

**IN THE COURT OF MS. COLETTE RASHMI KUJUR:  
ADDITIONAL DISTRICT JUDGE-10: CENTRAL DISTRICT,  
TIS HAZARI COURTS: DELHI.**

**CNR No: DLCT01-000006-1986  
CS/DJ/617422/2016**

**IN THE MATTER OF :-**

Shri Ghanshyam Dass Gupta (Deceased)  
died on 05.11.2000

Through his Legal Representative

1. Smt. Shyama Devi died on 19.01.2008

- Wife

2. Shri Vinay Gupta

- Son

R/o H-2/7, Model Town-II  
Delhi-110009.

3. Shri Ajay Gupta(Deceased) died on 4.4.2015

- Son

Through his Legal Representatives

a. Smt. Nishi Gupta (Wife)

b. Arti Gupta (Daughter)

c. Ayushi Gupta (Daughter)

All residents of 697, sector-36  
Gurgaon, Haryana

4. Shri Vivek Gupta

- Grandson

R/o 91, State Bank Colony,

Near Rana Pratap Bagh,

G.T. Karnal Road, Delhi-110007

Old Address H-2/7, Model Town, Delhi-110009

5. Smt. Raj Hari Gupta

- Daughter

C-19 Bijli Apartments, G.T. karnal Road

Delhi-110009

6. Smt. Veena Khandelwal

- Daughter

22/1, Moti Lal Nehru Road,

Agra (U.P.)

.....Plaintiffs

VERSUS

1. Shri Rajneesh Gupta DIED ON 20.06.2022

S/o Late Harish Chander Gupta

R/o Old Address: 8-2/581/7, Road No. 8, Bajara Hills

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Hyderabad 500034 (A.P.).  
New Address: A-3, Co-Operative Industrial Estate,  
Balanagar, Hyderabad 500037.

(a) Smt. Prabha Jain - Wife  
(b) Sh. Parikshit - Son  
Both R/o 6-3-347/16, Dawarka Puri colony,  
Puja Gutta, Khairatabad, Hyderabad,  
Telangana-500004.

2. Tara Devi died on 07.02.2015  
W/o Late Harish Chander Gupta  
R/o Old Address: 8-2/581/7, Road No. 8, Bajara Hills  
Hyderabad 500034 (A.P.)

a) Smt. Nirmala Bansal  
(Already Defendant no.3)  
W/o Shri Harish Bansal  
D/o Late Harish Chander Gupta  
R/o Old Address : A-37, Kailash Colony, New Delhi  
New Address :- 3/2, Arawali Vihar,  
Housing Board Colony, Alwar-301001 (Rajasthan)  
b) Rajneesh Gupta  
(Already Defendant No.1)  
S/o Late Harish Chander Gupta  
R/o Old Address: 8-2/581/7, Road No. 8, Bajara Hills  
Hyderabad 500034 (A.P.)  
New Address: A-3, Co-Operative Industrial Estate,  
Balanagar, Hyderabad 500037  
c) Smt. Madhu Loyalka  
(Already Defendant No.4)  
W/o Shri Atul Loyalka  
D/o Late Harish Chander Gupta  
R/o Old Address: Dhansar, Dhanbaad, Bihar  
New Address: 605, Block- B, Rosewood Greens,  
Sirsi Road, Jaipur, Rajasthan

3. Smt. Nirmala Bansal  
W/ o Shri Harish Bansal  
D/o Late Harish Chandra Gupta  
R/o Old Address: A-37, kailash Colony, New Delhi  
New Address: 3/2, Arawali Vihar Housing Road Colony  
Alwar-301001 (Rajasthan)

4. Smt. Madhu Loyalka  
(Already Defendant No.4)

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W/o Shri Atul Loyalka  
D/o Late Harish Chander Gupta  
R/o Old Address: Dhansar, Dhanbaad, Bihar  
New Address: 605, Block- B, Rosewood Greens,  
Sirsi Road, Jaipur, Rajasthan

5. Shri Sunil Khandelwal  
S/o Late manohar lal Khandelwal  
R/o Flat no. 5, Vishwa Mahal,  
C-Rod, Church gate,  
Mumbai-400020.

6. Smt. Urmila Khandelwal  
W/o Late manohar lal khnadelwal  
R/o Flat no. 5, Vishwa Mahal,  
C-Rod, Church gate,  
Mumbai-400020.

7. Ms. Neeraja Khandelwal  
Died in 1995 (unmarried)  
R/o Flat no. 5, Vishwa Mahal,  
C-Rod, Church gate,  
Mumbai-400020.

i) Smt. Urmila Khandelwal - Mother  
Already defendant no.4  
W/o Late Manohar Lal Khandelwal

8. Shri Prehlad Chander Gupta (Deceased)  
Through Legal Representatives

(i) Patasi bai - Mother  
Expired on 03.10.1995  
W/o Shri Binodi Lal  
H-2/, Model Town,  
Delhi-110009

A) Shri Ghanshyam Dass Gupta (Deceased) - Son  
(Already Plaintiff)  
Through His Legal Representatives  
H-2/7, Model Town, Delhi-110009

i) Vinay Gupta  
S/o Late Ghanshyam Dass  
R/o H-2/7, Model Town  
Delhi-110009

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ii) Ajay Gupta  
Expired on 04.04.2015 through LRs

a) Mrs. Nishi Gupta (Wife)  
b) Aarti gupta (daughter)  
c) Ayushi gupta (daughter)  
R/o 697, Sector-36, Gurgaon, Haryana

iii) Shri Vivek Gupta  
S/o Late Sh. Vijay Gupta  
R/o 91, State Bank Colony,  
Near Rana Pratap Bagh  
G.T. Karnal Road, Delhi

iv) Smt. Raj Hari Gupta  
D/o Ghanshyam Dass Gupta  
C-19, Bijli Apartments  
G.T. Karnal Road, Delhi

v) Smt. Veena Khandelwal  
D/o Shri Ghansyam Dass  
22/1, Moti Lal Nehru Road,  
Agra (U.P.)

B) Shri Harish Chander Gupta  
(Deceased 02.05.1986) Through LRs.

i) Smt Tara Devi (Wife)  
Since deceased 07.02.2015

ii) Smt. Nirmala Bansal  
Already Defendant No.3  
W/ o Shri Harish Bansal  
D/o Late Harish Chandra Gupta  
R/o Old Address: A-37, Kailash Colony, New Delhi.  
New Address: 3/2, Arawali Vihar Housing  
Road Colony, Alwar-301001 (Rajasthan).

iii) Rajneesh Gupta died on 20.06.2022  
Already Defendant No. 1  
S/o Late Harish Chander Gupta  
R/o Old Address: 8-2/581/7, Road No. 8,  
Banjara Hills, Hyderabad 500034 (A.P.)  
New Address: A-3, Co-Operative Industrial Estate,  
Balanagar, Hyderabad 500037

(a) Smt. Prabha Jain - Wife  
(b) Sh. Parikshit - Son  
Both R/o 6-3-347/16, Dawarka Puri colony,  
Puja Gutta, Khairatabad, Hyderabad,  
Telangana-500004

iv) Smt. Madhu loyalka  
(Already Defendant No.4)  
W/o Shri Atul Loyalka

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D/o Late Harish Chander Gupta  
R/o Old Address: Dhansar, Dhanbaad, Bihar  
New Address: 605, Block- B, Rosewood Greens,  
Sirsi Road, Jaipur, Rajasthan

C) Shri Manohar Lal Khandelwal  
(Deceased May,1964)

i) Shri Sunil Khandelwal  
Already Defendant No.5  
S/o Late Manohar Lal Khandelwal  
ii) Smt. Urmila Khnadelwal  
Already Defendant No.6  
W/o late Shri Manohar Lal Khandelwal  
iii) Ms. Neerja Khandelwal died in 1995 (unmarried)  
Already defendant No. 7  
All the residents of  
Flat no. 5 Vishwa Mahal, C-Road,  
Church Gate, Mumbai-400 020

D) Shri Prehlad Chander Gupta  
Already Defendant No.8  
Deceased July 1998

i) Patasi Bai	-	Mother
ii) Smt Usha Rani	-	Wife
W/o Shri Prahlad Chander Gupta		
iii) Shri Rahul Gupta	-	Son
S/o Late Prahlad Chandra Gupta Both R/o 1, Quinton Road, Lucknow (U.P.)		
iv) Smt. Rashmi Gupta	-	Daughter
W/o Shri Sunil Gupta R/o 19/1, New Road, Dehradun (U.P.)		
v) Smt. Ritu Gupta	-	Daughter

E) Shri Prakash Chander Gupta  
Already Defendant No. 9  
S/o Shri Binodi Lal  
R/o 23-B, Jolly Makers Towers  
Cuffe Parade, Colaba  
Mumbai 400 005

F) Shri Purushottam Dass Gupta  
Already Defendant No. 10  
S/o Late Binodi Lal

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R/o H.No.208-A/D-5  
Scheme No. 54, Vijay Nagar Colony  
Bombay- Agra Road  
Indore (M.P.)

G) Smt. Vidya Wati  
Already Defendant No. 11  
W/o Shri Bhagvat Swaroop Gupta  
Deceased Through Legal Reprmentatives

a) Ashok Kumar Gupta – Son  
11, Kanchan Bagh, S. Tukoganj, Indore-452001

b) Rajendra Gupta – Son  
1st Floor, 11, Kanchan Bagh, S. Tukoganj,  
Indore-452001

c) Smt. Lata Khnadelwal – Daughter  
W/o Deepak Khandelwal  
H.No.92 , Tarani Debnath Road,  
N.S. Avenue, Silchar 788005

d) Smt. Rekha Shah – Daughter  
W/o Chandrakanth Shah  
7, Centreal Excise Co-op. Housing Society,  
Opp. Skota Stadium. Akota  
Vadodara, Gujarat

e) Smt. Renu Gupta - Daughter  
W/o Dr. Rajesh Gupta  
27, Snajay Marg, Hathroi, Ajmer Road  
Jaipur – 302001

f) Smt. Nutan Gupta - Daughter  
W/o Dr. Arvind Gupta  
C-1/37, Ashok Vihar-II  
Delhi

H) Smt. Kashmero Devi  
W/o Shri Rameshwar Dayal  
Already Defendant No. 12  
D/o Shri Binodi Lal,  
R/o Old Address: A-2/7, Model Town, Delhi-110009  
New Address : H.No. 57 Sector 15A, Noida  
201301 (U.P.)

