(2016) 01 DEL CK 0316

DELHI HIGH COURT

Case No: CS (OS) No. 1528/2010

Surender Kumar Khurana		APPELLANT
	Vs	
Tilak Raj Khurana and Others		RESPONDENT

Date of Decision: Jan. 18, 2016

Acts Referred:

- Benami Transactions (Prohibition) Act, 1988 - Section 4, Section 4(1), Section 4(3)
- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, Order 6 Rule 4, Order 7 Rule 11
- Hindu Succession Act, 1956 - Section 6, Section 8

Citation: (2016) 227 DLT 8 : (2016) 155 DRJ 71 : (2016) 1 HLR 646

Hon'ble Judges: Valmiki J. Mehta, J.

Bench: Single Bench

Advocate: Sudhir Sukhija, Advocate, for the Appellant; Abhishek Kishore and Anju Bhusan, Advocates, for the Respondent

Final Decision: Disposed Off

Judgement

Valmiki J. Mehta, J.

1. The issue to be decided in the present suit, which is fixed for framing of issues, is as to whether on the facts as averred in the plaint, the requisite legal cause of action of existence of HUF and its properties is or is not made out. The parents of the plaintiff, defendant nos. 1 and 2 are now around 82 years of age and they plead that harassment caused to them by filing of this false and frivolous suit must come to an end inasmuch as, plaint itself does not show existence of any legal cause of action for claiming the reliefs with respect to the various properties referred to in the plaint.

2. In the forenoon today itself I have passed a detailed judgment in the case of Sh. Surender Kumar Vs. Sh. Dhani Ram and Others, CS(OS) No. 1737/2012 dismissing the suit for lacking the necessary ingredients of law as required for existence of HUF and its

properties and since the ratio of that judgment would be directly applicable in the present case, at the outset let me reproduce the relevant paras of that judgment as under :

"I.A. No. 17622/2012 (filed by defendant no.1 under Order VII Rule 11 CPC) & CS (OS) No. 1737/2012

1. This application is filed by the defendant no.1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for dismissal of the suit on the ground that the suit plaint does not disclose the cause of action. In the application it is averred that the suit plaint does not show existence of the legal cause of action as the plaintiff is only a grandson of late Sh. Jage Ram who owned the property and thus not a class I legal heir, and since there are already the sons of late Sh. Jage Ram who are class I legal heirs (including defendant no.1/applicant who is the father of the plaintiff), and who are alive, plaintiff cannot lay any claim to the properties of late Sh. Jage Ram. It is further averred in the application that the properties of late Sh. Jage Ram were not Hindu Undivided Family (HUF) properties/joint Hindu family properties but were the individual properties of late Sh. Jage Ram. Accordingly, it is prayed that the suit which is seeking the relief of possession, and effectively partition etc, be dismissed.

2. Counsel for the plaintiff in response has argued that in the plaint, plaintiff has made a specific averment in para 4 that the properties of late Sh. Jage Ram, grandfather, remained joint Hindu family properties and have continued to be so even after his death between his legal heirs, and once the suit properties are joint Hindu family properties, the issue with respect to the plaintiff not being the class I legal heir is immaterial because plaintiff claims right in the suit properties as a coparcener of a joint Hindu family/HUF. On behalf of the plaintiff, reliance in support of his arguments is placed upon the judgments of the Supreme Court in the cases of Rohit Chauhan vs. Surinder Singh & Ors., , AIR 2013 SC 3525 and Hardeo Rai vs. Sakuntala Devi & Ors., VI (2010) SLT 222.

3. A reading of the plaint shows that plaintiff claims rights in various immovable properties which are detailed in para 2 of the plaint, and which para reads as under:-

"AGRICULTURAL LAND

i. Land comprising in Khasra No. 125/1 measuring (4 Bigha and 12 Bishwa), in khasra No. 125/1/10 (4 Bigha and 16 Bishwa), in Khasra No. 125/1/21 (4 Bigha and 16 Bishwa) and in Khasra No. 125/1/22 (4 bigha and 12 Bishwa) total land measuring 18 bigha and 16 bishwa situated in the revenue estate of village- Mundka, Delhi-110041.

