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

% **Reserved on : 21st February, 2023**
Pronounced on: 1st March, 2023

\+ CS(OS) 650/2021 & I.A. 16025/2021 & I.A. 7658/2022

AKSHAT MITTAL & ORS. ..... Plaintiffs
Through: Mr. Praveen Mahajan and Mr. Kawirangbou Charenamei, Advocates

versus

MRS RENU MITTAL & ORS. ..... Defendants
Through: Dr. Amit George, Mr. Siddhartha Jain, Mr. Amol Acharya and Mr. Arkaneil Bhaumik, Advocates for D-1 and 2 Mr. Abhinav Tathagat, Advocates for D-3

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

I.A. 2094/2022 *(Under Order VII R 11 of CPC)*

1. The instant application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter "CPC") read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of defendant no. 1 seeking rejection of the plaint.

2. In the captioned suit, the plaintiffs are seeking a decree of partition and permanent injunction in respect of the property bearing no. 171, Chitra Vihar, Delhi – 110092 (hereinafter "suit property").

3. The instant application is filed on behalf of defendant no. 1 under Order VII Rule 11 of the CPC for dismissal of the suit on the ground that

the plaint does not disclose the cause of action for grant of permanent injunction and a decree for partition. In the application, it is averred that neither there are any relevant and material contentions in the suit, nor have the plaintiffs filed any document on record to support their allegations and premise on which the present suit is based. It is also contended that the plaintiffs have no locus to seek partition of the said property, which is a self-acquired property of late Sh. Pradeep Kumar Mittal, since none of the plaintiffs are the legal heirs of late Sh. Pradeep Kumar Mittal. Therefore, the plaintiffs cannot raise any claim towards the said suit property. It is further averred in the application that the said suit property was not a Hindu Undivided Family (hereinafter "HUF") property but the individual property of the late Sh. Pradeep Kumar Mittal. Accordingly, it is prayed that the suit seeking the relief of partition and permanent injunction amongst other reliefs may be dismissed.

4. Learned counsel appearing on behalf of the defendant no. 1/applicant submitted that it is an admitted fact that late Sh. Pradeep Kumar Mittal is the registered owner of the suit property. The plaintiffs have themselves filed the Agreement to Sell dated 9th October, 1997 and Conveyance Deed dated 27th March, 2001, executed in favour of late Sh. Pradeep Kumar Mittal, with the plaint. It is also submitted that the plaintiffs have made vague averments about the existence of a purported HUF and the suit property being part of an alleged common pool of the HUF. It is submitted that there are no averments or document which fulfil even the bare modicum of the minimum prerequisites to plead an actionable case in relation to the existence of the alleged HUF. The plaint is completely silent about the specific details and/or particulars of the sources of funds for the purchase of the property.

5. Learned counsel for the defendant no. 1/applicant submitted that the plaintiffs have failed to elaborate the details of the HUF and the property thereof, for which the plaintiffs' claim themselves as coparceners and are seeking partition. The plaintiffs admittedly are not the legal heirs of late Sh. Pradeep Kumar Mittal and therefore, cannot seek partition of the property which is registered in the name of late Sh. Pradeep Kumar Mittal. In fact, the defendant no. 1, who is the only surviving legal heir of late Sh. Pradeep Kumar Mittal is now the absolute owner of suit property. The suit property stands mutated in the name of defendant no. 1 vide Mutation Letter dated 26th August, 2021 issued by East Delhi Municipal Corporation.

6. It is submitted that the plaintiffs have miserably failed to show that the plaintiffs are coparceners to the estate of late Sh. Pradeep Kumar Mittal. The plaintiffs herein are children and wife of late Sh. Praveen Kumar Mittal and were permitted to live in suit property. The plaintiffs have already inherited the movable and immovable assets of late Sh. Praveen Kumar Mittal, after his demise and thus, cannot claim any right in the assets of late Sh. Pradeep Kumar Mittal. It is vehemently submitted that the plaintiffs are happy with exclusive enjoyment of all the assets left behind by late Sh. Praveen Kumar Mittal, whereas at the same time stating that the assets of late Sh. Pradeep Kumar Mittal are transformed into a HUF property with shares for all including the plaintiffs herein. The plaintiff have also not placed on record any document to show if there exists any HUF of either brothers, i.e. late Sh. Pradeep Kumar Mittal, late Sh. Pankaj Kumar Mittal and late Sh. Praveen Kumar Mittal or the said brothers were coparceners to any alleged HUF. It is submitted that neither brothers as aforesaid had any HUF or were part of any HUF, as alleged by the plaintiffs in the suit.

