
(2016) 04 DEL CK 0116
In the Delhi High Court
Case No : CS(OS) 2202 of 2011.

Avnija Ahluwalia(Minor)

APPELLANT

Vs

Bikramjit Ahluwalia and Others

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2016) 8 ADDelhi 596 : (2016) 164 AIC 603 : (2016) 230 DLT 200

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

Bench : Single Bench

Advocate : H.S.Phoolka Sr. Adv. with Manav Gupta, Advocates, for the Appellant; Y.P. Narula, Sr. Advocate with Aniruddha Choudhry, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J. - IA No. 13260/2012 (under Order 7, Rule 11 CPC)

1. The defendants have filed the present application seeking rejection of the plaint.

2. At the outset, I must note that for deciding this application this Court has consciously ignored the averments made in this application under Order 7, Rule 11 of the Code of Civil Procedure, 1908 (CPC) which are on merits and which dispute and deny the existence of the HUF. This is because when an application under Order 7, Rule 11 CPC is considered, the contents of the plaint are deemed to be correct. Also, in the application under Order 7, Rule 11 CPC, it is noticed that defences on merits have been taken up, and which defences can only be the subject matter of the contents of the written statement, and which cannot be the basis of an application under Order 7, Rule 11 CPC.

3. Let us therefore, examine the pleading/plaint as to whether the plaint discloses a cause of action as distinguished from proving a cause of action and which will arise only at the stage of trial. When an application under Order 7,

Rule 11 CPC uses the expression "discloses a cause of action", the expression pertains to the existence only of sufficient pleading with respect to the existence of HUF and its properties. Once such pleading exists, what are the properties of HUF etc will be issues of merits to be decided after trial in the suit and not by means of an application under Order 7, Rule 11 CPC.

4. The averments of the amended plaint are reproduced below and which are examined, as to whether the plaintiff has pleaded the case (as distinguished from establishing a case of existence of an HUF and its properties for the plaintiff to have a share as a coparcener in the HUF) of existence of an HUF and its properties and businesses. The plaintiff is the minor daughter of her father/defendant no.2 in this suit filed for partition etc. The instant suit has been filed through estranged wife of defendant no.2 and who is the mother of the plaintiff. Relevant paragraphs of the amended plaint, which in the opinion of this Court make out, as per the pleading, the cause of action of existence of an HUF and its properties and businesses, are inter alia paragraph nos. 1, 2, 14, 15, 15 (a) to 15 (e), 15 (g), 15 (h) and 16, and which paras are being reproduced hereunder:

"(1) The present suit is being filed praying for partition, declaration in respect of Joint Family Properties purchased from the nucleus of joint family funds being suit properties as detailed in the Schedule A and rendition of accounts of the joint family businesses as detailed in the Schedule B.

(2) That the Plaintiff and the Defendants are the members of HUF of Defendant No.1 [Mr. Bikramjit Ahluwalia], the grand-father of the Plaintiff.

xxxxx xxxxx xxxxx

(14) That initially the business of the construction was started as a joint family business by Late Mr. Karam Chand Ahluwalia and Mr. Bikramjit Ahluwalia with the nucleus of HUF funds. Thereafter as the business grew and a private limited the company Ahluwalia Contracts Private (India) Ltd. was set up in 1979 wherein the Defendant no.1 and Late Sh. Karam Chand Ahluwalia were promoter/shareholders. Thereafter with passage of time the other family members being Defendants no. 2 to 6 were introduced, in the company and allotted shares, along with other relatives. The payment for the said shares was made out of the joint family funds as none of the defendants had any independent source of income. Thus, the entire funding for the share holding was from the joint family funds. That subsequently the Defendant no.7 was converted to public limited. That the main business concern of the Defendants is Ahluwalia Contracts (India) Ltd. which is India's leading EPC [Engineering, Procurement and Constructions] services provider having business interests in various segments including Metro Stations, Stadiums, Airport, IT Parks, SEZ Retail, Multi Stored Housing Complexes. Industrial complexes luxurious 5 star hotels and hospitals. It has rare distinction of being one of India's few ISO 9001. ISO 14001 and OHSAS 18001 certified companies with a pan India presence. The company has successfully executed more than 80 projects in the past six years valued in