ABADI LAND/HOUSE

i. Plot No. 711 comprising (1 Bigha and 14 Biswa), plot bearing No. 715 comprising (4 Bigha and 2 Biswa) situated in extended Lal Dorra, Village-Mundla, Delhi-110041.

ii. 4 Biswa of Land out of khasra No. 711 allegedly relinquished by defendant no.4 Sh. Sant Ram, brother of defendant no.1 in favour of defendant no.1.

iii.H. No. 603 (area about 215 sq. yds. out of khasra No. 370) situated in Old Lal Dora, Abadi, Village Mundka Delhi-110041.

iv. H. No. 356/524, area about 350 sq. yds. situated in Old Lal Dora Abadi of Village Mundka, Delhi-110041.

v. H. No. 527 (area about 200 sq. yds. out of khasra No. 370) situated in Old Lal Dora, Abadi of Village Mundka, Delhi-110041."

4. Plaintiff claims that as a son of defendant no.1 and as a grandson of late Sh. Jage Ram, plaintiff is entitled to his share as a coparcener in the aforesaid suit properties on the ground that the properties when they were inherited by late Sh. Jage Ram were joint family properties, and therefore, status as such of these properties as HUF properties have continued thereby entitling the plaintiff his rights in the same as a coparcener.

5. The Supreme Court around 30 years back in the judgment in the case of Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, , (1986) 3 SCC 567, held that after passing of the Hindu Succession Act, 1956 the traditional view that on inheritance of an immovable property from paternal ancestors up to three degrees, automatically an HUF came into existence, no longer remained the legal position in view of Section 8 of the Hindu Succession Act, 1956. This judgment of the Supreme Court in the case of Chander Sen (supra) was thereafter followed by the Supreme Court in the case of Yudhishter Vs. Ashok Kumar, , (1987) 1 SCC 204 wherein the Supreme Court reiterated the legal position that after coming into force of Section 8 of the Hindu Succession Act, 1956, inheritance of ancestral property after 1956 does not create an HUF property and inheritance of ancestral property after 1956 therefore does not result in creation of an HUF property.

6. In view of the ratios of the judgments in the cases of Chander Sen (supra) and Yudhishter (supra), in law ancestral property can only become an HUF property if inheritance is before 1956, and such HUF property therefore which came into existence before 1956 continues as such even after 1956. In such a case, since an HUF already existed prior to 1956, thereafter, since the same HUF with its properties continues, the status of joint Hindu family/HUF properties continues, and only in such a case, members of such joint Hindu family are coparceners entitling them to a share in the HUF properties.

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.

8. The relevant paragraphs of the judgment in the case of Sunny (Minor) (supra) are paragraphs 6 to 8 and which paras read as under:-

''6. At the outset, it is necessary to refer to the ratio of the judgment of the Supreme Court in the case of Yudhishter Vs. Ashok Kumar, , (1987) 1 SCC 204 and in para 10 of the said judgment the Supreme Court has made the necessary observations with respect to when HUF properties can be said to exist before passing of the Hindu Succession Act, 1956 or after passing of the Act in 1956. This para reads as under:-

''10. This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. , [1986]161ITR370(SC) 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 become 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 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 Kar of his own undivided family but takes it in his individual capacity. At pages 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. pages 924-926 as well as Mayne''s on Hindu Law 12th Edition pages 918-919. Shri Banerji relied on the said observations of Mayne on ''Hindu Law'', 12th Edn. at pages 918-919. 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 was 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. page 919. In that view of the matter, it would be difficult to hold that property which developed on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a-vis his own sons. If that be the position then the property which developed 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."

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.

(ii) This position of law alongwith facts as to how the properties are HUF properties was required to be stated as a positive statement in the plaint of the present case, but it is seen that except uttering a mantra of the properties inherited by defendant no.1 being ''ancestral'' properties and thus the existence of HUF, there is no statement or a single averment in the plaint as to when was this HUF which is stated to own the HUF properties came into existence or was created ie whether it existed even before 1956 or it was created for the first time after 1956 by throwing the property/properties into a common hotchpotch. This aspect and related aspects in detail I am discussing hereinafter.