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I) Smt. Padmawati  
Deceased February 1969

i) Shri Rajat Gupta  
Already Defendant No. 13  
S/o Sh. Raj Narain Gupta  
Grand son of Late Binodi Lal  
R/o Sharewali Kothi, Jamuna Kinare,  
Bakan Ganj, Agra (U.P.)

ii) Smt. Shalini Jhalani  
Already Defendant No. 14  
W/o Sh. Rajesh Jhalani  
D/o Sh. Raj Narain Gupta  
Grand D/o Late Sh. Binodi Lal  
R/o H. No. 3 Ram Chander Lane  
Civil Lines, Delhi

J) Smt. Saroj Bala  
Already Defendant No.15  
W/o Shri Krishan Dass Khandelwal  
D/o Late Shri Binodi Lal  
Old Address: C/o Bhanamal Guljari Mal, \  
Chawari Bazar Delhi 110006  
New Address: 6, Ansari Road, Darya Ganj,  
Delhi-110002

a) Smt. Usha Rani  
W/o Shri Prehlad Chander Gupta

b) Shri Rahul Gupta  
S/o Late Prehlad Chander Gupta  
Both R/o 1, Quinton Road,  
Lucknow (U.P.)

c) Smt. Rashmi Gupta  
W/o Sh. Sunil Gupta  
R/ 19/1, New Road  
Dehradun U.P.

d) Smt. Ritu Gupta  
W/o Shri Praveen Gupta  
R/o 36/A-7, Rampur Garden  
Civil Lines  
Bareilly (U.P.)

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9. Shri Prakash Chander Gupta  
S/o Shri Binodi lal  
Deceased on 19/11/2020 through his legal representative

- i) Sh Amit Gupta - Son
- ii) Sh Ashish Gupta - Son
- iii) Sh Adhir Gupta - Son

All R/o 23-B, Jolly Makers Towers  
Cuffe Parade, Colaba  
Mumbai 400 005

10. Shri Prushottam Dass Gupta  
S/o Binodi Lal  
R/o House No. 208-A/D-5  
Scheme No. 54, Vijay Nagar Colony  
Bombay Agra Road, Indore M.P

11.Smt. Vidya Wati  
W/o Shri Bhagvat Swaroop Gupta  
Deceased Through Legal Reprntatives

a) Ashok Kumar Gupta – Son  
11, Kanchan Bagh, S. Tukoganj, Indore-452001

b) Rajendra Gupta – Son  
1st Floor, 11, Kanchan Bagh, S. Tukoganj,  
Indore-452001

c) Smt. Lata Khnadelwal – Daughter  
W/o Deepak Khandelwal  
H.No.92 , Tarani Debnath Road,  
N.S. Avenue, Silchar 788005

d) Smt. Rekha Shah – Daughter  
W/o Chandrakanth Shah  
7, Centreal Excise Co-op. Housing Society,  
Opp. Skota Stadium. Akota  
Vadodara, Gujarat

e) Smt. Renu Gupta - Daughter  
W/o Dr. Rajesh Gupta  
27, Snajay Marg, Hathroi, Ajmer Road  
Jaipur – 302001

f) Smt. Nutan Gupta - Daughter

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W/o Dr. Arvind Gupta  
C-1/37, Ashok Vihar-II  
Delhi

12. Smt. Kashmero Devi  
W/o Shri Rameshwar Dayal  
D/o Shri Binodi Lal,  
R/o Old Address: A-2/7, Model Town, Delhi-110009  
New Address : H.No. 57 Sector 15A, Noida  
201301 (U.P.)

13. Shri Rajat Gupta  
Already Defendant No. 13  
S/o Sh. Raj Narain Gupta  
Grand son of Late Binodi Lal  
R/o Sharewali Kothi, Jamuna Kinare,  
Bakan Ganj, Agra (U.P.)

14. Smt. Shalini Jhalani  
Already Defendant No. 14  
W/o Sh. Rajesh Jhalani  
D/o Sh. Raj Narain Gupta  
Grand D/o Late Sh. Binodi Lal  
R/o H. No. 3 Ram Chander Lane  
Civil Lines, Delhi

15. Smt. Saroj Bala  
Already Defendant No.15  
W/o Shri Krishan Dass Khandelwal  
D/o Late Shri Binodi Lal  
Old Address: C/o Bhanamal Guljari Mal,  
Chawari Bazar Delhi 110006  
New Address: 6, Ansari Road, Darya Ganj,  
Delhi-110002

16. Smt. Patasi Bai  
W/o of Late Shri Binodi Lal  
House No. 2/7 Model Town,  
Delhi 110009

A) Shri Ghanshyam Dass Gupta (Deceased)  
(Already Plaintiff)  
Through His Legal Representatives  
H-2/7, Model Town, Delhi-110009

– Son

i) Vinay Gupta

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S/o Late Ghanshyam Dass  
R/o H-2/7, Model Town  
Delhi-110009

ii) Ajay Gupta  
Expired on 04.04.2015 through LRs

a) Mrs. Nishi Gupta(Wife)  
b) Aarti gupta (daughter)  
c) Ayushi gupta (daughter)  
R/o 697, Sector-36, Gurgaon, Haryana

iii) Shri Vivek Gupta  
S/o Late Sh. Vijay Gupta  
R/o 91, State Bank Colony,  
Near Rana Pratap Bagh  
G.T. Karnal Road, Delhi

iv) Smt. Raj Hari Gupta  
D/o Ghanshyam Dass Gupta  
C-19, Bijli Apartments  
G.T. Karnal Road, Delhi

v)Smt. Veena Khandelwal  
D/o Shri Ghansyam Dass  
22/1, Moti Lal Nehru Road,  
Agra (U.P.)

B) Shri Harish Chander Gupta  
(Deceased 02.05.1986) Through LRs.  
i) Smt Tara Devi (Wife)  
Since deceased 07.02.2015

ii) Smt. Nirmala Bansal  
Already Defendant No.3  
W/ o Shri Harish Bansal  
D/o Late Harish Chandra Gupta  
R/o Old Address: A-37, Kailash Colony, New Delhi  
New Address: 3/2, Arawali Vihar Housing Road Colony  
Alwar-301001 (Rajasthan)

iii) Rajneesh Gupta died on 20.06.2022  
Already Defendant No. 1  
S/o Late Harish Chander Gupta  
R/o Old Address: 8-2/581/7, Road No. 8, Banjara Hills,Hyderabad 500034 (A.P.)  
New Address: A-3, Co-Operative Industrial Estate, Balanagar, Hyderabad 500037

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(a) Smt. Prabha Jain - Wife  
(b) Sh. Parikshit - Son  
Both R/o 6-3-347/16, Dawarka Puri colony,  
Puja Gutta, Khairatabad, Hyderabad,  
Telangana-500004

iv) Smt. Madhu loyalka  
(Already Defendant No.4)  
W/o Shri Atul Loyalka  
D/o Late Harish Chander Gupta  
R/o Old Address: Dhansar, Dhanbaad, Bihar  
New Address: 605, Block- B, Rosewood Greens,  
Sirsi Road, Jaipur, Rajasthan

C) Shri Manohar Lal Khandelwal  
(Deceased May,1964)

i) Shri Sunil Khandelwal  
Already Defendant No.5  
S/o Late Manohar Lal Khandelwal

ii) Smt. Urmila Khandelwal  
Already Defendant No.6  
W/o late Shri Manohar Lal Khandelwal

iii) Ms. Neerja Khandelwal died in 1995 (unmarried)  
Already defendant No. 7  
All the residents of  
Flat no. 5 Vishwa Mahal, C-Road,  
Church Gate, Mumbai-400 020

D) Shri Prehlad Chander Gupta  
Already Defendant No.8  
Deceased July 1998

i) Patasi Bai  
Expired on 3.10.1995  
(Already defendant No. 16)

ii) Smt Usha Rani  
(Already defendant No. 18)  
W/o Shri Prahlad Chander Gupta

iii) Shri Rahul Gupta  
S/o Late Prahlad Chandra Gupta  
Both R/o 1, Quinton Road,

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Lucknow (U.P.)

iv) Smt. Rashmi Gupta  
W/o Shri Sunil Gupta  
R/o 19/1, New Road,  
Dehradun (U.P.)

v) Smt. Ritu Gupta  
W/o Praveen Gupta  
R/o 36/A-7, Ram Pur Garden,  
Civil Lines, Bareilly, U.P

E) Shri Prakash Chander Gupta  
Deceased on 19/11/2020  
Through his legal representative

- (i) Sh Amit Gupta - Son
- (ii) Sh Ashish Gupta – Son
- (iii) Sh Adhir Gupta - Son

All R/o 23-B, Jolly Makers Towers  
Cuffe Parade, Colaba  
Mumbai 400 005.

F) Shri Purushottam Dass Gupta  
Already Defendant No. 10  
S/o Late Binodi Lal  
R/o H.No.208-A/D-5  
Scheme No. 54, Vijay Nagar Colony  
Bombay- Agra Road  
Indore (M.P.)

