



2025:DHC:491

**IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 20th JANUARY, 2025**IN THE MATTER OF:**+ **CS(OS) 1965/2012**

SONAKSHI GUPTA

.....Plaintiff

Through: Mr. Giriraj Subramaniam, Mr. Simarpal Singh Sawhney, Mr. Joy Banerjee & Mr. Ravi Pathak, Advocates

versus

L.R GUPTA ,HUF & ORS

.....Defendants

Through: Mr. Akshay Chitkara and Mr. Rishabh Tomar, Advocates for D-6. Mr. Rikky Gupta and Ms. Ananya Singh, Advocates for D-7 to 20. Mr. Tanmaya Mehta, Advocate for D-21 & D-22.

CORAM:**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT****I.A. 13190/2013, I.A. 5097/2013, I.A. 8405/2013, I.A. 13383/2012**

1. The present applications, I.A 13383/2012 filed by Defendant No. 2, I.A. 5097/2013 filed by Defendant Nos. 21 and 22, I.A. 8405/2013 filed by Defendant No. 5, and I.A. 13190/2013 filed by Defendant Nos. 6-19, have been filed under Order VII Rule 11 CPC on behalf of the Defendants No.2, 5, 6 to 19, 20 & 21 for rejection of the plaint.

2. The Plaintiff has filed the present suit for partition, rendition of accounts and injunction in respect of the HUF properties of Defendant No.1 mentioned in Schedule A & Schedule B annexed to the plaint. The Plaintiff has approached this Court with the following prayers:-

"a) For partition and separate possession of the properties and assets (both moveable and immoveable



properties) as mentioned in Schedule A & B annexed to the plaint with the delivery of possession of the properties and assets and moneys which may fall to the share of plaintiff which is 8.33%.

b) Preliminary decree be passed against defendant Nos.1 to 3 and in favour of plaintiff, thereby directing them to render all accounts of HUF properties, assets as stated in Schedule A & B to the plaint and render all account books in this respect w.e.f. July 1987 till date of filing of this suit.

c) Pass a final decree for recovery of amount which is found due to plaintiff and against defendants after accounts are rendered alongwith pendete lite interest @ 24% per annum from the date of filing of suit and till decretal amount is recovered.

d) For permanent injunctions:-

i. Restraining the defendants Nos. 1, 2, 3 & defendant No. 7 to 20 their agents servants, representatives, employees or any other concern from alienating, transferring, selling, parting with possession, renting out or creating any tenancies, creating third party rights or dealing in any manner whatsoever in respect of properties as detailed in Schedule-A to the plaint.

ii. Restraining the defendants Nos. 1, 2, 3 & defendant No. 7 to 20 their agents servants, representatives, employees or any other concern from raising any construction in respect of immoveable properties as detailed in Schedule-A to the plaint including property situated at 47, Amrita Shergil Marg admeasuring 5000 sq. yds. "

3. The genealogy reads as under:-



7. Material on record discloses that Defendant No.3, i.e., Rajiv Gupta, father of the Plaintiff herein had filed a suit being Suit No.1968/2003 on the file of this Court seeking partition and rendition of accounts of Defendant No.1 herein, LR Gupta HUF.

8. Defendant No.3 herein was the Plaintiff in Suit No.1968/2003. There were four Defendants in the said suit. Defendant No.1 herein, i.e., LR Gupta HUF is Defendant No.1 in the said suit. Defendant No.2 herein, is the Defendant No.3 in the said suit. Defendant No.5 herein, i.e., Sumangli Gupta, @ Ms. Sumangli Jain, is Defendant No.4 in the said suit.

9. By way of Suit No. 1968/2003, Defendant No.3 herein sought partition of Defendant No.1. It is pertinent to mention that during the pendency of Suit No.1968/2003, the Hindu Succession (Amendment) Act, 2004 was enacted and it came into effect on September 9, 2005. The amended Hindu Succession Act has elevated the position of the daughter of the coparcener to become a coparcener in her own right in the same manner as the son. Under the amended Act, the daughter of a coparcener now gets the same rights as the coparcener in the property as she would have had if she had been a son.