8(i). A reference to the plaint shows that firstly it is stated that Sh. Tek Chand who is the father of the defendant no.1 (and grandfather of Sh. Harvinder Sejwal and defendants no.2 to 4) inherited various ancestral properties which became the basis of the Joint Hindu Family properties of the parties as stated in para 15 of the plaint. In law there is a difference between the ancestral property/properties and the Hindu Undivided Family property/properties for the pre 1956 and post 1956 position as stated above because inheritance of ancestral properties prior to 1956 made such properties HUF properties in the hands of the person who inherits them, but if ancestral properties are inherited by a person after 1956, such inheritance in the latter case is as self- acquired properties unless of course it is shown in the latter case that HUF existed prior to 1956 and continued thereafter. It is nowhere pleaded in the plaint that when did Sh. Tek Chand father of Sh. Gugan Singh expire because it is only if Sh. Tek Chand father of Sh. Gugan Singh/defendant no.1 had expired before 1956 only then the property which was inherited by Sh. Gugan Singh from his father Sh. Tek Chand would bear the character of HUF property in the hands of Sh. Gugan Singh so that his paternal successors-in-interest became co-parceners in an HUF. Even in the evidence led on behalf of the plaintiffs, and which is a single affidavit by way of evidence filed by the mother of the plaintiffs Smt. Poonam as PW1, no date is given of the death of Sh. Tek Chand the great grandfather of the plaintiffs. In the plaint even the date of the death of the grandfather of the plaintiffs Sh. Gugan Singh is missing. As already stated above, the dates/years of the death of Sh. Tek Chand and Sh. Gugan Singh were very material and crucial to determine the automatic

creation of HUF because it is only if Sh. Tek Chand died before 1956 and Sh. Gugan Singh inherited the properties from Sh. Tek Chand before 1956 that the properties in the hands of Sh. Gugan Singh would have the stamp of HUF properties. Therefore, in the absence of any pleading or evidence as to the date of the death of Sh. Tek Chand and consequently inheriting of the properties of Sh. Tek Chand by Sh. Gugan Singh, it cannot be held that Sh. Gugan Singh inherited the properties of Sh. Tek Chand prior to 1956.

(ii) In fact, on a query put to the counsels for the parties, counsels for parties state before this Court that Sh. Gugan Singh expired in the year 2008 whereas Sh. Tek Chand died in 1982. Therefore, if Sh. Tek Chand died in 1982, inheriting of properties by Sh. Gugan Singh from Sh. Tek Chand would be self- acquired in the hands of Sh. Gugan Singh in view of the ratio of the Supreme Court in the case of Yudhister (supra) inasmuch as there is no case of the plaintiffs of HUF existing before 1956 or having been created after 1956 by throwing of property/properties into common hotchpotch either by Sh. Tek Chand or by Sh. Gugan Singh/defendant no.1. There is not even a whisper in the pleadings of the plaintiffs, as also in the affidavit by way of evidence filed in support of their case of PW1 Smt. Poonam, as to the specific date/period/month/year of creation of an HUF by Sh. Tek Chand or Sh. Gugan Singh after 1956 throwing properties into common hotchpotch.

(iii) The position of HUF otherwise existing could only be if it was proved on record that in the lifetime of Sh. Tek Chand a Hindu Undivided Family before 1956 existed and this HUF owned properties include the property bearing no.93, Village Adhichini, Hauz Khas. However, a reference to the affidavit by way of evidence filed by PW1 does not show any averments made as to any HUF existing of Sh. Tek Chand, whether the same be pre 1956 or after 1956. Only a self-serving statement has been made of properties of Sh. Gugan Singh being ''ancestral'' in his hands, having been inherited by him from Sh. Tek Chand, and which statement, as stated above, does not in law mean that the ancestral property is an HUF property.''

9. I would like to further note that it is not enough to aver a mantra, so to say, in the plaint simply that a joint Hindu family or HUF exists. Detailed facts as required by Order VI Rule 4 CPC as to when and how the HUF properties have become HUF properties must be clearly and categorically averred. Such averments have to be made by factual references qua each property claimed to be an HUF property as to how the same is an HUF property, and, in law generally bringing in any and every property as HUF property is incorrect as there is known tendency of litigants to include unnecessarily many properties as HUF properties, and which is done for less than honest motives. Whereas prior to passing of the Hindu Succession Act, 1956 there was a presumption as to the existence of an HUF and its properties, but after passing of the Hindu Succession Act, 1956 in view of the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhishter (supra) there is no such presumption that inheritance of ancestral property creates an HUF, and therefore, in such a post 1956 scenario a mere ipse dixit statement in the plaint that an HUF and its properties exist is not a sufficient compliance of the legal requirement of creation or existence of HUF properties inasmuch as it is

necessary for existence of an HUF and its properties that it must be specifically stated that as to whether the HUF came into existence before 1956 or after 1956 and if so how and in what manner giving all requisite factual details. It is only in such circumstances where specific facts are mentioned to clearly plead a cause of action of existence of an HUF and its properties, can a suit then be filed and maintained by a person claiming to be a coparcener for partition of the HUF properties.