G) Smt. Vidya Wati  
Already Defendant No. 11  
W/o Shri Bhagvat Swaroop Gupta  
Deceased Through Legal Reprmentatives

i) Ashok Kumar Gupta – Son  
11, Kanchan Bagh, S. Tukoganj, Indore-452001

ii) Rajendra Gupta – Son  
1st Floor, 11, Kanchan Bagh, S. Tukoganj,  
Indore-452001

iii) Smt. Lata Khnadelwal – Daughter  
W/o Deepak Khandelwal  
*Ghanshyam Dass & Ors. v. Rajneesh Gupta & Ors.*

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H.No.92 , Tarani Debnath Road,  
N.S. Avenue, Silchar 788005

iv) Smt. Rekha Shah – Daughter  
W/o Chandrakanth Shah  
7, Central Excise Co-op. Housing Society,  
Opp. Skota Stadium. Akota  
Vadodara, Gujarat

v) Smt. Renu Gupta - Daughter  
W/o Dr. Rajesh Gupta  
27, Snajay Marg, Hathroi,  
Ajmer Road, Jaipur – 302001

vi) Smt. Nutan Gupta - Daughter  
W/o Dr. Arvind Gupta  
C-1/37, Ashok Vihar-II, Delhi

H) Smt. Kashmero Devi  
W/o Shri Rameshwar Dayal  
Already Defendant No. 12  
D/o Shri Binodi Lal,  
R/o Old Address: A-2/7, Model Town, Delhi-110009  
New Address : H.No. 57 Sector 15A, Noida  
201301 (U.P.)

I) Smt. Padmawati  
Deceased February 1969

i) Shri Rajat Gupta  
Already Defendant No. 13  
S/o Sh. Raj Narain Gupta  
Grand son of Late Binodi Lal  
R/o Sharewali Kothi, Jamuna Kinare,  
Bakan Ganj, Agra (U.P.)

ii) Smt. Shalini Jhalani  
Already Defendant No. 14  
W/o Sh. Rajesh Jhalani  
D/o Sh. Raj Narain Gupta  
Grand D/o Late Sh. Binodi Lal  
R/o H. No. 3 Ram Chander Lane  
Civil Lines, Delhi

J) Smt. Saroj Bala  
Already Defendant No.15

*Ghanshyam Dass & Ors. v. Rajneesh Gupta & Ors.*

*CS DJ no.617422/16*

W/o Shri Krishan Dass Khandelwal  
D/o Late Shri Binodi Lal  
Old Address: C/o Bhanamal Guljari Mal, \  
Chawari Bazar Delhi 110006  
New Address: 6, Ansari Road, Darya Ganj,  
Delhi-110002

17.Smt. Shyama Devi  
Died on 19.01.2008  
W/o of Ghanshyam Dass  
House No -2/7, Model Town,  
Delhi – 110009  
Through legal representatives

i) Vinay Gupta  
S/o Late Ghanshyam Dass  
R/o H-2/7, Model Town  
Delhi-110009

ii) Ajay Gupta  
Expired on 04.04.2015 through LRs

a) Mrs. Nishi Gupta(Wife)  
b) Aarti gupta (daughter)  
c) Ayushi gupta (daughter)  
R/o 697, Sector-36, Gurgaon, Haryana

iii) Shri Vivek Gupta  
S/o Late Sh. Vijay Gupta  
R/o 91, State Bank Colony,  
Near Rana Pratap Bagh  
G.T. Karnal Road, Delhi

iv) Smt. Raj Hari Gupta  
D/o Ghanshyam Dass Gupta  
C-19, Bijli Apartments  
G.T. Karnal Road, Delhi

v)Smt. Veena Khandelwal  
D/o Shri Ghansyam Dass  
22/1, Moti Lal Nehru Road,  
Agra (U.P.)

18.Smt. Usha Rani  
W/o Shri Prehlad Chander Gupta  
Expired on 29.09.2020

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i) Shri Rahul Gupta - Son  
S/o Late Prahlad Chandra Gupta  
Both R/o 1, Quinton Road,  
Lucknow (U.P.)

ii) Smt. Rashmi Gupta - Daughter  
W/o Shri Sunil Gupta  
R/o 19/1, New Road,  
Dehradun (U.P.)

iii) Smt. Ritu Gupta - Daughter  
W/o Praveen Gupta  
R/o 36/A-7, Ram Pur Garden,  
Civil Lines, Bareilly, U.P.

19.Smt. Manju Gupta  
W/o Shri Prakash Chand Gupta  
Deceased on 24.09.2020  
Through his legal representatives

i) Shri. Prakash Chand Gupta - Husband (Expired on 19.11.2020)  
ii) Shri. Amit Gupta - Son  
iii) Shri. Ashish Gupta - Son  
iv) Shri, Adhir Gupta - Son

All R/o of 23-B, Jolly Makers Tower,  
Cuff Prade, Colaba, Mumbai – 400005  
Maharashtra

.....Defendants

**Date of Institution of the Suit : 14.11.1986**  
**Date on which Judgment was reserved : 13.04.2023**  
**Date of Judgment : 18.04.2023**

### **SUIT FOR PARTITION**

### **JUDGMENT**

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1. Vide this judgment, I shall decide the present suit for partition.

**BRIEF PLEADINGS OF THE PARTIES:**

2. The case of the plaintiff is that plaintiff is the real brother of defendants no.8 to 10 and defendants no.11 & 12 are the sisters of the plaintiff and other defendants are sons and daughters, spouses of the brothers and sisters. The defendant no.17 is his mother and defendant no.18 is his wife. That his father, Late Sh. Binodi Lal died intestate in the year **1978** and he was survived by his legal heirs. Sh. Bishamber Dayal, his grandfather died in the year 1938. His father Late Sh. Binodi Lal inherited various movable and immovable properties. As per plaint, his father carried business as Manager and Karta of Joint Hindu Family till 1978 and the income earned therefrom was further invested in other properties and businesses as per Annexure-A/Schedule-A (annexed with the plaint), which were put into a Joint Hindu Family pool which also included the properties inherited by Late Binodi Lal from his father Late Bishamber Dayal and the properties purchased after 1978 in the name of other defendants, out of the funds of the Joint Hindu Family with the consent of all the members. He



also acquired properties in his name at Rewari and Ujjain and rest of the properties were created in the names of other sons, daughters, wives of the sons, plaintiff, plaintiff's wife and mother. All his legal heirs are the co-owners of the properties acquired with the ancestral funds. The sons of Late Binodi Lal are the co-owners / joint owners of the properties inherited by their father from Late Bishamber Dayal after his death in the year 1938.

3. It is the case of the plaintiff that the properties in the suit were always and still are in the joint possession of the parties mentioned in Schedule A which include shares, rights, interests, and some of the properties are occupied by the tenants. The rent from the tenants was being realized by his mother. That for the proper management and also in the interest of the members of the family, the properties were created/purchased in the names of defendants no.2, 4, 6, 9, 17, 18 and 19. The parties to the suit are not having any independent right in the properties and they are holding the same for and on behalf of each other being the members of Joint Hindu Family. That they have equal shares in

the properties left by Late Binodi Lal on his death in the year 1978.

4. That the plaintiff is in exclusive possession of property bearing no.H-2/7, Model Town, Delhi-09 which is a built up property on the ground and first floors. That he had been enjoying the said property uninterruptedly, peacefully for more than 12 years to the exclusion of other defendants. However, one room on the first floor was in the possession of defendant no.1. That the plaintiff and the defendants are the members of Joint Hindu Family and are co-owners of all the suit properties mentioned in Schedule-A which are coparcenary properties. That for the last about one year, the defendants have created circumstances for the plaintiff to ask for partition of entire properties inherited/acquired since 1938 onwards. That the defendants were called upon in the year 1985 to hand over his share in the properties and also of other defendants. That the defendants have failed to render account of the joint Hindu Family business mentioned in Schedule A. That the defendants no.1 & 2 attempted to dispossess him on 21.10.1986 from the property in his possession and occupation. That he called upon the defendants on 11.11.1986 to partition the properties and

give his share but they failed to do so. Hence, the present suit seeking preliminary decree of partition, thereby appointing a Local Commissioner with the directions to declare the shares of the parties in the suit in respect of the properties mentioned in Schedule A and to pass final decree in terms of the report of the Local Commissioner.

5. Defendants no.1 to 3 in their written statement took the preliminary objections that the suit is barred under proviso to Section 34 of the Specific Relief Act. That the plaintiff is not in possession or joint possession of the properties in suit except that he is in unauthorized possession of four rooms which was allowed to be used by way of leave and license and it was a permissive use. As per the defendants, the license given to the plaintiff by Harish Chandra Gupta in the year 1978 stands revoked since February, 1986 and on revocation, his use and occupation or possession is wholly unauthorized. That the suit is barred under Section 281-A of the Income Tax Act, 1961. It is stated by the answering defendants that no business or property mentioned in the schedule A is held benami and that the property bearing no.H-2/7, Model Town exclusively

belongs to them. It is their case that after death of Sh. Harish Chander Gupta, father of defendant no.1, defendant no.1 required the plaintiff to vacate the said portion of the aforesaid property which was allowed to be used and occupied by the plaintiff as a licensee. That no particulars of properties mentioned in the schedule A alleged to be joint have been given nor it has been alleged as to how and when the said properties and businesses were acquired. That the plaintiff and his sons served various notices upon Late Harish Chander Gupta as Director-in-Charge of M/s. Purshottam Iron & Steel Industries Pvt. Ltd. It is their defence that there was no HUF nor any joint or HUF properties and businesses except the properties situated in Rewari, Haryana and Indore, Madhya Pradesh which are ancestral properties but already stood lost to the parties herein for the last 25 years.

6. Further objections have been taken that the suit is bad for non-joinder of necessary parties as sons of defendants no.8 to 10; wife of defendant no.10; his grandson who is the son of his pre-deceased son and son of Sh. Vinay Gupta and also son & daughter of deceased sister

Padmavati have not been impleaded. The plaintiff on the one hand alleged the property bearing no.H-2/7, Model Town, Delhi as HUF or joint property and on the other hand, alleged the said property to be his exclusive property on account of adverse possession. That the parties to the suit have been residing separately and carrying on their various business and would assemble only on the occasions of marriages and death. That there was no commonality between Sh. Binodi Lal and his sons after the year 1952 onwards in residence, food, worship and business.

