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

Judgment reserved on:01.08.2024

Judgment pronounced on: 23 .01.2025

+ **CS(OS) 2382/2007**

DR. PUSHPALATA AND ANR.

.....Plaintiffs

Through: Mr Varun Nischal, Mr. Rajat Manchanda, Mr. Parveen Kalra, Ms. Aditi Singhal, Ms. Somya, Mr. Deepanshu Bharti, Mr. Shubham Sharma, Advs.

versus

RAM DAS HUF & ORS.

.....Defendants

Through: Mr. Manish Vashisht, Sr. Adv. with Mr. Rikky Gupta, Ms. Ananya Singh, Mr. Vanshay Kaul, Mr. Vedansh Vashisht, Ms. Harshita Nathrani, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. The instant suit has been filed seeking the following substantial prayers:-

a. To pass a decree of declaration that the Plaintiff is entitled to 1/5th share of the Suit HUF properties.



- b. To pass a preliminary decree of partition in favor of the Plaintiff and against the Defendants holding the Plaintiff to be entitled to 1/5th share of the Suit HUF properties.*
- c. To pass a decree for declaration in favor of the Plaintiff and against the Defendants declaring that any change in the record of ownership or any Agreement/contract of sale etc. if any done or entered into by any of the Defendants without express consent of the Plaintiff in respect of the Suit HUF properties mentioned in is null and void and not binding upon the Plaintiff;*
- d. After passing the preliminary decree as at (a) and (b) above, pass orders for appointment of local commissioner/s for effecting the partition by metes and bounds of the suit properties with a further direction to the local commissioner to suggest other modes of partition and in case this Hon'ble Court comes to the conclusion that it is not possible to effect partition by metes and bounds, then the suit properties be sold/ release and the sale/realisation proceedings be distributed between the parties in proportion to their share demarcated.*
- e. pass final decree of partition in terms of either the report of the local commissioner or any other mode as stated in the prayer "d" above and if the need arises, by delivering the actual vacant physical possession of the respective portions to the parties.*



- f. For permanent injunction restraining the Defendants, their servants and agents from selling, alienating, encumbering or parting with possession in any manner and ousting the Plaintiff from the joint possession of the properties described above till passing of a final decree for partition partitioning the properties in between the co sharers by metes and bounds;*
- g. For a permanent injunction restraining the Defendants, their servants and agents from illegally and forcibly dispossessing the Plaintiff from the suit HUF properties.*
- h. To pass an order directing the Defendants to render accounts of the rents accrued from the tenancy of the ground floor of the HUF Residential property at New Friends Colony East.*
2. The plaintiff no. 1 i.e. Dr. Pushpa Lata is the eldest daughter of the defendant No. 2 (since deceased) from his first wife, namely, Mrs. Shakuntala Devi (since deceased).
 3. Defendant no. 1 i.e. Ram Das HUF was created by defendant no. 2 i.e. Dr. Ram Das in the year 1978.
 4. Defendant no. 2 was the father of the plaintiff and defendant nos. 3- 5 and was also the 'Karta' of the defendant no. 1. Defendant no. 3 and 4 are the sons of the defendant no. 2 from his second wife, namely, Mrs. Shanti Devi (since deceased). During the present proceedings, defendant no. 2 died on 10.12.2008.
 5. Defendant no. 5 i.e. Smt. Usha Singh is the other daughter of defendant no. 2 from his first wife i.e. Mrs. Shakuntala Devi. Plaintiff



no. 1 and defendant no. 5 are real sisters. *Vide* order dated 08.12.2008, the defendant no. 5 was transposed as plaintiff no. 2.

FACTUAL BACKGROUND AS PER THE PLAINTIFF

6. Defendant no. 2 was married to Mrs. Shakuntala Devi in the year 1937 who died on 03.10.1943. Thereafter, defendant no. 2 got married to Mrs. Shanti Devi on 24.02.1944. The plaintiffs are real sisters and defendant nos. 3 and 4 are real brothers *interse* and the step brothers of the plaintiffs.
7. In the year 1978, defendant no. 2 created defendant no. 1 i.e. Ram Das HUF (*hereinafter referred as "HUF"*) from the ancestral nucleus and/or self-acquired property, all thrown into the common stock for the benefit of the entire family of defendant no. 2. Defendant no. 2 was the '*Karta*' of the HUF. As per the plaintiffs, the HUF is in control of the following properties/assets:-
 - a. A three storied house situated at A-28, Friends Colony East, New Delhi measuring 501.67 sq. mts and the lease rental accruing from it (*hereinafter referred to as "Kothi"*);
 - b. Plot Nos. C-1034 and C-1035 situated at Sushant Lok 1, Gurgaon, Haryana;
 - c. 7700 Units of U.T.I, amounting to Rs. 1 lakh.;
 - d. Bank Balance in the Account no. 67972 (now 525-1-008486-5), held with Standard Chartered bank (erstwhile Grindlays Bank), Parliament Street, New Delhi;
 - e. Bank Balance in the account no. 2380241 in the Standard Chartered Bank, Parliament Street, New Delhi;



- f. PPF account no. 10485058884 in the name of HUF held with the SBI, Friends Colony East, New Delhi;
- g. Shop no. FF18 booked in the names of Defendant no. 3 and Defendant no. 4 situated in Sushant Lok Vyapar Kendra, Gurgaon.
8. It is stated that all the aforementioned properties are the coparcenary properties of defendant no. 1, for and on behalf of all the coparceners of the HUF.
9. On 11.09.1987, defendant no. 2 executed a registered Will, whereby he declared that his share of the HUF properties will go to defendant nos. 3 and 4 and his second wife i.e. Mrs. Shanti Devi in equal proportions.
10. In 1989, defendant no. 2 opened a PPF account in the name of the 'Ram Das HUF' and later on, in the year 1995, bought two properties in the name of defendant nos. 3 and 4 respectively from the HUF rental income. i.e. Plot Nos. C-1034 and C-1035 situated at Sushant Lok 1, Gurgaon, Haryana.
11. The second wife of defendant no. 2 i.e. Smt Shanti Devi also executed a Will on 23.12.1995, bequeathing her share of the HUF properties in favour of defendant nos. 3 and 4. Thereafter, Smt. Shanti Devi died on 08.03.1997.
12. Another Will came to be executed by defendant no. 2 on 17.07.2004, whereby defendant no. 2 professed to be the sole owner of the Kothi and bequeathed the said property in favour of defendant nos. 3 and 4.
13. The operative portion of the will dated 17.07.2004 reads as under:-
"I am the sole owner of A-28, Friends Colony (East), New



Delhi. This building was constructed by me out of my own funds after purchasing the plot also out of my personal earnings. So, I am the sole and absolute owner of the same. That I leave and bequeath my whole house no. A-28, Friends Colony (East), New Delhi to my two sons Dr. Vijay Kumar Das and Dr. Vinay Kumar Das and each of them shall be the exclusive owner of their respective portions as detailed below and shown in the map attached with this WILL after my death

a. Dr. Vijay Kumar Das (my elder son) will get the whole of Ground floor of the main building at A-28, Friends Colony (East), New Delhi along with its back yard and front lawn plus left side garage and servant quarter above it (left as looking from front road).

b. Dr. Vinay Kumar Das (my younger son) will get the whole of the first floor and whole of IIInd floor with Barsati and Barsati's roof of the main building at A-28 Friends Colony (East) New Delhi along with staircases leading to his portions plus right-side garage and servant quarter above it (Right as looking from front road).

Dr. Vinay Kumar Das will have right of passage to his share of building via the side pathway between front gate and the garage and also through main side entrance from the same pathway which are part of the joint portion described in c below.

c. The front gate on road side, Main side entrance to ground



floor 1st 2nd floors, main side pathway leading to main side entrance, garages, servant quarters and Pump House shall all be the common/joint property of both my sons named above and these shall all be for their common use.”

14. The defendant no. 2 thereafter, on 24.08.2004, executed a registered Gift Deed with respect to Kothi in favor of defendant nos. 3 and 4.
15. Hence, the plaintiff no. 1 filed the present suit on the ground that the plaintiffs are coparceners in the HUF, after the Hindu Succession (Amendment) Act, 2005 came into force i.e. on 09.09.2005 and the plaintiffs have 1/5th share each in the properties described in para 7 above. Since the defendant nos. 3 and 4 were trying to sell, alienate and dispose of the HUF properties without the consent of the plaintiffs, the present suit was necessitated to be filed.

WRITTEN STATEMENT BY THE DEFENDANTS

16. The defendant nos. 2, 3 and 4 contested the present suit by filing separate written statements.
17. Plaintiff no. 2 in her written statement as defendant no. 5 supported the case of the plaintiff no. 1.

WRITTEN STATEMENT ON BEHALF OF DEFENDANT NO. 2

18. Defendant no. 2 has denied the averments made by the plaintiffs and has primarily pleaded that the plaintiff no. 1 ceased to be a Hindu, as she is married to a Muslim of Pakistani origin in United Kingdom. The plaintiff no. 1 was not a Hindu, as required under Hindu Law, either on the date of filing of the present suit or on the date when the Hindu Succession (Amendment) Act, 2005 came into force i.e.



09.09.2005. Hence the suit filed by the plaintiff no. 1 is not maintainable.

19. In view of the registered Gift Deed dated 24.08.2004, defendant no. 2 ceased to be the owner of the property either individually or as the *Karta* of the HUF and hence the Hindu Succession Act is not applicable.
20. Defendant No. 2 purchased the Kothi from the DDA using his personal funds on a leasehold basis, which was subsequently, converted to freehold through a conveyance deed dated 21.11.2000. In addition, all the rights, titles and interests with respect to the said property are with the defendant nos. 3 and 4, which was given to them by defendant no. 2 by way of a registered Gift deed dated 24.08.2004. Therefore, the plaintiff cannot claim any right over the said property.
21. The plaintiffs have relied on the Income Tax returns Income Tax Returns of the HUF pertaining to the assessment years 2005-06; 2006 – 07; 2007- 08 to state that the Kothi was in the ownership of defendant no. 1. In this regard, defendant no. 2 has pleaded that the same is just an inadvertent error on the part of his consultant and even otherwise, the Income tax Returns of the HUF do not change the character of the said property, which after execution of the registered gift deed became the absolute property of defendant nos. 3 and 4.
22. Further, the defendant nos. 3 and 4 have become the sole owners of the Kothi and defendant no. 3 has registered a Power of Attorney dated 17.12.2004 in favor of defendant no. 2 for collecting the rentals with respect to the said property as well as for executing a lease deed.



A lease has also been executed with a tenant in the said property by defendant no.2.