10. That suit ended in a compromise. An application being IA No.220/2006 under Order XXIII Rule 3 CPC was filed and the suit was decreed on 09.01.2006 on the basis of the settlement entered into between the parties. The said application filed under Order XXIII Rule 3 CPC clearly indicates that Defendant No.3 herein, who is Plaintiff in the said suit, had separated from the Joint Hindu family of Defendant No.1 under oral family settlement which was reduced into writing on 21.10.1993 under which the Plaintiff therein, i.e., Defendant No.3 herein was given certain properties and certain sums of money.



11. The entire Order dated 09.01.2006 reads as under:-

*"1. The plaintiff has filed the present suit for partition, rendition of accounts and injunction in respect of properties stated to be HUF properties of defendant No.1 mentioned in schedules "A" and "B" annexed to the plaint. **The defendants 1 to 3 had averred in their written statement that the plaintiff separated from the joint Hindu family of L.R. Gupta, HUF under an oral family settlement which was reduced to writing on 21.09.1993 under which the plaintiff was allotted certain properties and certain sum of money, was also payable to him. Thereafter, differences and disputes seem to have arisen between the parties as a result of which the plaintiff filed the present suit.***

*2. Now, the parties have resolved all those differences and disputes and have recorded the terms of compromise in the present application which is signed by the plaintiff as well as the defendants 2 and 3. **Insofar as the defendant No.1 is concerned, it is common ground that the said HUF had already been dissolved in 1993.** However, Mr L.R. Gupta has signed on behalf of the defendant No.1 by way of abundant caution Insofar as defendant No.4 is concerned, the learned counsel for the plaintiff states that no relief is claimed against the defendant No.4 and the learned counsel for both the plaintiff as well as the defendants state that there is no dispute with regard to defendant No.4 who happens to be the daughter of Mr L.R.Gupta, the defendant No.2, and the sister of the plaintiff and she has also not chosen to appear in these proceedings throughout, despite service. Therefore, this compromise which is being effected is essentially between the plaintiff on the one hand and defendants 2 and 3 on the other hand. Other terms of the compromise are set out in the application which is exhibited as Exhibit C-1.*

3. The only two formalities which remained to be



completed were the handing over of the pay order and two postdated cheques. The pay order is of the sum of Rs.3.50 crores and the two cheques are for Rs.1.50 crores each. This pay order and the two cheques have been handed over to the plaintiff who is present in court and he acknowledges the receipt of the same. The defendant No.3 has signed these two cheques and he undertakes that the same shall be honoured on presentation on the due dates. The keys of 4 Palan Marg, Vasant Vihar, New Delhi are also handed over by the defendant to the plaintiff who is present in court and who had taken the same. It is clear that handing over of the keys means that the plaintiff now will have vacant physical possession of the said premises. In addition to the pay order and the two cheques which have been handed over in court today, the defendants have earlier made a payment of Rs.80,65,861/- by way of pay order dated 05.01.2006 favouring the DDA which is a payment on account of the plaintiff.

4. The application is signed by the plaintiff and the defendants 2 and 3 and the same is supported by the affidavits of the said parties. The application is also signed by the counsel for defendants 1,2 and 3 and by the plaintiff who had hitherto appeared in person.

5. I have examined the terms of the settlement and I am satisfied that the suit is entirely settled and compromised. Accordingly, the terms set out in the application are taken on record. The agreement is lawful. The decree be drawn up in terms of the compromise application (Exhibit C-1) which shall also form part of the decree. This application and the suit stand disposed of.

*The next date given in the matter stands cancelled."
(emphasis supplied)*

12. The Plaintiff who was born on 18.05.1991. She was a minor when the



amendment took place. She attained majority on 18.05.2009. She has filed the present suit within three years of attaining majority. In the plaint, it is stated that since Suit No.1968/2003 has been disposed of after the Plaintiff herein had attained majority, her rights as a coparcener in the property have not been decided by the Court and that she has been deprived of her share in the coparcenary property.

13. In the plaint, it is stated that income tax returns for the year 2003-04, 2004-05 clearly show existence of LR Gupta HUF and contrary to the plea raised in other suits that the HUF stood dissolved in the year 1993.