10. A reference to the plaint in the present case shows that it is claimed that ownership of properties by late Sh. Jage Ram in his name was as joint Hindu family properties. Such a bald averment in itself cannot create an HUF unless it was pleaded that late Sh. Jage Ram inherited the properties from his paternal ancestors prior to 1956 or that late Sh. Jage Ram created an HUF by throwing his own properties into a common hotchpotch. These essential averments are completely missing in the plaint and therefore making a casual statement of existence of an HUF does not mean the necessary factual cause of action, as required in law, is pleaded in the plaint of existence of an HUF and of its properties.

11. I may note that the requirement of pleading in a clear cut manner as to how the HUF and its properties exist i.e. whether because of pre 1956 position or because of the post 1956 position on account of throwing of properties into a common hotchpotch, needs to be now mentioned especially after passing of the Benami Transaction (Prohibition) Act, 1988 (hereinafter referred to as "the Benami Act") and which Act states that property in the name of an individual has to be taken as owned by that individual and no claim to such property is maintainable as per Section 4(1) of the Benami Act on the ground that monies have come from the person who claims right in the property though title deeds of the property are not in the name of such person. An exception is created with respect to provision of Section 4 of the Benami Act by its sub-Section (3) which allows existence of the concept of HUF. Once existence of the concept of HUF is an exception to the main provision contained in sub-Sections (1) and (2) of Section 4 of the Benami Act, then, to take the case outside sub- Sections (1) and (2) of Section 4 of the Benami Act it has to be specifically pleaded as to how and in what manner an HUF and each specific property claimed as being an HUF property has come into existence as an HUF property. If such specific facts are not pleaded, this Court in fact would be negating the mandate of the language contained in sub-Sections (1) and (2) of Section 4 of the Benami Act.

12. This Court is flooded with litigations where only self- serving averments are made in the plaint of existence of HUF and a person being a coparcener without in any manner pleading therein the requisite legally required factual details as to how HUF came into existence. It is a sine qua non that pleadings must contain all the requisite factual ingredients of a cause of action, and once the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhishter (supra) come in, the pre 1956 position and the post 1956 position has to be made clear, and also as to how HUF and its properties came into existence whether before 1956 or after 1956. It is no longer enough to simply state in the plaint after passing of the Hindu Succession Act 1956, that there is a

joint Hindu family or an HUF and a person is a coparcener in such an HUF/joint Hindu family for such person to claim rights in the properties as a coparcener unless the entire factual details of the cause of action of an HUF and each property as an HUF is pleaded.

13. In view of the above, actually the application filed under Order VII Rule 11 CPC in fact is treated as an application under Order XII Rule 6 CPC, inasmuch as, it is observed on the admitted facts as pleaded in the plaint that no HUF and its properties are found to exist. There is no averment in the plaint that late Sh. Jage Ram inherited property(s) from his paternal ancestors prior to 1956. In such a situation, therefore, the properties in the hands of late Sh. Jage Ram cannot be HUF properties in his hands because there is no averment of late Sh. Jage Ram inheriting ancestral property(s) from his paternal ancestors prior to 1956. There is no averment in the plaint also of late Sh. Jage Ram''s properties being HUF properties because HUF was created after 1956 by late Sh. Jage Ram by throwing properties into a common hotchpotch. I have already elaborated in detail above as to how an HUF has to be pleaded to exist in the pre 1956 and the post 1956 positions and the necessary averments which had to be made in the present plaint. The suit plaint however grossly lacks the necessary averments as required in law to be made for a complete cause of action to be pleaded for existence of an HUF and its properties."