7. Learned counsel for the defendant no. 1/applicant submitted that considering the aforesaid submissions, the plaintiffs have no cause of action to file the instant suit or seek partition of the self-acquired property of late Sh. Pradeep Kumar Mittal, and as such, the suit of the plaintiff is liable to be dismissed.

8. *Per contra,* learned counsel appearing on behalf of the plaintiffs submitted that the bare perusal of the contents of application demonstrates that the defendant No. 1 in the present application has merely culled out the portions of her defence as stated in the written statement and is relying upon the documents filed with the written statement. The applicant is virtually claiming the adjudication of the disputed fact between the parties by way of filing the instant application under Order VII Rule 11 of CPC which is not permissible under law, hence, the present application defies very basic purpose of Order VII Rule 11 of the CPC and is liable to be dismissed with exemplary costs.

9. It is further submitted that the instant application is wholly misconceived and based on distorted version of the facts, the application does not satisfy the criteria of dismissal of the plaint under Order VII Rule 11 of the CPC, the suit of the plaintiffs disclosed the cause of action which is duly stated in the suit itself, thus the application is liable to be dismissed with exemplary costs as it is nothing but gross misuse of process of law.

10. It is submitted that the contentions raised by the defendant no. 1 are a matter of trial which cannot be decided by way of allowing the present application. It is submitted that the explanation and/or defence taken by the defendant in the written statement and/or otherwise cannot be basis to adjudicate and decide the application under Order VII Rule 11 of the CPC.

11. It is submitted that at the stage of consideration of application under Order VII Rule 11 of the CPC, it is obligatory upon the defendant to read the entire plaint as a whole to find out whether it discloses a cause of action or not and the plaint cannot be rejected on the basis of selective reading of the plaint. It is stated that whether the plaint discloses a cause of action is a question of fact which has to be gathered on the basis of averments raised in the plaint in its entirety by taking those averments to be correct. A cause of action is a bundle of facts which is succulently stated in the entire plaint of the plaintiff. It is further submitted that the bare perusal of the plaint in totality shall clearly disclose the cause of action which requires determination by this Court on the basis of issues which ought to be framed post completion of pleadings. The mere averment of the defendants that the plaintiff may not succeed in their claims cannot be a ground for the rejection of the plaint.

12. Learned counsel for the plaintiffs/non-applicants vehemently submitted that in view of the contentions made in the foregoing paragraphs, it is evident that the instant petition is nothing but a gross misuse of process of law and the defendant no. 1/applicant has miserably failed to establish any ground for allowing the instant application under Order VII Rule 11 of the CPC for rejection of the plaint.

13. Heard learned counsel for the parties and perused the contentions made in instant application as well as the plaint.

14. ***Points for consideration***

Upon a thoughtful consideration of the pleadings, record as well as the oral submissions on behalf of the parties, the following points/issues fall for consideration before this Court:

(i) Whether the suit property is property belonging to an HUF.

(ii) Whether the instant plaint is liable to be rejected on the grounds raised by the applicant in the application under Order VII Rule 11 of the CPC.

15. An HUF property is a property belonging to an HUF having a particular colour. Pursuant to the enactment of the Hindu Succession Act, 1956, when a male descendant inherits a property from his paternal ancestors, such inheritance itself would not constitute a separate HUF property in the hands of the person who inherits it.

16. In the case of ***Commissioner of Wealth Tax, Kanpur vs. Chander Sen,* (1986) 3 SCC 567**, the Hon'ble Supreme Court held as under:

> *"**15.** It is clear that under the Hindu law, the moment a son is born, he gets a share in the father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. But the question is: is the position affected by Section 8 of the Hindu Succession Act, 1956 and if so, how? The basic argument is that Section 8 indicates the heirs in respect of certain property and Class I of the heirs includes the son but not the grandson. It includes, however, the son of the predeceased son. It is this position which has mainly induced the Allahabad High Court in the two judgments, we have noticed, to take the view that the income from the assets inherited by son from his father from whom he has separated by partition can be assessed as income of the son individually. Under Section 8 of the Hindu Succession Act, 1956 the property of the father who dies intestate devolves on his son in his individual capacity and not as karta of his own family. On the*

other hand, the Gujarat High Court has taken the contrary view.

