(2009) 07 DEL CK 0150

In the Delhi High Court

Case No : FAO (OS) No. 83 of 2008 and CM Application No''s. 2503, 2518 of 2008 and 5355 of 2009

Manjeet Singh Anand APPELLANT

Vs

Sh. Sarabit Singh Anand and Others RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 2A, 4, 4(3)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 151
Transfer of Property Act, 1882 — Section 41
Trusts Act, 1882 — Section 81, 82

Citation : (2009) 07 DEL CK 0150

Hon'ble Judges : V.K. Jain, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Sunil Gupta, Rajesh Yadav and Ravi Gupta, for the Appellant; Rekha Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The appellant in FAO (OS) No. 83/2008 (defendant No. 1 in the suit) had filed an application under Order VII Rule 11 read with Section 151 of the CPC seeking rejection of the plaint in the suit filed by respondents No. 1 to 3 herein. That application has been dismissed by the learned Single Judge vide orders dated 11.2.2008. This order is the subject matter of challenge in both these appeals. Second appeal, i.e., FAO (OS) No. 84/2008 is preferred by defendant No. 1 in CS (OS) No. 1791/2006. To avoid any confusion, we shall stick to the nomenclature of different parties as appearing in the suit, i.e., the appellant in FAO (OS) No. 83/2003 shall be referred to as the defendant No. 1 and the respondents No. 1 to 3 herein shall be referred to as the plaintiffs.

2. The plaintiffs and the defendants are related to each other. Suit filed by the plaintiffs is for partition and permanent injunction wherein decree of partition in respect of the property known as 6, Cavalry Lines, Mall road, Delhi, has been sought. It is stated that all the plaintiffs and the defendants, who are 10 in

number, have 1/10th share each in the said property. The relationship between the parties, as disclosed in the plaint, is as under:

Late Sardar Sucha Singh Anand (Father) | ____ | | Late Smt. Kundan Kaur Anand Smt. Basant Kaur Anand (Mother) (Mother) (Second wife) (Third wife) | plaintiff No. 3 | ____ | | | Jagdish Singh Anand Manjit Singh Anand Gurdip Singh Anand (Son) (Son) (Son) (Def. No.3) (Def. No.1) (Def. No.4) __________________________ | | Kuljeet Kaur Bhasin Gurinder Kaur Sethi (Daughter) (Daughter) (Def. No.6) (Def. No.7) ____ | | | Sarabjit Singh Anand Amarjit Singh Anand Jasjit Singh Anand (Son) (Son) (Son) (plaintiff No.1) (Def. No.2) (plaintiff No.2) Brijender Kaur Kohli (Daughter) (Def. No.5)

3. Decree for permanent injunction is also prayed for seeking restraint against the defendant No. 1 from selling, alienating, disposing or otherwise creating third party interest in the said property (hereinafter referred to as ''the suit property''). Since we are concerned with the decision on the application under Order VII Rule 11 CPC and at this stage only averments in the plaint are to be looked into and examined, we may take note of those averments only. The learned Single Judge in his impugned order has made reference to these averments contained in the plaint. Without any fear of contradiction we can take note of those averments as they appear in the impugned order.

4. The plaintiffs (excluding plaintiff No. 3) and the defendants are all sons and daughters of Late S. Sucha Singh Anand, albeit, from different wives. plaintiff No. 3 is the third wife of Late S. Sucha Singh Anand. plaintiff No. 1 and 2 and defendants No. 2 and 5 are born from plaintiff No. 3 Defendant No. 1, 3, 4, 6 and 7 are the children of the second wife of Late S. Sucha Singh Anand. There were no issues from the first wife.

5. It is averred in the plaint that late S. Sucha Singh Anand and plaintiff No. 3 had from their own income and funds purchased the lease hold rights in the property and premises bearing No. 6, Cavalry Lines, Mall Road, Delhi- 110 007 for the residence of all their family members. The entire sale consideration amounting to Rs. 2,05,000/- flowed from Late S. Sucha Singh Anand and the plaintiff No. 3. The said property was purchased by the aforesaid persons as a joint family property and Conveyance Deed dated 1.11.1961 was executed in the name of defendant No. 1.