7. In reply on merits, it is admitted only to the extent that the father of the plaintiff named Lala Binodi Lal died intestate in the year 1978 and was survived by his sons and daughters. It is submitted that M/s. Jagan Nath Makhan Lal was started by L. Bishamber Dayal, father of Lala Binodi Lal. That this firm closed its business in or about the year 1953. The only asset which was left with the firm was the tenancy rights in respect of office premises situated at 108/116, Panchi Bai Trust Building Vithal Wadi, Kalba Devi, Bombay. That the premises bearing no.459-460, Khari Baoli, Delhi which were on lease/rent with M/s. Jagan Nath Devi Sahai was

purchased from the landlord/owner by the defendant no.2 Smt. Tara Devi in the year 1965 with her own funds. After the said purchase, the firm attorned to Smt. Tara Devi and paid rent to her till this firm was completely closed down in the year 1980. The plaintiff has filed the present suit only to forestall, pre-empt and avoid his eviction from the house at Model Town, Delhi which belonged to defendants no.1 & 2. That the only properties which were inherited by Sh. Binodi Lal from his late father Sh. Bishamber Dayal were the properties which had fallen to his share and are situated at Rewari and Ujjain.

8. That the firm mentioned at item no.7 (Southern Industrial Corporation) was owned by a partnership firm comprising of defendants no.1 to 3. That M/s. H.R. Bright Steel Private Ltd. belonged to defendants no.1 & 2 and wife of defendant no.1. With regard to M/s. Premier Deep Well Hand Pumps Pvt. Ltd., it is submitted that defendants no.1 & 2 have 1/3<sup>rd</sup> shareholding of the said company. That building No.459-460, Khari Baoli, Delhi is exclusively owned by Smt. Tara Devi, defendant no.2. With regard to property no.462, Jubilee Hills, Hyderabad is owned by Sh.

Rajneesh Gupta. It is submitted that when the defendants no.1 & 2 finally asked the plaintiff on 26.09.1986 to vacate the accommodation which he was allowed to occupy, out of compassion by way of leave & license. He refused/failed to do so, instead, he and his sons threatened defendant no.1 with dire consequences. It is prayed that the present suit be dismissed.

9. The defendants no.5 to 7 also filed their written statement taking preliminary objections that the suit of the plaintiff is not maintainable and is bad for misjoinder of parties. That the plaintiff has not disclosed as to the business carried on by the said Binodi Lal. It is stated that tenancy rights of M/s. Jagannath Makhanlal were sublet to Universal Trading co. in which firm defendant no.5 was a partner. That the said firm was also dissolved and the defendant no.5 is occupying the said premises as legal sub-tenant for the last more than 13 years and doing his business in the name of M/s. M.L.K. Trading Co. It is stated that Flat no.5, Vishwa Mahal, C Road, Churchgate, Bombay-20 was purchased by defendant no.6 out of her own funds and neither the plaintiff nor any other defendants have any any interest whatsoever in the said flat. It is further stated that late

Manoharlal, the father of defendants no.5 & 7 and husband of defendant no.6 was entitled to his share pro-rata with other sons.

10. In reply on merits, it is stated that the defendants have no knowledge that the properties mentioned at a, b, c & d were inherited by Late Binodilal in 1938. It is stated the answering defendants call upon the plaintiff to disclose particulars as to what businesses were carried by Late Binodilal with the names of business, commencement date of the business, discontinuation dates of the businesses, places where the said businesses were carried on, their nature and to produce the Income Tax Forms & Assessment Orders in respect of those businesses. It is further submitted that defendant no.5 Sh. Sunil Khandelwal is sub-tenant so far as Vithalwadi premises are concerned and defendant no.6 Smt. Urmila M. Khandelwal is the owner of the block at 6, Vishwa Mahal. It is prayed that receiver be appointed with respect to the properties no.14, 18, 19 & 20 or the joint properties of Late Sh. Binodilal to be partitioned amongst his heirs.

11. Defendant no.5 also filed his amended written statement to the



amended plaint, wherein, similar submissions have been made as in joint written statement filed earlier along-with defendants no.6 & 7. Further preliminary objections have been taken that the plaintiffs have not pointed out as to which properties are of ownership and in whose names the tenanted premises stand. Further, plaintiff has failed to point out the name of the joint family, the year in which it was formed and who were the members of the said joint and undivided Hindu family. It is further stated that the firm of M/s. Jagan Nath Makhanlal was never the property of the HUF of Binodilal. That the tenancy rights of said firm were sublet to Universal Trading Co. That item no.15 of the schedule A ie. flat no.5, Vishwa Mahal, C Road, Churchgate, Bombay was purchased by defendant no.6 out of her own funds. In reply on merits, it is submitted that the plaintiff has set up the Will dated 06.10.1977 allegedly executed by Sh. Binodi Lal and has willfully suppressed the existence of the said Will from court. That the suit of the plaintiff in the year 1986 at a time when he knew of the existence of the Will. It is further submitted that in the alleged Will, it is mentioned that all the sons of Sh. Binodi Lal were doing their own business and there was no mention of any Joint Family Business with Sh.

Binodilal as the Karta. It is further submitted that the order dated 05.11.1982 of Sh. V.K. Jain, the then Ld. ADJ (II), Narnaul, Haryana in Execution No.3 would operate as res-judicata between the parties in relation to any question.

12. Defendant no.9 in his written statement took the preliminary objections that the suit is bad for misjoinder and non-joinder of parties as Smt. Krishna Devi, wife of Sh. Purshottam Dass who is defendant no.10 has not been made a party. That the plaintiff be directed to file plans of the properties to be partitioned. That many of the properties are not included in the plaint. That the proper court-fee has not been paid. That the income from the properties, firms, factories be also rendered. On merits, the averments of the plaint were categorically denied. It is submitted that the relationship has been wrongly mentioned in the plaint. That the details of the properties at Rewari and Ujjain have not been given.

13. Defendants no.8 & 18, in their written statement, took the preliminary objections that the allegations in the plaint are absolutely

vague. It is submitted that partnership firms and limited companies cannot be owned by HUF, contrary to allegations made by the plaintiff. That the plaintiff has not mentioned as to when the alleged joint family came into existence and who are the various members thereof. That the plaintiff has failed to mention details of the businesses of Late Binodi Lal and whether his sons had independent properties or independent business. It is submitted that the property bearing no.1, Quint Road, Lucknow mentioned at s.no.16 in Schedule A was purchased by Smt. Usha Rani in 1966 entirely with her own funds. Also, property bearing no.2852, Gali Peepal Mahadev, Hauz Qazi, Delhi mentioned at S. no.23 in Schedule A was purchased by Smt. Usha Rani in 1965 entirely with her own funds. Similarly, properties mentioned at s.no.29 and 30 in Schedule A are not part of any HUF, rather, they were purchased by Smt. Usha Rani entirely with her own funds, however, in the names of defendants Tara Devi, Urmila Khandelwal and Sh. Parkash Chand through benami transactions. In reply on merits, categorical denials were made w.r.t. averments made in the plaint. It is stated that the plaintiff has not given details of the various investments if any made by Sh. Binodi Lal. It is prayed that the answering defendants

have no objection to the partition of other properties in case they are so decided and held to be joint properties.

14. Smt. Patasi Bai, defendant no.16 filed her written statement who is the widow of Late Binodi Lal, father of the plaintiff herein. She stated that she has no objection to the prayer of the plaintiff being granted. It is further stated that as agreed upon between her late husband and all their sons that all the properties will remain the properties of the HUF and will be treated as such for all practical purposes. Although, for income tax purpose, the properties may be purchased in the individual names of any or all the members of the HUF as the situation may warrant.

15. With regard to properties mentioned in Schedule A, it is stated that M/s. Jagan Nath Makhan Lal was the tenant of 3<sup>rd</sup> floor of the premises no.108/116, Vithalwadi, Kalbadevi Road, Bombay-2. That her late husband Binodi Lal was the real nephew of Sh. Makhan Lal who had no issue. After his death, her late husband had been the occupant of the premises in question through his HUF firms namely Universal Trading Co. and

Universal Trading Co. (Steel Department). Her grandson Sh. Sunil Khandelwal, son of her pre-deceased son Sh. Manoharlal Khandelwal was authorized to do his business and look after the interest of the entire family in respect of the premises and specially of the HUF of her late husband, since her late husband had the sole tenancy rights.

16. It is further submitted that M/s. Jagan Nath Devi Sahai had its office at 459-460, Khari Baoli, Delhi-06. That Smt. Tara Devi, defendant no.2 wife of Late Harish Chandra Gupta illegally and unauthorizedly parted ways with the physical possession of the premises for a consideration of Rs.18 Lakhs, which should be thrown in the common hotch-potch. That the said property was purchased by her late husband out of his own funds and the funds of his own HUF. With regard to said premises mentioned at S.no.6, 7 & 8 and the business carried out there have been illegally and unauthorizedly acquired by her son Late Harish Chandra Gupta in connivance with his son Sh. Rajneesh Gupta. The property at s.no.9 was unauthorizedly and illegally acquired by defendant no.1 Sh. Rajneesh Gupta and that he had taken more than Rs.10 Lakhs by way of

pugree/premium for vacating the earlier premises namely 29, Strand Road, Calcutta.

17. It is further submitted that property at s. no.13 is a private limited company and its 33% shares have been jointly purchased by Smt. Tara Devi, her husband Late Harish Chandra Gupta and her son Sh. Rajneesh Gupta by playing a fraud and cheating the members of the HUF as well as other share-holders of the company. That the properties mentioned at s.no.27 & 28 have already been held to be properties of HUF Binodi Lal vide order and judgment dated 19.04.1961 passed by the Hon'ble High Court of Punjab & Haryana in RFA No.115 of 1954.