16. *In CIT v. Babubhai Mansukhbhai [(1977) 108 ITR 417 (Guj)] the Gujarat High Court held that in the case of Hindus governed by the Mitakshara law, where a son inherited the self-acquired property of his father, the son took it as the joint family property of himself and his son and not as his separate property. The correct status for the assessment to income tax of the son in respect of such property was as representing his Hindu undivided family. The Gujarat High Court could not accept the view of the Allahabad High Court mentioned hereinbefore. The Gujarat High Court dealt with the relevant provisions of the Act including Section 6 and referred to Mulla's "Commentary" and some other decisions.*

17. *Before we consider this question further, it will be necessary to refer to the view of the Madras High Court. Before the Full Bench of Madras High Court in Additional CIT v. P.L. Karuppan Chettiar [(1978) 114 ITR 523 (Mad)] this question arose. There, on a partition effected on March 22, 1954, in the Hindu undivided family consisting of P, his wife, their son, K and their daughter-in-law, P was allotted certain properties as and for his share and got separated. The partition was accepted by the revenue under Section 25-A of the Indian Income Tax Act, 1922. K along with his wife and their subsequently born children constituted a Hindu undivided family which was being assessed in, that status. P died on September 9, 1963. leaving behind his widow and divided son K, who was the karta of his Hindu undivided family, as his legal heirs and under Section 8 of the Hindu Succession Act. 1956, the Madras High Court held, that these two persons succeeded to the properties left by the deceased, P, and divided the properties among themselves. In the assessment made on the Hindu undivided family of which K was the karta, for Assessment Year 1966-67 to 1970-71, the Income Tax Officer included for assessment the income received from the properties inherited by K from his father, P. The inclusion was confirmed by the Appellate Assistant Commissioner but, on further appeal,*

the Tribunal held that the properties did not form part of the joint family properties and hence the income therefrom could not be assessed in the hands of the family. On a reference to the High Court at the instance of the revenue, it was held by the Full Bench that under the Hindu law, the property of a male Hindu devolved on his death on his sons and grandsons as the grandsons also have an interest in the property. However, by reason of Section 8 of the Hindu Succession Act, 1956, the son's son gets excluded and the son alone inherits the property to the exclusion of his son. No interest would accrue to the grandson of P in the property left by him on his death. As the effect of Section 8 was directly derogatory of the law established according to Hindu law, the statutory provision must prevail in view of the unequivocal intention in the statute itself, expressed in Section 4(1) which says that to the extent to which provisions have been made in the Act, those provisions shall override the established provisions in the texts of Hindu law. Accordingly, in that case, K alone took the properties obtained by his father, P, in the partition between them, and irrespective of the question as to whether it was ancestral property in the hands of K or not, he would exclude his son. Further, since the existing grandson at the time of the death of the grandfather had been excluded, an after-born son of the son will also not get any interest which the son inherited from the father. In respect of the property obtained by K on the death of his father, it is not possible to visualise or envisage any Hindu undivided family. The High Court held that the Tribunal was, therefore, correct in holding that the properties inherited by K from his divided father constituted his separate and individual properties and not the properties of the joint family consisting of himself, his wife, sons and daughters and hence the income therefrom was not assessable in the hands of the assessee-Hindu undivided family. This view is in consonance with the view of the Allahabad High Court noted above.

18. *The Madhya Pradesh High Court had occasion to consider this aspect in Shrivallabhdas Modani v. CIT [(1982) 138 ITR 673 (MP)] and the Court held that if there was no coparcenary subsisting between a Hindu and his sons at the time of death of*

his father, property received by him on his father's death could not be so blended with the property which had been allotted to his sons on a partition effected prior to the death of the father. Section 4 of the Hindu Succession Act, 1956, clearly laid down that "save as expressly provided in the Act, any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act should cease to have effect with respect to any matter for which provision was made in the Act". Section 8 of the Hindu Succession Act, 1956 as noted before, laid down the scheme of succession to the property of a Hindu dying intestate. The Schedule classified the heirs on whom such property should devolve. Those specified in Class I took simultaneously to the exclusion of all other heirs. A son's son was not mentioned as an heir under Class I of the Schedule, and, therefore, he could not get any right in the property of his grandfather under the provision. The right of a son's son in his grandfather's property during the lifetime of his father which existed under the Hindu law as in force before the Act, was not saved expressly by the Act, and therefore, the earlier interpretation of Hindu law giving a right by birth in such property "ceased to have effect". The court further observed that in construing a Codification Act, the law which was in a force earlier should be ignored and the construction should be confined to the language used in the new Act. The High Court felt that so construed. Section 8 of the Hindu Succession Act should be taken as a self-contained provision laying down the scheme of devolution of the property of a Hindu dying intestate. Therefore, the property which devolved on a Hindu on the death of his father intestate after the coming into force of the Hindu Succession Act, 1956, did not constitute HUF property consisting of his own branch including his sons. It followed the Full Bench decision of the Madras High Court as well as the view of the Allahabad High Court in the two cases noted above including the judgment under appeal.

