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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **CS(OS) 679/2024 and I.A. 37445/2024**

KRITIKA JAIN
W/O SH. ABHINAV JAIN
A-841, 1ST FLOOR
SUSHANT LOK 1, GURUGRAM .....PLAINTIFF

(Through: Ms. Aparna Jain, Adv.)

Versus

1. RAKESH JAIN
S/O LATE SH. PAWAN KUMAR JAIN
R/O C4F/196, PANKHA ROAD, JANAKPURI,
NEW DELHI – 110058 …..DEFENDANT NO. 1

2. NEENA JAIN
W/O NARESH JAIN
H. NO. 36, GUJRAWALA TOWN,
PART – 2, DELHI – 110009 ……DEFENDANT NO. 2

(Through: Mr. Vineet Jindal, Ms. Urvashi Parkash, Ms. Richa Pandey and Ms. Akshita Thakur, Advs for D-1 and 2.)

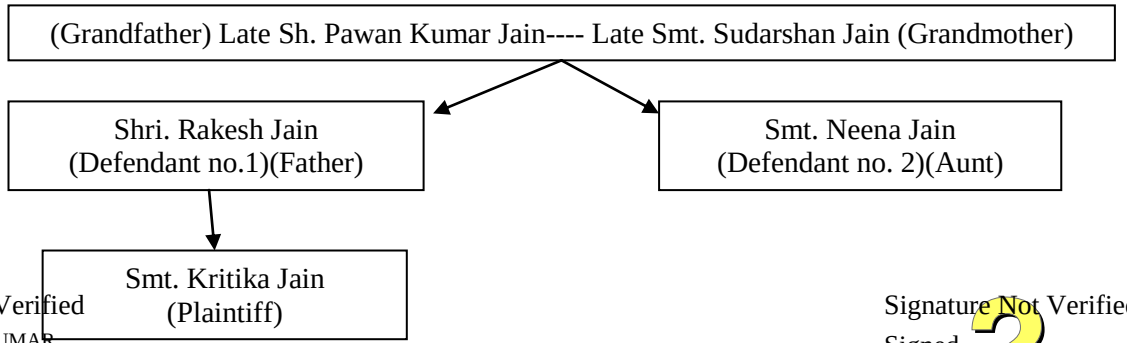
% Reserved on: 20.08.2025
Pronounced on: 09.09.2025

J U D G M E N T

I.A. 46721/2024 (UNDER ORDER VII RULE 11 OF CPC FOR REJECTION OF THE PLAINT)

1. The instant application is filed by the defendants herein under Order VII Rule 11(a) of the Code of Civil Procedure, 1908 (CPC), seeking rejection of the plaint on the ground that no cause of action is disclosed therein.

2. The present civil suit has been filed by the plaintiff against her father, Sh. Rakesh Jain arrayed as defendant no. 1 herein, and her paternal aunt, Smt. Neena Jain arrayed as defendant no. 2, seeking partition of the property bearing number C4F/196, Pankha Road, Janakpuri, New Delhi-110058 ('*suit property*'). The case set up in the plaint is that the suit property was purchased by late Sh Pawan Kumar Jain, the paternal grandfather of the plaintiff, sometime in the years 1972-1973, thereby acquiring absolute rights and title over the same. Late Sh. Pawan Kumar Jain is stated to have passed away intestate, on 26.06.1994, leaving behind his widow, late Smt. Sudarshan Jain and children, Sh. Rakesh Jain and Smt. Neena Jain as his legal heirs. Late Smt. Sudarshan Jain, the paternal grandmother of the plaintiff is also stated to have passed away intestate on 19.01.2023. The family tree of late Sh. Pawan Kumar Jain is produced below, for reference:



3. In the plaint, the plaintiff avers that when she asked to partition the suit property, the defendants kept on avoiding on one pretext or the other, and set about trying to alienate and create third party rights in the suit property in order to deprive her of a share in the same. The plaintiff avers that she has filed the present suit in order to protect her interest in the suit property.