18. In his written statement, defendant no.19 took the similar preliminary objections as taken by defendant no.9 in his written statement. In reply on merits, similar submissions have been made.

19. Defendants no.11 12 13, 15 were proceeded ex-parte vide order dated 26.10.1994 by Hon'ble Justice P.K. Bahri. The defendant no.17

was proceeded ex parte vide order dated 17.09.2002 by the then Hon'ble Justice Vikramjit Sen, the Hon'ble High Court of Delhi. It was ordered that the status quo be maintained in respect of all the properties detailed in Schedule A. Further, defendants no.2, 8 and 9 were proceeded ex parte vide order dated 11.02.2003 and the right of the defendants no.2 & 3 to file the Written Statement was forfeited.

### **ISSUES FRAMED IN THE MATTER**

20. Upon these pleadings, the issues were framed by the court of Hon'ble Justice K. Ramamoorthy vide order dated 04.12.1995:

*a. Whether the properties mentioned at items Nos.16, 22, 29 and 30 Schedule 'A' to the plaint namely 1. Kothi at No.1, Quinton Road, Lucknow, 2. property bearing No.2852, Gali Peepal Mahadev, Hauz Qazi, Delhi, 3. Agriculture land at Village Simra, Chinhat, Lucknow and 4. Agricultural land at Deva Road form part of HUF properties. If not, who is the owner of the same?*

*b. Whether property at item no.18 in schedule A Khari Baoli, Delhi forms part of HUF properties and was exclusively owned by Smt. Patasi Devi?*

*c. Whether Late Shri Harish Chand Gupta transferred the ground floor premises of 459-60, Khari Baoli, Delhi by creating tenancies and realised*

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*a sum of Rs. Eighteen Lakhs. If so, whether the heirs of Shri Harish Chand Gupta are liable to account for the same?*

*d. Whether plaintiff can claim any relief in respect of partnership firms and various limited companies as alleged in para 1 of Preliminary Objections?*

*e. Whether the suit is barred under Section 281-A of Income Tax Act?*

*f. Whether the counter-claim of defendant no.1 is maintainable without payment of court fee?*

*g. Whether the suit is maintainable as contended by the defendants no.1 to 3?*

*h. Whether the suit has been properly valued for purposes of court fees and jurisdiction?*

*i. What are the various properties and business liable to partition?*

*j. Relief.*

Additional issues were framed on 21.05.2010 by the Hon'ble High Court of Delhi:

*(i) Whether the properties mentioned in the will dated 06.10.77 of Late Shri Binodi Lal were the only properties of the estate of Late Shri Binodi Lal? OPD 5 & 6*

*(ii) If the issue No.(i) is in the affirmative, is the suit, as framed, maintainable? OPD 5 & 6*

*(iii) Whether defendant no.5 and other LRs were aware of the existence of Will dated 06.10.1977 of Late Shri Binodi Lal since 1982? OPD 5&6*



**EVIDENCE OF THE PLAINTIFF:**

21. Thereafter the matter was listed for plaintiff evidence. The plaintiff in order to prove his case, stepped in the witness box as PW1. In his cross-examination, he deposed that his father took loans from his father-in-law for the purchase of the assets. He could not say whether he had filed any documentary proof in support of his statement or not. He admitted that in 1962, Lala Krishan Lal, Rameshwar Prasad, Manoharlal Khandelwal of Pratap Garh and Chote Lal retired from the firm and that Prakash Chander, Prahlad Gupta, Harish Chand Gupta and Purshottam, all sons of Lala Vinodi Lal were inducted as partners. He went on to admit that the business of the firm was transacted from the premises at Room No.31, IIIrd Floor, 108/116 Vithal Wadi Bombay and that till 1962, the principal business of the firm was of cloth and thereafter, of steel. He affirmed that Sh. Prakash Chand Gupta was one of the partners of the firm and that he misappropriated entire of the funds of the firm, for his personal benefits. That the firm was consequently sold out at Re.1/- in 1976 and that Prakash Chander Gupta sold the tenancy of the godowns of the firm at Kalbadevi, Bombay for a consideration of Rs.15,00,000/-. That the only asset presently left with the firm was one telephone bearing No.312500 and that out of *Ghanshyam Dass & Ors. v. Rajneesh Gupta & Ors.*

these funds, Sh. Prakash Chand Gupta purchased a flat bearing no.238, Jolly Maker, Bombay. He further deposed that the books of accounts and other documents of the firm were in the possession of Sh. Prakash Chander Gupta and that said Sh. Prakash Chander Gupta had not rendered any accounts to the partners of the firm.

22. PW-1 Sh. Ghanshyam Dass further deposed in his cross-examination conducted on 27.04.2000 that he was not aware as to whether there is any document on the record to prove his statement that the funds of the firm were derived from the HUF. He affirmed that Chhote Lal, Kishan Lal and Rameshwer Prasad were not related to Late Lala Binodi Lal and that these members were the majority shareholders in the firm but that was because they were his partners in other firms. He further admitted that since 1976, that firm was dormant and was not transacting any business. He denied the suggestion that flat no.23-B, Jolly Makers Apartments, Bombay belonged to the said firm. He deposed that Universal Trading Company and Universal Trading Company (Steel department) were one and the same business concern. He denied the suggestion that Universal Trading

Company (Steel department) started in 1967 but it was started in 1962 and that the partners of both these firms were the same. He affirmed that mills were situated in Wagle Industrial Estate, Thana Maharashtra and that Sh. Prakash Chander Gupta was whole-time partner of that firm and consequently, the entire affairs of the firm were under his control. That firm was also not in existence on that day since it was sold for Re.1/- to Sh. Vinod Kumar Agarwal of Jalandhar in 1975-76. Although he denied the suggestion that that firm was never an HUF firm and deposed that the firm was also shown as an HUF entity before the Income Tax Department and that it was on that basis he said that it was an HUF firm. He denied the suggestion that there was no documentary evidence in proof of his statement that that was an HUF firm. He admitted that Sh. Prakash Chander Gupta misappropriated all the funds and assets of that firm also.

23. PW-1 Sh. Ghanshyam Dass denied the suggestion that M/s. Harison Enterprises belonged to HUF of Harish Chander Gupta HUF of which defendant no.1 was the Karta. He denied to have knowledge of the fact that M/s. Harison Enterprises was assessed to income tax from its

inception till date as a sole proprietorship concern of Harish Chander Gupta (HUF). The right of the defendants to further cross-examine the said witness was closed vide order dated 21.09.2000 by the then Hon'ble Justice Vikramjit Sen, the Hon'ble High Court of Delhi. In the meanwhile the plaintiff Ghanshyam Dass expired in the year 2000. His LRs were brought on record vide order dated 30.03.2001.

24. However, it is pertinent to mention the order dated 27.01.2003 passed by Hon'ble Joint Registrar Ms. Anu Malhotra, whereby, it was observed that no statement has been made by the LRs of the plaintiff seeking to adopt the statement made by deceased plaintiff, and thus in view of the pendency of IA 11688/2000 whereby the defendant no.1 had sought opportunity to cross examine the plaintiff, the statement of Mr. Ghanshyam Dass cannot be read as evidence. This application was decided on 21.02.2006 by the Hon'ble High Court of Delhi as infructuous as the plaintiff died before the cross examination could be completed, the prayer to cross examine the witness is hence infructuous.

25. Mr. Gauri Shankar Khandelwal was examined as PW-2 who deposed that defendant no.1 was his nephew in relation. He admitted in his cross-examination by Ld. Counsel for defendant no.17 that he had not seen the detail of the properties which he alleged to have been purchased from the joint family business. He deposed that he had not seen the title documents of the property located at Mumbai. He denied the suggestion that defendant no.17 was the exclusive owner of property located at Mumbai. On being cross-examined by Ld. Counsel for defendants no.7(b) and 16, he deposed that he was not aware about the status of M/s. Universal Trading Co. that whether it was a private limited company, partnership firm or a proprietorship concern and as to in whose name the Cold Storage located at Lucknow stood in the document. He denied to have any knowledge of the accounts of the above firms and company and whether it was being run by Mr. Rahul Gupta, defendant no.7(b). He denied to have any knowledge of the fact whether the said property stood in the name of Mr. Rahul Gupta or not. He deposed that he had not filed any document in support of his averments made in the plaint that all properties were acquired from the funds of HUF.

26. PW-2 was further cross-examined by Ld. Counsel for defendants no.5 and 6 wherein he stated that he was born on 01.01.1941. He deposed that he did not know whether M/s. Universal Trading Co. was earlier a partnership firm or it was a company since inception. Though, he deposed that Mr. Manoharlal Bhawani Sahai was partner/Director in the said company but later on denied the said fact. He further deposed that he had not gone through the Will executed by Mr. Binodi Lal and that he was not aware about the contents of the said Will. He voluntarily stated that he had heard about the said Will. He further deposed that no partition suit was pending wherein he was one of the parties. The Attorney of defendant no.14 did not cross-examine the said witness.

27. Mr. Gauri Shankar Khandelwal was examined as PW-2, however, the testimony of the said witness did not prove to be of much help to the plaintiffs as he admitted in his cross-examination by Ld. Counsel for defendant no.17 that he had not seen the detail of the properties which he alleged to have been purchased from the joint family business. He deposed

that he had not seen the title documents of the property located at Mumbai. He denied the suggestion that defendant no.17 was the exclusive owner of property located at Mumbai. On being cross-examined by Ld. Counsel for defendants no.7(b) and 16, he deposed that he was not aware about the status of M/s. Universal Trading Co. that whether it was a private limited company, partnership firm or a proprietorship concern and as to in whose name the Cold Storage located at Lucknow stood in the document. He denied to have any knowledge of the accounts of the above firms and company and whether it was being run by Mr. Rahul Gupta, defendant no.7(b). He denied to have any knowledge of the fact whether the said property stood in the name of Mr. Rahul Gupta or not. He deposed that he had not filed any document in support of his averments made in the plaint that all properties were acquired from the funds of HUF.