19. *The Andhra Pradesh High Court in the case of CWT v. Mukundgirji [(1983) 144 ITR 18 (AP)] had also to consider the aspect. It held that a perusal of the Hindu*

Succession Act, 1956 would disclose that Parliament wanted to make a clear break from the old Hindu law in certain respects consistent with modern and egalitarian concepts. For the sake of removal of any doubts, therefore, Section 4(1)(a) was inserted. The High Court was of the opinion that it would, therefore, not be consistent with the spirit and object of the enactment to strain provisions of the Act to accord with the prior notions and concepts of Hindu law. That such a ccurse was not possible was made clear by the inclusion of females in Class I of the Schedule, and according to the Andhra Pradesh High Court, to hold that the property which devolved upon a Hindu under Section 8 of the Act would be HUF property in his hands vis-a-vis his own sons would amount to creatins two classes among the heirs mentioned in Class I. viz. the male heirs in whose hands it would be joint family property vis-à-vis their sons: and female heirs with respect to whom no such concept could be applied or contemplated. The intention to depart from the pre-existinc Hindu law was again made clear by Section 19 of the Hindu Succession Act which stated that if two or more heirs succeed together to the property of an intestate, they should take the property as tenants-in-common and not as joint tenants and according to the Hindu law as obtained prior to Hindu Succession Act two or more sons succeeding to their father's property took as joint tenants and not tenants-in-common. The Act, however, has chosen to provide expressly that they should take as tenants-in-common. Accordingly the property which devolved upon heirs mentioned in Class I of the Schedule under Section 8 constituted the absolute properties and his sons have no right by birth in such properties. This decision, however, is under appeal by certificate to this Court. The aforesaid reasoning of the High Court appearing at pp. 23 to 26 of Justice Reddy's view in CWT v. Mukundgirji [(1983) 144 ITR 18 (AP)] appears to be convincing."

17. In case of ***Yudhishter vs. Ashok Kumar,* (1987) 1 SCC 204**, the Hon'ble Supreme Court held as under:

*"**9.** Our attention was drawn to a decision of the Judicial Committee in Rani Sartaj Kuari v. Rani Deoraj Kuari [(1887-88) 15 IA 51]. That case was in respect of an impartible estate governed by the Mitakshara school of Hindu law. There was a custom that the estate was impartible and was descendible to a single heir by the rule of primogeniture. It was held that in order to render alienations by the rajah in that case invalid as made without the consent of his son it must be shown that the Rajah's power of alienation was excluded by the custom or by the nature of the tenure. In such a Raj the son is not a co-sharer with his father. The Judicial Committee further observed that property in ancestral estate acquired by birth under the Mitakshara law is so connected with the right to partition that it does not exist independently of such right. At p. 64 of the Report, the Judicial Committee observed that the property in the paternal or ancestral estate acquired by birth under the Mitakshara law is, in the opinion of the Judicial Committee, so connected with the right to partition, that it did not exist where there was no right to it. We are of the opinion that no much support can be sought for by the appellant from the said decision. Here in the instant case, the question is whether the respondent who undoubtedly was governed by the Mitakshara school of law, had acquired a right to ancestral property by his birth. But this question has to be judged in the light of the Hindu Succession Act, 1956. Reliance was also placed on State Bank of India v. Ghamandi Ram [(1969) 2 SCC 33 : AIR 1969 SC 1330 : (1969) 3 SCR 681] . At p. 686 of the Report (SCC pp. 36-37, para 5), this Court observed that according to the Mitakshara school of Hindu law all the property of a Hindu joint family was held in collective ownership by all the coparceners in a quasi-corporate capacity. The court approved the observations of Mr Justice Bhashyam Ayyangar in Sundarsanam Maistri v. Narasimhulu Maistri [(1901-2) ILR 25 Mad 149, 154 : 11 MLJ 353] . But the question in the instant case is the position of the respondent after coming into operation of the Hindu Succession Act, 1956. Shri Banerji drew our attention to Mulla's Hindu Law 15th, Edn. at p. 924 where the learned commentator had discussed effect in respect of the*

devolution of interest in Mitakshara coparcenary property of the coming into operation of the Hindu Succession Act, 1956.

