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

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Date of decision: 12th November, 2025

I.A. 10980/2022 and I.A. 27697/2025

IN

+ CS(OS) 411/2022

SMT. SAVITRI SHARMA & ANR.

.....Plaintiffs

Through: Mr. N.S. Dalal, Ms. Nidhi Dalal, Mr. Alok Kumar & Ms. Rachana Dalal, Advocates.

versus

SMT. BHAGWANI DEVI & ORS.

.....Defendants

Through: Ms. Prashasti Singh, Ms. Chandrika Prasad Mishra & Ms. Harshita Bhardwaj, Advocates for D-1, 2, 5, 6, 7, 8.

Mr. B.S. Randhawa, Advocate for D-3. Mr. B. Narayan Sharma, D-3 in person.

Mr. Rishabh Kapur & Mr. Tanmay Gupta, Advocates for D-4.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

I.A. 27697/2025 (filed on behalf of plaintiffs for condonation of delay in filing written submissions)

1. This application has been filed on behalf of the plaintiffs seeking condonation of delay of 12 days in filing written submissions.



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2. For the reasons stated in the application, the delay of 12 days is condoned and the written submissions are permitted to be taken on record.

3. Accordingly, the application stands disposed of.

I.A. 16884/2022 (seeking amendment of the plaint)

4. By way of the present amendment application under Section 151 of the Code of Civil Procedure, 1908 ('CPC'), the plaintiffs seek to add two (2) more properties to the existing properties, in respect of which partition is sought.

5. The details of the said properties sought to be added are as follows:

- i. Property bearing Khatauni No. 40/36 Khasra No. 1108(4-3), 1109(4-16), 1111/1(2-0); Khatauni No. 42/39, Khasra No. 1102(4-5), 1110(3-18) at Rajokri, Delhi
- ii. Property bearing Khasra No. 152/140 Khasra No. 15555(4-16), 1556(4-16), 1560(4-4), 1562/1(3-1); Khatauni No. 41/37 Khasra no. 1559(4-16), 1561(2-6); Khatauni No. 190/178 Khasra No. 1557(4-16), 1558(4-16), 1562/2(1-9) at Rajokri, Delhi.

6. I have heard the counsel for the parties.

7. The aforesaid amendments are necessary for proper adjudication of the suit. The suit is still at an early stage and the proposed amendments do not change the nature and character of the suit.

8. Without prejudice to the rights and contentions of the parties in the aforesaid suit, the amendment is allowed and the aforesaid properties are added to the suit properties.

9. The present application stands disposed of.



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I.A. 3665/2023 (seeking amendment in the plaint)

10. This is yet another amendment application under Section 151 of CPC filed on behalf of the plaintiffs seeking amendment in the plaint.
11. Counsel appearing on behalf of the defendants do not oppose this amendment.
12. To be noted, the suit is still at an early stage and the proposed amendments do not change the nature and character of the suit.
13. Accordingly, the amendment is allowed and the amended plaint is permitted to be taken on record.
14. The present application stands disposed of.

CS(OS) 411/2022 with I.A. 10980/2022 (under Order XXXIX Rule 1 and 2, CPC)

15. In view of the fact that Mr. N.S. Dalal has entered appearance on behalf of the plaintiffs, Ms. Rekha Aggarwal, Advocate stands discharged.
16. In light of the orders passed above, the amended plaint as filed with I.A. 3665/2023 is taken on record.
17. The present suit has been filed on behalf of the plaintiffs seeking partition along with other ancillary reliefs in respect of the following four properties:
 - i. Property bearing Khata No. 188/2 Kharsa No.41/10, 11/1, 12/3, 19, measuring 3252.48 Gaj Appx, situated in the Revenue Estate of Village Mehrauli, Delhi, the property known as Mehrauli, Delhi (hereinafter the 'suit property no.1').
 - ii. One residential property bearing no. 626/27/28, Village & PO Rajokri, New Delhi- 110038, Area measuring 500 Sqr Yards



