts under Order VII Rule 11 of CPC. The remedy envisaged under this Rule is a self-contained and distinct procedural device that enables a Court to summarily reject a plaint at the threshold, without embarking upon a full trial or recording of evidence. The objective behind this provision is to weed out meritless suits, prevent the abuse of judicial process, minimize avoidable litigation costs, and ensure efficient deployment of judicial resources towards disputes warranting substantive adjudication. In ***Dahiben v. Arvindbhai Kalyanji Bhanusali***[7]**,** the Supreme Court has enumerated the specific grounds for rejection under this Rule, namely where the plaint: (i) fails to disclose a cause of action; (ii) is undervalued and the deficiency is not rectified within the time granted; (iii) is insufficiently stamped and the deficit remains uncured despite opportunity; (iv) is barred by any provision of law; (v) is not filed in duplicate; or (vi) is in breach of any mandatory procedural requirement under CPC. Further, the proviso appended to Rule 11 empowers the Court, in exceptional circumstances, to grant time for curing procedural defects so as to avert manifest injustice.

22. The principles enunciated in ***Dahiben*** were reaffirmed by the Supreme Court in ***Shri Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle*** [8]**,** wherein it was reiterated that Courts must deter vexatious or frivolous suits at the inception itself to protect judicial time and uphold the sanctity of judicial proceedings. Recently, in ***Smt. Uma Devi & Ors.***

[7](2020) 7 SCC 366
[8]2024 SCC OnLine SC 3844

v. Sri Anand Kumar & Ors.[9], the Supreme Court emphasized that clever drafting of a plaint to create an illusion of cause of action cannot be sustained and uphold the applicability of Order VII Rule 11 of CPC. The Court reiterated the decisions in ***Shri Mukund Bhavan Trust*** and ***Dahiben*** to reinforce that Courts can reject suits at the threshold where pleadings disclose no cause of action or are barred by law.

23. The legal contours of the power under Order VII Rule 11 of CPC were also appropriately discussed by a Division Bench of this Court in ***Manjeet Singh Anand vs. Sarabjit Singh Anand and Ors.***[10], wherein it was held that the invocation of this provision must not be done in a hasty manner. The Court must engage in diligent scrutiny of the plaint to assess whether the suit is maintainable within its jurisdiction, whether it is barred by any statute, or whether it discloses a cause of action at all. The following observations were made by the Court in paragraph No. 24 of the decision in ***Manjit Singh Anand***:-

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

[9] 2025 INSC 434
[10] FAO (OS) 83/2008.

restricted to ascertaining whether on the allegations, a cause of action is shown…"

24. The Court also takes note of the settled legal principles governing the institution of the joint Hindu family and the devolution of ancestral property under the Hindu Law, particularly in light of evolving statutory amendments and judicial precedents.

25. A joint Hindu family, as envisaged under the Mitakshara School of Hindu Law, constitutes a legal entity formed by all lineal male descendants of a common ancestor, together with their respective spouses and unmarried daughters. The continuity of such a family is legally presumed until severance of status is distinctly established. Severance necessitates demonstrable intent coupled with definitive partition, while mere divergence in rituals or residence is insufficient to disrupt the legal presumption of jointness.

26. Furthermore, joint Hindu family property is constituted through its intrinsic ancestral nature or by assets acquired through the collective efforts of family members acting in cooperation. The presumption of joint Hindu family property extends to all possessions held within the unit unless clear evidence suggests individual ownership. Upon severance, the division effectuates separate ownership.

27. The narrower body within this umbrella of Joint family property is the Hindu coparcenary, traditionally confined to a propositus and three male lineal descendants. The ownership within the coparcenary is collective and by birth, known as unobstructed heritage. Each coparcener acquires a fluctuating, undefined interest in the whole of the coparcenary property, which enlarges or

contracts by subsequent births or deaths. Until partition, the interest remains indeterminate. A single surviving coparcener holds the estate as separate property, but a fresh coparcenary is created upon the birth of a son. The management of joint property is done by the *Karta*, usually the eldest coparcener, who acts as manager of the family estate, clothed with fiduciary responsibility. The *Karta* is empowered to represent the family, incur debts, and alienate property only for legal necessity or the benefit of the estate.