10. *This question has been considered by this Court in CWT v. Chander Sen [(1986) 3 SCC 567 : 1986 SCC (Tax) 641] where one of us (Sabyasachi Mukharji, J.) observed that under the Hindu law, the moment a son is born, he gets a share in father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as karta of his own undivided family but takes it in his individual capacity. At p. 577 to 578 of the Report, this Court dealt with the effect of Section 6 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th Edn., pp. 924-26 as well as Mayne's Hindu Law, 12th Edn. pp. 918-19. Shri Banerji relied on the said observations of Mayne on Hindu Law, 12th Edn., at p. 918-19. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12th Edn., p. 919. In that view of the matter, it would be difficult to hold that property which devolved on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-à-vis his own sons. If that be the position then the property which devolved upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the*

appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house."

18. A reading of the aforesaid judgments as well as the interpretation by the Hon'ble Supreme Court holds forth that the traditional concept of Hindu Law, pertaining to succession and inheritance wherein a male descendant inherits a property from his paternal ancestors and the inherited property becomes an HUF property, no longer prevails after passing of Hindu Succession Act, 1956. An HUF property, therefore, comes into existence when either a person has inherited the property from his male ancestors prior to passing of Hindu Succession Act, 1956 or when a person has throw his self-acquired property/individual property in common hotchpot after the passing of Hindu Succession Act, 1956. In the instant case, it is an admitted fact that the suit property was acquired by late Sh. Pradeep Kumar Mittal after passing of Hindu Succession Act, 1956. However, to set forth the claim of the plaintiffs, there is no specific pleading on behalf of the plaintiffs claiming throwing of the individual suit property into common hotchpot so as to transform the same into an HUF property. Proper pleading of existence of HUF is all the more so required in the present case because the HUF which is pleaded to exist is not the plaintiffs' and their immediate family members but involves their brothers and nephews. An HUF does not come into existence merely by uttering a mantra of there being a joint Hindu Family or Hindu Undivided Family. The plaintiffs have failed to satisfy the requirements of an HUF and how an HUF property comes into existence while arguing that the property in question was an HUF property or that an HUF was in existence, which have been extensively dealt with by this Court

after referring to the ratio of the judgment of the Hon'ble Supreme Court in the case of ***Chander Sen* (Supra)** and ***Yudhistir* (Supra).**

19. A reference to the plaint in the present case shows that it is claimed that ownership of the property by late Sh. Praveen Kumar Mittal in his name was in the nature of a Joint Hindu Family property. Such a bald averment in itself cannot create an HUF unless it is pleaded and established that late Sh. Praveen Kumar Mittal inherited the properties from his paternal ancestors prior to 1956 or that late Sh. Praveen Kumar Mittal created an HUF by throwing his own properties into a common hotchpot. These essential averments are completely missing in the plaint and therefore, making a casual statement regarding the existence of an HUF does not mean that the necessary factual cause of action, as required in law, has been shown to be arisen.

20. After a plain reading of the plaint, this Court does not find any pleading contending or establishing that suit property was an HUF property or that late Sh. Praveen Kumar Mittal or late Sh. Pradeep Kumar Mittal had thrown their individual property into a common hotchpot.

21. Since the defendant no. 1/applicant herein has filed an application under Order VII Rule 11 of the CPC for rejection of the plaint on the ground that it does not show any cause of action against him at the foremost, it is useful to refer to the relevant provision. The Order VII Rule 11 of the CPC is reproduced as under:

> *"11. Rejection of plaint- The plaint shall be rejected in the following cases-*
>
> *(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the*

valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp paper, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

22. Moreover, in the case of ***Saleem Bhai vs. State of Maharashtra,* (2003) 1 SCC 557**, the Hon'ble Supreme Court held as under:

"9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule

11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court."

23. It is thus clear from the above provision as well as the observations of the Hon'ble Supreme Court that where the plaint does not disclose a cause of action, the relief claimed is undervalued and/or not corrected within the time allowed by the Court, the plaint is insufficiently stamped and not rectified within the time fixed by the Court, is barred by any law, or fails to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that the power under Order VII Rule 11 of the CPC can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of trial.

Cause of Action

24. While scrutinizing the averments in the plaint, it is the bounden duty of this Court to ascertain the material for highlighting and showing the cause of action for filing the suit. It is also worthwhile to find out the meaning of the words "cause of action".

25. The cause of action is bundle of facts which, along with the application of the law prevailing, gives the plaintiff the right to seek relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree is to be set out in clear terms. A cause of action must include some acts/omissions done/omitted to be done by the defendant. In the absence of such an act/omission being contended and shown in the pleadings, no relief can possibly accrue to the parties that have approached the Court of law.