6. At the relevant time when the conveyance was got executed in the name of defendant No. 1, the eldest son (defendant No. 3) was in the USA and since defendant No. 1 was the second major son of Late S. Sucha Singh, the property was purchased in his name as a trustee of the entire family. This was the understanding between all members of the family upto the filing of the suit. The

plaintiff and defendants resided together in the said property and in course of time, only Late S. Sucha Singh. plaintiffs, defendant No. 1 and defendant No. 2 were left in the physical possession of the property, though the property still remained a joint family property of all. Even upon the demise of Late Sucha Singh Anand on 6.3.2000 his legal heirs continued in occupation of the said property in the manner in which they were in possession prior to his demise. Thus, the entitlement of other legal heirs of Late S. Sucha Singh to the suit property was never disputed at any time and the defendant No. 1 had been holding the said property as a nominee and trustee of the plaintiff No. 3, Late S. Sucha Singh and the entire family.

7. Since the defendant No. 1 had with a malafide intention got a notice published in the Statesman on 22nd July 2006 and was negotiating/ attempting to dispose of the suit property, the plaintiffs were constrained to file the instant suit on 18.8.2006.

8. In the application filed by the defendant No. 1 under Order VII Rule 11 CPC it was stated that even as per the averments made in the plaint case was founded on the basis that there was an HUF of Late Sardar Succha Singh Anand and the property in question was purchased by him from his funds and also money is contributed by the plaintiff No. 3 (third wife of Late Sardar Succha Singh Anand). Therefore, even when if property was purchased in the name of defendant No. 1, it was purchased as a joint family property and for the benefit of its members. It was also pleaded in the plaint that he was the trustee of the suit property in his hands. Submission was that neither the case of joint family property set up by the plaintiffs was sustainable in law nor the plea of trustee maintainable in law even on the basis of averments made in the plaint. According to him, the case pleaded in essence was that the defendant No. 1 was the Benami owner of the suit property and such a suit was barred by the provisions of Benami Transactions (Prohibition) Act, 1988 (in short ''the Benami Act''), inasmuch as the plaintiffs could not bring out the case within the two exceptions, i.e., (i) the property is owned by a coparcener of a Hindu Undivided Family or (ii) the defendant No. 1, who had acquired the title of the property, had been acting in fiduciary capacity and was trustee of the real owner. It was also pointed out that Late S. Sucha Singh never laid any claim to the said property during his life time nor was suit filed before his death. After his death, the present plaintiffs in any case have no right, authority or locus to institute the present suit. The plaintiff on these facts ought to have been brought within three years of the date of registration of the Deed of Conveyance in favour of the defendant/applicant. Thus, there is no cause of action available to the plaintiff to file a suit after 45 years of registration of the Conveyance Deed. The suit is barred by limitation. The plaintiff has also not sought the cancellation of sale deed executed in favour of defendant No. 1. The suit is not maintainable in the absence of the said relief.

9. The plaintiffs contested the aforesaid application by filing reply thereto. In the said reply it was contended that the suit was not hit by Section 4 of the Benami

Act as the transaction cannot be treated as "Benami". According to the plaintiffs, they along with the defendants were in physical possession and occupation of the suit property and the defendant No. 1 was not holding the same solely and exclusively. They maintained that the suit property was purchased as joint family property for the benefit and enjoyment of the entire family, though in the name of the defendant No. 1. There was a clear averment to this effect in the plaint and at this stage nothing more was to be examined. They also pointed out that in the plaint it was averred that defendant No. 1 was to act as a trustee in respect of the said property, the beneficiaries whereof were all the family members of late Sardar Succha Singh Anand. The property had been treated as joint family property throughout. The plea that the doctrine of blending has no applicability to the contribution made by plaintiff No. 3 being a female is also without any merit as a female can always make a gift of her self-acquired property for the benefit of joint family. All other defendants have pleaded that the suit property is a joint family property. Whether the said property is actually a joint family property or not is a matter which can be determined only after a full-fledged trial after recording of evidence by the parties. Being a question of fact it cannot form the basis for rejection of plaint under Order VII Rule 11 CPC. The averments in the plaint set up a case which is squarely covered by the exception provided under Clause (a) and (b) of Sub-section (3) of Section 4 of Benami Act.