28. The incidents of a Mitakshara coparcenary have been delineated by the Supreme Court in ***SBI v. Ghamandi Ram***[11] and ***CED v. Alladi Kuppuswamy***[12], and include: (i) acquisition of interest by birth, (ii) the right to demand partition, (iii) collective ownership without specific shares, (iv) joint enjoyment, (v) restrictions on alienation absent consensus or legal necessity, and (vi) the principle of survivorship, which has since been considerably eroded.

29. The Act of 1956 was enacted by the Parliament to amend and codify the law relating to intestate succession among Hindus. It classifies heirs into four categories. Class-I heirs include immediate family like sons, daughters, widows, and mothers, who have the first right to inheritance, Class-II heirs, comprise distant relatives like siblings, grandparents, and uncles, who inherit only if no Class-I heirs exist, Agnates, who are relatives through the male lineage, and Cognates, who are relatives through the female lineage. Under the Act of 1956, a daughter was not recognized as a coparcener. However, she was classified as a Class-I legal heir in the Schedule of the Act of 1956, thereby entitling her to inherit her father's estate alongside other Class-I heirs, but only in cases where

[11](1969) 2 SCC 33
[12](1977) 3 SCC 385

the father had died intestate (i.e., without leaving a testamentary document).

30. Furthermore, Section 6 of the Act of 1956, as originally enacted, dealt with the devolution of interest in the coparcenary property of a male Hindu who was a member of the Hindu coparcenary. Under the said Section, when a male Hindu, who was a coparcener in a Hindu joint family, died intestate, his undivided interest in the coparcenary property would not devolve by succession, but instead by survivorship.

31. The legislative landscape underwent a significant transformation with the enactment of the Hindu Succession (Amendment) Act, 2005 (*hereinafter referred to as 2005 amendment*), which substituted Section 6 of the Act of 1956 to affirm the principle of gender equality in matters of succession. The amended provision unequivocally confers upon daughters the status of coparceners by birth, at par with sons and male legal heirs, thereby enabling them to demand partition, own a share in coparcenary property, and dispose of it independently.

32. This progressive shift has been affirmed by the Supreme Court in ***Vineeta Sharma v. Rakesh Sharma***[13], wherein the Supreme Court held that the conferral of coparcenary rights upon daughters is by virtue of birth and is not contingent upon the existence of the father on the date of commencement of the amendment. The Court observed that the amendment is retroactive in application with respect to the rights it recognizes, and daughters are entitled to a share in the coparcenary property.

33. The Supreme Court in ***Vineeta Sharma*** held that this right applies to daughters born before or after the amendment. It was held that the fiction of

[13] (2020) 9 SCC 1

partition must be given full effect for determining the deceased's share, but it does not disrupt the coparcenary unless an express intention to sever is manifested. The relevant extracts of the aforesaid decision read as under:-