26. On the issue of cause of action being an essential indispensible requirement for accepting a plaint and granting a relief thereunder, the Hon'ble Supreme Court in the case of ***T. Arivandandam vs. T. V. Satyapal,*** **(1977) 4 SCC 467** held as under:

> *"**5**....The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them...."*

27. Furhter, in the case of ***A.B.C. Laminart (P) Ltd. vs. A. P. Agencies,*** **(1989) 2 SCC 163,** the Hon'ble Supreme Court held as under:

> *"**12**. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence*

which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

28. In the case ***Bloom Dekor Ltd. vs. Subhash Himatlal Desai,*** **(1994) 6 SCC 322,** the Hon'ble Supreme Court held as under:

*"**28**. By 'cause of action' it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court, (Cooke v. Gill); in other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit."*

29. In view of the pronouncements of Hon'ble Supreme Court, it is clear that if the allegations are vexatious and meritless and do not disclose a clear right or material to sue, it is the duty of the Court to exercise its powers under Order VII Rule 11 and reject the plaint at the outset. If clever drafting has created the illusion of a cause of action, it should be nipped in the bud at the first hearing of examining the parties under Order X of the CPC. It is mandatory that in order to get a relief, the plaintiff avers all material facts before the Court. In other words, it is necessary for the plaintiff to aver and prove the very cause of action for approaching the Court in order to succeed in a suit.

30. The present case is a classic case where the plaintiffs by clever drafting of the plaint, attempted to make out an illusory cause of action. The prayer no. (a) of the plaint is reproduced as under:

"a) pass a PRELIMINARY decree of the partition thereby partitioning by meets and bounds the build-up suit Property having front veranda (also used as car parking area), ground, first and second floors with terrace rights constructed upon "Plot No. 171, Chitra Vihar, Vikas Marg, Delhi - 110092 admeasuring 196.75 Sq Yds bounded as North: Plot No 170, East: Service Lane, South: Tot Lot, West: Road 30' Wide" (suit property) as shown in the site plan and shares of suit property

please be partitioned to the plaintiff No. 1to 3jointly as 1/3rd Share of suit property in the capacity of Class 1 legal heirs of Late Sh Praveen Kumar Mittal and to the defendants No 1 as l/3rd Share of suit property in the capacity of Class 1 legal heirs of Late Sh Pradeep Kumar Mittal and to the defendant No 3 and 4 jointly as 1/3rd Share of suit property in the capacity of Class 2 legal heirs (being surviving sisters) of Late Sh Pankaj Kumar Mittal and/or as per the legitimate shares of plaintiffs and defendants and…;"

31. Some relevant contents made in the plaint are also reproduced as under:

"1) That the Plaintiff No.1 is the "son" of Late Sh Praveen Kumar Mittal, whereas the plaintiff No. 2 is the 'daughter" of the Late Sh Praveen KumarMittal. The Plaintiff No. 3 is the "widow / wife" of Late Sh Praveen Kumar Mittal that the Plaintiff No 3 herein being a widow of Late Sh Praveen Kumar Mittal steps in the shoes of her husband in capacity of heir in Class I. Thus, the plaintiffs herein are fully entitled to claim the partition of joint suit property i.e. "having front veranda (also used as car parking area), ground, first and second floors with terrace rights constructed upon "Plot No. 171, Chitra Vihar, Vikas Marg, Delhi - 110092 admeasuring 196.75 Sq Yds bounded as North: Plot No 170, East: Service Lane, South: Tot Lot, West: Road 30' Wide"

2) That Late Sh Praveen Kumar Mittal died on dated 09.05.2021 as intestate Hindu i.e without making any testamentary disposition capable of taking effect hence in view of afore stated relations of plaintiffs after the death of Late Sh Praveen Kumar Mittal all the Plaintiffs herein are Class 1 legal being son, daughter and widow respectively, thus are fully entitled to file the present suit.

3) That Late Sh. Praveen Kumar Mittal, father of the Plaintiff No. 1 and 2 and husband of Plaintiff No 3, were three brothers namely, Late Sh Pradeep Kumar Mittal (Elder Brother), Late Sh Pankaj Kumar Mittal (Younger Brother) and Late Sh Praveen Kumar Mittal (Youngest Brother). Unfortunately, all

three brothers got severely infected by COVID-19 during the month of April 2021 and after undergoing treatment in Holy Family Hospital, New Delhi for few weeks, all three brothers succumbed to the severity of COVID-19 disease on 02.05.2021, 14.05.2021 and 09.05.2021, respectively. That the Late Sh Pradeep Kumar Mittal was Mukhiya / Karta of the HUF family had one son, namely Sh. Ashish Mittal who was not in the right physical & mental condition since his birth thus remained virtually bed ridden for almost his whole life unfortunately Sh Ashish Mittal (Ashoo) also expired due to Covid-19 on 20.04.2021 while undergoing home treatment.