23. It is stated that the HUF, as alleged was created only for the purpose of saving income tax and defendant no. 2- 4 were the only coparceners of the HUF. Defendant no. 2 never had any intention of relinquishing any of his separate or individual rights, title and interest in the Kothi in favor of the HUF i.e. defendant no. 1.
24. Defendant no. 2 and his second wife, Smt. Shanti Devi have executed separate wills in favor of defendant nos. 3 and 4 and the plaintiffs cannot claim any rights over any property under the said wills.
25. With respect to property bearing no. C-1034 and C-1035 situated at Sushant Lok 1, Gurgaon, Haryana, it is stated that the said properties were purchased by defendant nos. 3 and 4 in their own name and out of their own funds and hence were never a part of the HUF. The defendant nos. 3 and 4 have registered conveyance deeds dated 27.11.1995, with respect to the said properties and the plaintiffs have not sought cancellation of the said conveyance deeds.
26. As regards, the bank account Nos. 2380241 and 525-1- 008486-5 held with Standard Chartered Bank, Parliament Street, New Delhi, it is stated that the same are the pension accounts of the defendant no. 2 and are separate and individual accounts of defendant no. 2 and are not connected with the HUF.

WRITTEN STATEMENT ON BEHALF OF DEFENDANT NOS. 3 AND 4

27. Defendant nos. 3 and 4 by way of a written statement denied the averments made by the plaintiffs and pleaded that the defendant no. 2



took Kothi on lease in the year 1969 and thereupon, he built his house on the said land out of his own funds. Therefore, Kothi is a self-acquired property of defendant no. 2.

28. It is stated that defendant no. 2 never received any asset by way of inheritance and he never created any HUF nor was the *Karta*/coparcener of any HUF.
29. Assuming that even if there was an HUF under the name and style of *Ram Das HUF*, then the same stood dissolved on 08.03.1997, when Smt. Shanti Devi (mother of defendant nos. 3 and 4) passed away executing a Will on 23.12.1995, whereby she had bequeathed her 1/4th share in the HUF in favour defendant nos. 3 and 4. Thus the coparceners became co sharers of the HUF.
30. In addition, defendant no. 2 also gifted his rights with respect to the Kothi to defendant nos. 3 and 4 and for the said purpose, he also executed a Gift Deed on 24.08.2004, which was duly registered, thereby gifting all his rights, titles and interest in favor of defendant nos. 3 and 4. In addition, the said property has been mutated in the names of defendant nos. 3 and 4 and they have been duly paying electricity, water bills etc. Defendant nos. 3 and 4 have also been paying house tax to the municipal authorities in respect of their respective portions of the property. Hence the HUF if any stood dissolved when Smt Shanti Devi passed away on 08.13.1997 or in the worst-case scenario when the duly registered Gift Deed was made on 24.08.2004.
31. As regards, the properties bearing nos. C-1034 and C-1035 situated at Sushant Lok 1, Gurgaon, Haryana is concerned, it is stated that the



said properties were never a part of any HUF as they were purchased by defendant nos. 3 and 4 out of their own funds. Defendant nos. 3 and 4 are doctors by profession working in United Kingdom. It is stated that the property bearing no. C-1034, Sushant Lok 1, Gurgaon, Haryana was purchased by defendant no. 4 and property bearing no. C-1035, Sushant Lok 1, Gurgaon, Haryana was purchased by defendant no. 3 and the sale deeds with respect to the said properties were executed on 27.11.1995.

ISSUES

- 32.** The following issues were framed on 08.12.2008:
- I.** Whether any HUF as alleged by the plaintiffs existed at the time of coming into force of Act 39/2005 amending Section 6 of the Hindu Succession Act? OPP
 - II.** Whether properties mentioned in the plaint or any of them were the properties of the HUF or were put in the HUF as on the aforesaid date? OPP
 - III.** If the issues No. 1 & 2 are decided in favour of the plaintiffs, what share, if any, do the plaintiffs have in the property/properties? OPP
 - IV.** Whether the suit is correctly valued for the purposes of court fees and jurisdiction, if not, to what effect? OPP
 - V.** Whether the claim in the suit is barred by time? OPD
 - VI.** Whether the amendment to Section 6 of the Hindu Succession Act by Act No. 39/2005 is violative of the constitutional rights of the defendants No. 2 to 4 under Articles 14 and 300A of the Constitution of India? OPD



VII. Whether on account of the marriage of the plaintiff/Dr. Pushp Lata to a Muslim, she has ceased to have any right, if any, to the property under section 19 of the Special Marriage Act, 1954 or otherwise? OPD

VIII. Relief.

EVIDENCE LED BY THE PARTIES

33. The plaintiffs examined the following witnesses:

- I. Dr. Pushp Lata - PW1 - (Plaintiff No. 1) who tendered her evidence by way of affidavit, (PW1/A) and Evidence in Rebuttal, (PW1/B), and was cross-examined. PW1 has exhibited the following documents:
 - a. Exhibit P/1 – Autobiography of Defendant no. 2.
 - b. Mark X – (mentioned as Exhibit P/2 in the evidence affidavit) – Photocopy of Will executed by defendant no. 2 on 11.09.1987.
 - c. Exhibit P/3 (Colly) – Photocopy of statement of the HUF Savings account No. 525-1-008486-5 held with Standard Chartered Bank, Parliament Street, New Delhi from March 2003 to May 2008 along with the bank envelope.
 - d. Exhibit P/4 – Photocopy of cheque No. 453154, drawn on Standard Chartered Bank, Sansad Marg, New Delhi given by Defendant No. 2 to the plaintiff no. 1
 - e. Exhibit P/5 – Certified copy of account statement of plaintiff No. 1 held with the HDFC Bank showing credit of cheque No. 453154.



- f. Exhibit P/6- Photocopy of Plaintiff No.1's letter to the Manager, State Bank of India, A-5, Friends Colony, New Delhi.
- g. Exhibit P/7 – Photocopy of the transaction statement of the PPF account No. 10485058884.
- h. Exhibit P/8 – Certified copy of Tax returns of Defendant No. 1 for the assessment year 2005 – 06.
- i. Exhibit P/9 - Certified copy of Tax returns of Defendant No. 1 for the assessment year 2006 – 07.
- j. Exhibit P/10 – Certified copy of Tax returns of Defendant No. 1 for the assessment year 2007 – 08.
- k. Exhibit P/11 – Certified revised copy of Tax returns of Defendant No. 1 for the assessment year 2007 – 08.
- l. Exhibit P/12 – Information provided by the ITO Ward 22(2) in response to the Plaintiff's letter dated 27.12.2008.
- m. Exhibit P/13 and Exhibit P/14 – Letters dated 09.01.1999 issued by defendant no. 2.
- n. Exhibit P/15 – Photocopy of Lease Agreement of plaintiff No. 2.
- o. Exhibit P/16 – Photocopy of the Gift Deed dated 24.08.2004 (subsequently exhibited as Exhibit PW1/D1 – Original Gift Deed dated 24.08.2004.)
- p. Exhibit P/17 – not exhibited
- q. Exhibit P/18 – not exhibited



II. Mr. Rajvir Singh (husband of Ms. Usha Singh i.e. plaintiff no.2) – PW2 - who tendered his evidence by way of affidavit, (PW2/A) and was cross-examined. PW2 has exhibited the following documents:-

- a. Mark PW 2/ 1, PW 2/ 2 and PW 2/ 3 – Photocopies of M/s Ansal Properties and Industries Ltd. receipt numbers 301941 and 301942, both dated 05.09.1995 and receipt number 190391 dated 12.01.1994

III. Mr. Sudhir Gupta (Chartered accountant) - PW3 - was duly cross examined.

IV. Mr. Pankaj Chaturvedi (Assistant Manager, Ansal Properties and Infrastructure Ltd.) - PW4 was cross examined and has relied on the following documents during his cross examination:

- a. Exhibit P4/A – Payment details pertaining to C-1034, situated at Sushant Lok 1, Gurgaon, Haryana along with the photocopy of the Sale Deed.
- b. Exhibit PW4/B (Colly) - Payment details pertaining to C-1035, situated at Sushant Lok 1, Gurgaon, Haryana along with the photocopy of the Sale Deed.
- c. Exhibit PW4/C – Payment details pertaining to Unit No. FF-18, Sushant Lok Vyapar Kendra.

V. Mr. Than Singh (Manager, SBI, Friends Colony Branch) – PW5 - who tendered his evidence by way of cross-examination. PW5 has relied on the following documents:-



- a. Exhibit PW - 5/A – Certified copy of Account opening form of the HUF.
 - b. Exhibit PW - 5/B – Certified copy of letter dated 07.03.1989.
 - c. Exhibit PW - 5/C – Certified copy of Statement of Account of Account bearing no. 10485058884.
 - d. Exhibit PW - 5/D - Certified copy of the statement of the Account No. 10485014507 belonging to Mr. Rajinder Vir Handa.
- VI. Mr. Om Prakash (Inspector of Income Tax department)– PW - 6, was cross examined and has relied on the following documents during his cross examination:
- a. Exhibit PW6/A – Photocopy of the E copy of the ITR details of the HUF for the assessment years 2004-05.
- VII. Mr. Lal Saheb Mishra (Supervisor in the Standard Chartered Bank, 1st Floor, Express building) – PW - 7, who tendered his evidence by way of cross examination and has exhibited the following documents:
- a. Exhibit PW - 7/1 – Certified copy of statement of Account of the HUF bearing no. 525-1-008486-5 held with the Standard Chartered Bank
 - b. Exhibit PW - 7/2 – Certified copy of the Account opening Form of the HUF with the Grindlays Bank.
 - c. Exhibit PW - 7/3 – Certified photocopy of the signature card of defendant no. 2.



- d. Exhibit PW - 7/4 – Certified copy of the original fresh signature card dated 12.10.1998 of defendant no. 2.
- e. Exhibit PW - 7/5 – Certified copy of Form DA-1 of defendant no. 2.
- f. Exhibit PW - 7/6 – Certified copy of the letter dated 13.11.1988 written by defendant no. 2 to the manager of the Grindlays Bank.
- g. Exhibit PW - 7/7 – Certified copy of the letter dated 17.12.1996 written by defendant no. 2 to the manager of the Grindlays Bank.
- h. Exhibit PW - 7/8 – Photocopy of the letter dated 17.12.1996 issued to defendant no. 2 by the Customer Relation Officer.

VIII. Mr. Anil Kumar (Inspector, Income Tax Department) – PW - 8, was cross examined and has relied on the following documents during his cross examination:

- a. Exhibit P/8 – Certified copy of Tax returns of Defendant No. 1 for the assessment year 2005 – 06.
- b. Exhibit P/9 - Certified copy of Tax returns of Defendant No. 1 for the assessment year 2006 – 07.
- c. Exhibit P/10 – Certified copy of Tax returns of Defendant No. 1 for the assessment year 2007 – 08.