3. Now, let us see what are the facts of the present case and apply the ratio of the judgment in the case of Sh. Surender Kumar (supra). For this purpose reference will have to be made to the relevant paras of the plaint and these relevant paras of the plaint are paras 2 to 10 and which read as under:

"2. That defendant no.1, father of the plaintiff initially started business in partnership with defendant no.3 Madan Lal Khurana in the name and style M/s. Khurana Traders from a tenanted premises Opposite Shop No. 217, Behind Shri Gauri Shankar Temple, New Lajpat Rai Market, Chandni Chowk, Delhi-110006, in as early as 1980 and subsequently the plaintiff was also called and joined in the said business in the next couple of years. At that time it was agreed between the defendants and plaintiff that they being the Joint Hindu Family Members of Shri Tilak Raj Khurana, Hindu Undivided Family of which Sh. Tilak Raj Khurana defendant No. 1, being father and head of the family and plaintiff, defendants No. 3 & 4 being sons, shall be other family members thereof, and all male members including father/head of the family, would contribute and put their best efforts in the said and/or the other businesses, which may be established time to time in the different names, under different- different partnerships and different places and whatever they will earn and made from the earnings made from such business and/or the assets generated their from in the names of the said business or any individual, joint names of the family members, including in the name of defendant no.2, the same shall belong to and be of joint family assets/properties, irrespective who ever may look after any business, possessing any shop, house or any other property either under ownership or tenanted, at any point of time and all the family members except defendant no.2, shall have one forth share each therein at all relevant time. Since, defendant no. 1, being

father of the plaintiff and defendants no.3 and 4, happens to be an experience person and plaintiff and defendant no.3 and 4 had complete faith on him, it was agreed he shall managed and kept all records of all transactions of the businesses, assets and properties etc. with him. It was also agreed specifically, unless divided mutually among all members together, all the said firms, funds, incomes and properties, existing or already disposed off, shall be treated as joint family undivided properties and on partition true accounts of all up-to such date, when agreed to partition, shall be rendered and each such members except defendant no. 2 as stated above, shall be given his due share and possession of the such firms, assets and properties.

3. That pursuant to the given aforesaid broad understanding by the defendants, the plaintiff was made to believe therein bonafidely being family member and as agreed between the parties, they started to act there upon, by working together initially in the firm M/s. Khurana Traders and subsequently in the names of other firms established time to time in the names of M/s. Khurana Associates and M/s. Khurana Sales Corporation and using the funds and incomes of the said firms generated therefrom, acquired various properties time to times in the name of one or the other parties hereto.

4. That the plaintiff and defendants being in close relations with each other, their business is also common and they have vested interests in the business and properties. The business is being run under the name and style of M/s. Khurana Traders, at the tenanted premises under tenancy of Sh. Tilak Raj Khurana, father of the plaintiff, at Opposite Shop No. 217, Behind Shri Gauri Shankar Temple, New Lajpat Rai Market, Chandni Chowk, Delhi-110006. Since as early as 1980, the Firm was established as a Partnership Firm. The above Firm is being looked after by Sh. Tilak Raj Khurana and Sh. Sanjay Khurana - defendants no.1 and 4 respectively. Another firm is being run under the name and style of M/s. Khurana Associates, at Shop No. 205, New Lajpat Rai Market, Delhi-110006. The said shop was purchased in the name of Sh. Tilak Raj Khurana. The same is in possession of and being looked after by Sh. Surender Khurana, plaintiff herein. The third shop No. 267, New Lajpat Rai Market, Delhi-110006, comprising of basement, ground, first and second floors, is being run under the trade name and style of M/s. KHurana Sale Corporation. The said property was purchased in the name of Sh. Surender Khurana, plaintiff herein and Sh. Madan Lal Khurana, defendant no.3.

5. The prior to 1980, there was no property in the name of plaintiff and the defendants. The business was started in the year 1980 by the plaintiff and defendants No. 1 and 3.

6. That from the income i.e. the joint funds received from the different shops since 1980 onwards, different properties as mentioned hereunder were acquired and purchased in different names of the family members and are joint properties having been purchased from the joint funds of the family members.

i) Tenancy Shop/premises under tenancy of Sh. Tilak Raj Khurana, father of the plaintiff and defendant no. 1 herein, Opposite Shop No. 217, Behind Shri Gauri Shankar Temple,

New Lajpat Rai Market, Chandni Chowk, Delhi - 110006, business of which is being run under the name and style of M/s. Khurana Traders. The approx. value of the above shop is about Rupees Two crores and two other and two other godowns building No. 418, Shri Gauri Shankar Temple, Chandni Chowk, Delhi - 110006. The approx. value of the said two godowns is Rs. 50,00,000/- (Rupess Fifty Lacs), under the possession of defendants No. 1 and 4.