10. The Impugned Order

The learned Single Judge, after delineating the scope of the application under Order VII Rule 11 CPC and referring to Section 2A of the Benami Act, which defines "Benami transaction" as well as Section 4 of the said Act, which creates prohibition of the right to recover the property held Benami, proceeded on the premise that since suit property was in the name of defendant No. 1, case put forth by the plaintiffs was that of a Benami transaction. However, there are certain exceptions to the principle of law mentioned in Section 4 of the Benami Act, as provided in Sub-section (3) of Section 4 itself, which are as under:

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where a person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards who he stands in such capacity.

11. The learned Single Judge, then, posed the question as to whether the averments contained in the plaint would bring the case within any of the aforesaid clauses. Thereafter the averments in the plaint were taken note of in the following manner:

14. The averments in the plaint along with the documents filed on record are

that the property was purchased by the father and step-mother of the defendant No. 1 in his name as he was the only major son/child then available in Delhi in whose name the property could have been purchased at the relevant time. The property was purchased in his name as a nominee of the purchasers. The property was purchased for the benefit of all the members of the family which consisted of late Sardar Sucha Singh Anand, his children from the second wife (including defendant No. 1), his third wife (plaintiff No. 3) and his children from plaintiff No. 3. The property has been in the possession and enjoyment of the entire family. All throughout the defendant No. 1 has been the registered owner and has held the property for the benefit of all.

15. In para 8 it is averred "It is submitted that Late Sardar Sucha Singh Anand and plaintiff No. 3 purchased the suit property as a joint family property and the conveyance deed dated 1.11.1961 was executed in the name of defendant No. 1 as trustee of entire family members in respect of the suit property." In para 16 it is averred as follows:

It is submitted that in the year 1961 defendant No. 1 was in his final year of graduation and was about 21 years old. It is submitted that at the time of registration of the said conveyance deed dated 1.11.1961 defendant No. 1 had just passed out his graduation. It is submitted that prior to the registration of conveyance deed in respect of the suit property, defendant No. 1 was simply a student having no income of his own and was completely dependent upon his father for his day to day expenses. Thus, registration of the Conveyance deed dated 1.11.1961, in the name of defendant No. 1, was mere faith and choice of Late Sardar Sucha Singh Anand, Plaintiff No. 3 and their family members as trustee of entire family members in respect of the suit property. Thus conveyance deed in favour of defendant No. in respect of the suit property was a sham and was done with the intention to treat the suit property as joint family property while defendant No. 1 holding the suit property as trustee for all the family members in order to maintain harmony. It is submitted that had any other major son of Late Sardar Sucha Singh Anand was available at that particular point of time, conveyance deed would have been executed also in the name of such other son(s) jointly with defendant No. 1.

16. In para 21 it is stated that "It is submitted that right from the date of purchase of the suit property till the date of filing of the present suit there was/is no controversy, at all, with regard to the status of suit property that the same is joint family property and that defendant No. 1 has been holding the suit property as the nominee and trustee of Late Sardar Sucha Singh Anand, plaintiff No. 3 and entire family members. It is submitted that entitlement of the legal heirs of Late Sardar Sucha Singh Anand as co-owners of the suit property was neither denied nor disputed at any time, by any person including defendant No. 1, either during the life time of Late Sardar Sucha Singh Anand or after his death, as also evident and clear from some subsequent events as averred hereinafter.