14. It is stated that Plaintiff and Defendant No.4 have not received anything under the compromise recorded by this Court on behalf of the Plaintiff on 09.01.2006. It is stated that approximately a sum of Rs.100 crores would be found due in favour of the Plaintiff and against Defendants No.1 and 2. It is the case of the Plaintiff that the compromise is contrary to the provisions of the Hindu Succession Act.

15. Written statements have been filed by the Defendants along with documents. Defendants No.2, 5, 6 to 19, 20 & 21 have moved the present applications for rejection of the plaint contending that once there is a partition of the HUF, in absence of any averment that post partition the HUF continued, the Plaintiff who is claiming through her father, Defendant No.3 in the present suit, cannot maintain a suit for partition.

16. The present applications have been filed by the Applicant/Defendants stating that the present suit is hit by Order VII Rule 11 CPC inasmuch as the plaint and the documents filed in the plaint itself record that the partition has taken place in the year 1993. It is stated that partition in the family has taken place in the year 1993 and partitioning the very same property is not



maintainable and therefore is barred by law. Learned Counsel for the Defendants contend that Defendant No.3's children are repeatedly trying to reopen the settlement that has been arrived at between the parties in Suit No.1968/2003 as decreed in terms of the settlement on 09.01.2006.

17. It is stated by learned Counsel for the Applicant/Defendants that once Defendant No.3, who is the father of the Plaintiff and Plaintiff in Suit No.1968/2003 has taken his share of the HUF and has separated from the family, his daughter, who is Plaintiff herein cannot maintain a separate suit for partitioning the HUF. It is stated that the right of the Plaintiff opens only through her father, i.e., Defendant No.3 herein, who has filed Suit No. 1968/2003 which stands disposed of in terms of the settlement arrived at between the parties on 09.01.2006. It is stated that once a branch of Defendant No.3 has taken its share and gone, then it is not open for the person claiming through Defendant No.3 to maintain her share. It is further contended that on the day when the suit was instituted, the Hindu Succession Act had not been amended. It is stated that the partition dates back to the institution of the suit on which date the Plaintiff did not have any right since the partition had taken place on the date when the Hindu Succession Act had not been amended and the properties could not enure to the benefit of the Plaintiff.

18. Learned Counsel for the Applicant/Defendants state that Paragraph 43 of the plaint acknowledges partition of the HUF and that compromise is not under challenge. It is contended that the suit is barred (a) in law because of the earlier partition; (b) no cause of action arises against the HUF as it did not survive.

19. It is stated that there is no averment in the plaint that there was a reunion of the HUF post the compromise dated 09.01.2006 after which



Defendant No.3 could have created his own HUF as the existence of HUF of Lt. Sh. L.R. Gupta is lost. It is stated that Plaintiff and Defendant No.4 were minor at that time, therefore Defendant No.3 herein acted on behalf of Plaintiff and Defendant No.4 herein as their shares are determined per stirpes. It is further contended that suit for partition by the Plaintiff can only be initiated against her father, i.e., Defendant No.3 herein.

20. *Per contra*, learned Counsel for the Plaintiff contends that the partition was partial and the HUF continued after 09.01.2006. He states that the fact that Defendant No.3 entered into a compromise does not take away shares of the Plaintiff and Defendant No.4 as only Defendant No.3 alienated from the family having no impact on the children and their shares.

21. Learned Counsel for the Plaintiff placed reliance on Valliammai Achi v. Nagappa Chettiar & Ors., **1967 SCC OnLine SC 32**. He further placed reliance on Shalini Sumant Raut & Ors. v. Milind Sumant Raut & Ors., **2012 SCC OnLine Bom 1839** which deals with the question that can a grandchild maintain a suit for partition.

22. It is further contended that a grandchild can maintain a suit for partition but their share will be determined per stirpes and also the facts of this case do not apply as this case does not deal with when a partition has already been effected in an existing HUF.

23. Heard learned Counsel for the parties and perused the material on record.

24. The short question which arises for consideration is whether the plaint can be rejected on the ground that it is hit by Order VII Rule 11(d) CPC. The case of the Applicant/Defendants is that in the suit being Suit No.1968/2003 filed by Defendant No.3 herein, i.e., the father of the Plaintiff, was settled on



2025:DHC:491



the basis of the settlement agreement dated 09.01.2006 in which it has been recorded that the partition had taken place in the year 1993.