> *"107. Once the constitution of coparcenary changes by birth or death, shares have to be worked out at the time of actual partition. The shares will have to be determined in changed scenario. The severance of status cannot come in the way to give effect to statutory provision and change by subsequent event. The statutory fiction of partition is far short of actual partition, it does not bring about the disruption of the joint family or that of coparcenary is a settled proposition of law. For the reasons mentioned above, we are also of the opinion that mere severance of status by way of filing a suit does not bring about the partition and till the date of the final decree, change in law, and changes due to the subsequent event can be taken into consideration.*
>
> *108. As to the effect of legal fiction, reliance was placed on CIT v. S. Teja Singh[CIT v. S. Teja Singh, AIR 1959 SC 352] , in which it was laid down that in construing the scope of legal fiction, it would be proper and even necessary to assume all those facts on which alone the fiction can operate. There is no dispute with the aforesaid proposition, but the purpose of fiction is limited so as to work out the extent of the share of the deceased at the time of his death, and not to affect the actual partition in case it has not been done by metes and bounds.*
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> *109. When the proviso to unamended Section 6 of the 1956 Act came into operation and the share of the deceased coparcener was required to be ascertained, a deemed partition was assumed in the lifetime of the deceased immediately before his death. Such a concept of notional partition was employed so as to give effect to Explanation to Section 6. The fiction of notional partition was meant for an aforesaid specific purpose. It was not to bring about the real partition. Neither did it affect the severance of interest nor demarcated the interest of surviving coparceners or of the other family members, if any, entitled to a share in the event of partition but could not have claimed it. The entire partition of the coparcenary is not provided by deemed fiction; otherwise, coparcenary could not have continued which is by birth, and the death of one coparcener would have brought an end to it. Legal fiction is only for a purpose it serves, and it cannot be extended beyond was held in State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory [State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory, 1954 SCR 53 : (1953) 1 SCC 826 : AIR 1953 SC 333] ; Bengal Immunity Co. Ltd. v. State of Bihar [Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661] ; and CED v. S.*

Harish Chandra [CED v. S. Harish Chandra, 1986 SCC OnLine All 805 : (1987) 167 ITR 230] . A legal fiction created in law cannot be stretched beyond the purpose for which it has been created, was held in Mancheri Puthusseri Ahmed [Mancheri Puthusseri Ahmed v. Kuthiravattam Estate Receiver, (1996) 6 SCC 185] thus: (SCC p. 195, para 8)

"8. ... In the first place the section creates a legal fiction. Therefore, the express words of the section have to be given their full meaning and play in order to find out whether the legal fiction contemplated by this express provision of the statute has arisen or not in the facts of the case. Rule of construction of provisions creating legal fictions is well settled. In interpreting a provision creating a legal fiction the court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the section by which it is created. It cannot also be extended by importing another fiction."

110. It is apparent that the right of a widow to obtain an equal share in the event of partition with the son was not deprived under old Section 6. Unamended Section 6 provided that the interest of a coparcener could be disposed of by testamentary or intestate succession on happening of exigency under the proviso. Under the old law before 1956, a devise by a coparcener of Hindu Mitakshara family property was wholly invalid. Section 30 of the 1956 Act provided competence for a male Hindu in Mitakshara coparcenary to dispose of his interest in the coparcenary property by a testament.

111. In Gyarsi Bai v. Dhansukh Lal [Gyarsi Bai v. Dhansukh Lal, AIR 1965 SC 1055] , it was held that the shares of all coparceners should be ascertained in order to work out the share of the deceased coparcener, partition to be assumed and given effect to when the question of allotment comes, but this Court did not lay down in the said decision that the deeming fiction and notional partition brought an end to the joint family or coparcenary.

112. In case coparcenary is continued, and later on between the surviving coparceners partition takes place, it would be necessary to find out the extent of the share of the deceased coparcener. That has to be worked out with reference to the property which was available at the time of death of deceased coparcener whose share devolved as per the proviso and Explanation I to Section 6 as in case of intestate succession.

113. In Hari Chand Roach v. Hem Chand [Hari Chand Roach v. Hem Chand, (2010) 14 SCC 294 : (2012) 1 SCC (Civ) 430] , a widow inherited

the estate of her husband and had an undivided interest in the property. The subsequent family arrangement was entered into whereby she exchanged her share for another property. This Court held that though her share was definite, the interest continued undivided, and there was a further family arrangement that will have the effect of giving her disposition over the property in question, which was given to her in the subsequent family arrangement. It is apparent that under an undivided interest, as provided under Section 6, the shares are definite, but the interest in the property can continue undivided."

