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

% *Date of Decision: 2nd December 2025*

\+ CS(OS) 93/2023 with I.A. 2556/2023, I.A. 8465/2023 and I.A. 1913/2024

AMRITA NARANG .....Plaintiff
Through: Mr. Shailen Bhatia, Ms. Ekta Nayar Saini, Ms. Deeksha Gulati, Mr. Aparna Sharma, Mr. Bhaven and Mr. Abhishek, Advocates.

versus

HARPAL SINGH & ANR. .....Defendants
Through: Mr. Abhishek Mohan, Advocate for D-1.
Mr. Lal Singh Thakur, Mr. Sudhir Tewari, Ms. Mehul Gulati, Mr. Naman Chowdhary, Mr. Rachit, Mr. Tarun Maan, Ms. Sonali Singh and Ms. Kavya, Advocates for D-2.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

I.A. 8465/2023 *(u/O VII Rule 11 of CPC)* in CS(OS) 93/2023

1. The present suit has been filed by the plaintiff *inter alia* seeking a decree of declaration and permanent injunction.

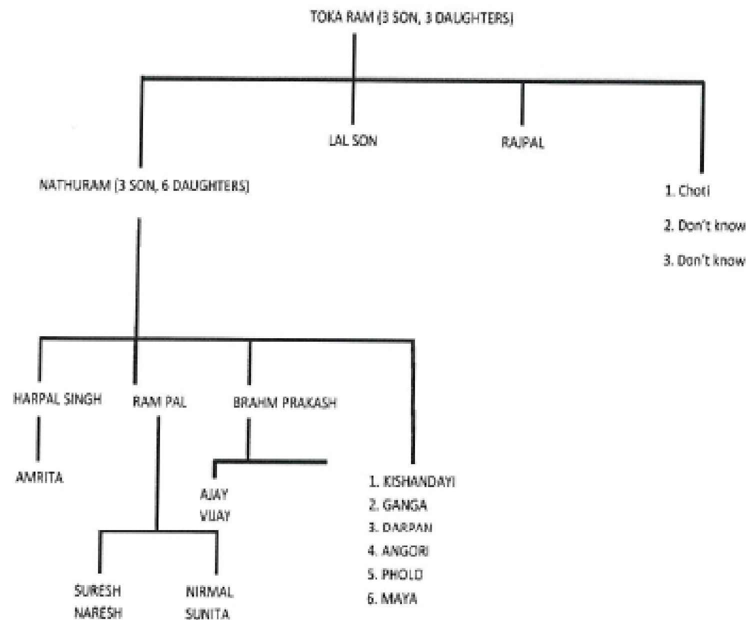
2. This application has been filed under Order VII Rule11 of the Code of Civil Procedure, 1908 (hereinafter 'CPC') seeking rejection of the plaint on

the ground that the plaintiff has no right or interest in the properties that are subject to the said suit in light of Section 8 of the Hindu Succession Act, 1956 as the subject properties belong to the grandfather of the plaintiff.

3. In this regard, reference may be made to the averments made in the plaint.:-

3.1. The plaintiff is the daughter of Sh. Harpal Singh, originally impleaded as the defendant no.1 in the suit. The plaintiff was born out of the wedlock of the defendant no.1 and Ms. Maya Devi.

3.2. The family pedigree chart as given in paragraph 7 of the plaint is set out below:-



3.3. The plaintiff contends that she is entitled to a declaration that the properties belonging to the Late Sh. Toka Ram, great-grandfather of the plaintiff and Late Sh. Nathu Ram, grandfather of the plaintiff, are ancestral.