28. PW3 Sh. Arun Khandelwal in his cross-examination by defendant no.1 himself deposed that he had not seen the documents pertaining to the properties mentioned in his affidavit of evidence at any point of time. He further deposed that he was neither the share holder nor

holding any position in the said companies. During cross-examination by Ld. Counsel for defendants no.5 & 6, he deposed that he was not aware who were the owners of the said firm. That he was also not aware about the firm M/s. Universal Trading Company and M/s. Universal Trading Company (Steel Department) nor was he aware about the detail of the property bearing no.5. He further deposed that he had heard about the Will of late Binodi Lal but he had not seen the same and also not aware about its contents. In his further cross-examination by Ld. Counsel for defendants no.7(b) & 16, 14, 17, nothing material could be extracted. He only deposed that the properties were purchased from the joint funds as the same was being told by the plaintiffs during family discussions, which is also of not much help to the plaintiffs.

29. PW-4 Mr. Ravinder Nath Jhalani tendered his affidavit as Ex. PW-4/A. In his cross-examination, he admitted that he had not seen any document pertaining to his deposition in para 5 & 6 of his affidavit. He further deposed that he was not aware if Binodi Lal used to be assessed as HUF for the purpose of income tax. He deposed that he had no knowledge



about the accounts book of the said company.

No other witness was examined on behalf of the plaintiffs.

**EVIDENCE OF THE DEFENDANTS:**

30. On the other hand, defendants produced Mr. Ram Chander Mishra, rent collector of Mr. Panchibai Trust who was examined as DW-1. He brought the certificate and marked the same as Ex. DW-1/2 and rent receipts issued by the Trust as Ex. DW-1/3. In his cross-examination, he deposed that the premises was let out to M/s. M.L.K. Trading Co. by one of the trustee but he did not know how the same was given, whether it was given after taking money or not and that tenant receipt was used to be issued in the name of Jagan Nath Makkhan Lal.

31. Mr. Satish Kumar Mehta who was working as accountant in Vishwa Co-operative Housing Society Ltd. was examined as DW-2. He brought the documents to the effect that Smt. Urmila Devi Khandelwal was the member of the society holding 25 shares each and that he was the owner of the flat no.5 to the building and marked the same as Ex. DW-2/2;

attested copy of page no.60 of the share transfer register containing the relevant entries as Ex. DW-2/3 and Ex. DW-2/4 and attested copy of resolution of share as Ex. DW-2/5.

32. Mr. Sunil Chabukswar was examined as DW3 marked the record pertaining to property bearing no.176/1, Village Karla, Pune registered in the name of Mrs. Urmila Manohar Lal Khandelwal as Ex. DW-3/1.

33. Mr. Sunil Khandelwal was examined as DW-4 and he marked the documents as Ex. DW-4/1 to Ex. DW-4/8. In his cross-examination by Ld. Counsel for plaintiff, he admitted that as per document Ex. DW-4/6, the partners of Universal Trading company were Ghanshyam Dass Vinodi Lal, Manohar Lal Vinodi Lal, Kishan Lal Ghisu Ram, Rameshwar Prasad Ramji Lal, Manohar Lal Bhawani Sahai, Chhote Lal Ramji Lal. That he was also named as a partner, although he was minor at that time and that his mother Smt. Urmila Manohar Lal was inducted as a partner in the firm M/s. Universal Trading Co. on 14.05.1964. He deposed that in the year 1974, the

rent receipts were being issued by the landlord in the name of M/s. Jagannath Makhan Lal but they were paying the rent and they were in possession. That the landlord had filed a civil case in the Mumbai court and he had been made a party to the suit as the landlord wanted to know who was in legal possession. He further deposed that he was not in possession of any documents of Universal Trading Company (Steel Department). That M/s UTC was dissolved sometime in the late 1970s but he did not remember as to how much amount was received by him and his mother at the time of dissolution of UTC. He admitted that all the other partners who were also family members signed on the partnership deed and that the business of Universal Trading Company was carry forwarded by the partners and it was dissolved sometimes between 1976 and 1978. He further deposed that his possession was upheld by the Hon'ble Court and thereafter, the tenancy was transferred in the name of MLK Trading Company of which he was the proprietor.

34. Mr. Rahul Gupta stepped in the witness box as DW-7B and tendered his evidence by way of affidavit as Ex.-7B/A. He was cross-

examined by Sh. Vinay Gupta, LR no.1 of plaintiff, wherein, he deposed that the property bearing No.1, Quinton Road, Lucknow was purchased by his mother from her own funds. He denied the suggestion that the above-said property was purchased by the funds of M/s. Purushottam Traders Pvt. Ltd. That his name was added as a co-owner of the above-said property. He deposed that the assets/business/liabilities of Himalayan Traders was taken over by M/s. Himalayan Iron & Steel Udyog Pvt. Ltd. He admitted that Himalayan Iron & Steel Udyog Pvt. Ltd. also owned Cold Storage in Lucknow. He further deposed that the land situated at Village Goela, Malihabad Tehsil, Dist. Lucknow was acquired by UPSIDC.

35. Sh. Sevajit record attendant, Govt. of NCT of Delhi, Department of Delhi Archives was examined before the Court Commissioner as DW-15/2. He proved the document bearing registration No.3815 as Ex. DW-15/2/1 (running into 06 pages) and another document bearing registration no.6526 as Ex. DW-15/2/2 (running into 08 pages). Sh. Rajendra Prasad, Sub-Registrar, Lucknow Sadar-I was examined as DW-15/3. He brought the record pertaining to different lands/properties and

proved the same as Ex. DW-15/3/1 to Ex. DW-15/3/10.

36. Defendant no.17 Ms. Manju Gupta w/o Sh. Prakash Gupta tendered her evidence by way of affidavit as Ex-17/A. In her cross-examination by Sh. Vinay Gupta, LR no.1 of plaintiff, she deposed that in Lucknow, she was gifted as dowry one property in Khyali Ganj in Lucknow. She deposed that she was not aware what was the cash flow statement. She admitted that M/s. Ashish Enterprises was her proprietorship firm. She deposed that she was not aware as to who all were partners in M/s. Universal Trading Co., but, was aware that her husband was one of the partners. She denied of being aware whether her husband ever dealt with any property No.457, 458 and 481, Khari Baoli, Delhi in 1993 and with regard to any details of the property. She also denied of being aware w.r.t. transfer of telephone no.320523 and that any meeting was held on 09.02.1976 by the Directors of Purushottam Iron & Steel Industries Pvt. Ltd. She denied the suggestion that all the properties/business which are the subject matter of the present suit were purchased from the funds of Purushottam Iron & Steel Industries Pvt. Ltd.

Thereafter no defence evidence was led and DE was closed.

37. Final arguments were heard. Written submissions have been filed.

**ARGUMENTS OF THE PARTIES:**

38. It is argued by the plaintiff that originally there were only 6 properties mentioned at the time of filing the plaint but the plaint was later amended and several properties were mentioned as Schedule A of the plaint. The court ordered the parties not to dispose the properties during the pendency of the suit but the parties have committed contempt of the order.

39. It was argued that the suit relates to the property of Late Sh. Binodi Lal and no defendant has been able to prove that they hold the property exclusively. Issues were framed on 04.12.1995 but OPP/OPD has not been mentioned, clearly the onus to prove the issues was upon both the

parties.

40. It was argued that the counter claim of the defendant is not maintainable as the same stands abated. It is argued that the claim can be made only against the claimant, since the same has not been amended and LRs of the plaintiff have not been brought on record, as such, decree cannot be passed against a dead man.

41. The defendant no.1 had argued that HUF has not been established by the plaintiff. The plaintiff is seeking partition of Pvt. Ltd. Co. which are not of hereditary nature and should be removed from the list of properties.

42. In the written submission filed on behalf of the defendants no.5 & 6 Sunil Khandelwal and Urmila Khandelwal, it is submitted that the defendant no.5 is occupying the property no.a, for more than 25 years and doing his business in the name of M/s. M.L.K. Trading Co. With regard to property no.b and c, it is submitted that they are self acquired properties of

Urmila Khandelwal, defendant no.6 and mother of defendant no.5. That while disposing miscellaneous application of the plaintiff seeking an amendment of the plaint for including 49 items of the properties mentioned in that application, it was observed by the Hon'ble Justice that, *I make it very clear that it is open to the defendants to challenge the claim of the plaintiff with reference to these properties whether they file independent reply to this amended plaint or not.*” That the objection raised by the plaintiff with regard to sub-tenant or a tenant as raised in the replication will only be adjudicated at trial. He relied upon the judgment cited as ***Santosh Kumar Jain v. Mehtab Singh Jain & Ors., 260 (2019) DLT 497,*** wherein, it was observed that the plaintiff was unable to prove existence of coparcenary/HUF. It was opined that merely because ancestors of plaintiff have been carrying on business, does not prove existence of coparcenary or HUF. Rather business is carried on as partnership which negates existence of any joint Hindu Family.

43. It is contended that the plaintiff has not given any details and particulars of the various business entity, their members nor has he proved



as to when the alleged joint family came into existence. That no evidence or document has been placed on record to establish whether there was any HUF or whether the firms and companies sought to be partitioned were formed from the funds of the alleged HUF. Although the plaintiff has stated that his father Binodi Lal died intestate but on the other hand, a Will dated 06.10.1977 was detected and introduced by the defendant no.5. It is argued that the existence of the Will was within the knowledge of the plaintiff but was not disclosed in the suit. Properties like Universal Trading Co. were partnerships, having outsiders as partners, hence. there was no way this property could be HUF, it was even dissolved in the 1970s.