12. From the aforesaid averments the learned Single Judge concluded that the

plaintiffs had brought out the case within Exception (b) to Section 4(3) of the Benami Act as existence of the Trust was specifically pleaded. Various judgments on this aspect, including provisions of Sections 81 and 82 of the Indian Trust Act have been noticed by the learned Single Judge in this behalf. In the opinion of the learned Single Judge averments in the plaint do make out a case which can be covered by Exception (a) in Section 4(3) of the Benami Act inasmuch as the case of joint Hindu family was specifically pleaded, more particularly the act of the plaintiff No. 3 contributing towards purchase of the suit property. The question as to whether or not Hindu joint family existed could not be decided at this stage as it was a matter of evidence. Here again, much case law is discussed in coming to the aforesaid conclusion on the application of the defendant No. 1. Contention about the suit being barred by limitation is also rejected in the following manner:

31. I find that the plaintiffs are not seeking a cancellation of sale deed in this case. Their claim is that the said property though in the name of one party, was purchased for the benefit of all and constituted co- parcenary property. Now a joint family property may not stand in the name of all the co-parceners as ownership in the said property is governed by law and a co-parcener acquires interest in the same by birth and independent of any document of title. So long as his title is not denied by the others i.e., a cloud is not cast on his title, there is no obligation on him to seek a declaration of his title from the court. However, the moment his title is so denied or threatened to be denied or an act detrimental to his interest is committed so as to curtail his right, the time begins to run for seeking the appropriate relief. The plaintiffs had categorically averred that their rights and title was admitted by the defendant No. 1 till the publication of the notice in the Statesman on 22.07.2006, and it was only thereafter that the cause of action for seeking a declaration commenced. I find that none of the cases referred on behalf of the defendant deal with a fact situation where the property in question is alleged to be coparcenary property and issue/relief is only for declaration of a share by a co-parcener. This matter also therefore cannot be decided without leading of evidence. The plaintiff have already filed a separate suit being CS(OS) No. 1791/2006 to challenge the title of the transferees from defendant No. 1.

13. Mr. Sunil Gupta, learned Senior Advocate, who appeared on behalf of the defendant No. 1 made a fervent plea for setting aside the impugned order and allowing the application of the defendant No. 1 filed under Order VII Rule 11 CPC contending that the learned Single Judge had not decided the said application in correct perspective. Mr. Ravi Gupta, who appeared for the appellants in other appeal, supported the cause advanced by the defendant No. 1 submitting that neither the case of an HUF nor that of a trustee established even from the bare reading of the averments made. In this behalf it was argued that first exception carved out by Clause (a) to Sub-section (3) to Section 4 of the Benami Act categorically states that the property should be held by persons as "coparcener in a Hindu Undivided Family" and for the benefit of "coparceners in the family".

On this basis submission was that pre-requisites of pleading was that there has to be "coparcenery" in an HUF. In this behalf learned Counsel submitted that following pre-requisites of pleadings of coparcenery in an HUF were essential:

1. INHERITED PROPERTY - There is property in the hands of the present holder (i.e. holder for the time being) inherited by him from his father or father''s father or father''s father''s father viz. ancestor - whether such property in the hands of such ancestor himself was ancestral, separately received or self- acquired.

2. ANCESTRAL PROPERTY - The said holder has his own son(s) etc., the property thus being ancestral property vis-a-vis such son(s).

The holder (father) and his sons(s) will then form a coparcenary. The sons would acquire the share by birth and survivorship (not by death of father and succession) an interest in the joint/ancestral/coparcenary property.

14. It was argued that Coparcenary is different from HUF simpliciter and its ingredients are:

a) there needs to be, at least, 3 generations with an ancestor in the picture

b) the property needs to be ancestral property devolving from the 1st generation upon the 2nd generation

c) 2nd generation being accompanied by the 3rd generation, the 3rd generation by birth acquires right to the ancestral property along with the 2nd generation. The 3rd generation can prevent alienation by or demand partition from the 2nd generation in respect of the ancestral property.