4. The present suit has been filed seeking the following reliefs:-

"a) That a declaration may be passed that the following properties may be declared as ancestral property vis-à-vis Plaintiff:

i. Mahipalpur – having address at Khasra No.334/2, Mahipalpur, New Delhi.

ii. Ancestral land in name of Amrita's Grandfather Shri. Nathu Ram, at Village Devli, New Delhi.

iii. Shares in various Khasras in village Ladhpuri, Jila- Alwar, Rajasthan as mentioned in para-10.

iv. Apartment in Dwarka having address at- Flat No. A-804, N.T.P.C. Employees CGHS Ltd., Plot No. 10, Sector-19B, Krishna Garden Society, Dwarka, New Delhi.

v. Commercial shops in Dwarka in the same complex, Krishna Garden.

vi. House No. 683, Sector 21, Gurugram, Haryana.

vii. 6 shops of Defendant No. 1 in Village Devli, New Delhi.

b) That a consequential relief in the form of permanent injunction may be passed so that the Defendant No. 1 or 2 may not alienate the said properties namely.

i. Mahipalpur- having address at Khasra No. 334/2, Mahipalpur, New Delhi.

ii. Shares in various Khasras in village Ladhpuri, Jila - Alwar , Rajasthan as mentioned in para- 10.

iii. Apartment in Dwarka having address at- Flat No. A -804, N.T.P.C Employees CGHS Ltd. , Plot No . 10, Sector-19B, Krishna Garden Society , Dwarka, New Delhi.

iv. Commercial shops in Dwarka in the same complex, Krishna Garden.

v. House No. 683, Sector 21 , Gurugram, Haryana.

vi. 6 shops of Defendant No. 1 in Village Devli , New Delhi."

5. Subsequent to the filing of the present suit, the defendant no.1 expired

on 21st November, 2023. Subsequently, *vide* orders dated 24th July 2024 and 22nd August 2024, the legal representatives of the defendant no.1, *i.e.* Smt. Maya Devi and Sh. Samrat were impleaded as the defendant no.2 and defendant no.3 respectively.

6. It is the case of the defendants that the properties mentioned by the plaintiff of Late Sh. Nathu Ram were not Hindu Undivided Family (HUF) properties/joint Hindu family properties, but were the individual properties of the Late Sh. Nathu Ram. Therefore, the plaintiff has no right in the subject properties under Section 8 of Hindu Succession Act, 1956. The properties in question, having devolved from the plaintiff's grandfather, do not vest any share in the plaintiff, who is not a Class I legal heir. Since the father of the plaintiff was alive at the time of filing of the suit, the plaintiff cannot lay any claim to the properties of Late Sh. Nathu Ram.

7. Notice in this application was issued on 29th August 2024.

8. Reply has been filed on behalf of the plaintiff.

9. I have perused the entire plaint and the documents filed along with the plaint.

10. From a reading of the plaint, what appears is that it is the case of the plaintiff that all the properties which are subject matter of the present suit are either ancestral or purchased by the defendant no.1 out of the sale proceeds of said ancestral properties as well as from the joint family funds. Hence, the aforesaid properties qualify as joint family properties.

11. In this regard, a reference may be made to the judgment of Coordinate Bench of this Court in ***Sunny (Minor)* v. *Sh. Raj Singh***[1], the relevant

[1] 2015 SCC OnLine Del 13446

paragraphs of which are set out below:

> *"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 latter's 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 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.***
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> *** *** ***
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> *9. Onus of important issues such as issue nos. 1 and 2 cannot be discharged by oral self-serving averments in deposition, once the case of the plaintiffs is denied by the defendants, and who have also filed affidavit of DW1 Sh. Ram Kumar/defendant No. 2 in the amended memo*

of parties for denying the case of the plaintiffs. ***An HUF, as already stated above, could only have been created by showing creation of HUF after 1956 by throwing property/properties in common hotchpotch or existing prior to 1956, and once there is no pleading or evidence on these aspects, it cannot be held that any HUF existed or was created either by Sh. Tek Chand or Sh. Gugan Singh. In my opinion, therefore, plaintiffs have miserably failed to discharge the onus of proof which was upon them that there existed an HUF and its properties, and the plaintiffs much less have proved on record that all/any properties as mentioned in para 15 of the plaint are/were HUF properties.***"

[emphasis supplied]

10. The judgment in ***Sunny (Minor)*** (supra) was followed in ***Surender Kumar Khurana* v. *Tilak Raj Khurana & Ors***[2]. Both the aforesaid judgments were followed by me in ***Dr. G.M. Singh* v. *Dr. Trilochan Singh and Others***[3].