IX. Mr. Mustafa Ali (Registration clerk, Office of Sub Registrar, Ghaziabad, Uttar Pradesh) – PW - 9, was cross



- examined and has relied on the following documents during his cross examination:
- a. Mark 9A - Photocopy of the document pertaining to the registration of the HUF.
- X. Mr. Rakesh Lal (property dealer) – PW - 10, who tendered his evidence by way of affidavit, (PW-10/A) and was cross examined.
- 34.** The defendants have relied on the following evidences:
- I. Dr. Vijay Das - DW1 - (Defendant No. 3) who tendered his evidence by way of affidavit, (DW-3/A) and was cross-examined. DW1 has exhibited the following documents:
 - a. Exhibit D-1 – Perpetual Lease Deed pertaining to the Kothi.
 - b. Exhibit D-2 – Original Sale Deed pertaining to Plot No. C-1034, Sushant Lok, Gurgaon, Haryana executed in favor of defendant no. 4.
 - c. Exhibit D-3 - Conveyance Deed dated 21.11.2000.
 - d. Exhibit D-4 – Special Power of Attorney in favour of Defendant no. 2 on 17.12.2004
 - e. Exhibit D-5 – Mutation dated 02.01.2006 issued by the Municipal Corporation of Delhi with respect to the Kothi in favor of the defendant no.4.
 - f. Exhibit D-6 – Mutation dated 02.01.2006 issued by the Municipal Corporation of Delhi with respect to the Kothi in favor of the defendant no. 3.



- g. Mark A – Will executed by the second wife of Defendant no. 2 i.e. Smt. Shanti Devi on 23.12.1995.
- h. Mark B/ Mark DW2/A /Exhibit DW 6/1- Certified copy of the Will of Defendant no. 2 executed on 17.07.2004.
- i. Exhibit PW1/D1 – Gift Deed dated 24.08.2008.
- j. Exhibit DW1/D1 – Medical certificate dated 28.08.2004 of Defendant no. 2 certifying his medical condition.
- k. Exhibit DW 1/2 to Exhibit DW 1/13 – Receipts issued by the Municipal Corporation of Delhi and the electricity bills, water bills of the Kothi.
- l. Exhibit DW 1/14 to Exhibit DW 1/23 – Photocopy of the Income Tax Returns of defendant no. 2 for the Assessment years 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 & 2014-2015.
- m. Exhibit D-7 – Sale Deed pertaining to Plot No. C-1035, Sushant Lok, Gurgaon, Haryana.
- n. Exhibit DW 1/ 24 (Colly) – Photographs of defendant no. 2.
- o. Exhibit DW 1/25 – List of documents filed by defendant no. 2 in this suit.
- p. Exhibit DW1/DX1 (OSR) – Photocopy of the PIO card issued in favor of defendant no. 3



- II. Mr. Dharmender Mohan- DW2, - Registration clerk, office of Sub Registrar – I, Meerut was cross-examined.
- III. Mr. Rakesh Kumar –DW3, - Zonal Inspector, SDMC (Central Zone) Sanwal Nagar, New Delhi who was examined in Chief and thereafter was cross examined. DW3 has proved the following documents:
- a. Ex.DW3/1 (OSR) – Photocopy of the application for mutation filed by defendant no. 4.
 - b. Ex.DW3/2 (OSR) – Photocopy of the indemnity Bond filed by defendant no. 3
 - c. Ex.DW3/3 (OSR) – Photocopy of the Affidavit of defendant no. 3.
 - d. Ex.DW3/4 (OSR) – Photocopy of the application for mutation filed by defendant. 4.
 - e. Ex.DW3/5 (OSR) – Photocopy of the Affidavit of defendant no.4 with respect to the Kothi.
 - f. Ex.DW3/6 (OSR) – Photocopy of the indemnity Bond filed by defendant no. 4.
- IV. Mr. Vinay Kumar Das (defendant no. 4) had filed his evidence by way of affidavit; however, he was dropped from the list of witnesses on the statement made by the counsel for defendant no. 4, namely, Mr. Sameer Vashisht on 20.02.2017. Hence, Mr. Bharat Sanwaria, Record Keeper, Sub Registrar - V, Mehrauli, New Delhi was examined as defendant no. 4 (DW -4) and he proved Exhibit PW1/D1, however on page no. 2 of the said



document dated 24.08.2004, “24” was filled with hand in the original which was not available on the record of the DW – 4.

- V. Mr. Santosh Kumar (eldest son of Late Chaudhary Ranjit Singh. Late Chaudhary Singh was the real uncle of defendant no. 2) – DW5, who tendered his evidence by way of affidavit, Exhibit – (DW-5/A) and was cross-examined.
- VI. Mr. Ashok Singh (attesting witness to the will of defendant no. 2) – DW6, who tendered his evidence by way of affidavit, Exhibit – (DW-6/A) and was cross-examined. DW6 has exhibited the following documents:
- a. Mark B/Mark DW2/A/Exhibit DW – 6/1– Certified copy of the Will of defendant no. 2 executed on 17.07.2004.
 - b. Exhibit DW – 6/2 – Certified copy of the site plan.

FINDINGS

35. I have perused the material on record and heard the arguments advanced by the learned counsels for the parties.
36. The issues are decided as under: -

Issue no. 1: Whether any HUF as alleged by the plaintiffs existed at the time of coming into force of Act 39/2005 amending Section 6 of the Hindu Succession Act? OPP

Issue no. 2: Whether properties mentioned in the plaint or any of them were the properties of the HUF or were put in the HUF as



on the aforesaid date? OPP

37. The issue are inter related and are being dealt together: -
38. Mr. Nishchal, learned counsel for the plaintiffs submits that defendant no. 2, established defendant No. 1 i.e. Ram Das HUF, in 1978 by transferring his self-acquired property no. A-28, Friends Colony East, New Delhi, into the common hotchpotch for the benefit of his family. The existence of the HUF is supported by the registered will dated 11.09.1987 (Mark X) executed by defendant No. 2. Additionally, the existence of the HUF is also declared in the Income Tax Returns filed for the HUF for the assessment years 2005–06, 2006–07, and 2007–08 (Exhibits P/8 to P/10).
39. There is an admission by the defendants themselves regarding the creation of the HUF. Defendant no. 2 himself had admitted the fact that the HUF was created for the common good of the family and for the purpose of saving income tax. In this regard, learned counsel draws my attention to para 9 of the Written Statement of the defendant no. 2 and the same reads as under:-

“9.the H.U.F was created merely to save on income tax and not for any other purposes. In any case prior to the coming into force of the Amending Act, the answering Defendant and Defendants no. 3 & 4 were the only coparceners of the alleged H.U.F. and a gift was made by the answering Defendant in favor of the remaining coparceners i.e. Defendant no. 3 & 4 and which has been duly accepted and acted upon by the parties and as such the property bearing no. A-28, Friends Colony East, New Delhi



lost its nature as a Joint Family property, if it ever held such character though denied, and as such no right can be claimed upon the same by the Plaintiff in the capacity of being a coparcener.”

- 40.** He further states that defendant nos. 3 and 4 had initially denied the existence of the defendant no. 1, however, during the proceedings, they subsequently admitted to the creation of defendant No. 1, albeit stating that the defendant no. 1 was only created for the purpose of saving income tax. In this regard, he draws my attention to para 7 of the evidence by way of affidavit of defendant no. 3. (Exhibit DW 3/A), whereby defendant no. 3 deposed as under:-

“7. I say further that the above property was acquired and was acquired, constructed and maintained by late Dr Ram Das from his own funds and was his only residential house. I say further that late Dr Ram Das only for the purpose of saving tax, established an HUF comprising of himself, his wife Late Smt Shanti Devi, the deponent and Dr Vinay Kumar Das as the only named coparceners as regards the property bearing No. A-28, Friends Colony (East) New Delhi. I say further that though the character of the property was never changed, but for the mere purpose of saving tax the rental income of the ground floor was shown as HUF income. There had never been any intention to throw the property in the alleged common pool change its character from individual property to HUF property which is well apparent from the fact that the Perpetual Lease in



respect of the property was obtained in his individual name and at a later date even the Conveyance Deed was obtained and registered in his individual name and not as HUF property.”

41. He states that defendant no. 2, also in his Will dated 11.09.1987 (Mark X) has demarcated the properties of HUF and has bequeathed his share of the HUF in favor of his second wife i.e. Smt. Shanti Devi and defendant nos. 3 and 4. The said will has also been duly registered and the parties have acted upon it which clearly indicates the existence of the HUF. The operative portion of the Will dated 11.09.1987 reads as under:-

“AND WHEREAS I hereby devise and bequeath that after my death, my one-fourth interest in the House No. A-28, situated in Friends Colony East, New Delhi belonging to the said H.U.F. to my two sons namely Dr. Vijay Kumar Das and Dr. Vinay Kumar Das and my wife Smt. Shanti Devi equally meaning thereby that all the three will be entitled to further 1/12th share in the house. As regards my interest in the investment in the Unit Trust and Bank balance in account No. 67992 as stated above, my two sons namely Dr. Vijay Kumar Das and Dr. Vinay Kumar Das and my wife Smt. Shanti Devi will share equally.”

42. He states that the HUF continues to exist as no partition deed or order under Section 171 of the Income Tax Act has been filed by the defendants. It is further stated that the said HUF can only be dissolved through a complete partition of its properties, which has not taken



place. Therefore, the HUF remains intact and has not been dissolved. In addition, the dissolution of the HUF or the transfer of rights in HUF properties cannot occur because of:-

- A. The Will of Late Smt. Shanti Devi (second wife of defendant no. 2) executed in 1995 does not automatically dissolve the HUF.
- B. The Will (Mark A) executed by defendant no. 2 on 17.07.2004 is void ab initio or even otherwise inconsequential because the same has been executed by defendant no. 2 in his individual capacity, when he was no longer the sole and absolute owner of the property and he could not have given away the property as claimed by him in the Will. In this regard, learned counsel places reliance on *Jugal Kishore vs Roshan Lal and Anr.* (2017 SCC OnLine Del 8732).
- C. The Gift Deed (Exhibit PW1/D1) executed by defendant no. 2 on 24.08.2004 with respect to the Kothi is also void ab initio as the defendant no. 2 i.e. the donor was not the absolute owner of the Kothi. Defendant No. 2 made the gift deed in his individual capacity claiming to be the sole and absolute owner of the Kothi, when the said property had already been specifically declared to be property of the HUF in the year 1978. In this regard, learned counsel places reliance on *Thamma Venkata Subbamma (Dead) By L.R vs ThammaRattamma* (1987) 3 SCC 294. Additionally, the execution date mentioned on the gift deed filed by the



defendant nos. 2, 3 and 4 is hand-written with pen, which is at variance with the one brought by DW4 i.e. Record Keeper, Sub registrar V, Mehrauli, where the execution date is missing. In addition, the gift deed was never acted upon as defendant no. 2 continued to receive the rental income from the Kothi and the same was deposited in the account of the HUF.