Thus, the 2nd & 3rd generation(s) form a coparcenary as regards the said ancestral property. The property though in the hands of the 2nd generation is ancestral vis-a-vis the 3rd generation.

15. The learned Counsel pleaded that in the present case, none of the basic ingredients of a ''coparcenary in a HUF'' have been pleaded so as to be covered by the saving clause in S.4(3)(a) of the Benami Transaction (Prohibition) Act, 1988. There is no mention of grandfather, grandfather''s property, inheritance of grandfather''s property by the father, SSA, etc or is clear from the reading of paras 8, 9, 15, 16, 21 & 31 of the Plaint.

16. He also referred to the following judgments to demonstrate that coparcenery was different from HUF:

i. Sathyaprema Manjunatha Gowda (Smt) Vs. Controller of Estate Duty, Karnataka,

ii. Commissioner of Expenditure Tax, Gujarat, Ahmedabad Vs. Darshan Surendra Parekh,

iii. State Bank of India Vs. Ghamandi Ram (Dead) through Gurbax Rai,

iv. Controller of Estate Duty, Madras Vs. Alladi Kuppuswamy,

v. Hindu Law Mulla 15th Ed. (1982).

vi. Hindu Law Mulla 15th Ed. (2007).

vii. Shri Ramesh Chand Vs. Shri Tek Chand and Others,

After reading various paras in the plaint the learned Counsel pointed out that these pleadings lacked the following:

a) COPARCENERY IN HUF:

''Coparcenary in HUF'' and not merely HUF is required by S.4(3)(a). Benefit pleaded in the plaint is not of coparcenary, but of the general and broad joint family, including females etc. This could be simply moral or ethical burden of defendant No. 1 but not the legal obligation of Defendant No. 1 as a coparcener for the benefit of and towards other coparceners.''

b) FUNDS - Source

Far from ancestral funds being pleaded as the source of the funds, the avowed case of the plaintiff is that the suit property was purchased by SSA and his 3rd wife from their ''own funds''.

c) NUCLEUS

Presumption of Joint Family (normal state) does not mean presumption of there being also Joint family property. No ''nucleus of Joint family or HUF property'' pleaded in plaint: No such lis.

? Mayne, Hindu Law & Usage, 16th Ed. (2008) pp. 7445-746.

? Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others,

? Mohan Lal v. Ram Dayal AIR 1941 Oudh. 331.

? Babu Bisar v. Babu Raja AIR 1950 PC 204.

d) COMMON STOCK

For blending in HUF common stock, common stock must exist from before Kewal Krishan Mayor Vs. Kailash Chand Mayor and Others,

17. He also submitted that all legal heirs of late Sardar Succha Singh Anand could be co-owners after his death, by succession and not coparceners by birth and survivalship during his life time. It was also pointed out that if intention was to treat the suit property as joint family property, he could have purchased this in his name. It was also argued that merely by mentioning that the plaintiff No. 3 allegedly contributed the money from her funds would lead to the case to nowhere as wife could not be treated as coparcener and therefore, could not ''blend'' her property with HUF property. Moreover, neither Sardar Succha Singh Anand during his lifetime, nor any of his sons and daughters ever raised the

claim of HUF for more than 45 years. In so far as pleading that defendant No. 1 was a trustee and holding that the property in fiduciary capacity is concerned, the submission was that the same was antithesis of HUF/coparcenery theory. Both the things could not be pleaded at the same time. Clause (b) of Section 4(3) of the Benami Act regarding holding of the property in a fiduciary capacity could be pleaded only in a case of betrayal as held in Anil Bhasin v. Vijay Kr. Bhasin 102 (2003) DLT 932. Argument of limitation was again pressed on the ground that suit for cancellation of sale deed could be filed only within three years.