- Appx. (hereinafter the 'suit property no.2').
- iii. Property bearing Khatauni No. 40/36 Khasra No. 1108(4-3), 1109(4-16), 1111/1(2-0); Khatauni No. 42/39, Khasra No. 1102(4-5), 1110(3-18) at Rajokri, Delhi (hereinafter the 'suit property no.3').
- iv. Property bearing Khasra No. 152/140 Khasra No. 15555(4-16), 1556(4-16), 1560(4-4), 1562/1(3-1); Khatauni No. 41/37 Khasra no. 1559(4-16), 1561(2-6); Khatauni No. 190/178 Khasra No. 1557(4-16), 1558(4-16), 1562/2(1-9) at Rajokri, Delhi (hereinafter the 'suit property no.4').
18. The case set up by the plaintiffs in the plaint is that:
- i. Plaintiffs are the daughters of the defendant no.1/ Late Smt. Bhagwani Devi. Defendants no. 2 to 5 are the brothers of the plaintiffs. Defendant no. 6 is the sister-in-law of the plaintiffs and the defendants no. 7 and 8 are the nieces of the plaintiffs.
- ii. The properties which are the subject matter of the present suit are ancestral properties. The suit properties belonged to Late Shri Aasa Ram, grandfather of the plaintiffs and thereafter the properties were inherited by five (5) sons of Late Shri Aasa Ram, including Shri Dayanand Sharma, father of the plaintiffs.
- iii. It is stated that Shri Aasa Ram died in the year 1987 and the aforesaid properties which came to the share of the plaintiffs' father were in the nature of Joint Hindu Undivided Family ('HUF') properties.
- iv. It is further averred that Shri Dayanand Sharma became the *Karta*



- of the HUF in respect of the 1/5th share which came to him.
- v. Accordingly, it is stated that the plaintiffs being the daughters of Shri Dayanand Sharma, are a part of the said HUF and would have a share in the aforesaid suit properties.
 - vi. Shri Dayanand Sharma expired on 3rd October, 2017.
 - vii. From the written statement filed on behalf of the defendants, it came to the knowledge of the plaintiffs that Late Shri Dayanand Sharma had executed a Will dated 16th December, 1999, in favour of defendants no. 2, 3, 4, 5, 7 and 8. Shri Dayanand Sharma executed a Sale Deed dated 11th December, 1986 in respect of certain properties in favour of the defendant no.1.
 - viii. Late Shri Dayanand Sharma was not competent and capable to execute the alleged Will in respect of the HUF properties and therefore the said Will is legally untenable.
 - ix. Accordingly, the plaint was amended and the plaintiffs sought a declaration that the said Will and the Sale Deed dated 11th December, 1986 be declared null and void.
19. Counsel appearing on behalf of the defendants submit that even the suit as amended by the plaintiffs would not be maintainable in light of the judgments passed by this Court in *Sunny (Minor) v. Sh. Raj Singh*, 2015 SCC OnLine Del 13446, *Arshnoor Singh v. Harpal Kaur*, (2020) 14 SCC 436 and *Neelam v. Sada Ram*, 2013 SCC OnLine Del 384.
20. Counsel for defendants contend that the plaint does not contain any averment regarding the creation, existence, or continuity of a Hindu Undivided Family (HUF). Consequently, the subject properties cannot be



treated as HUF properties for the purposes of the present suit. Even after the amendments were made by the plaintiffs, the Will has not been challenged on any grounds mentioned under the Indian Succession Act.

21. I have heard the counsel for the parties.

22. A reference may be made to the judgment of a Coordinate Bench of this Court in **Sunny (Minor)** (supra), the relevant 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.

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. Gagan 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]

23. The judgment in *Sunny (Minor)* (supra) was followed in *Surender Kumar Khurana v. Tilak Raj Khurana & Ors.*, 2016 (155) DRJ 71. Both the aforesaid judgments were followed by me in *Dr. G.M. Singh v. Dr. Trilochan Singh and Others*, 2022 SCC OnLine Del 3514.