- 43.** He further states that during the pendency of the proceedings, some properties/assets have been discovered by the plaintiffs i.e. a PPF account bearing no. 10485058884 in the name of the HUF held with the SBI, Friends Colony East, New Delhi, and a shop bearing no. FF18, booked in the names of defendant nos. 3 and 4, situated in Sushant Lok Vyapar Kendra, Gurgaon. It is stated that the said assets/properties have been purchased by the funds of the HUF and have not been disposed of, hence were HUF properties as on 09.09.2005.
- 44.** He further submits that the other immovable properties being C-1034 and C-1035, Sushant Lok-I, Gurugram, Haryana, were also purchased using the funds of the HUF and, therefore, constitute HUF properties. Additionally, the HUF also holds movable assets, including 7,700 Units of U.T.I valued at Rs. 1 lakh, bank balance in Account No. 67972 (subsequently renumbered to 525-1-008486-5) held with Standard Chartered Bank (formerly Grindlays Bank), Parliament Street, New Delhi and bank balance in Account no. 2380241 also held with Standard Chartered Bank, Parliament Street, New Delhi. These assets were also HUF properties and were available for partition as of



09.09.2005 i.e. when the amended section 6 of the Hindu Succession Act came into force.

45. Since the defendants have been appropriating the proceeds of the HUF to the exclusion of the plaintiffs, the plaintiffs are entitled to their rightful share in the aforementioned properties, including rendition of accounts of the rents received from the HUF property.
46. Mr. Vashist, learned senior counsel for the defendants vehemently opposes the contentions raised by the plaintiffs and states that the HUF was created only for the Income Tax purposes and there was neither any intention nor any act of throwing the immovable property i.e. the Kothi into the common stock. Moreover, there was no pre-existing common stock/ ancestral property/ nucleus in existence when the alleged HUF was created.
47. He states that in the absence of any ancestral properties/ nucleus, there is no concept of blending applicable and in the absence of any blending the property continues to be held individually and does not assume the character of Joint Family property. Learned senior counsel places reliance on *Jupudi Venkata Vijayabhaskar vs. Jupudi Kesava Rao and Ors.* 1994 SCC OnLine AP 1; *Mallesappa Bandeppa Desai & Anr. vs. Desai Mallappa alias Mallesappa & Anr* 1961 SCC OnLine SC 270; *Goli Eswariah vs. Commissioner of Gift Tax, Andhra Pradesh* 1970 (2) SCC 390. In this regard, defendant no. 3 in his evidence by way of affidavit (Exhibit DW 3/A) deposed as under:-
“7.... I say further since there was no ancestral funds, ancestral income, parental income which fell to the share of late Dr Ram Das or was available to him and as such, the said property



always remained individual property. I say further that even the leasehold rights were converted to Freehold and Conveyance Deed executed in the name of late Dr Ram Das in his individual capacity on 21.11.2001 is exhibited as Exhibit D-3.”

- 48.** He further states that the plaintiffs have not led any evidence of existence of any ancestral property received by the defendant no. 2. The onus of proving the existence of such ancestral property lies squarely upon the plaintiffs. The cross examination of the plaintiff no. 1 also shows that the plaintiffs have been unable to show the ancestral nucleus of the HUF.
- 49.** In this regard, Mr. Santosh Kumar (DW-5) in his evidence deposed as under:-

“2. I say that Late Dr. Ram Das had inherited a land admeasuring 7 Bighas of agricultural land situated in Village Mangalore (Nibhara) Distt. Bulandshahr, Uttar Pradesh. I say further that though the said land was inherited by Late Dr. Ram Das but the said land had always been in possession, cultivation and control of our family.

3. I say further that Late Dr. Ram Das had educated himself and had never cultivated the aforementioned land nor derived any benefits.

4. I say further that Late Dr. Ram Das had given up his rights over the said land and had neither demanded any compensation for the said land nor has demanded any share out of the income derived from the aforementioned land.”



50. He states that the said factum of defendant no. 2 not having any ancestral property has also been reiterated in the autobiography of defendant no. 2 (Exhibit P – 1).
51. He further states that the defendants have taken a specific stand that the Kothi was a self-acquired property of Defendant no. 2 and he had executed a registered Gift Deed in favor of defendant nos. 3 and 4, divesting himself of all the rights in the said property and vesting of the specified portions of the entire property by partitioning and dividing the same in favor of the defendant nos. 3 and 4.
52. He further submits that the plaintiffs have failed to produce any evidence to substantiate their allegation that the HUF came into existence in the year 1978. The allegation remains unsupported by any documents or credible evidence on record. Further, the plaintiffs have not demonstrated the availability of any funds or income attributable to the alleged HUF.
53. He submits that no HUF was constituted by defendant No. 2. However, without prejudice to this contention, even if it is presumed that an HUF existed, the same stood dissolved on 08.03.1997 when, Smt. Shanti Devi passed away, executing a will on 23.12.1995, bequeathing her share in the HUF property to defendants No. 3 and 4, thereby converting the coparceners into co-sharers. Furthermore, Defendant No. 2 gifted his rights in the Kothi to defendants No. 3 and 4 through a duly registered gift deed. In the Gift Deed (Exhibit PW1/D1) and the Will dated 17.07.2004 (Mark B/MarkDW2/A/Exhibit DW6/1), the defendant no. 2 partitioned the Kothi by metes and bounds with clear demarcation of the individual



portions/specified areas with defendant no. 3 and defendant no. 4. Further, the respective portions of the Kothi are in possession of the defendant nos. 3 and 4, have been duly mutated in their name and they have been paying water and electricity bills of their respective portions since 24.08.2004.

- 54.** He submits that as regards, the properties C-1034 and C-1035, Sushant Lok-I, Gurugram, Haryana are concerned, the said properties are purchased by defendant nos. 3 and 4 out of their own funds and have no relation to the HUF. None of the properties mentioned in the plaint were available for partition on 09.09.2005 i.e. the date when the Hindu Succession Amendment Act came into force. Moreover, since the plaintiff no. 1 is married to a Muslim of Pakistani origin, she has ceased to be a Hindu under the ambit of section 19 of the Special marriage Act, which clearly provides that a marriage of a person solemnized under the Special Marriage Act will amount of severance from any such family covered under the Hindu Succession Act.
- 55.** Before delving further into the matter, it is crucial to examine the existence of the HUF. In the present matter, defendant no. 2 explicitly acknowledged the creation of the HUF and its assets in his Will dated 11.09.1987 (Mark X), where he bequeathed his one-fourth share in the HUF properties to his second wife, Smt. Shanti Devi, and his two sons, defendant nos. 3 and 4. Similarly, Smt. Shanti Devi, in her Will dated 23.12.1995 (Mark A), affirmed that the Kothi had been made part of the HUF by defendant no. 2. Though these documents are not exhibited the same have been filed by defendant nos. 3 and 4 and their authenticity has also not been disputed by the plaintiffs. In addition,



the defendant no. 2, in para 9 of his Written Statement, and defendant no. 3 in para 7 of his evidence by way of affidavit (Exhibit DW 3/A) have explicitly acknowledged the existence of the HUF, albeit claiming it was created solely for the purpose of saving income tax. They have stated that the defendant no. 2 established the HUF comprising himself, his second wife i.e. Smt. Shanti Devi, and defendant nos. 3 and 4, as coparceners. The Kothi was also identified as part of the HUF. Further, the existence of the HUF has also been shown before the Income Tax Authorities in the Income Tax Returns of the HUF pertaining to the assessment years 2005-06; 2006 – 07; 2007- 08 (Exhibit P/8 – P/10). Thus, based on the consistent declarations and the actions of the parties involved, it is evident that the existence of the defendant no. 1 i.e. Ram Das HUF cannot be denied.

56. The arguments raised by the defendants that no ancestral property or nucleus existed when the HUF was created and without the concept of the blending, the Kothi cannot be given the character of the HUF is misplaced.
57. In the present case, the Kothi is the self-acquired property of defendant no.2 and there was no ancestral property/nucleus at the time when the HUF was created in the year 1978, however, the fact remains that it was defendant No.2, himself, who put the Kothi in the common hotchpotch of defendant No.1. i.e. Ram Das HUF for the common good of his family.
58. Defendant No. 2, acting as the *Karta* of the HUF, had a clear intention to include the Kothi in the common hotchpotch of HUF



assets/properties. Given the clear intention and the actions of the defendant no. 2, the argument raised by the defendants that there was no property/nucleus or there was no concept of blending is misconceived.

59. I am of the view that the Kothi was a part of the HUF and had acquired the character of joint family property. It is a settled position of law that an HUF can be created even if there is no preexisting coparcenary/Hindu undivided family property. In this regard, the judgment laid down by this Court in ***Captain Bhupinder Singh Suri vs Naresh Kumar Suri and others*** 2017 SCC OnLine Del 7214 is relevant. The operative portion reads as under:-

“36. I highlight (though it is already the reasoning in Surjit Lal Chhabda as well as of the learned Single Judge in Kewal Krishan Mayor supra) that in the present case Major Khemraj Suri by the Declaration dated 25th February, 1969 constituted the HUF comprising of himself, his wife and his sons. It is not as if HUF was constituted with any strangers. The HUF was created with his wife and sons and daughters, with whom as per law, there could be a HUF. The act of creation of HUF was a unilateral act of declaration by Major Khemraj Suri and not a contract with his wife and sons and daughters. Mulla, in 21st Edition (2010) on Hindu Law in Chapter XII in paragraph 212 titled “Formation of coparcenary” has authored that “the conception of a joint Hindu family constituting a coparcenary is that of a common male ancestor with his lineal descendants in the



male line within four degrees counting from, and inclusive of, such ancestor (or three degrees exclusive of the ancestor). No coparcenary can commence without a common male ancestor, though after his death, it may consist of collaterals, such as brothers, uncles, nephews, cousins, etc.” and that “no female can be a coparcener, although a female can be a member of a joint Hindu family”. I also do not find any basis to hold that a Hindu male living jointly with his wife, sons and daughters, even if there is no joint family property and no jointness in law in the name of HUF, cannot form a Joint Hindu Family or a Hindu Undivided Family with his wife, sons and daughters or that to be able to so, he has to wait to have grandsons and great grandsons.

37. *The contention that, a Hindu male cannot create a Joint Hindu Family or a Hindu Undivided Family along with his wife, sons and daughters, if has no existing Joint Hindu Family/coparcenary/Hindu Undivided Family or existing joint Hindu property or coparcenary property or Hindu Undivided Family property, cannot be accepted also for the reason that it is the settled principle of law that even after partition amongst members of the coparcenary/Joint Hindu Family or Hindu Undivided Family, whereafter, there is no Joint Hindu Family/Hindu Undivided Family/coparcenary in existence, they can reunite and a Hindu Undivided Family/Joint Hindu*



Family/coparcenary can again come into existence.