ii) Shop No. 205, New Lajpat Rai Market, Delhi - 110006, in the name of Sh. Tilak Raj Khurana defendant No. 1. The said shop is in occupation and possession of Sh. Surender Khurana, plaintiff herein, business being run under the trade name and style of M/s. Khurana Associates. The approx. value of the above said shop is about Rs. 60,00,000/- (Rupees Sixty Lacs).

iii) Shop No. 267, New Lajpat Rai Market, Delhi-110006, comprising of basement, ground, first and second floors, under the Joint names of Sh. Surender Khurana plaintiff herein and Sh. Madan Lal Khurana and is in occupation and possession of Sh. Madan Lal Khurana, defendant No. 3 herein, business being run under the trade name and style of M/s. Khurana Sales Corporation. The approx. value of the above shop is about Rupees Two crores.

iv) Residential Built up property No. 172, Jagrity Enclave, Delhi-110092, comprising of basement, ground floor first floor and Barsati Room, area approx. 192 Sq.yds., purchased in the year 1983, in the joint names of Smt. Santosh Khurana- defendant No. 2, herein, and Sh. Sanjay Khurana-defendant No. 4 herein, and his family members are residing, therein along with Sh. Tilak Raj Khurana-defendant No. 1 and his wife Smt. Santosh Khurana-defendant No. 2. The approx. value of the above built-up property is about Rupees Four crores.

v) Residential Built up property No. 242, Jagrity Enclave, Delhi-110092, comprising of basement, ground floor and first floor area approx. 275 sq.yds, purchased in the year 1993, in the joint names of Sh. Madan Lal Khurana, defendant No. 3 herein, Sh. Sanjay Khurana, defendant no. 4 herein, and Sh. Surender Khurana, plaintiff herein respectively. Sh. Madan Lal Khurana, defendant no. 3 herein, is in possession and user with his family members of First Floor, and half portion of basement and Sh. Surender Khurana-plaintiff, with his family members is in possession and user of ground floor and half portion of basement. The approx. value of the above built up property is about Rupees Six crores.

vi) Residential Built up Property/Flat in Sai Cooperative Society, situated at Rohini, Delhi, in the name of Sh. Madan Lal Khurana defendant No. 3, purchased in the year 1981. Sh. Tilak Raj Khurana, defendant No. 3 herein, is in possession thereof. The approx. value of the above flat is about Rs. 75,00,000/- (Rupees Seventy Five lacs).

vii) Residential built up property/flat in Sai Cooperative Society, situated at Rohini, Delhi, in the name of Smt. Santosh Khurana defendant no. 2, purchased in the year 1981. Sh.

Tilak Raj Khurana, defendant no. 1 herein, is possession. The approx. value of the above flat is about Rs. 75,00,000/- (Rupees Seventy Five Lacs).

viii) One plot at Rajender Nagar, Ghaziabad (UP) admeasuring 650sq.yds., acquired in the name of Smt. Santosh Khurana, defendant no. 2 in the year 1987, which was sold on or about 2001 for an approx. value of Rs. 25,00,000/- (Rupees Twenty Five Lacs). The amount has been received by defendant no. 1, account of which the defendant no. 1 will have to disclosed and render the account thereof.

ix) One plot at Ramprastha Colony, Ghaziabad (UP) admeasuring 555sq.yds., in the name Smt. Santosh Khurana, defendant no. 2, Sh. Surender Khurana, plaintiff herein and Sh. Sanjay Khurana, defendant no. 4, purchased in the year 1995. The said plot was constructed into Twelve Flats and said flats were sold by defendants no. 1,2, and 4, in league and collusion with each other, without prior consent, knowledge and plaintiff being party thereto and the entire sale consideration of all the said flats is with the defendants 1,2 and 4 who have to rendered the account thereof. In the estimation of plaintiff the sale consideration of said twelve flats would be total Rs. 5 (five) crores. The plaintiff is also entitled to receive his share in the sale consideration of said flats being a joint owner thereof.

x) That the plaintiff has also come to know that defendants 1 and 4, from the above said flats sale consideration/funds, have purchased on 1st May, 2004, a Shop No. SB-114 (C), at Jaipuria Developers Pvt. Ltd., Jaipuria Sunrise Plaza, @ Rs. 5000/- (Five Thousands) per.sq.ft. total area of which is 244.00sw.ft. Total sale value of the property is Rs. 11,22,400/- (Rupees Eleven lacs, Twenty Two Thousands four hundred). As on date the value of the same is more than Rs. 25,00,000/- (Rupees Twenty Five Lacs).