excess of Rs.30 billion. It is listed at Bombay Stock Exchange, Delhi Stock Exchange, Calcutta Stock Exchange, Jaipur Stock Exchange. As the business grew, several companies including Defendants no. 8 to 16 were incorporated which are closely held by the Defendants and other family members in which the joint family funds have been blended. The Defendants no.1 to 6 along with other family member are the promoters in the said companies and the Defendant no.7 is the main shareholder in the said companies. As far as the Plaintiff knows the details of the joint family/HUF businesses the list of businesses is detailed in Schedule B. Thus initially the entire business operation of construction and contracts was started with the joint family funds and subsequently the said joint family funds were blended in form of shareholdings of the Defendants in several companies as mentioned in Schedule B. The plaintiff craves leave of this Hon"ble Court to add/amend the details of HUF businesses Schedule B. The Defendants have also been running and managing schools and educational institutes out of the funds of the joint family ostensibly in the name of the societies. The Defendants are also drawing income from the said schools and educational institutes.

xxxxxx xxxxx xxxxx

(15) The HUF was started by late Sh. Karamchand Ahluwalia great grandfather of the plaintiff. Late Sh. Karamchand Ahluwalia was Karta of Karamchand Alhuwalia (HUF) and defendant no.1 to 6 except defendant no.3 were coparceners. The HUF was joint in food, mess and worship. Thus a part of HUF is filing tax returns and is being assessed as HUF. The suit property as detailed in Schedule-A are ancestral properties purchased and built out of the joint family funds of Karamchand Ahluwalia (HUF). After the demise of late Karamchand Alhuwalia in and around 1991, the defendant no.1 became the Karta and defendant no.2, 4 to 6 remained coparceners of the HUF. The plaintiff is the daughter of defendant no.2 hence the plaintiff has acquired the right to partition in the property being coparcener, and by way of survivorship, the plaintiff is claiming 1/10th share in the HUF property. The plaintiff has attained the right of partition by way of survivorship being coparcener as the property mentioned in schedule A and B are the properties purchased from the HUF funds.

15(a). That Karamchand Ahluwalia HUF was started around 1968 when a partnership firm was formed by late Sh. Karamchand Ahluwalia, great grandfather of the plaintiff and Mr. Bikramjit Ahluwalia, the grandfather of the plaintiff. At the initial stage, the three sons and three daughters of late Karamchand Ahluwalia were made coparceners of the said HUF. It is pertinent to mention that Mr. Bikramjit Ahluwalia was the eldest son and hence he was managing the HUF funds and activities in association with his father.

15(b). That in an around 1970, a house bearing no. B-4/205, Safdarjung Enclave was purchased from joint family funds or to say Karamchand Ahluwalia HUF and all the family members resided together in such house.

15(c). That there was considerable growth in the businesses and assets of firms created out of the HUF income, a private company in the name and style as M/S Ahluwalia Contracts India Pvt. Ltd was formed in 1979 by acquiring/merging of businesses and assets of various partnership firms which had been created out of HUF funds. The said firm was also the creation of HUF funds and promoted by late Sh. Karamchand Ahluwalia and Mr. Bikramjit Ahluwalia. Since the funds were generated from HUF corpus, entire family members of Late Karamchand Ahluwalia as well as their respective spouses were gradually introduced as shareholders and promoters of the company.

15(d). That later on Mr. Bikramjit Ahluwalia was handling the affairs of the company, he gave shareholdings in the company to his minor children also in an around 1980. It is pertinent to mention that father of plaintiff is only son and defendant no. 4-6 are daughters of Mr. Bikramjit Ahluwalia. All the defendants including defendant no.3 were made coparceners in the said HUF.....

15(e). That from the HUF funds in property bearing no. B-10, Saket, New Delhi was purchased in around 1980 and the said house become the residence of all the family members of Bikramjit Ahluwalia. Late Sh. Karamchand Ahluwalia along with his wife late Ms. Shanti Devi were also residing in the said house.

xxxxx xxxxx xxxxx

15(g). That in furtherance of business growth achieved from the family funds, the Karamchand Ahluwalia HUF in which Late Sh. Karamchand Ahluwalia acting as Karta made considerable investment in different schools namely Ahlcon Public School etc through "Shanti Devi Progressive Society" named after his wife. After the demise of late Sh. Karamchand Ahluwalia in and around 1991, the eldest son Mr. Bikramjit Ahluwalia became Karta and his children remained coparceners of Bikramjit Ahluwalia HUF. It is pertinent to mention that the other sons and daughters of late Sh. Karamchand are also holding some of the share holdings in some of the companies.