44. It is argued that defendant no.5 has discharged the onus to prove the issue. It is clearly set out that she is in exclusive possession of the property at item no.31 as tenant. Income tax record Ex PW17/7 has been shown to prove the same. It is argued that none of the documents were confronted from the witness and suggestion even was given about the properties. It is argued that the plaintiff himself has stated that he heard about the HUF, hence, there is nothing remaining to be proved by the

defendants.

45. The defendants no.8 and 18 have also denied that the properties mentioned at item no.16, 23, 29, 30 are HUF. According to the defendants, the property was purchased by the defendant Usha Rani out of her own funds.

46. As for defendant no.19 Smt. Manju Gupta, suit has been filed against her relating to property item no.17, 31 and 36. According to her, these properties are self-acquired properties and have nothing to do with the HUF. It is argued that property at item no. 29 and 30 are agricultural properties in the name of Tara Devi, Urmila Khandelwal and Prakash Chand. Property at Item 30 has now been acquired by the government. As per section 14 of the Hindu Succession Act, property possessed by a female Hindu, whether acquired before or after the commencement of 1956 shall be held by her as full owner and not as a limited owner. It is argued that PW2 and PW3 have not supported the claim of the plaintiff as the witness was unaware of the status of Universal Trading Co., he was unaware even

about the fact as to who is the owner of the property. Nothing in evidence of the plaintiff reflects that Binodi Lal was a Karta. There is evidence of Joint family and partnerships cannot be the subject matter of HUF. The plaintiff has failed entirely in proving his case as no details have been furnished as to how the properties got acquired by the alleged joint family. There is no document to support as to who is in possession of which property and how it falls under the HUF. The Will of Late Sh. Binodi Lal is also exhibited. Further documents of the defendant no. 8 and 18 have not been challenged by the plaintiff. Documents mentioned as Ex. DW15/3 and Ex.DW15/2 were exhibited but witness not cross examined on these nor challenged in any manner.

47. Submissions addressed on behalf of the ld. Counsels for the parties are taken into consideration. Record perused.

## **FINDINGS**

48. My issue wise findings are as under:

### ***h. Whether the suit has been properly valued for purposes of court fees***

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***and jurisdiction?***

The plaintiff has failed to show that which property fell under HUF and therefore, he was the one who had to calculate court fee for the purpose of jurisdiction and the defendants on the other hand, not brought any evidence to show that the appropriate court fees has not been paid by the plaintiff. The issue with regard to court fee is not proved and hence, the court fee paid by the plaintiff is deemed to be appropriate for the purposes of present suit and jurisdiction.

***a. Whether the properties mentioned at items Nos. 16, 22, 29 and 30 Schedule 'A' to the plaint namely 1. Kothi at No.1, Quinton Road, Lucknow, 2. property bearing No.2852, Gali Peepal Mahadev, Hauz Qazi, Delhi, 3. Agriculture land at Village Simra, Chinhath, Lucknow and 4. Agricultural land at Deva Road form part of HUF properties. If not, who is the owner of the same?***

***b. Whether property at item no.18 in schedule A Khari Baoli, Delhi forms part of HUF properties and was exclusively owned by Smt. Patasi Devi?***

***c. Whether Late Shri Harish Chand Gupta transferred the ground floor premises of 459-60, Khari Baoli, Delhi by creating tenancies and realised a sum of Rs. Eighteen Lakhs. If so, whether the heirs of Shri Harish Chand Gupta are liable to account for the same?***

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***d. Whether plaintiff can claim any relief in respect of partnership firms and various limited companies as alleged in para 1 of Preliminary Objections?***

***e. Whether the suit is barred under Section 281-A of Income Tax Act?***

***g. Whether the suit is maintainable as contended by the defendants no.1 to 3?***

***i. What are the various properties and business liable to partition?***

**Additional issues framed on 21.05.2010:-**

***(i) Whether the properties mentioned in the will dated 06.10.77 of Late Shri Binodi Lal were the only properties of the estate of Late Shri Binodi Lal? OPD 5& 6***

***ii. If the issue No.(i) is in the affirmative, is the suit, as framed, maintainable? OPD 5 & 6***

***iii. Whether defendant no.5 and other LRs were aware of the existence of Will dated 06.10.1977 of Late Shri Binodi Lal since 1982? OPD 5&6***

49. All these issues are taken up together since they are inter-connected.

The plaintiff has in his plaint stated that his father Sh. Binodi Lal carried out business as manager and Karta of Joint Hindu Family till the year 1978 and the income earned from that business was invested in other properties and businesses mentioned in Schedule A (there are 49 *Ghanshyam Dass & Ors. v. Rajneesh Gupta & Ors.*

properties mentioned in the said schedule). According to the plaintiff, all these properties formed a common Joint Hindu Family pool which included the properties inherited by Binodi Lal from his father Bishamber Dayal. Further, Sh. Binodi Lal purchased properties in the name of other defendants out of the JHF funds with the consent of other members therefore all the legal heirs of Sh. Binodi Lal are co-owners of the properties and all the properties are in the joint possession of the parties.

50. The initial onus to prove that there existed Joint Hindu Family Funds was therefore upon the plaintiff. In his testimony, the plaintiff/PW-1 Mr. Ghanshyam Dass specifies that name of HUF of Vinodi Lal was called Vinodi Lal HUF. In his examination in chief, he elaborates how and when the properties mentioned in the Schedule A annexed to the plaint were acquired and how they all fall under the HUF. As per the witness, none of the sons of Late Sh. Binodi Lal including the plaintiff had their independent business or source of income. Several letters have been brought on record by the plaintiff which are Exhibited as Ex P.2 to Ex P.205. As per his examination in chief, properties at no. 16 and 22 was purchased from the

HUF firms and funds of Binodi Lal in the name of Usha Rani w/o Late Sh. Prahlad Chandra (daughter-in-law of Binodi Lal), as member of Joint Hindu Family. Whereas, properties at serial no. 29 and 30 were purchased in the name of all the ladies out of Binodi Lal HUF. To prove these aspects, the plaintiff stepped into the witness box as PW-1.

51. However, upon cross-examination, the witness/PW1 admitted that Probate of the Will of Sh. Binodi Lal has been granted by the Additional District Judge, Distt. Mahinder Garh, Naryana. But the order granting probate has not been filed in this court dealing with partition. According to that, Will dated 06.10.1977, Late Binodi Lal bequeathed house no.11212 and 11192, Ward No.XIV, Shadipura, Delhi; compensation awarded in acquisition case no.17/1973; account no.2005 held in Punjab National bank and shares in Delhi Cloth Mill to plaintiff Ghanshyam Dass. The plaintiff failed to disclose that the said Will had been probated and instead, he filed the present suit on the ground that his father died intestate. The witness, in contradiction to the stand taken by him, on the question that his father constituted HUF further answered, *“I have never stated like*

*that.” Upon further cross examination he states, “ I am not aware as to whether there is any document on the record to prove my statement that the funds of the firm were derived from the HUF.”*

52. Even the other witnesses brought by plaintiffs remained mute on this crucial aspect. That PW2 deposed that he had not filed any document in support of his averments made in the plaint that all properties were acquired from the funds of the HUF. PW3 also deposed in line with the other plaintiff witnesses saying that he was not aware if Binodi Lal used to be assessed as HUF for the purpose of income tax and that he had no knowledge about the accounts book of the said company. Nothing concrete could be extracted from their testimonies.

53. In contrast to the plaintiffs, the defendants have been able to bring documents in support of the defence. Mr. Ram Chander Mishra, rent collector of Mr. Panchibai Trust who was examined as DW-1 brought the certificate and marked the same as Ex. DW-1/2 and rent receipts issued by the Trust as Ex. DW-1/3. DW-2 Mr. Satish Kumar Mehta brought the



documents to the effect that Smt. Urmila Devi Khandelwal was the member of the society holding 25 shares each and that she was the owner of the flat no.5 to the building and marked the same as Ex. DW-2/2; attested copy of page no.60 of the share transfer register containing the relevant entries as Ex. DW-2/3 and Ex. DW-2/4 and attested copy of resolution of share as Ex. DW-2/5.

54. DW-3 Mr. Sunil Chabukswar marked the record pertaining to property bearing no.176/1, Village Karla, Pune registered in the name of Mrs. Urmila Manohar Lal Khandelwal as Ex.DW-3/1. Mr. Sunil Khandelwal was examined as DW-4, who in his cross-examination by Ld. Counsel for plaintiff, admitted that as per document Ex.DW-4/6, the partners of Universal Trading company were Ghanshyam Dass Vinodi Lal, Manohar Lal Vinodi Lal, Kishan Lal Ghisu Ram, Rameshwar Prasad Ramji Lal, Manohar Lal Bhawani Sahai, Chhote Lal Ramji Lal. That he was also named as a partner, although he was minor at that time and that his mother Smt. Urmila Manohar Lal was inducted as a partner in the firm M/s. Universal Trading Co. on 14.05.1964. He further deposed that in the year

1974, the rent receipts were being issued by the landlord in the name of M/s. Jagannath Makhan Lal but they were paying the rent and they were in possession. He went on to admit that all the other partners who were also family members signed on the partnership deed and that the business of Universal Trading Company was being carried forward by the partners and it was dissolved sometimes between 1976 and 1978. He further deposed that his possession was upheld by the Hon'ble Court and thereafter, the tenancy was transferred in the name of MLK Trading Company of which he was the proprietor.

55. DW-7B Rahul Gupta s/o Late Sh. Prahlad Chander Gupta and Smt. Usha Rani deposed that the property no.1, Quinton Road, Lucknow was purchased by his mother Usha Rani ie. defendant no.15 with her own funds. He went on to admit that his mother was the owner of the property located at Semra, Lucknow along with others but he does not know who are the others. He further deposed that his name was added as a co-owner of the above-said property. He went on to depose that the assets/business/liabilities of Himalayan Traders were taken over by M/s.