6) That three real brothers i.e. Late Sh Pradeep Kumar Mittal, Late Sh Pankaj Kumar Mittal and Late Sh Praveen Kumar Mittal were part of Hindu Undivided Family (governed by Mitakshara Law) i.e. lineal descendants of a common ancestor and upon birth of the Plaintiff No. 1and 2 being son and daughter of Late Sh Praveen Kumar Mittal, they automatically became a coparcener in HUF and thus assumes the legal right in HUF suit property by the birth.

12) The family since inception always lived as a Hindu Undivided and joint Family for all material purposes with joint kitchen since inception, that the joint earnings and joint labour of Late Pradeep Kumar Mittal and Late Sh Praveen Kumar Mittal as advocates practicing jointly created the nucleus of joint funds out of which the property bearing "Plot No. 171, Chitra Vihar, Vikas Marg, Delhi-110092" at the time of purchase said property was independent single storey house purchased in 1997 out of joint funds for the total consideration of Rs. 15 lacs by virtue of the agreement to sale dated 09.10.1997 executed in the name of Late Sh Pradeep Kumar Mittal and GPA dated 09.10.1997 in name of Late Sh Praveen Kumar Mittal.

13) It is stated that said property immediately on the date of purchase in year 1997 i.e. 09.10.1997 was voluntarily thrown in the common hotchpot of joint family and thus impressed with the Character of HUF property since inception and was never considered and treated as separate and / or individual property

of Late Sh Pradeep Kumar Mittal at any point of time. It is stated that Late Sh Pradeep Kumar Mittal being Karta/mukhiya of joint family executed the conveyance deed somewhere in the year 2001 in his favor for perfecting the tile of property for the benefit of entire Hindu joint family and to carry out the further constructions with joint funds. It is stated that since both Late Sh Pradeep Kumar Mittal and Late Sh Praveen Kumar Mittal already started their joint practice since year 1995 thus the said property purchased in year 1997 was fruit of joint labor of both advocate brothers which was purchased for the sole purpose of using the said property as joint house for the joint undivided Hindu family of all three Mittal's brother. It is pertinent to mention that Late Sh Pankaj Kumar Mittal also contributed for the construction of property.

14) That after the date of purchase of the said property on 26th January 1999, Late Sh Praveen Kumar Mittal got married to the Plaintiff No. 3 (Mrs Deepali Mittal) and the said Property i.e independent single storey house at 171, Chitra Vihar, Delhi-110092 became the matrimonial home of the Plaintiff No. 3.

17) That the said Property when purchased in year 1997 was single storey building comprising of One Drawing Room, One Lobby, Three Bedrooms, One kitchen and two toilets at Ground Floor only. The ground floor drawing room of the said Property used as common office by both advocates brothers and rest of One Lobby, Three Bedrooms, one kitchen and two toilets at Ground Floor was used as joint accommodation for the entire joint family, therefore, soon after the marriage of both brothers, the family started feeling shortage of accommodation and under these circumstances, family decided to construct two more additional floors in the said Property so that office and home of entire joint family can be easily accommodated in one place as the family never wished to separate from each other.

21) It is pertinent to mention that defendant No 3 and 4 being Class 2 legal heirs of Late Sh Pankaj Kumar Mittal never stayed in said property and they lived in their respective families of their husband since their marriage. It is stated that as typically in case of HUF the suit property remained in the

name of Late Sh Pradeep Kumar Mittal for the benefit of entire joint family furthermore said suit property was never treated by Late Sh Pradeep Kumar Mittal as his individual and/or separated property at any point of time till the date of his death in the manner aforesaid said suit property always remained in the hotchpotch of the joint family jointly enjoyed by all in complete harmony without any dispute.

24) That during his life time Late Sh Pradeep Kumar Mittal being Karta has powers in respect of day-to-day management of joint Hindu family and remained the controller of income and expenditure of joint family and he was the custodian of its surplus finances as well. It is stated that Late Sh Pradeep Kumar Mittal with confidence of all the members of Joint Hindu family always utilized the income of joint family for the joint purposes of family, viz., for the maintenance, education, marriage, well-being, day to day expense, religious functions, shradh and other religious ceremonies of the coparceners and members of the joint family.