4. By way of the present suit, the plaintiff seeks declaration that she is entitled to 1/4th share in the suit property and for partition of the same accordingly. Apart from the aforenoted prayers, the plaintiff also seeks other ancillary reliefs. The prayer clause of the plaint is reproduced below, for reference:

> *"a. Pass an ad-interim order restraining the defendants from creating any third-party rights in the suit property till the pendency of this present suit;*
>
> *b. "Pass a decree of declaration that the Plaintiff is entitled to 1/4th share in the undivided ½ share of Defendant No. 1 in the suit property being C4F/196, Pankha Road, Janakpuri, New Delhi;*
>
> *c. Pass a decree cancelling the relinquishment deed dated 12.08.2024 as null and void;*
>
> *d. pass a preliminary decree of partition of the suit property being No. C4F/196, Pankha Road, Janakpuri, New Delhi; and*
>
> *e. pass an order appointing a local commissioner to suggest mode of partition of the suit property by metes and bounds; and*
>
> *f. pass a final decree of partition delineating and separating the 1/4th share each of the Plaintiff in the undivided share of Defendant No. 1 in the suit property bearing No. C4F/196, Pankha Road, Janakpuri, New Delhi; and*
>
> *g. pass a decree of permanent injunction restraining the Defendant no. 1 and 2 from in any manner selling, mortgaging, transferring and/ or encumbering the suit property and/ or creating third party rights therein; and/ or*
>
> *h. award costs of these proceedings in favour of the Plaintiff and against the defendants; and/ or*

i. pass any other or further order(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the present case."

5. The defendants, by way of the present application under Order VII Rule 11(a) of the CPC, seek rejection of the plaint on the ground of non-disclosure of cause of action for institution of the suit.

6. Mr. Vineet Jindal, learned counsel for the defendants, submits that upon the death of the plaintiff's grandparents, the suit property devolved solely on the defendants under Section 8 of the Hindu Succession Act, 1956, *('HSA')* and therefore, the plaintiff cannot claim to have any right over the suit property.

7. Learned counsel for the defendants submits that the plaintiff has filed the present suit only with a view to pressurise the defendants, and prays that the plaint be rejected.

8. Ms. Aparna Jain, learned counsel for the plaintiff, opposes the aforesaid submissions and contends that the suit property did not devolve on the defendants under Section 8 of the HSA, and is the ancestral property of the plaintiff having been the self-acquired property of her paternal grandfather.

9. Learned counsel for the plaintiff further submits that the plaint discloses the cause of action for the institution of the present suit, insofar as it contains averments that the defendants, with a view to deprive her of her rightful share in the suit property, are trying to create third party rights in the same.

10. I have heard learned counsel for the parties and perused the record.

11. The provision under Order VII Rule 11(a) of the CPC empowers the Court to reject a plaint, where it does not disclose a cause of action. Therefore, the short question that arises for consideration in the present application is whether the plaint discloses a cause of action i.e. the foundational facts to claim a relief from the Court.

12. The entire case of the plaintiff seems to premise on the assumption that the suit property is her ancestral property. Under the Mitakshara school of Hindu law, prior to the enactment of the HSA, property inherited by a person from his father, father's father, or father's father's father would be ancestral property in his hands and thus, a right to a share in the same would vest in his son, the moment he is born. Reference can be made to the decision of the Supreme Court in ***Trijugi Narain v. Sankoo***[1], the relevant part of which reads thus:

> *"8. In order to decide the question, we must first notice the difference between the joint Hindu family and coparcenary. Coparcenary, as observed in Surjit Lal Chhabda v. CIT [Surjit Lal Chhabda v. CIT, (1976) 3 SCC 142 : 1976 SCC (Tax) 252] , is a narrower body than the joint Hindu family. Under the Mitakshara Hindu Law, any property inherited by a male Hindu from his father, father's father or father's father's father is ancestral property. The male descendant who inherits the property in the above manner did not inherit the property absolutely as a separate property, but as coparcenary property."*

13. However, the enactment of the HSA brought about a drastic change in the law relating to intestate succession amongst Hindus in India. By virtue of Section 4 of the HSA, any text, rule, or

[1] 2019 INSC 1344

interpretation of Hindu law, in respect of which provision was made in the HSA, ceased to have effect. Section 8 of the HSA, contains certain rules of succession in respect of the property of a male Hindu dying intestate. The said provision is reproduced below, for reference:

> *"8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—*
>
> *(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;*
>
> *(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;*
>
> *(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and*
>
> *(d) lastly, if there is no agnate, then upon the cognates of the deceased."*

14. A perusal of the said provision indicates that in case a male Hindu dies intestate, leaving behind relatives/heirs specified in Class I of the Schedule to the HSA, his property shall devolve on the said relatives/heirs to the exclusion of all other persons. The Class I heirs specified in the Schedule are as follows:

> *"Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son son of a predeceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son."*

15. It is pertinent to note that grandchildren, who are not children of a predeceased child, are not included in the list of Class-I heirs.