Reference, if any in this regard can be made to Bhagwan Dayal v. Reoti Devi AIR 1962 SC 287 and Anil Kumar Mitra v. Ganendra Nath Mitra (1997) 9 SCC 725.

38. I find a coordinate bench also to have in Surender Kumar v. Dhani Ram AIR 2016 Del 120 held that the only way in which a HUF/Joint Hindu Family can come into existence after the coming into force of the Hindu Succession Act is if an individual's property is thrown into a common hotchpotch.

(emphasis supplied)

- 60.** The next issue for determination is whether the HUF was dissolved upon the execution of Smt. Shanti Devi's Will, dated 23.12.1995 (Mark A), wherein she bequeathed her 1/4th share in the Kothi to defendant nos. 3 and 4 and the subsequent execution of the Gift Deed on 24.08.2024 (Exhibit PW1/D1) by defendant no. 2, through which he gifted the Kothi to defendant nos. 3 and 4, ultimately making defendant nos. 3 and 4, the absolute owners of the Kothi.
- 61.** In the present case, the HUF was created with 4 coparceners being (i) defendant no. 2 i.e. Mr. Ram Das (since deceased) (ii.) Smt. Shanti Devi (since deceased) (iii.) defendant no. 3 and (iv.) defendant no. 4.
- 62.** Smt. Shanti Devi, being a coparcener was entitled to deal with her share in the HUF properties, which she so did by executing a Will on 23.12.1995 (Mark A), whereby she bequeathed her share of the HUF properties in favour of defendant nos. 3 and 4. As per her will, her share in the ground floor of the Kothi was to go to defendant no. 3 and



her share in the first and the second floor along with *barsati* was to go to defendant no. 4. Her share in the garage and the servant quarter were also to be equally divided among both the sons. Consequently, when she died on 08.03.1997, the HUF comprised of defendant Nos. 2, 3 and 4.

63. Defendant no. 2 had gifted the Kothi to defendant nos. 3 and 4 by way of the Gift Deed dated 24.08.2004. The Gift Deed is dated 24.08.2004 and was duly registered with the Sub-Registrar *vide* registration No. 10760, Book No. 1, Volume 4258, pages 105 to 121 on the same date. Through the Gift Deed, the Kothi was partitioned by metes and bounds with clear demarcation of the individual portions / specified areas to be held by defendant nos. 3 and 4. Ground floor of the Kothi along with one garage, open space and lawns was to exclusively belong to the defendant no. 3 and the first floor, second floor with roof rights, one garage and servant quarter of the Kothi was to exclusively belong to the defendant no. 4.
64. On 24.08.2004, defendant Nos. 2, 3 and 4 were the only coparceners of the HUF and the Gift Deed has been executed by defendant No. 2 with the consent of defendant Nos. 3 and 4, whereby the defendant no. 2 signed the Gift Deed as the donor and defendant nos. 3 and 4 signed the Gift Deed as the donees.
65. I am of the view that with the execution of the Gift Deed (Exhibit PW1/D1), the Kothi lost the character of a Joint family property on 24.08.2004 i.e. the date when the Gift deed came to be registered. In this regard, the Hon'ble Supreme Court in *V.N. Sarin v. Major Ajit Kumar Poplai* 1965 SCC OnLine SC 301 *inter alia* held as under:-



“10.....Community of interest and unity of possession are the essential attributes of coparcenary property; and so, the true effect of partition is that each coparcener gets a specific property in lieu of his undivided right in respect of the totality of the property of the family. In other words, what happens at a partition is that in lieu of the property allotted to individual coparceners they, in substance, renounce their right in respect of the other properties; they get exclusive title to the properties allotted to them and as a consequence, they renounce their undefined right in respect of the rest of the property. The process of partition, therefore involves the transfer of joint enjoyment of the properties by all the coparceners into an enjoyment in severality by them of the respective properties allotted to their shares. Having regard to this basic character of joint Hindu family property, it cannot be denied that each coparcener has an antecedent title to the said property, though its extent is not determined until partition takes place. That being so, partition really means that whereas initially all the coparceners have subsisting title to the totality of the property of the family jointly, that joint title is by partition transformed into separate titles of the individual coparceners in respect of several items of properties allotted to them respectively. If that be the true nature of partition, it would not be easy to uphold the broad contention raised by Mr Purshottam that partition of an



undivided Hindu family property must necessarily mean transfer of the property to the individual coparceners. As was observed by the Privy Council in Girja Bed v. Sadashiv Dhundiraj [43 IA 151 at p. 161] “Partition does not give him (a coparcener) a title or create a title in him; it only enables him to obtain what is his own in a definite and specific form for purposes of disposition independent of the wishes of his former co-sharers.”

(emphasis supplied)

66. Hence, by way of the Gift Deed, the defendant no. 2 has gifted his rights in the Kothi to defendant nos. 3 and 4 and the coparcenary property i.e. the Kothi stood divided by metes and bounds. The operative portion of the Gift Deed reads as under:-

“GIFT DEED

This Gift Deed is made and executed at Delhi on this 24th Day of August, 2004 by Dr. Ram Das son of Sh. B. Singh resident of A-28, Friends Colony East, New Delhi, hereinafter called ‘DONOR’ of the one part.

IN FAVOUR OF

(i) Dr. Vijay Kumar Das (ii) Dr. Vinay Kumar Das sons of Dr. Ram Das both resident of A-28, Friends Colony East, New Delhi, hereinafter called the ‘DONEES’ of the other part and have blood relations, Donees being sons at Donor.

The expression of the Donees shall mean and include their



respective legal heirs, successors, executors, administrators, representatives and assignees.

.....

And whereas the donor is the sole absolute & exclusive owner and in possession of freehold built-up property bearing No. A-28, measuring 501.67 Sq. Mtrs., shown in the layout plan of Friends Colony Residential Scheme, now known as Friends Colony East, New Delhi, with the freehold rights of land beneath the same.

And whereas the said donor is desirous to gift and is gifting the aforesaid freehold built-up property bearing No. A-28 measuring 501.67 Sq. Mtrs., shown in the Layout plan of Friends Colony Residential Scheme, now known as Friends Colony East, New Delhi in the manner prescribed hereunder, (hereinafter called the said property)

to his sons namely (i) Dr. Vijay Kumar Das – Entire Ground Floor portion without terrace/roof rights, with front lawn and back yard, one left side garage at Ground Floor alongwith one servant quarter above garage out of above mentioned freehold property and (ii) Dr. Vanay Kumar Das – Entire First Floor and one barsati and mumty on Second Floor, with entire terrace /roof rights, one right side garage at Ground Floor alongwith one servant quarter above garage, out of above mentioned freehold property, due to natural love and affection without any monetary consideration, possessing good health



and sound disposing mind.

(i.) Dr. VIJAY KUMAR DAS'S PORTION:

Entire Ground Floor portion without terrace/roof rights, with frond lawn and back yard, one left side garage at Ground Floor alongwith one servant quarter above garage, with root rights, out of freehold built-up property bearing No. A-28, measuring 501.67 Sq. Mtrs., shown in the layout plan of Friends Colony Residential Scheme, now known as Friends Colony East, New Delhi, alongwith proportionate undivided, indivisible & impartiable rights of land beneath the same, more particularly shown in Green Colour in site plan annexed herewith and common portion shown in yellow colour.

(ii.) DR. VINAY KUMAR DAS'S PORTION:

Entire First Floor and one barsati & mumty on Second Floor with entire terrace/roof rights, one right side garage at Ground Floor alongwith one servant quarter above garage, with roof rights, out of freehold built-up property bearing No. A-28, measuring 501.67 Sq. Mtrs., shown in the layout plan of Friends Colony Residential Scheme, now known as Friends Colony East, New Delhi, alongwith proportionate undivided, indivisible & impartiable rights of land beneath the same, more particularly shown in Red colour in site plan annexed herewith and common portion shown in yellow colour.

NOW THIS DEED WITNESSES AS UNDER: -



1. *That actual, physical possession of respective portions of above said property is already handed over by the donor to the donees in advance of this Gift Deed and the donees have occupied the same, the proprietary/symbolic possession is being handed over by the donor to the donees.*
2. *That all previous dues such as House-Tax, Electricity and Water bills etc. of the said property upto the date of execution of this Gift Deed shall be paid by the Donor to all the concerned authorities and later on the same shall be paid & borne by the donees.*
3. *That original documents such as Lease Deed, Conveyance Deed of the freehold property etc. relating to the said property have been handed over by the Donor to donee at No.1 namely Dr. Vijay Kuamr Das and the photocopies of the same have been handed over to donee at No.2 namely Dr. Vinay Kumar Das, and the Dr. Vijay Kumar Das hereby undertake to produce the original for the inspection as and when required.*
4. *That the donor assures the donees, that said property is free from all sorts of encumbrances such as prior sale, mortgage, gift, litigation, attachment, notification, acquisition, surety, lien, etc. whatsoever and if it is proved otherwise then the donor shall be liable and responsible for the same.*
5. *That the Donor has gifted, transferred, conveyed, assigned, handed over all his rights, titles, powers, interests, authorities of ownership of under gift (in the manner prescribed above), unto the Donees by way of this Gift Deed.*



6. *That all the expenses of this Gift Deed shall be borne by the Donor such as stamp papers, execution and registration charges etc. whatsoever.*
7. *That the Donees have become sole and absolute owner of aforesaid property, by way of this Gift Deed and shall be fully entitled, empowered, authorised to use, enjoy, occupy, hold, sale, mortgage, gift, exchange, lease out or to transfer or to dispose off their respective portion in any manner, as the Donees deem fit and proper to do so as their own property without any claim, demand, objection by the Donor or any of his legal heir or any other person claiming under the Donor.*
8. *That the Donees shall also be fully entitled, empowered, authorised to get their respective portions mutated and transferred in their own name in all the concerned Govt. Revenue Records/MCD on the basis of this Gift Deed even in the absence of the Donor also. The donees shall be entitled to obtain new electricity/water connections/meters in their own name in their respective portion at their own costs & expenses.*
9. *That the Donor has obtained the valuation report of the said property from Govt. Approved Valuer (report enclosed herewith) for the purpose of stamp duty and the valuation comes out to Rs. 47,08,500/-.*
10. *That the passage from the main door upto garage and also side entrance from common passage on ground floor (below porch) is marked as common portion (show in yellow colour in site plan) and this property shall be used by both the donees and*



their authorized representatives.

11. That the new owners and their respective successors of said property by way of this gift deed shall have no right to use common staircase passage leading from ground floor to top floor to go to terrace of top floor for repairing/maintenance of T.V./Cable Antenna & Overhead Water Tank only and the occupant(s)/owner(s) of top floor shall have no objection in this regard.

12. That the said Donees accept the said gifted property.

13. That the donor hereby declares that this Gift Deed is executed by donor with full understanding and of his free will without any pressure from any person(s).