24. 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 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 creation of HUF have to be pleaded.

25. At this stage, it may be apposite to refer to the pleadings in the plaint pertaining to the subject properties:

6. That Sh. Dayanand (since deceased) after the death of his father Sh. Asa Ram became the Karta of the Joint Hindu Undivided Family in respect of his 1/5th share. As stated above, during the lifetime of late Sh. Asa Ram, the plaintiff No.1 had born on 10.11.1962 and the plaintiff No.2 had born on 14.04.1973 and other brothers of the plaintiffs who had been arrayed as the defendants in the suit had also born during the lifetime of late Sh. Asa Ram as the defendant No.2 born on 17.12.1955, the defendant No.3 born on 16.07.1957, the defendant No.4 born on 28.10.1959 and the defendant No.5 born on 28.04.1961 and one deceased grandson of Sh. Asa Ram namely Laxmi N. Sharma was born on 14.06.1965 and the father of the plaintiffs namely Sh. Dayanand Sharma had born on 08.10.1929, so, on account of the birth of the above named persons who are parties to the suit thus becomes coparceners/ co-sharers/co-owners in respect of the properties as detailed in the suit as well as in the application in hand and after the death of Sh. Asa Ram in the year 1987, the above named persons becomes coparceners/co-sharers/co-owners with late Sh. Dayanand in respect of the Joint Hindu undivided coparcenary ancestral properties whereas the plaintiffs including the defendants except the defendant No.1 had become coparceners/ co-sharers/co-owners to the extent of 1/8th share each which is thus deemed in view of the creation/formation of coparcenary among Joint Hindu Family like in the case in hand thus constituting a coparcenary through common male ancestors as detailed in the application in hand. However, during the lifetime of Sh. Dayanand (since deceased), his one of the sons namely Laxmi N. Sharma, expired in the year 1994, and his said deemed 1/8th coparcenary share stands devolved upon the defendant No.7 and 8 jointly, except the defendant No.6 being widow of Laxmi N. Sharma, and these defendants also become the part of coparcenary among the Joint Hindu Family of the parties to the suit.”

[Emphasis supplied]

26. There is no pleading in the plaint that there was a pre-existing HUF



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during the lifetime of Shri Aasa Ram which continued after 1956. From the paragraph set out above, it is evident that the suit properties were inherited by Late Shri Dayanand Sharma after the death of Shri Aasa Ram in the year 1987. Hence, the properties inherited from the paternal ancestor would become the self-acquired properties of Late Shri Dayanand Sharma and not coparcenary properties. There are no averments in the plaint regarding the creation or existence of a Hindu Undivided Family (HUF) by Late Shri Dayanand Sharma. Consequently, the subject properties cannot be treated as HUF properties for the purposes of the present suit.

27. After filing of the suit, the plaintiffs have amended the plaint twice. In the latest amendment, it has been averred that since the suit properties are HUF properties, hence the father of the plaintiffs could not have made a Will dated 16th December, 1999 in respect of the said properties. To be noted, even in the amended plaint, there has been no challenge to the validity or genuineness of the aforesaid Will under Indian Succession Act.

28. Mr. Dalal, counsel appearing on behalf of the plaintiffs submits that in light of the amendment to Section 6 of the Hindu Succession Act, 1956 on 9th September, 2005, it has been declared that the daughters would get status of coparceners in the HUF and hence would have right in the coparcenary properties.

29. This submission would have carried weight had there been an HUF in existence on 9th September, 2005. As noted above, there is nothing in the plaint which discloses the existence of HUF on 9th September, 2005.

30. Therefore, the plaintiffs cannot claim the benefit of the aforesaid amendment to Section 6 of the Hindu Succession Act, 1956.



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31. In view of the above, the plaint fails to disclose a cause of action. Consequently, the plaint is rejected under Order VII Rule 11 of CPC.
32. All pending applications stand disposed of.

AMIT BANSAL, J

NOVEMBER 12, 2025

at

CORRECTED AND UPLOADED ON 21.11.2025