34. Moreover, in ***Rohit Chauhan v. Surinder Singh***[14]**,** the Supreme Court held that the ancestral property remains a separate property of the coparcener until the birth of a son, after which it becomes a joint family property. A sole surviving coparcener has full rights to sell or alienate the property as his own, but once a son is born, the property transforms into coparcenary property, restricting absolute alienation. The Court held that so long, on partition, an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property, and the son would acquire an interest in that and become a coparcener. Applying the aforesaid position, the Court held that the father of the appellant therein had full ownership rights until his birth, but post-birth, the property became coparcenary/ancestral. The relevant extract reads as under: -

"..*In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male*

[14](2013) 9 SCC 419

members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.

12. The view which we have taken finds support from a judgment of this Court in M. Yogendra v. Leelamma N. [(2009) 15 SCC 184 : (2009) 5 SCC (Civ) 602] in which it has been held as follows: (SCC p. 192, para 29)

"29. It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him. It is one thing to say that the property remains a coparcenary property but it is another thing to say that it revives. The distinction between the two is absolutely clear and unambiguous. In the case of former any sale or alienation which has been done by the sole survivor coparcener shall be valid whereas in the case of a coparcener any alienation made by the karta would be valid."

13. Now referring to the decision of this Court in Bhanwar Singh [(2008) 3 SCC 87 : (2008) 1 SCC (Civ) 779] relied on by the respondents, the same is clearly distinguishable. In the said case the issue was in relation to succession whereas in the present case we are concerned with the status of the plaintiff vis-à-vis his father who got property on partition of the ancestral property."

35. At this stage, it is also pertinent to note the difference between ancestral and self-acquired property. An ancestral property, as reaffirmed by this Court in ***Birbal Saini v. Satyawati***[15], is one in which legal heirs acquire an interest by birth, flowing through the male lineage. It was reiterated that the nature of ancestral property is that it is held collectively and cannot be disposed of

[15] 2024 SCC OnLine Del 9267

without the consent of all coparceners. Self-acquired property, conversely, is obtained through a personal endeavour or outside the paternal male lineage and may be freely alienated by the owner. Furthermore, the doctrine of blending allows a coparcener to merge self-acquired property into joint family property through unequivocal intention, subjecting it to the incidents of the coparcenary. Upon partition, the share of the coparcener becomes a separate property, yet may again assume the character of ancestral property in the hands of his descendants.

36. While reiterating the legal position and decisions elucidated hereinabove, this Court in ***Harmanpreet Kaur Dhir v. Pritam Singh Bhatia***[16], unequivocally held that the issue as to whether a particular property constitutes part of an HUF or is self-acquired property is a quintessentially triable issue, warranting adjudication based on evidence adduced by the parties. It was further observed that the determination of disputed claims regarding the legal character of the suit property cannot be undertaken at the preliminary stage by resorting to Order VII Rule 11 of CPC.

37. This Court, in ***Harmanpreet Kaur Dhir***, also highlighted that the exercise of powers under Order VII Rule 11 of CPC results in a drastic dismissal of the proceedings without affording the plaintiff an opportunity to substantiate the claims through evidence. Consequently, such power must be exercised sparingly and only where, upon a plain reading of the plaint, it is absolutely clear that no cause of action arises or that the suit is *ex facie* barred by law.

38. In the aforesaid decision, after examining the factual backdrop, the Court

[16] 2025: DHC: 1787

noted that the pleadings in the plaint, corroborated by documentary material, *prima facie* reflected the intention of defendant no.1 to treat the disputed property as part of the HUF estate, thereby renouncing claims of exclusive ownership. Given the existence of a plausible cause of action and discernible triable issues, the Court found that the stringent conditions required for rejection of the plaint under Order VII Rule 11 of CPC were not fulfilled, leading to the dismissal of the application seeking rejection. The pertinent extract is set out hereinbelow:

> "*49. However, it is important to note that the question of whether the suit property is in fact HUF property is a matter requiring adjudication on merits after the parties have led their respective evidence. Such issues, involving competing claims on the legal character of the property, cannot be summarily determined at this preliminary stage. The power under Order VII Rule 11 CPC must be exercised with circumspection, given that its invocation results in the summary dismissal of a suit solely on the basis of the pleadings, without an opportunity for evidentiary substantiation. Only where it is unmistakably apparent from the plaint that no cause of action exists or a legal bar is clearly established, should the plaint be rejected. Where triable issues arise, a full trial must ensue*."