15(h). That the Bikramjit Ahluwalia HUF created enormous growth with the help of HUF funds gradually and a number of residential as well as commercial establishments were purchased by the said HUF in different names so as to incorporate the family members and assigned them the ownership as well as notional control over such properties, though as a matter of fact all the properties were generated from same source i.e. HUF corpus. The coparceners were made beneficiaries which was somewhere a reward in lieu of their respective shares in the coparcenaries or HUF funds.

xxxxx xxxxx xxxxx

(16.) That from the HUF funds/ancestral earnings ostensibly earned from different companies in which the defendants have invested ancestral funds, the Defendants purchased the suit properties including but not limited to residential houses being B-10, Saket New Delhi; B-7, Saket, New Delhi; B-5/6, First Floor

Flat, Saket New Delhi; B-5/1, Ground Floor, Duplex Flat, Saket. New Delhi; M-1, Saket New Delhi; B-16 Geetanjli New Delhi; A-332 Shivalik, New Delhi; B-4/205 Safdarjung Enclave, New Delhi, C-5/34 Safdarjung Development Area, New Delhi; B-6 Saket, New Delhi; B-11, Saket, New Delhi; B-15 B-Block, Mandir, Saket New Delhi; DDA flat on ground floor near D Block, Saket New Delhi; Flat in Tara Apartment, New Delhi. The entire business is HUF/joint family business and started out of nucleus of joint family funds. The entire land and construction thereon on the properties was done from the nucleus of HUF/joint family property and business and income. The plaintiff also understands that the HUF returns are also being filed by the Defendants declaring some of the properties as HUF."

(emphasis is mine)

5. As already stated above, in deciding an application under Order 7, Rule 11 CPC, this Court has to accept as true and correct what has been pleaded in the plaint. A reading of the aforesaid paragraphs, though there is some amount of vagueness, does show that there is creation of HUF by Sh. Karamchand Ahluwalia in the year 1968-vide para 15(a). The aforesaid paragraphs also show that the HUF businesses and its properties are reflected in Income Tax Returns and which is specifically stated in para nos. 15 and 16 of the amended plaint.

6. In law, there is a difference between wholly inadequate pleadings and perfect pleadings. Though the pleadings may not be completely perfect in the sense that each and every aspect is mentioned categorically and clearly, and yet if there are averments with respect to the existence and creation of HUF and its properties, and properties thereafter being purchased in the names of different coparceners, and that of businesses of HUF being carried out in the name of companies or partnership firms etc, the plaint in such a case does disclose a cause of action that there was creation and existence of the HUF. What is the extent of HUF properties and its various businesses are all questions of fact which only have to be established at the trial and definitely an application under Order 7, Rule 11 CPC cannot be used as a basis for dismissing the suit on merits at this stage.

7. I may note that in this suit filed in the year 2011, and in which amended plaint was filed in the year 2011 itself, there is till date no written statement filed by the defendants. Defendants are placing reliance upon an Order of a learned Single Judge of this Court dated 15.05.2013 which puts the plaintiff to notice as to how the plaint discloses a cause of action, and, therefore, it is argued that the defendants have not filed written statement. It is however noted that the Order dated 15.05.2013 does not categorically observed that the defendants should not file their written statement. Therefore, ordinarily the defendants ought to have filed written statement inasmuch as now the provisions of the Code of Civil Procedure specify a time period to file the written statement. Filing of an application under Order 7, Rule 11 CPC does not mean that there is an automatic stay for filing of the written statement

8. The plaintiff is a minor. The suit is registered as an IPA i.e the plaintiff has been allowed to sue as a pauper. Turnover of the companies of the defendants runs into thousands of crores of rupees and the values of the immovable properties also run into hundreds of crores of rupees. Facts of the present case clearly show that there is unnecessary harassment of the plaintiff, more so because law under Order 7, Rule 11 CPC is now well settled by a catena of judgments of the Hon"ble Supreme Court of India that merits of the matter cannot be and shall not be examined at the time of deciding an application under Order 7, Rule 11 CPC.

9. In view of the above, this application is dismissed with actual costs. The actual costs shall be the costs which have been incurred by the plaintiff for this application from the date of filing of the instant application till today when this application of the defendants has been dismissed. Plaintiff, through her mother/next friend, will file an affidavit as to the costs incurred by the plaintiff with respect to this application under Order 7, Rule 11 CPC which has been dismissed today within four weeks from today, and thereafter such costs would be paid by the defendants within four weeks by way of a cheque in favour of the plaintiff.

10. This IA stands dismissed and disposed of accordingly.

CS(OS) 2202/2011

11. All other pending applications will now be taken up after completion of pleadings and admission/denial of the documents.

12. List before the Joint Registrar on 20th July, 2016 for further proceedings.