xi) That the plaintiff has also come to know that the defendants No. 1 and No. 4, from the above said flats sale consideration/funds, have purchased on 5th April 2004, another Shop No. SA-152, at Jaipuria Developers Pvt. Ltd., Jaipuria Sunrise Plaza, @ Rs. 5000/-(five thousand) per sq.ft. total area of which is 267.00sq.ft. total sale value of the property is Rs. 12,28,200/- (Rupees Twelve Lacs, Twenty Eight Thousand, Two Hundred). As on date, the value of the same is more than Rs. 30,00,000/-(Rupees Thirty Lacs).

xii) That the plaintiff has also come to know that defendants 1 and 4, from the above said flats sale consideration/funds, have purchased on 5th April, 2004, another Shop No. SA-154(c), at Jaipuria Developers Pvt. Ltd., Jaipuria Sunrise Plaza @ Rs. 5000/- (Five Thousands) per sq.ft total area of which is 244.00 sq. ft. totale sale value of the property is Rs. 11,22,400/- (Rupees Eleven Lacs, Twenty Two Thousands, Four Hundred). As on date the value of the same is more than Rs. 25,00,000/- (Rupees Twenty Five lacs).

xiii) One property plot area 300 sw. meters had been purchased by defendant no. 1, either in his own name or in the name of Smt. Santosh Khurana or Sh. Sanjay Khurana,

defendant no. 4, at manesar, Gurgaon (Haryana). Approx. value of the property is Rs. 45,00,000/- (Rupees Forty Five Lacs).

xiv) One property plot area 300 sq.meters had been purchased by defendant no. 1, either in his own name or in the name of Smt. Santosh Khurana or Sh. Sanjay Khurana, defendant no.4, at Kundli, Sonepat (Haryana). Approx. value of the said property is Rs. 35,00,000/- (Rupees Thirty Five Lacs).

It is submitted although, the plaintiff is in legal possession of the aforesaid joint family properties, yet he is also in actual physical and symbolical possession.

7. That Shop No. 267, New Lajpat Rai Market, Delhi- 110006, comprising of basement, ground, first and second floors, under the joint names of Sh. Surender Khurana plaintiff and Sh. Madan Lal Khurana, defendant no. 3. The defendant no. 3 is running business under the trade name and style of M/s. Khurana Sales Corporation, as detailed in para (iii) above from part of the said premises and he is releasing rents from rest of the part of the said shop approximately Rs. 60,000/- per month, which the said defendant is liable to render the account thereof, even since let out and the rent received by him.

8. That all the above properties have been purchased from the joint funds, joint income and joint business and all the money whosoever and whatsoever had earned from the joint business was/is kept by defendants. The defendants 1,2 and 4 have also sold and received considerations of various joint family properties including twelve flats built on plot at Ramprastha Colony, Ghaziabad, another plot at Rajender Nagar, Ghaziabad etc. Even the rental income received by the defendant no. 3 is also in his hands and all the defendants have to render the account of entire family incomes, funds, properties and other assets received and generated therefrom. It is further submitted that from the inception of the business, till date, no division, distribution or partition of joint family funds, properties have been done an/or no rendition of accounts have been made by the defendants, who kept and maintaining the account thereof and are in possession of the same and documents thereof.

9. That in the manner indicated above, all the share-holding of all the properties acquired from the joint family business and funds, rental earnings etc. comes 1/4 share to each of the plaintiff, defendants no. 1,3 and 4, and accordingly, the plaintiff entitled to one-fourth share in the above.

10. That the plaintiff being the member of the same family with a common ancestor and on account of close relationship and joint family business amongst the parties, the rights, claim and interest of plaintiff, defendants no. 1,3 and 4 are common and equal in all the joint family business, firms funds, properties existing and already disposed off. All the family joint business and properties purchased from the family joint business/funds are joint ones and all the parties except defendant no. 2 to the suit are the co-owners of the same and plaintiff and defendant no. 1,3 and 4 are entitled to one- fourth share in the joint

family business as well as joint family properties."