25) That Late Sh Pradeep Kumar Mittal further allowed Late Sh Praveen Kumar Mittal to enjoy the proceeds of joint practice of advocacy generated with the joint labour of both advocates brothers. Late Sh Praveen Kumar Mittal was provided with the funds generated out of joint funds from time to time and also by way of collecting the proceeds directly from the clients as per the instructions of Late Pradeep Kumar Mittal as well. It is pertinent to mention that the brothers also generated separate properties in their own name and enjoyed the same during their life time as their own separated properties, however the "suit property" though registered in the name of Late Sh Pradeep Kumar Mittal admittedly remained the HUF property of the joint family and was never treated as separate property of Late Sh Pradeep Kumar Mittal, thus the family always lived in joint house with common kitchen as a Hindu Undivided Family for all purposes without raising any dispute at any point of time.

27) In other words, the said bank account of Standard Chartered Bank of Late Pradeep Kumar Mittal was somewhat like an HUF account and was being managed by him as Karta

of HUF for the welfare of the joint family. It is pertinent to mention here that out of the common funds generated from joint practice of both brothers and deposited in the bank account of Late Pradeep Kumar Mittal, several investments viz., investment in shares, FD, insurance, moveable properties, immovable properties, etc. were made, from time to time, by both brothers namely, Late Pradeep Kumar Mittal and Late Praveen Kumar Mittal, in their personal names which were kept as their own separate properties without any dispute and said fact was never disputed by any of the parties and even after death the respective families also got these separate properties in their own favor without any dispute.

39) That the Plaintiffs are apprehensive that the Defendants will leave no stone unturned to defeat the rights of the plaintiffs by creating third party rights over the Joint Family Property. Under these circumstances, the Plaintiffs have to approach this Hon'ble Court seeking the ad interim ex parte reliefs and also the decree of partition of the suit property and permanent mandatory injunctions thereby partitioning the Joint Family "suit property" by metes and bounds according to their shares."

32. An extensive perusal and consideration of the plaint and the relevant portion reproduced above shows that the plaintiffs have deliberately failed to elaborate or even mention as to how the suit property became an HUF property. Further, the plaintiffs have also completely failed to mention that the suit property, which is admittedly in the name of late Sh. Pradeep Kumar Mittal, and other properties, which were purchased by the plaintiffs, were not part of the hotchpot of the HUF. The averments and contentions regarding these facts have not been mentioned in the pleading of the plaintiffs and therefore, the basic and necessary ingredient is found to be missing from the plaint explaining how the plaintiffs are entitled to claim the partition of the property which was purchased by late Sh. Pradeep Kumar Mittal, of whom the plaintiffs are admittedly not the legal heirs.

33. The averments made in relevant paragraphs of the plaint reproduced as above cannot be said to be the legal and factual averments required to be made for showing the existence of a cause of action with respect to HUF and its properties. It is also found that there is only *ipse dixit* of the plaintiff claiming the joint properties being purchased from the joint funds, however, in law joint funds or joint properties are not equal to HUF funds/HUF properties or business.

34. This Court in the case of ***Surender Kumar Khurana vs. Tilak Raj Khurana and Ors.*, 2016 SCC OnLine Del 336** held as under:

> *"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."*
>
> *XXXXXX*
>
> *"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.

(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."

> *"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."

35. Therefore, in view of the facts, circumstances, contentions raised in the pleadings and the submissions made on behalf of the parties as well as the discussion in the foregoing paragraphs made in light of the judgments passed by the Hon'ble Supreme Court, this Court is of the considered opinion that the instant application is fit to be allowed, since the learned counsel appearing on behalf of the defendant no. 1/applicant has been able to establish that the captioned suit has been filed without delineating any cause of action in the plaint.

36. The plaintiffs have attempted to make unfounded and unsubstantiated submissions and contentions regarding the suit property being an HUF property, thereby seeking its partition, however, they have miserably failed to show as to how the suit property came to be an HUF property. The plaintiffs have further failed to establish their entitlement in seeking the reliefs as sought before this Court.

37. The filing of captioned suit by the plaintiffs is a clearly an abuse of process of law. The plaint filed on behalf of the plaintiffs is bereft of any merit and is, hence, liable to be rejected.

38. Accordingly, the instant application is allowed and the plaint is rejected in accordance with the provision under Order VII Rule 11 of the CPC.

CS(OS) 650/2021

1. In view of the observations and decision of this Court in I.A. 2094/2022, the plaint filed on behalf of the plaintiffs does not survive.

2. Accordingly, the instant suit stands dismissed.

3. Pending applications, if any, also stand dismissed.

4. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MARCH 1, 2023
gs/ms