11. In ***Surender Kumar Khurana*** (supra), the suit was rejected and it was held that clear pleadings need to be made in the plaint with regard to existence and creation of an HUF including its date of creation, its *Karta* and coparceners and in the event the HUF was created after 1956, when the property claimed to be an HUF property was put in common hotchpotch. The observations of the Court in ***Surender Kumar Khurana*** (supra) are set out below:

"*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) v. Sh. Raj Singh, 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***

[2] 2016 (155) DRJ 71
[3] 2022 SCC OnLine Del 3514

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.*"

[emphasis supplied]

12. The conclusion of the Court in ***Surender Kumar Khurana*** (supra) is set out below:

"*9. Accordingly, the following conclusions are arrived at:-*

(i) The plaint only talks of 'joint funds', 'joint properties' and 'working together' without the necessary legal ingredients averred to make a

> ***complete existence of a cause of action of joint Hindu family/HUF with its properties and businesses.***
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> ***(ii) Joint funds, joint businesses or working together etc. do not mean averments which are complete and as required in law for existence of HUF and its properties have been made, and, joint funds and joint properties do not necessarily have automatic nexus for they being taken as with joint Hindu family/HUF properties.***
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> ***(iii) In view of the specific bar contained in Sections 4(1) and (2) of the Benami Act, once properties in which rights sought by the plaintiff are not by title deeds/documents in the name of the plaintiff but are in the name of defendants, the plaintiff is barred under Section 4(1) of the Benami Act from claiming any right to these properties and the only way in which the right could have been claimed was if there was an existence of an HUF and its properties, but, the plaint does not contain the legally required ingredients for existence of HUF and its properties.***
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> *(iv) With respect to the properties lacking in exact details with the complete address, no reliefs can be claimed or granted with respect to the vague properties.*
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> *10. In view of the above, the suit plaint does not contain the necessary averments as required by law for existence of joint Hindu family/HUF properties and its businesses and thus in fact the suit plaint would be barred by Section 4(1) of the Benami Act as the necessary facts to bring the case within the exceptions contained in Section 4(3) of the Benami Act are not found to be pleaded/existing in the plaint.*"
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> [emphasis supplied]

13. The legal position emerging from the abovementioned judgments is that the plaint has to contain positive statements and a reference to proper documentation with regard to the creation and existence of an HUF. There also needs to be detailed and specific descriptions of properties claimed as HUF assets. In the event the HUF is stated to have existed prior to 1956, it has to be averred that the said HUF continued and in the event the HUF came into existence after 1956, the details with regard to the creation of the HUF, including the date it was created, have to be pleaded.

14. Except for making a bald averments in the plaint that the suit

properties are ancestral properties/properties purchased out of the sale proceeds of the ancestral property, no details have been given as to the following aspects:-

i. The date when the plaintiff's grandfather expired.

ii. Whether HUF was in existence prior to 1956 or not.

iii. Whether HUF was created after 1956 and in what manner.

iv. Whether the aforesaid ancestral properties were put into the common hotchpotch.

15. In view of the legal position obtaining above, the plaint fails to disclose any cause of action.

16. Accordingly, the plaint is rejected under Order VII Rule 11 of CPC.

17. To be noted, subsequent to the filing of the present suit, another suit for partition has been filed on behalf of the plaintiff, being CS(OS) 346/2024, which is pending adjudication before this Court.

18. All pending applications stand disposed of.

AMIT BANSAL, J

DECEMBER 2, 2025
Vivek/-