18. plaintiff No. 1, who appeared in person, countered the aforesaid submissions. He reiterated that intention was to purchase the property for the benefit of all and therefore, the defendant No. 1 was holding the same in fiduciary capacity. He read the impugned order of the learned Single Jude and submitted that the reasons contained therein were perfectly valid and at this stage plaint should not be rejected in view of the averments made in the plaint which needed trial. He emphasized the fact that when the property was purchased in the name of defendant No. 1, he was a young boy without any income and therefore, he could not plead nor was his case that the property was purchased by him from his funds. The intention which was manifest was even acted upon all these years as the property was enjoyed by other siblings/relations of defendant No. 1. Therefore, defendant No. 1 was holding the said property only in a fiduciary capacity. He referred to the provisions of Section 41 of the Transfer of Property Act and the following judgments in support of his case:

1) Laxman Sakharam Salvi and others Vs. Balkrishna Balvant Ghatage,

2) Rajinder Kumar Malik Vs. Shanti Devi and Others,

3) V. Shankaranarayana Rao (D) by Lrs. and Others Vs. Leelavathy (Dead) by Lrs. and Others,

4) Heirs of Vrajlal J. Ganatra Vs. Heirs of Parshottam S. Shah,

19. We have given our utmost consideration to the respective submissions of the counsel and the parties on both sides.

20. In the present case we are concerned with the application moved by the appellant herein in the suit under Order VII Rule 11 of the CPC. Therefore, the scope and ambit of such a provision has to be kept in mind and the Court is to proceed taking into consideration its limited power and jurisdiction while dealing with the prayer made in such an application for rejection of the plaint at this stage when the trial in the suit has not taken place and the evidence is yet to surface. It cannot be disputed, nor was it disputed, that while dealing with such an application and to see whether cause of action is pleaded or not or the suit is barred by law, the Court is required to go by the averments made in the plaint alone. The defence of the defendants in the written statement, or the documents on which they seek to place reliance, is not to be looked into at this stage.

Rejection of a plaint is a serious matter. It non-suits the plaintiff(s). Therefore, such a course of action is adopted by the courts only when conditions mentioned in Order VII Rule 11 CPC are strictly satisfied. It is not to be resorted to cursorily. In order to see whether Order VII Rule 11 CPC is attracted or not in a given case, the Court is to examine, from the averments made in the plaint, whether the jurisdiction of the court is made out or not and whether the suit is barred by any law or the plaint does not disclose any cause of action. (See - Kanwal Kishore Manchanda v. S.D. Technical Services Pvt. Ltd. 2005 IV AD (Del) 541; Arvinda Kumar Singh v. Hardayal Kaur 2005 II AD (Delhi) 430; Asha Bhatia Vs. V.L. Bhatia, Condor Power Products Pvt. Vs. Sandeep Rohtagi,

21. The suit filed by the plaintiff is for partition of property known as 6, Cavalry Lines, Mall Road, Delhi. No doubt, this property is registered in the name of the defendant No. 1. At the same time, it is also not in dispute that the property in question was purchased by late Sardar Sucha Singh Anand, al be it in the name of defendant No. 1. It is also an admitted fact that parties are related to each other, i.e. they are all children of late Sardar Sucha Singh Anand. Again, what is not disputed even by the defendant No. 1 is that when the property was purchased, he was only 21 years of age and was a student who was in the final year of graduation with no income of his own. According to the plaintiffs, ever since the purchase of the property in the year 1961, all the parties have been residing in the disputed property. Apart from the aforesaid averments made in the plaint, which is almost the admitted position, the plaintiffs have made specific pleadings, as is clear from paras 14 to 16 of the impugned order where the pleadings are incorporated, to the following effect:

(i) Property was purchased in the name of defendant No. 1 as nominee of the purchasers for the benefit of all the members of the family.

(ii) The property was purchased by late Sardar Sucha Singh out of his funds, along with funds contributed by plaintiff No. 3 (his third wife) as a Joint Hindu Property.

(iii) The property has been in possession and enjoyment of the entire family all throughout.