67. It is well-established in law that nothing prevents a coparcener from gifting his undivided interest in a coparcenary property to the other coparceners. In this regard, reliance is placed on the judgment passed by the Hon'ble Supreme Court in ***Thamma Venkata Subbamma (Dead) By L.R vs Thamma Rattamma*** (1987) 3 SCC 294, wherein the Hon'ble Supreme Court observed:-

“17. It is, however, a settled law that a coparcener can make a gift of his undivided interest in the coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. Such a gift would be quite legal and valid.”

(emphasis supplied)



68. Further, the Hon'ble Supreme Court in *M.R. Vinoda v. M.S. Susheelamma*, (2021) 20 SCC 180 while reiterating the position laid down in *Thamma* (supra) *inter alia* held as under:-

“23. This judgment in *Thamma Venkata Subbamma [Thamma Venkata Subbamma v. Thamma Rattamma, (1987) 3 SCC 294]* draws a distinction between gifts and relinquishment by a coparcener of his share; and the head of the branch or karta as the representative or eldest member of the branch. Former is valid and legal, provided the relinquishment is in favour of all other coparceners. **The gift or relinquishment would also be valid if it is with the prior consent of another coparcener. Equally, a coparcener may make a gift of his undivided interest in the coparcenary property to another coparcenary with the prior consent of other coparceners.**

24. Mulla's *Hindu Law*, 22nd Edn. vide Article 262, states that a coparcener may renounce his interest in favour of the other coparceners as a body, but not in favour of one or more of them. **When he renounces in favour of one or more of them, the renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener or coparceners in whose favour the renunciation is made.** A similar exposition vide Article 407 in *Mayne's Treatise on Hindu Law and Usage*, 17th Edn., states that a gift by a coparcener of his entire undivided interest in favour of the other coparcener or coparceners is



valid whether it is regarded as one made with the consent of the other or others or as a renunciation of his interest in favour of all. Referring to the judgment in Thamma Venkata Subbamma [Thamma Venkata Subbamma v. Thamma Rattamma, (1987) 3 SCC 294], Mayne's Treatise on Hindu Law and Usage observes that renunciation in the form of ostensible gift may have the effect of relinquishment and if it enures for the benefit of all the coparceners, such gift would be construed as valid. In addition, Mulla's Hindu Law, 22nd Edn. recognises that a father or other managing member of the ancestral immovable property can make gifts within reasonable limits for "pious purposes". [See Articles 223 and 224 at pp. 332 and 333, Mulla's Hindu Law, 22nd Edn.]

(emphasis supplied)

- 69.** Since the HUF only comprised of defendant nos. 2, 3 and 4, on the date of the execution of the Gift Deed i.e 24.08.2004, in view of the law discussed above nothing prevented the defendant no. 2 to gift his interest in the Kothi being the coparcenary property in favor of the other coparceners i.e. defendant nos. 3 and 4.
- 70.** The fact that defendant no. 2 in the gift deed has purported to say that he is the owner of the entire property No. A-28, Friends Colony (East), New Delhi-110065 will not make the gift deed void ab initio. The intention of defendant no. 2 was to transfer his interest in the Kothi in favor of defendant nos. 3 and 4. Whether defendant no. 2 owned the entire Kothi or as a coparcener only a portion of the same will not make any difference as the Kothi was being partitioned and



being gifted to defendant nos. 3 and 4 by metes and bounds. Post the execution of the registered gift deed dated 24.08.2004, it would only be defendant nos. 3 and 4 who would be entitled to own the Kothi as per their respective demarcated shares. On the date of the execution of the gift deed, the amendment to section 6 of the Hindu Succession Act was not in existence. Hence, the plaintiffs had no share in defendant no. 1 i.e. the HUF on the date, the Gift Deed was executed.

71. Pursuant to the execution of the Gift Deed, the defendant nos. 3 and 4 have been in possession and occupation of their respective portions in the Kothi and the said portions have also been mutated in favour of defendant nos. 3 and 4 (Exhibit D-5 and Exhibit D-6). respectively.
72. In this regard, DW – 3, Mr. Rakesh Kumar in his cross examination on 18.01.2017 deposed as under:-

“18.01.2017

I have brought the summoned record i.e. the application filed by Mr. Vinay Kumar Das and Mr. Vijay Kumar Das, both sons of Sh. Ram Das for mutation of the property No. A-28, Friends Colony (East), New Delhi-110065 alongwith the documents filed by them vide Dy. No. 5194 dated 26.12.2005. The property was mutated in the names of the applicants vide two letters dated 02.01.2006. The letters are already exhibited as Ex.D5 and Ex. D6. The receipts showing payment of house tax are correct as per our records and the same are already exhibited as Ex.DW1/12 and Ex.DW1/13. As per the records of SDMC, the aforesaid property was assessed in the name of Dr. Ram Das in the



year 1994. The property remained assessed in the name of Dr. Ram Das till 2006. The property returns after 2006 have been filed by Mr. Vinay Kumar Das and Mr. Vijay Kumar Das. The copy of the application for mutation is now exhibited as Ex.DW3/1 (OSR). The copy of Indemnity Bond filed by Mr. Vijay Kumar Das is exhibited as Ex.DW3/2 (OSR). The affidavit of Mr. Vijay Kumar Das is exhibited as Ex.DW3/3 (OSR). The copy of application for mutation by Mr. Vinay Kumar Das is exhibited as Ex.DW3/4(OSR). The affidavit of Mr. Vinay Kumar Das is exhibited as Ex.DW3/5 (OSR). The copy of Indemnity Bond filed by Mr. Vinay Kumar Das is exhibited as Ex.DW3/6 (OSR).

- 73.** Further, the electricity and the water connections were also transferred in the name of defendant nos. 3 and 4. It is stated that since the date of the Gift Deed i.e. 24.08.2004, the house tax and other bills are being paid by defendant nos. 3 and 4 for their respective portions (DW 1/2 to Exhibit DW 1/13).
- 74.** In this regard, defendant no. 3 (DW – 1) in his evidence deposed as under:-

“12. I say further that after the execution of the Gift Deed i.e. Exhibit PW 1/ D1, my father was left with no right, title or interest of any kind whatsoever over the property bearing No. A-28, Friends Colony (East), New Delhi and the said property became the exclusive property of the deponent and his brother, Dr. Vinay Kumar Das. I say further that the said property though was self-acquired property and



remained as an individual property but in any case, even if the said property formed part of HUF, the same lost its character as an HUF property and the said Gift Deed Exhibit PW 1/D1 amounted to separation of shares, partition of the property and dissolution of the HUF.

13. I say further that the said Gift Deed was duly acted upon and the mutation of the. property was made in favour of the deponent and his brother. Dr. Vinay Kumar Das in respect of the respective portions which fell to their share as per the Gift Deed i.e. the ground floor in favour of the deponent and the first floor and above in favour of Dr. Vinay Kumar Das. The mutations accorded by the Municipal Corporation of Delhi are exhibited as Exhibit D-5 & Exhibit D-6 respectively.

...

15. I say further that the aforementioned property has since remained the property of the deponent and his brother Dr Vinay Kumar Das and has been so utilized as such. I say further that the deponent and his brother have been making payment of House Tax as regards the said property out of their own funds ever since the date of execution of the Gift Deed. I say further that the electricity connection as well as the Water connection were also got transferred in the name of the deponent and Dr Vinay Kumar Das and the bills have been raised in their name since upon the execution of the Gift Deed i.e. after 24.08.2004. The receipts issued by the



Municipal Corporation of Delhi and the electricity bills, water bills etc are exhibited as Exhibit DW 1/2 to Exhibit DW 1/13 respectively.”

75. In the present case, the plaintiffs could not be recognized as members of the HUF till 09.09.2005 i.e. the date of amendment when section 6 of the Hindu Succession Act was substituted.
76. I deem fit to refer to section 6 of the Hindu Succession (Amendment) Act, 2005. The operative portion of the same reads as under:-

“6. Devolution of interest in coparcenary property. —

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.



.....

(5) *Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.*

Explanation. —For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.”

77. The legislative intent behind section 6 of the Hindu Succession (Amendment) Act, 2005 is to confer upon the daughters the same rights as given to the sons in respect of coparcenary property, thereby entitling them to be recognized as coparceners and to claim a share in the HUF property. Section 6(5) of the Hindu Succession (Amendment) Act, 2005 specifically addresses the issue of partitions, whereby the proviso to section 6(5) clearly holds that the unregistered partitions, are termed legally invalid as defenses against the entitlement of daughters to their rightful share. This provision is intended to prevent the use of fraudulent claims or collusive actions where such informal or unregistered documents are invoked to circumvent the legal rights of daughters. In this regard, the Hon’ble Supreme Court in *Prakash and Others vs Phulavati and Others* (2016) 2 SCC 36 *inter alia* held as under:-

“22. In this background, we find that the proviso to Section 6(1) and sub-section (5) of Section 6 clearly intend to exclude the transactions referred to therein which may have taken place prior to 20-12-2004 on which date the Bill was



introduced. Explanation cannot permit reopening of partitions which were valid when effected. Object of giving finality to transactions prior to 20-12-2004 is not to make the main provision retrospective in any manner. The object is that by fake transactions available property at the introduction of the Bill is not taken away and remains available as and when right conferred by the statute becomes available and is to be enforced. Main provision of the amendment in Sections 6(1) and (3) is not in any manner intended to be affected but strengthened in this way. Settled principles governing such transactions relied upon by the appellants are not intended to be done away with for period prior to 20-12-2004. In no case statutory notional partition even after 20-12-2004 could be covered by the Explanation or the proviso in question.”

(emphasis supplied)

78. Similar position of law was also laid down by the Hon’ble Supreme Court in *Vineeta Sharma vs Rakesh Sharma and Others* (2020) 9 SCC 1 wherein the Hon’ble Supreme Court *inter alia* held as under:-

“134. The protection of rights of daughters as coparcener is envisaged in the substituted Section 6 of the 1956 Act recognises the partition brought about by a decree of a court or effected by a registered instrument. The partition so effected before 20-12-2004 is saved.

135. A special definition of partition has been carved out in



the Explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in Section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of Section 6, the intendment of the legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of Section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her



rights as a coparcener. When such a defence is taken, the court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigour of very heavy burden of proof which meets the intendment of Explanation to Section 6(5). It has to be remembered that the courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under Section 6(5) had taken place.”