25. The application records that as per the terms of the settlement, the Plaintiff in Suit No.1968/2003 has been granted exclusive and absolute ownership of two immovable properties, namely Property No. 4, Palam Marg, Vasant Vihar, New Delhi, and Property No. 5, Vasant Marg, Vasant Vihar, New Delhi. In addition, the plaintiff was entitled to monetary compensation of ₹6.5 crores, comprising ₹3.5 crores via Pay Order No. 371547 dated January 5, 2006, and ₹3 crores through two post-dated cheques of ₹1.5 crores each, bearing Nos. 709687 and 709688, dated January 5, 2009. The Defendants then had handed over vacant possession of the properties along with all original documents to the Plaintiff, thereby transferring complete ownership and control.

26. It is stated in the application that in pursuance to Property No. 4, Palam Marg, which was a leasehold property, that was to be converted to freehold under the scheme of the Delhi Development Authority (DDA). While the defendants therein had initiated the conversion process and paid part of the required charges, the responsibility to complete the conversion was with the plaintiff. The Defendants therein, particularly Shri Sanjay Gupta, was to bear any additional expenses, including outstanding conversion fees and stamp duty, and assist in executing all necessary documents as the power of attorney holder. The Plaintiff in Suit No.1968/2003 had undertaken to pursue the matter with the DDA and complete the formalities for conversion.

27. In the application it is stated that the Plaintiff in Suit No.1968/2003 had waived all claims, rights, and interests over any other movable or immovable properties listed in Schedule A and Schedule B of the plaint, as



well as any properties held by the defendants therein individually, collectively, or through family-owned companies. In return, the defendants therein had relinquished any present or future claims to the properties now held by the plaintiff. All pending liabilities, including income tax, wealth tax, house tax, and utility dues on the said properties, up to the date of the settlement, were to be borne by the defendants. The plaintiff in Suit No.1968/2003 was to assume responsibility for such liabilities accruing after the date of this settlement.

28. It is stated that in relation to ongoing litigations at that time, including RFAs No. 309/80, 310/80, 356/80, 357/80, and RFAs No. 83/87, 84/87, 85/87, and 86/87, involving disputes over acquired lands and compensation, the plaintiff therein had renounced any claims to the enhanced compensation awarded or to be awarded in these matters. The defendants therein were to bear all costs, expenses, and responsibilities for the conduct of these litigations. The plaintiff had agreed to cooperate fully in these proceedings by providing any affidavits, applications, or statements required, provided such actions do not harm his interests. Should the plaintiff in Suit No.1968/2003 fail to comply, he will be held liable for any resulting losses to the Defendants therein.

29. The Defendants in the present suit, therefore, contend that once the property has already been partitioned and the father of the Plaintiff herein having been separated, his daughter, i.e., Plaintiff herein, cannot file the partition for the very same property. It is stated that the share of the Plaintiff will open only through her father and since her father has already separated, the Plaintiff cannot file a separate suit for partition for the property which has already been partitioned. It is the contention of the Defendants that the partition dates back to the filing of the suit, i.e., 2003. The amendment Act



enlarging the share of the daughter to that of a son came only in the year 2005 and on the date when the Act came into force, the property had already been partitioned, and therefore, the Plaintiff cannot maintain a separate suit. It is stated that this case is only in the alternate since Defendant No.3, the Plaintiff and Defendant No.4 had already separated in the year 1993 itself and Suit No.1968/2003 had been settled and that suit was itself not maintainable because Defendant No.3 had separated in the year 1993.

30. *Per contra*, the case of the Plaintiff is that the amendment enlarges the right of the daughter to that of a son in the partition that effected in the year 2003, the share of the Plaintiff and Defendant No.4 herein has not been calculated properly and the Plaintiff is entitled to maintain a separate suit for partition.

31. The Plaintiff was born on 18.05.1991. The amendment to the Hindu Succession Act enlarging the right of the daughter to that of a son came into effect on September 9, 2005. The Plaintiff attained majority on 18.05.2009. The suit was settled by compromise deed dated 09.01.2006, i.e., after the amendment Act had come into force. The Apex Court has held that the effect of the amendment is that it takes effect from the date on which the daughter was born and the effect of the amendment cannot be seen on the date of the amendment.