(iv) Defendant No. 1 has held the property, for the benefit of all, as a trustee of entire family members.

(v) Registration of Conveyance Deed dated 1.11.1961 was made in the name of the defendant No. 1 as he was in Delhi at that time living with his father and other brothers, including plaintiff No. 1, were not in Delhi.

(vi) Right from the date of purchase of the suit property till the date of filing of the suit, there was no controversy at all with regard to the status of the suit property that the same is a Joint Family Property.

(vii) Entitlement of legal heirs of late Sardar Sucha Singh Anand as co- owners of the suit property was neither denied nor disputed at any time by any person, including the defendant No. 1, either during his lifetime or after his death. To demonstrate this specific pleading events are stated in the plaint.

22. Thus, the plaintiffs have specifically pleaded that there existed a Joint Family (which would imply Hindu Undivided Family) and the property was held for the benefit of the coparceners in the family. It has also been specifically pleaded that defendant No. 1 holds the property as a trustee for the benefit of all the family members and, in fact, all the family members have enjoyed the property in this manner throughout. In this manner, attempt is made to bring the case within the exceptions contained in Sub-section (3) of Section 4 of the Benami Transactions (Prohibition) Act, 1988

23. We are, therefore, of the opinion that there are specific pleadings regarding HUF and holding of the property by the defendant No. 1 for the benefit of the coparceners and also specific pleadings that defendant No. 1 is the trustee holding the property in question for the benefit of all family members. In these circumstances, we are inclined to agree with the reasoning of the learned Single Judge that case of Joint Hindu Family is specifically pleaded and the question as to whether, in fact, Hindu Joint Family existed or not could not be decided at this stage as it was a matter of evidence.

24. To ascertain whether the plaint discloses cause of action or not the averments made in the plaint only have to be seen. A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is, if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed or not. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another, the Supreme Court held: (AIR pp.943-44, para 9)

By the express terms of Rule 5 Clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defenses which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.

25. When we apply this principle to the facts of the present case, we find that cause of action is pleaded. The mere fact that the case is weak and not likely to succeed is no ground for ousting the plaintiff at this stage. Failure to disclose a cause of action is distinct from the absence of full particulars. In the present case, the entire attempt of the appellants is to show that there is absence of full particulars. It is stated at the cost of repetition that the plaintiffs do plead existence of HUF and whether HUF in reality existed or not would be a matter of trial. Only on the ground that full particulars in that behalf are not pleaded by the plaintiffs, cannot be a ground to dislodge the plaintiffs at this stage.

26. The whole attempt of learned Counsel for the appellants, as is clear from their arguments noted above, is to show that no case of HUF is made out or that of a trustee established. In this behalf, their attempt is to point out that the pre-requisites of coparcenery or the HUF are not specifically pleaded. No doubt there are no detailed pleadings in this behalf. However, at this stage, pleadings cannot be construed in the manner in which it is sought to be done by the learned Counsel for the appellants. When we find that the appellants have pleaded that there was a Joint Family, it would be for them to bring on record sufficient evidence to show that all the pre- requisites of coparcenery in HUF are proved. Again that would be a matter of evidence. Same thing applies to the pleadings qua the plea of the plaintiffs that the property in question is a trust property. As pointed out above, the learned Single Judge has referred to various judgments dealing with exception (b) to Section 4(3) of the Benami Transactions (Prohibition) Act, 1988 relating to the plea of existence of the trust by the plaintiffs, including provisions of Sections 81 and 82 of the Indian Trust Act. Since we are agreeing with the said reasoning, which is based on many judgments referred to by the learned Single Judge, it is not necessary to burden this judgment by repeating the same.

27. Only after the evidence is led and keeping in view that evidence various pleas put forth by the learned Counsel for the appellants can be examined and appreciated.

28. In these circumstances, we do not find any merit in these appeals as we are of the opinion that the order of the learned Single Judge does not call for any interference. The appeals are accordingly dismissed.