(emphasis supplied)



79. The courts have time and again held that post amendment to the section 6 of the Hindu Succession Act, 1956 any disposition or alienation including any partition or testamentary disposition of property taken place before 20.12.2004 shall remain unaffected and the parties shall not be allowed to reopen the partitions taken place before 20.12.2004, which were valid when executed. To my mind, the plaintiffs cannot be permitted to reopen the validity of the Gift Deed dated 24.08.2004 by virtue of section 6 of the Hindu Succession (Amendment) Act, 2005, especially in view of the fact that there is no challenge or declaration sought with regard to the gift deed. Reliance placed by the defendants on the judgment passed by the Hon'ble Supreme Court in *N. Sarin* (supra) is well placed.
80. The status of the Kothi changed from that of an HUF property to that of individual property of defendant nos. 3 and 4 on 24.08.2004 i.e. prior to 20.12.2004 by virtue of a registered document being the Gift Deed. That being so, in order to the Kothi being the HUF property and being available for partition, there has to be a conscious act showing that defendant Nos. 3 and 4 have put their respective shares back in the HUF hotchpotch or in the alternative there has to be a challenge to the Gift Deed and the Gift Deed needs to be set aside.
81. Admittedly, there is no affirmative challenge to the Gift Deed nor any prayer seeking declaration for setting aside the Gift Deed. Further, there is no affirmative action by the defendant nos. 3 and 4 to put back their respective shares of the Kothi in the HUF hotchpotch.



82. In the absence of either of the two, I cannot persuade myself to hold that the Kothi was belonging to the HUF after 24.08.2004 and was available for partition on 09.09.2005 or prior to 20.12.2004.
83. Further, the defendant no. 3 has also executed a power of attorney as owner of his respective share in the Kothi in favor of defendant no. 2 to manage and administer his portion in the Kothi. The Power of attorney has been exhibited as Exhibit D – 4 and the same reads as under:-

“SPECIAL POWER OF ATTORNEY

Know all men by these presents that I, Dr. Vijay Kumar Das son of Dr. Ram Das resident of A-28, Friends Colony East, New Delhi, hereby appoint, nominate, constitute and authorize Dr. Ram Das son of Sh. B. Singh residents of A-28, Friends Colony East, New Delhi, as my true and lawful Special Attorney to do followings acts, deeds and things in mu name and on my behalf in respect of Entire Ground Floor portion without terrace/roof rights, with front lawn and back yard, one left side garage at Ground Floor alongwith one servant quarter above garage, with roof rights, out of freehold built-up property bearing No. A-28, measuring 501.67 Sq. Mtrs., shown in the layout plan of Friends Colony residential Scheme, now known as Friends Colony East, New Delhi, of which I am the lawful owner. The said attorney is fully empowered as under:-

1. To continue the present lease with Sh. Raj Handa till further advice from me.



2. *When necessary enter into a lease agreement/rent agreement, to sign and execute and get the lease agreement/rent agreement with a person of my choice.*
3. *To realise the rent of the said tenant/s and issue rent receipts thereof.*
4. *To issue notice for the ejectment of the tenants of the said property and to do all acts, deeds and things which are necessary for the same.*
5. *To deposit the house-tax, electricity and water bills to the concerned departments.*

In witness whereof I have signed this power of attorney at New Delhi on this 17th Day of December, 2004, in the presence of the following witnesses....”

84. The very fact that Income Tax Returns of the HUF pertaining to the assessment years 2005-06; 2006 – 07; 2007- 08 (Exhibit P/8 – P/10) show that the Kothi was the part of the HUF or that the rental income derived from the ground floor of the Kothi was being deposited in the HUF account is of no significance as there is no conscious act of defendant no. 3 and 4 of putting the Kothi back in the HUF hotchpotch. The income tax return of the assessment year 2007-08 was subsequently revised and has been exhibited as Exhibit - P/11.
85. As regards, the properties bearing no. C-1034 and C-1035, Sushant Lok-I, Gurugram, Haryana, are concerned, the plaintiffs have pleaded that the said properties have been bought out of the HUF funds and the defendant nos. 3 and 4 have failed to show any source for buying the said properties. It is stated that both the defendant nos. 3 and 4,



being permanent British residents, were also required to make payment in Foreign Exchange through banking system and the same has not been done.

86. PW – 1 in her cross examination on 28.04.2010 deposed as under:-

“28.04.2010

...I do not know the year of purchase of the plots no. 1034 and 1036, Sushant Lok, Gurgaon. I do not remember the amount of those sale considerations. The said sale considerations were paid by my father. It is correct that I was not present at the time of payment of the sale considerations.

Q. Do you have any documentary evidence to show that the sale consideration of the Sushant Lok plots have been paid by your father?

A. I do not have any documentary evidence at present but the sale considerations had been paid from the HUF account of my father maintained at Grindlays Bank. The said Grindlays bank has been subsequently taken over by M/s Standard Chartered Bank, Parliament Street, New Delhi.

Q. Can you produce the documents to show that the sale consideration had been paid from the HUF account of your father?

A. The said documents would be summoned by us in the present matter.

Q. When had you come to know about the payment of the



aforementioned sale considerations and whether your knowledge had come about a year ago or about two years, 5 years or 20 years ago?

A. I do not know.

Q. When had you come to know about the execution of the sale deeds in respect of the Sushant Lok plots?

A. I do not remember the exact year but the said fact was known to me before filing the suit.

Q. Have you seen the sale deeds?

A. Yes.

Q. Do you confirm that the sale deeds of Sushant Lok plots are in the name of defendant no. 3 & 4?

A. Yes.”

- 87.** The properties bearing no. C-1034 and C-1035, Sushant Lok-I, Gurugram, Haryana were purchased by defendant nos. 3 and 4 in their own names on 03.04.1986 from M/s Ansal Properties and Industries Ltd and the sale Deeds and the proof of payment for purchase of the said properties have been duly proved on record which are exhibited as Exhibits D-2 and D-7.
- 88.** In this regard, DW – 1 (defendant no. 3) in his evidence by way of affidavit deposed as under:-

“17. I say further that the plot bearing plot No. C-1035, Sushant Lok, Gurgaon, Haryana was acquired by the deponent out of his own funds. I say further that the sale Deed was executed by the seller on 27.11.1995 in my favour upon receipt of the entire sale consideration and the same is



exhibited as Exhibit D-7. I say that the said property has always been in my possession as my individual property and no ancestral funds from alleged HUF were utilized for acquiring the same by the undersigned.

18. I say that my younger brother Dr. Vinay Kumar Das did his MBBS from Shimla Medical College. He is working as a consultant in the UK National Health Service for over 03 Decades.

19. I say that similarly, the property bearing plot no. C-1034, Sushant Lok, Gurgaon, Haryana, was acquired by my brother out of his own funds and the sale Deed is executed in his favour which is exhibited as Exhibit D-2 upon receipt of the entire sale consideration.”

89. Further, DW – 1 in his cross examination on 27.04.2016 deposed as under:-

“27.04.2016

It is correct that the two plots at Gurgaon were purchased one by me and one by my brother from M/s. Ansal Properties. I do not remember exactly about the mode of payments of these two plots whether it was by cheque or it was by way of cash. The payment was made in installments spread out for the period of 4-5 years. I am not sure but the installments were perhaps annual in nature. I do not remember how many installments were paid by me in cash and how many installments were paid through cheque. The



cash payments used to be made by me, my wife, my brother and his wife depending on who so ever was present in India when the payments were made. I do not remember even the approximate amount of installments of the plot purchased by me. The total price of the plots was around Rs. 1.14 lakhs each.”

- 90.** Another Shop No. FF-18 at Sushant Lok Vyapar Kendra, Gurgaon was also purchased by defendant no. 3 i.e. Dr. Vijay Kumar Das in his own name and the payment details regarding the said shop has also been duly placed on record (Exhibit P4/C).
- 91.** In this regard, DW – 1 in his cross examination on 29.04.2016 deposed asunder:-

“29.04.2016

I and my brother Dr. Vinay Kumar Das (Defendant no.4) had booked one shop in Vyapar Kendra, Gurgaon, but never took its possession. The shop was booked with Ansal Properties. I do not remember if any money was deposited for booking the shop or simply an application was filed. I do not remember if any shop was allotted by Ansal Properties on our booking or not. It is wrong to suggest that I and my brother had actually been allotted a shop and for which we had also made several payments. It is wrong to suggest that those payments were also made from the income of the HUF properties. It is wrong to suggest that I and my brother resold our allotment with all the rights in the shop and did



not account for sale proceed to the HUF.”

- 92.** To my mind, the argument raised by the plaintiffs that the said properties were bought from the HUF funds is meritless. Defendant nos. 3 and 4 are medical practitioners in UK having their own independent source of income. It can be plausible to say that the defendant nos. 3 and 4 had enough resources to buy the said properties out of their own funds. The bookings of the said plots were also made in the year 1986 in the name of defendant nos. 3 and 4 (Exhibit P4/A and P4/B) and the plaintiffs have not placed anything to the contrary.
- 93.** The onus of proving that the two plots and the shop belong to the HUF was on the plaintiffs. The plaintiffs have only stated that the defendant nos. 3 and 4, being UK nationals could not have transferred money to India to buy the properties, which in my view is merely an averment. The said averment required substantiation, however, the plaintiffs have failed to discharge any evidence for me to hold that the said plots and the shop were purchased from the HUF funds and were the HUF properties. Further, the said properties have not been mentioned in any of the Wills executed by defendant nos. 2 (Mark X and Mark B/MarkDW2/A/Exhibit DW6/1) and Smt. Shanti Devi (Mark A) nor in any of the Income Tax Returns of the HUF.
- 94.** Therefore, I am unable to bring myself to the conclusion that the properties bearing no. C-1034 and C-1035, Sushant Lok-I, Gurugram, Haryana and the Shop No. FF-18 at Sushant Lok Vyapar Kendra, Gurgaon were a part of the HUF at the time when the amended section 6 of the Hindu Succession Act, 1956 came into force i.e. on 09.09.2005.



95. Even though I am unable to give a finding that properties bearing no. C-1034 and C-1035, Sushant Lok-I, Gurugram, Haryana and the Shop No. FF-18 at Sushant Lok Vyapar Kendra, Gurgaon were a part of the HUF, however, defendant nos. 3 and 4 have filed an affidavit in terms of order dated 04.07.2024, stating that as a goodwill gesture for their step sisters, defendant nos. 3 and 4 are ready to relinquish their rights, titles and interests in properties bearing no. C-1034 and C-1035, Sushant Lok-I, Gurugram, Haryana, in their favour. The said affidavits are placed on record.
96. In this view of the matter, plaintiff nos. 1 and 2 are at liberty to take appropriate action for conversion of the properties bearing no. C-1034 and C-1035, Sushant Lok-I, Gurugram, Haryana in their own names.
97. In relation to the 7700 Units of U.T.I. valued at Rs 1 Lakh, the plaintiffs have contended that these units were purchased using funds belonging to the HUF. In this regard, learned counsel for the plaintiffs draws my attention to the Will dated 11.09.1987 (Mark X) to state that the 7700 Units of U.T.I were a part of the HUF. The operative portion of the will dated 11.09.1987 reads as under:-

“Whereas I, the Testator, own various properties and assets consisting of deposits in banks, house-hold goods and interest in the H.U.F. (Ram Dass & Sons), I hereby devise and bequeath the said properties and assets including my interest in the HUF in the manner laid down here under.