4. In view of the ratio of the judgment in Sh. Surender Kumar"s case (supra), the aforesaid averments made in paras 2 to 10 of the plaint cannot be said to be the legal and factual averments required to be made for existence of a cause of action with respect to HUF and its properties. There are three firms as per the plaint being M/s. Khurana Traders, M/s. Khurana Associates and M/s. Khurana Sales Corporation. Qua the firm M/s. Khurana Traders as per the averments made in para 2 of the plaint, plaintiff is admittedly not a partner. Though plaintiff claims to be a partner in M/s. Khurana Associates and M/s. Khurana Sales Corporation, no details are stated in the plaint as to under which partnership deed (of which date) plaintiff claims to be a partner of any of these firms. In a case such as the present, besides ipse dixit of the plaintiff being a partner, it is necessary in law as per Order VI Rule 4 of the Code of Civil Procedure, 1908 (CPC) to make specific reference to the partnership deed as per which plaintiff is a partner in M/s. Khurana Associates and M/s. Khurana Sales Corporation. This however has not been done and the plaint is conspicuously silent in this regard.

5. It is also seen that there is only ipse dixit of the plaintiff of joint funds and joint properties being purchased from the joint funds, however, "joint funds" or joint properties are not in law equal to HUF funds/HUF properties or businesses. It is also further required to be noted that "joint funds" is an expression which is not in law equal to joint Hindu family property. "Working together" is not equivalent to existence of a joint Hindu family. This is all the more so after passing of the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as "the Benami Act") and which states that what is apparent must necessarily be taken as real i.e. who is the owner of a particular property as stated in the title deed is final, subject of course to the exceptions contained in Section 4(3) of the Benami Act of existence of HUF properties or trust properties. Specific and categorical averments have to be made with respect to existence, creation and continuation of HUF and its properties, and which necessary averments are not found in the plaint. Also, there is no averment in the plaint admittedly with respect to the properties being properties purchased in trust for non- applicability of the bar contained in sub-Sections (1) and (2) to Section 4 of the Benami Act to come in because of Section 4(3) of that Act.

6. (i). It is also required to be noted that properties which are referred to in para 6(vi) to 8 of the plaint are wholly vague properties without any details and it is not understood as to how, unless specific details exist of the properties, a property can at all be a subject matter of a suit, much less of partition. This is an aspect I have considered in the judgment in the case of Sunny (Minor) & Anr. Vs. Sh. Raj Singh & Ors., CS(OS) 431/2006, decided on 17.11.2015 and the relevant para of which judgment on the issue at hand is para 10 and which para 10 reads as under:-

"10. While on the aspect of properties mentioned in para 15 of the plaint, it bears note that defendants have categorically denied that there are any properties of the family which are found at serial nos.(c), (e), (f) and (g) of para 15 of the plaint either in the name

of defendant no.1 or of any of the defendants and that in fact no such properties exist. Once that is so there does not arise any question of partition of such imaginary properties. This Court notes that the properties at serial nos.(c), (f) and (g) being of 200 sq. yds plot in Ber Sarai Extension, New Delhi, Ballabhagarh in Faridabad and Kotputli, Rajasthan are wholly vague and without any details of the municipal numbers or agricultural khasra numbers and therefore it cannot be said that any of the said three properties exist, and are thus available for partition. The defendants have further denied that the defendants have ever owned even a single flat, much less four flats, at Village Adhichini, Hauz Khas, New Delhi as mentioned at serial no.(e) of para 15 of the plaint. This Court further observes that the details given of even the last two properties in para 15 of the plaint being vehicles and personal belongings including bank accounts are again wholly vague and are thus incapable of being understood and hence partitioned, because what are the bus and tempo numbers are not stated and nor are the bank accounts details given of the alleged accounts in Allahabad Bank and Punjab National Bank and there is no proof on record that these properties are in the name of defendant no.1 or in the name of any member of the family. Therefore, qua all such vague/non-existent properties there does not arise any issue of passing any vague decree of partition having vague and incomplete particulars."

(emphasis added)

(ii) Accordingly, qua vague properties, the suit is not maintainable and would stand dismissed as no reliefs can be granted with respect to properties of which complete details have not been mentioned in the plaint.

7. It may be noted that in para 6 of the plaint various properties are referred which are admittedly already sold, and with respect to such properties therefore there does not arise an issue of partition, and also that it is noted that in the suit plaint no relief is claimed for recovery of monies allegedly on account of the share of the plaintiff in such properties.

8. 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.

(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.

(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.

(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.

9. 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.

10. Suit is accordingly dismissed, leaving the parties to bear their own costs. All pending applications accordingly stand disposed of.