Therefore, if Section 8 is correctly appreciated, the suit property cannot be deemed to have devolved on the plaintiff upon the death of her paternal grandfather, her father being alive at the time of death of the grandfather. The suit property devolved solely on the defendants and their mother. Thereafter, upon the death of the defendants' mother, her share in the suit property devolved similarly, under Section 15 (1) (a) of the HSA, solely on the defendants. The said provision is reproduced below, for reference:

> *"15. General rules of succession in the case of female Hindus.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,— (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;"*

16. The Supreme Court in its judgment in ***Yudhister v. Ashok Kumar***[2] followed its decision in ***Commissioner of Wealth Tax, Kanpur and others v. Chander Sen and others***[3]**,** and held that the property inherited by a person under Section 8 of the HSA, is taken by him in his individual capacity, and not as the karta of his family. The relevant portion of the said judgment is extracted below, for reference:

> *"10. This question has been considered by this Court in CWT v. Chander Sen [(1986) 3 SCC 567 : 1986 SCC (Tax) 641] where one of us (Sabyasachi Mukharji, J.) observed that under the Hindu law, the moment a son is born, he gets a share in father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family*

[2] (1987) 1 SCC 204
[3] (1986) 3 SCC 567

with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as karta of his own undivided family but takes it in his individual capacity. At p. 577 to 578 of the Report, this Court dealt with the effect of Section 6 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th Edn., pp. 924-26 as well as Mayne's Hindu Law, 12th Edn. pp. 918-19. Shri Banerji relied on the said observations of Mayne on Hindu Law, 12th Edn., at p. 918-19. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12th Edn., p. 919. In that view of the matter, it would be difficult to hold that property which devolved on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-à-vis his own sons. If that be the position then the property which devolved upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house."

17. The Supreme Court in its decision in ***Trijugi Narain v. Sankoo*** also held as under:

"10. However, with the enforcement of the Succession Act with effect from 17-6-1956, any property inherited by an heir vide intestate succession in the event of death occurring after 17-6-1956 is absolute or individual property and not ancestral property. In the present case, we are not concerned with the concept of deemed partition of existing coparcenary property on death of a coparcener, execution of a will by coparcener of his undivided interest vide Section 30 of the Succession Act or the amendments made in the Succession Act vide Act 39 of 2005 applicable with effect from 9-9-2005."

18. In ***Surender Kumar v. Dhani Ram and Others,***[4] this Court

[4] 2016 SCC OnLine Del 333

followed the view endorsed by the Supreme Court in ***Yudhishter v. Ashok Kumar***, and held as follows:

> *"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 individual's 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."*

19. On an appreciation of the provision under Section 8 of the HSA and the aforenoted decisions, it could be concluded that the share of defendant no. 1 in the suit property is his absolute property, and the plaintiff does not have any right in the same. The right asserted by the plaintiff is not recognized by the rules of succession as per Section 8 of the HSA.

20. Having concluded that the plaintiff does not have any right over the suit property, the next aspect to be examined is whether there exists any cause of action for the institution of the present suit.

21. The phrase 'cause of action' has been defined in ***P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Ediction, Volume I***, as follows:

> *"'Cause of action' has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of the grievance founding the action, not merely the technical cause of action."*

22. The Supreme Court, in its judgment in ***Oil and Natural Gas Commission v. Utpal Kumar Basu and others***,[5] defined the said phrase as, the facts which the plaintiff needs to prove in order to entitle her to get the relief sought by her. The relevant portion of the said

[5] (1994) 4 SCC 711

judgment is reproduced below, for reference:

> *"6. It is well settled that the expression 'cause of action' means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court……"*

23. A perusal of the aforenoted authorities indicates that the plaintiff's purported right over the suit property, which she is required to prove in order to succeed in the instant suit, forms an integral part of the cause of action for the suit. Since the plaint does not disclose any right of the plaintiff over the suit property, it is held that the plaint does not disclose any cause of action for the present suit. For, there arises no question of partition of the suit property or any declaration qua the same or any prohibition upon the defendants, at the instance of the plaintiff, without the existence of a valid right therein.

24. In light of the foregoing discussion, the Court is of the opinion that the plaint is liable to be rejected under Order VII Rule 11(a) of the CPC. Therefore, the instant application stands allowed.

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1. Accordingly, the plaint stands rejected, along with the pending application.

2. No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 09, 2025
aks/sp