Himalayan Iron & Steel Udyog Pvt. Ltd. He admitted that Himalayan Iron & Steel Udyog Pvt. Ltd. also owned Cold Storage in Lucknow. He further deposed that the land situated at Village Goela, Malihabad Tehsil, Distt. Lucknow was acquired by UPSIDC. On cross-examination by Sh. Vinay Gupta, LR of the plaintiff, DW-7B deposed that his mother Smt. Usha Rani had taken a loan of some amount from M/s. Prushottam Traders for the purchase of 1, Quinton Road, Lucknow since the above-said loan amount was repaid by Usha Rani to the M/s. Purushottam Traders in the same financial year in the sum of Rs.20,000/- in August 1966 and Rs.10,000/- in November 1966 by way of Bank Cheques and rest of the loan amount was repaid by debiting her capital account, maintained in Himalayan Traders and the same was credited in M/s. Purushottam Traders account.

56. Smt. Usha Rani/DW-15 in her affidavit of evidence categorically stated that she was the absolute owner of property above-mentioned. She relied upon sale deed dated 18.06/1966 as Ex. DW-15/4; lease deed dated 03.06.1975 as Ex. DW-15/1; balance sheet dated 29.02.1968 as Ex. DW-15/5; statement of Vinay Gupta as Ex. DW-15/9;

Income-Tax / Wealth-Tax assessment as Ex. DW-15/15-16. She further deposed that similarly property No.2852 purchased in 1965 was out of her own funds. She marked the copy of the registered sale deed relied by her as Ex. DW-15/20.

57. Defendant no.17 Ms. Manju Gupta deposed that she was gifted as dowry one property in Khyali Ganj in Lucknow and admitted that M/s. Ashish Enterprises was her proprietorship firm. She deposed that she was not aware as to who all were partners in M/s. Universal Trading Co., but, was aware that her husband was one of the partners. She denied being aware whether her husband ever dealt with any property No.457, 458 and 481, Khari Baoli, Delhi in 1993 and with regard to any details of the property. She denied the suggestion that all the properties/business which are the subject matter of the present suit were purchased from the funds of Purushottam Iron & Steel Industries Pvt. Ltd.

58. The defendant no.17 has relied on ***Santosh Kumar Jain Vs. Mehtab Singh Jain & Ors.*** [260 (2019) Delhi Law Times 497] to argue

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that once existence of any Joint Hindu Family or Joint Hindu Family Firm or coparcenary has not been established, evidence of properties having been acquired from earnings of coparcenary/joint Hindu family business does not arise and properties would not be of HUF or of coparcenary.

59. It has been argued that merely because the ancestors of the plaintiff have been carrying on business, does not prove the existence of a coparcenary or HUF. In the present matter too, the business is stated to be a partnership which negates the existence of any joint Hindu family. If the business had been carried on as business of Joint Hindu Family, it would also be called so and not a partnership.

60. It is pertinent to mention that as per the Local Commissioner's report dated 21.11.1986 as to which party to the suit was in possession of which portion of the property H-2/7, Model town, Delhi, the property was found to be in joint possession of the plaintiff and the defendant no.1. One room marked as J in the map was in the actual physical possession of Smt. Patasi Bai w/o Late Sh. Bindi Lal and the pooja room was common for all.

61. The onus was upon the plaintiffs to prove their case. It is disclosed by the Ld. Counsel for defendants that the appeal bearing no.115 of 1954 arising out of the order of the court of Sh. A.S. Gilani, Senior Sub-Judge, Gurgaon dated 17<sup>th</sup> day of April, 1954 was filed by the plaintiffs herein who were granted a preliminary decree for possession by partition of 2/3rd shares of the properties mentioned at Nos.2, 4, 6, 8, 9, 13, 14, 16, 18, 19, 21, 22, 23, 25 and 27 in the list B/1 filed by the defendants no.1 to 16 against them and dismissing the rest of the claim and further ordering that the plaintiffs to pay costs of the suit to defendants no.1 to 16 and defendants no.17 to 20. The said appeal was dismissed by the Hon'ble Justice, Punjab & Haryana, High Court vide order dated 19.04.1961 except that it was ordered that the item of property which the defendants have proved to be the exclusive property of the plaintiffs, item no.26 in list B attached to the plaint, be not partitioned and be given exclusively to the plaintiffs. However, the plaintiffs herein have concealed the factum about the partition suit and its appeal in the present suit.

62. The plaintiffs herein have utterly failed to prove that the properties detailed in Annexure A and Schedule A belonged to Joint Hindu Family or were purchased from the funds therein. I am guided by the law laid down in the cases cited as *Master Neel Dayal & Ors. v. Someshwar Dayal & Ors*, 241 (2017) DLT 36, wherein, it was held that, “An act of creation of HUF and of putting of individual property into HUF hotch-potch has to be unequivocal and unambiguous. From mere use of the words ‘Joint Hindu Family Property’, an HUF does not come into existence and the exclusive rights in the property not divested/abandoned.” and another case cited as *Saroj Salkan (Mrs.) v. Huma Singh (Mrs.) & Ors.*, 2016 (157) DRJ 388, wherein, it was opined that, appellant had tried to introduce that ancestral properties are a part of common hotch-potch, however, pleadings qua, who put such properties and when such properties were put are missing.

63. In the present case, the plaint does not disclose the properties to be property of any HUF or joint Hindu Family property and the claim of the plaintiff with respect to the existence of HUF also remained

unsubstantiated. In view of the findings in the case referred therein and the absence of any supporting evidence in the present case, the issues are decided against the plaintiffs.

***c. Whether Late Shri Harish Chand Gupta transferred the ground floor premises of 459-60, Khari Baoli, Delhi by creating tenancies and realised a sum of Rs. Eighteen Lakhs. If so, whether the heirs of Shri Harish Chand Gupta are liable to account for the same?***

***e. Whether the suit is barred under Section 281-A of Income Tax Act?***

64. The onus to prove the issues was upon the defendants. The defendants no.1 to 3 in their Written statement have taken the preliminary objection that the suit of the plaintiffs is barred under Section 281-A of the Income Tax Act. That the premises bearing no.459-460, Khari Baoli, Delhi which were on lease/rent with M/s. Jagan Nath Devi Sahai was purchased from the landlord/owner by the defendant no.2 Smt. Tara Devi in the year 1965 with her own funds. After the said purchase, the firm attorned to Smt. Tara Devi and paid rent to her till this firm was completely closed down in the year 1980. The plaintiff has filed the present suit only to forestall, preempt and avoid his eviction from the house at Model Town, Delhi which belonged to defendants no.1 & 2. It is their defence that the building

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No.459-460, Khari Baoli, Delhi is exclusively owned by Smt. Tara Devi, defendant no.2.

65. Whereas, defendant no.14 Patasi Bai in her written statement submitted that M/s. Jagan Nath Devi Sahai had its office at 459-460, Khari Baoli, Delhi-06. That Smt. Tara Devi, defendant no.2 wife of Late Harish Chandra Gupta illegally and unauthorizedly parted ways with the physical possession of the premises for a consideration of Rs.18 Lakhs, which should be thrown in the common hotch-potch. That the said property was purchased by her late husband out of his own funds and the funds of his own HUF.

66. Section 281A of the Income Tax Act, is being reproduced herein for ready reference:

***S.281: Effect of failure to furnish information in respect of properties held benami :-***

*(1) No suit to enforce any right in respect of any property held benami, whether against the person in whose name the property is held or against*

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*any other person, shall be instituted in any court by or on behalf of a person (hereafter in this section referred to as the claimant) claiming to be the real owner of such property unless notice in the prescribed form and containing the prescribed particulars in respect of the property has been given by the claimant within a period of one year from the date of acquisition of the property to the Chief Commissioner or Commissioner.*

*(1A) Where any such property is acquired by the claimant before the 1<sup>st</sup> day of March, 1984, the provisions of sub-section (1) shall be deemed to have been fulfilled if notice in the prescribed form and containing the prescribed particulars in respect of the property is given by the claimant, within a period of one year from the said date, to the Chief Commissioner or Commissioner. (1B) Notwithstanding anything contained in sub-section (1) or sub-section (1A), in relation to any suit relating to any immovable property of a value not exceeding fifty thousand rupees, the provisions of sub-section (1) or, as the case may be.*

67. The plaintiff has not led any evidence to disprove the fact stated by the defendant. If the property is alleged to be HUF, no evidence

has been led to that effect. The defendant no. 14 has alleged that the property was indeed rented out to M/s. Jagan Nath Devi Sahai, and that the same was later purchased by Defendant no.2 from the landlord and unauthorizedly sold it for a consideration of 18 Lakhs. The firm of M/s. Jagan Nath Devi Sahai was closed down in the year 1980. The plaintiff has brought no evidence to show that this property purchased by Harish Chander was by misappropriating the funds of the HUF.

68. The plaintiff has also not shown as to how the properties in question fall under the Benami Act or that the property was purchased by any of the defendants. Consequently, it cannot be held that the LRs of Harish Chander are accountable. Hence, the issues are decided against the plaintiffs.

***f. Whether the counter-claim of defendant no.1 is maintainable without payment of court fee?***

69. The counter-claim of the defendant no.1 has been assigned miscellaneous number ie. CC No.25/19 titled as “Rajneesh Gupta and Ors.

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v. Ghanshyam Dass (Deceased through LRs)”, hence, this issue will be decided in that counter claim itself. The issue is therefore left undecided in the present suit.

### **Relief**

70. In view of my above discussion, the suit of the plaintiffs is dismissed. No order as to costs. Decree sheet be prepared accordingly.

71. File be consigned to Record Room.

**Announced in the open court  
on 18<sup>th</sup> April, 2023.**

**(Colette Rashmi Kujur)  
ADJ-10/Central/THC/Delhi.**