39. In ***M.R. Ramasamy v. Karthika***[17], the High Court of Madras reiterated that the question as to whether the suit properties constitute ancestral properties forming part of an HUF corpus, or are self-acquired properties of individual members, is a contentious factual issue that necessitates adjudication at trial and cannot be summarily determined at the stage of considering an application under Order VII Rule 11 of CPC. The Court observed that the plaint therein specifically alleged that the suit properties were acquired from the income derived from the joint family nucleus, thus disclosing a cause of action for partition. It was held that whether the suit properties were indeed purchased out

[17] 2022 SCC Online Mad 7852

of the joint family nucleus, and whether they retained the character of ancestral properties, are matters requiring a full-fledged trial based on evidence. Consequently, it was held that the power under Order VII Rule 11 of CPC, being an exceptional remedy resulting in non-suit of the plaintiff without trial, must be exercised sparingly and strictly confined to cases where, on a plain reading of the plaint, no cause of action or a clear legal bar is disclosed. Thus, the Court declined to interfere with the refusal of the lower court to reject the plaint and directed the matter to proceed to trial.

40. Furthermore, in ***Durga Prasad Shetty v. Dr. Shashikala & Ors***.[18], the High Court of Karnataka reaffirmed the settled principle that the determination of whether a particular property is joint family ancestral property or the exclusive self-acquired property of an individual, is a mixed question of fact and law, necessitating adjudication through a full-fledged trial. The Court emphasized that in suits for partition and separate possession, particularly where relationships are admitted, any claim by one party asserting absolute ownership over certain properties, asserting them as self-acquired, cannot be summarily accepted or rejected at the stage of preliminary objections or amendment proceedings. Rather, such assertions are subject to the evidentiary process wherein the burden initially lies upon the plaintiff to establish the ancestral character of the properties, which, upon *prima facie* discharge, shifts onto the defendants to rebut the presumption and establish self-acquisition. It was observed that the question as to the nature of the property, whether ancestral or self-acquired, is a *triable issue* and cannot be resolved at the threshold by invoking procedural bars such as Order VII Rule 11 of CPC.

[18] W. P. NO. 22744 OF 2021(GM-CPC) dated 11.07.2022

41. Upon an observant consideration of the legal framework and the elucidation of the decisions referred to hereinabove, it is apposite to observe that, at the stage of adjudicating an application under Order VII Rule 11 of CPC, it is sufficient if the plaintiff, in the plaint, pleads that the suit properties are ancestral in nature and asserts that the joint status of the properties have remained intact.

42. The threshold requirement under the CPC is the disclosure of a cause of action, a mere assertion, duly supported by requisite pleadings to the effect that the suit properties form a part of the joint family corpus, is adequate to withstand preliminary rejection. The veracity or otherwise of such a claim, namely, whether the property is indeed ancestral or self- acquired property or has transmuted into self-acquired property, is a matter that lies within the domain of contested factual adjudication, and cannot be summarily adjudicated upon at the inception without affording the parties an opportunity to lead evidence.

43. It is also observed that the delineation hereinabove affirms that the character of the property, whether ancestral or self-acquired, constitutes a quintessential triable issue. The power contemplated under Order VII Rule 11 of CPC is of a narrow and exceptional nature, strictly confined to instances where, on a demurrer, the plaint discloses no cause of action or is barred by law. In the presence of specific pleadings averring the ancestral character of the suit property and the continuance of joint status, the plaint cannot be interdicted at the threshold only on a rival claim by the opposite party. The determination of the true nature of the property must necessarily await the outcome of a full-fledged trial, wherein the rival claims of the parties shall be tested on the anvil

of evidence adduced before the Court.