32. The Apex Court in Danamma alias Suman Surpur & Anr. v. Amar & Ors., (2018) 3 SCC 343, considered the case of the amendment of 2005 to the Hindu Succession Act and after analyzing the various case laws, the Apex Court has observed as under:-

“22. The law relating to a Joint Hindu Family governed by the Mitakshara law has undergone unprecedented changes. The said changes have been brought forward to address the growing need to merit



*equal treatment to the nearest female relatives, namely, daughters of a coparcener. The section stipulates that a daughter would be a coparcener from her birth, and would have the same rights and liabilities as that of a son. The daughter would hold property to which she is entitled as a coparcenary property, which would be construed as property being capable of being disposed of by her either by a will or any other testamentary disposition. These changes have been sought to be made on the touchstone of equality, thus seeking to remove the perceived disability and prejudice to which a daughter was subjected. The fundamental changes brought forward about in the Hindu Succession Act, 1956 by amending it in 2005, are perhaps a realisation of the immortal words of Roscoe Pound as appearing in his celebrated treatise, *The Ideal Element in Law*, that “the law must be stable and yet it cannot stand still. Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and the need of change”.*

23. *Section 6, as amended, stipulates that on and from the commencement of the amended Act, 2005, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. It is apparent that the status conferred upon sons under the old section and the old Hindu Law was to treat them as coparceners since birth. The amended provision now statutorily recognises the rights of coparceners of daughters as well since birth. The section uses the words in the same manner as the son. It should therefore be apparent that both the sons and the daughters of a coparcener have been conferred the right of becoming coparceners by birth. It is the very factum of birth in a coparcenary that creates the coparcenary, therefore the sons and daughters of a coparcener become coparceners by virtue of birth. Devolution of coparcenary property is the later stage of and a consequence of death of a coparcener. The first stage of a coparcenary is obviously its creation as*



explained above, and is well recognised. One of the incidents of coparcenary is the right of a coparcener to seek a severance of status. Hence, the rights of coparceners emanate and flow from birth (now including daughters) as is evident from sub-sections (1)(a) and (b).

xxx

25. Hence, it is clear that the right to partition has not been abrogated. The right is inherent and can be availed of by any coparcener, now even a daughter who is a coparcener.

*26. In the present case, no doubt, suit for partition was filed in the year 2002. However, during the pendency of this suit, Section 6 of the Act was amended as the decree was passed by the trial court only in the year 2007. Thus, the rights of the appellants got crystallised in the year 2005 and this event should have been kept in mind by the trial court as well as by the High Court. This Court in *Ganduri Koteshwaramma v. Chakiri Yanadi* [*Ganduri Koteshwaramma v. Chakiri Yanadi*, (2011) 9 SCC 788 : (2011) 4 SCC (Civ) 880] held that the rights of daughters in coparcenary property as per the amended Section 6 are not lost merely because a preliminary decree has been passed in a partition suit. So far as partition suits are concerned, the partition becomes final only on the passing of a final decree. Where such situation arises, the preliminary decree would have to be amended taking into account the change in the law by the amendment of 2005.”*

33. The Apex Court in *Vineeta Sharma v. Rakesh Sharma & Ors.*, (2020) 9 SCC 1, again after analyzing the effect of amendment to Section 6 of the Hindu Succession Act, has summarized the position as under:-

“137. Resultantly, we answer the reference as under:



137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

137.2. The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.

137.3. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9-2005.

137.4. The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

137.5. In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of



oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected (sic effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.”
(emphasis supplied)

34. Suit No.1968/2003 was compromised on 09.01.2006. Applying the law laid down by the Apex Court to the facts of the present case, the Plaintiff is entitled to a share in the property by her birth and applying the judgment of the Apex Court in Danamma (supra), on the date when the compromise was recorded, the amendment Act had come into force and the Plaintiff's right ought to have been taken into account whether it should be taken into account would be seen in trial. The suit is not barred by law. Whether the partition took place or not will be a question which will be proved by leading evidence and therefore the plaint cannot be rejected on the grounds raised by the Defendants.

35. The applications stand dismissed.

36. List before the learned Joint Registrar for further proceedings on 12.02.2025.

SUBRAMONIUM PRASAD, J

JANUARY 20, 2025

hsk/jp