44. To embark upon an inquiry at the preliminary stage regarding the precise character of the suit property would not only impinge upon the evidentiary domain reserved for trial, but would also be prejudicial to the rights of the parties to substantiate their respective claims through due process of law. Such premature adjudication would, in effect, denude the plaintiff of the right to establish the ancestral character of the suit properties through pleadings and evidence, and render the institution of the suit itself otiose. It is axiomatic that the rejection of a plaint, which results in a dismissal of suit pre-trial, must not be permitted where the pleadings disclose a *prima facie* cause of action and raise triable issues warranting substantive adjudication on merits.

45. It is noted that the plaintiff is seeking a decree for partition of the suit properties, a declaration affirming her entitlement to a 1/5th share therein as a coparcener and Class-I heir under the Act of 1956, a decree of permanent injunction restraining the defendants from alienating, transferring, or creating third-party interests in relation to the suit properties during the pendency of the proceedings, and directions for the defendants to disclose all other movable and immovable assets that are part of the joint family estate within their knowledge and possession.

46. Further, the plaintiff has categorically pleaded that she came to know of the complete extent of the movable and immovable properties of her joint family, as well as certain testamentary instruments allegedly executed by the predecessors-in-interest, only upon the filing of the written statement by defendant Nos. 1 and 2. She has disputed the validity of the said instruments, alleging them to be forged and fabricated, and not executed in accordance with

the law.

47. It is also pleaded that the original title documents relating to the suit properties are in the custody of the defendants. In such circumstances, the plaintiff cannot be faulted for her inability to furnish full particulars at the inception of the proceedings. The pleadings disclose that the plaintiff has annexed a chart demonstrating the ancestry.

48. Whether the suit properties are in fact ancestral, whether the plaintiff is entitled to a share therein, and whether the documents relied upon by the defendants are genuine, are all matters that go to the root of the instant case and can only be determined after issues are framed and evidence is led to that effect. The determination of the character of the suit properties at a preliminary stage, particularly upon an application under Order VII Rule 11 of CPC, defeats the very purpose of instituting the suit and renders the plaintiff's right to lead evidence and establish their claim otiose. If such an application were to be allowed and the character of the property, whether ancestral/HUF or self-acquired, were to be conclusively adjudicated at the threshold, it would result in the premature disposal of the suit. A finding that the property is ancestral or part of an HUF would necessarily entail a decree in favour of the plaintiff, while a finding of self-acquisition would require rejection of the plaint. Such a recourse would amount to a mini-trial at the stage of maintainability, which is impermissible in law and outside the jurisdiction of the Court under the provisions of Order VII Rule 11 of CPC. The existence of *facta probanda*, i.e., facts asserted that require to be proved, is sufficient to disclose a *prima facie* cause of action.

49. At this stage of an application under Order VII Rule 11 of CPC, the Court

is required to examine only whether the plaint discloses a cause of action and whether the suit is barred by law. The averments made in the plaint, if taken at face value, clearly disclose a cause of action and a triable dispute. The plaintiff has laid a foundation for seeking partition and injunction and has pleaded the necessary facts to establish her claim, subject to proof.

50. Accordingly, this Court is of the opinion that the plaint makes sufficient averments regarding the ancestral nature of the suit properties. The question as to whether the suit properties are ancestral or self-acquired is a mixed question of law and fact, which can only be decided after trial.

51. The plaint, therefore, cannot be rejected at this stage. Accordingly, the instant application stands dismissed.

CS(OS) 567/2023, I.A. 17916/2023, I.A. 24362/2023 and I.A. 3657/2024

1. Let the matter to proceed before the Joint Registrar for taking up further necessary steps in accordance with extant rules.

2. List before the concerned Joint Registrar on 06.08.2025.

3. Thereafter, list the matter before the Court on the date to be assigned by the concerned Joint Registrar.

PURUSHAINDRA KUMAR KAURAV, J

MAY 07, 2025
mj

Click here to check corrigendum, if any