The abovesaid HUF (Ram Dass, Wife and Sons) own the following assets and properties in which my interest is one-fourth:



House No. A-28, situate in Friends Colony East, New Delhi.

7700 Units of U.T.I, amounting to Rs. 1,00,000/-

Bank balance in the account No. 67972 in the Grindlays Bank, Parliament Street, New Delhi.”

98. PW – 1 in her evidence by way of affidavit, regarding this, deposed as under:-

“5. In the year 1978 the Defendant No. 2 created Ram Das HUF and threw his self-acquired property at A-28 Friends Colony East, New Delhi, into the common stock for the benefit of the family on the whole. That the said Ram Das HUF was being managed by the Defendant No. 2, Dr. Ram Das being the Karta/Manager of the HUF. That once an HUF is created it can only be dissolved by way of partition of the HUF properties. That since no such partition of Ram Das HUF has taken place till date; the same is still in existence. Following is a description of the coparcenary properties forming part of the Defendant No. 1 HUF as known to the Plaintiff No. 1:

.....

7700 Units of U.T.I, amounting to Rs. 1 lac. These units existed in 1987 as per the will of the Karta dated 11.9.1987 and may have been cashed by the Karta.”

99. The 7,700 units of U.T.I, valued at Rs. 1 lakh, have only been mentioned in the registered Will dated, 11.09.1987 (Mark X), however, consequently, the said units have not been mentioned in any



of the documents i.e. the Income Tax Returns filed by the HUF, the Will of Smt Shanti Devi or the Will of the defendant no. 2 dated 17.07.2004. During the course of the proceedings, the plaintiffs have also stated that the status of the 7,700 units is not known.

- 100.** The onus to prove that these units formed part of the HUF at the time, the amended Section 6 of the Hindu Succession Act came into force rests entirely on the plaintiffs, who have failed to discharge this burden. The plaintiffs have failed to produce any documentary evidence to establish whether these units existed at the time when amended Section 6 of the Hindu Succession Act came into force. As such, their claim regarding these units being HUF property remains unsubstantiated.
- 101.** In the absence of any credible evidence from the plaintiffs, I am unable to hold that the 7,700 units of U.T.I, valued at Rs. 1 lakh were a part of the HUF as on 09.09.2005.
- 102.** As regards, Account no. 67972 (now 525-1- 008486-5), held with Standard Chartered bank (erstwhile Grindlays Bank), Parliament Street, New Delhi is concerned, the same has been closed.
- 103.** DW1's cross examination dated 28.04.2016, in this regard reads as under:-

“28.04.2016

It is correct that there was a bank account in the name of M/s. Ram Das HUF in National Grindlays Bank. (Vol.) It has since been closed.

.....



I was not aware of the HUF account at National Grindlays Bank since its opening. (Vol.) My father had opened this account to save the tax. It is wrong to suggest that I have deposited falsely. It is wrong to suggest that I am feigning lack of memory about the opening the aforesaid HUF account in the year 1983.”

- 104.** There is no evidence placed on record to substantiate the amount credited to this account, nor has any proof been provided regarding the balance standing to its credit. Furthermore, nothing has been provided to show the amounts, if any, withdrawn from the account after the filing of the suit. The said bank account has not been mentioned in the Income tax Returns of the HUF. In the absence of such material evidence, no relief can be granted in respect of this account.
- 105.** Concerning the PPF account no. 10485058884 in the name of the HUF held with the SBI, Friends Colony East, New Delhi is concerned, PW5's, cross examination dated 25.03.2014 in this regard reads as under:-

“25.03.2014

...I joined as manager (personal banking division) at SBI, Friend Colony Branch in August 2012. Generally, the branch is looked after by a Branch Manager. PPF Account is looked after by service manager. One, Mr. Gyan Singh was service manager before my joining.

I am not a service manager. However, if there is any emergency in the absence of service manager, I attend to the



same.

The PPF account in question is not closed yet. After completion of 2012, no amount is credited to the PPF account in question except the interest accrued.

The PPF account is in the name of HUF Ram Das as Karta. We do not have any other particulars with regard to members of the HUF.

I cannot who has obtained the bank statement which was produced on record pertaining to PPF account in question as there is no endorsement of receipt.”

106. My attention has also been drawn to the transaction statement of the PPF account No. 10485058884 which is duly placed on record and is exhibited as Exhibit P-7. It clearly shows that the PPF Account is in the name of the HUF and as per the testimony of PW5, the said account has not been closed and still remains an asset of the HUF. The said testimony has never been contradicted by the defendants. The defendant nos. 3 and 4 have pleaded that the amount lying in the credit in the PPF account is to be distributed in accordance with the last Will and testament of Smt. Shanti Devi, dated 23.12.1995, (Mark A) as well as the last Will and testament of Late Dr. Ram Das, dated 17.07.2004 (Mark B/MarkDW2/A/Exhibit DW6/1).

107. The argument raised by the defendants is unfounded. The defendants have failed to provide any evidence to demonstrate that the PPF account was never a part of the HUF. Furthermore, no proof has been submitted to establish that the PPF Account was closed or that the amount was released in favor of defendant nos. 3 and 4 prior to



20.12.2004. Further, the statement made by PW – 5 has also not been contradicted by the defendants.

- 108.** The amount lying to the credit of the PPF account cannot be distributed in terms of the Will of Smt. Shanti Devi, dated 23.12.1995, as well as the Will of Late Dr. Ram Das, dated 17.07.2004 as the same is an asset of the HUF and continues to be an asset of the HUF.
- 109.** As the status of the PPF account is intact, the same remains a property of the HUF. Therefore, in light of section 6 of the Hindu Succession (Amendment) Act, 2005, the plaintiffs, as members of the HUF, are legally entitled to a share in the HUF's property, being the amount lying credit in the PPF Account. Accordingly, the plaintiffs are entitled to their rightful share in the funds lying credit in the PPF Account.
- 110.** As regards issue no. 1 is concerned, I have already held that the HUF i.e. defendant no.1 existed at the time when section 6 of the Hindu Succession (Amendment) Act, 2005 came into force and had not been dissolved.
- 111.** Accordingly, issue no. 1 is held in favor of the plaintiffs, meanwhile issue no. 2 is partially held in favor of the plaintiffs.

Issue no. 3: If the issues No. 1 & 2 are decided in favour of the plaintiffs, what share, if any, do the plaintiffs have in the property/properties? OPP

- 112.** As on the date when section 6 of the Hindu Succession Act came into force, the Kothi had already become the exclusive property of defendant nos. 3 and 4 by virtue of the registered gift deed dated 24.08.2004. The same has duly been mutated in the name of defendant



nos. 3 and 4 and they are enjoying their respective portions. Thus, in view of the law laid down by the Hon'ble Supreme Court in *Vineeta Sharma* (supra), the Kothi was partitioned before 20.12.2004 and the plaintiffs cannot be entitled to any share in the Kothi.

- 113.** The properties bearing nos. C-1034 and C-1035, Sushant Lok-I, Gurugram, Haryana have never been shown as part of the HUF. The same has been purchased by defendant nos. 3 and 4 and the sale deeds with respect to the said properties is also placed on record as (Exhibit P4/A and P4/B). Thus, the plaintiffs do not have a share in the said properties.
- 114.** However, in view of the affidavits placed by defendant nos. 3 and 4, the plaintiffs are entitled to the properties bearing nos. C-1034 and C-1035, Sushant Lok-I, Gurugram, Haryana and the plaintiffs are entitled to get the said properties transferred in their own names.
- 115.** Admittedly, the bank account no. 67972 (now 525-1- 008486-5), also stands closed and hence the plaintiffs cannot be entitled to any relief with respect to the said bank account.
- 116.** As regards, the 7700 Units of U.T.I. valued at Rs 1 Lakh, the plaintiffs have failed to discharge the onus to prove that whether the said units ever existed at the time when section 6 of the Hindu Succession Act got amended.
- 117.** Amongst the properties mentioned in the plaint, only the PPF account no. 10485058884 was an HUF property and was available for partition as on, 09.09.2005.
- 118.** Since the PPF account no. 10485058884 held with the SBI, Friends Colony East, New Delhi continues to stand in the name of the HUF



i.e. defendant no.1, the plaintiffs are entitled to a share therein. Accordingly, the plaintiffs are entitled to 1/4th share each in the amount lying to the credit in the PPF Account.

119. Accordingly, issue no. 3 is held in favor of the plaintiffs.

Issue no. 4: Whether the suit is correctly valued for the purposes of court fees and jurisdiction, if not, to what effect? OPP

120. In the present case, the plaintiff no. 1 has valued the suit have valued the suit properties at Rs. 12 crores, and as per her claim i.e. 1/5th share in the suit properties, the value of the plaintiffs' share is Rs. 2.4 crores. Plaintiff no. 1 has paid ad valorem Court Fees on the said amount.

121. During the proceedings, the defendant no. 5 was subsequently transposed as plaintiff no. 2. Plaintiff no. 2 has not filed any fresh plaint and her prayer in the written statement filed as defendant no. 5 is only supporting the plaintiff.

122. Further, no evidence nor any argument has been led by the defendants regarding the market value of the properties in question. Hence, there is no reason to doubt the valuation made by the plaintiff no. 1.

123. In view of the above findings, it is held the suit is correctly valued for the purposes of court fees and jurisdiction, and accordingly, issue no 4 is held in favour of the plaintiffs.

Issue no. 5: Whether the claim in the suit is barred by time? OPD

124. With regard to the question of whether the suit is barred by limitation, the relevant portion of the cause of action para reads as under:-

“That the cause of action arose in favour of the Plaintiff and against the Defendants when in December 2006 the



Defendants for the first time refused to acknowledge the right of the Plaintiff to stay in the HUF residential property at New Friends Colony. That the cause of action continued on every instance thereafter when the Defendants actively prevented the Plaintiff from enjoying the HUF properties and misappropriated the proceeds of the same. The cause of action again arose in September 2007 when the Defendant No. 2 under undue pressure from the Defendant No. 3 and 4 served a notice of vacation upon the present tenants of the HUF property at New Friends Colony. The cause of action is continuing in favour of the Plaintiff and against the Defendants till date. Hence this suit.”

125. The present suit was filed on 03.12.2007, In the present case, the cause of the action for the plaintiffs are based on the amendment to the Hindu Succession Act, which came into effect on 09.09.2005 through which section 6 was amended and the plaintiffs being the daughters of the coparcener of the HUF were also granted share in the HUF properties. The plaintiffs' rights, as asserted in the plaint, are also entirely based on this amendment. The subsequent events that took place in December 2006 and September 2007, as mentioned in the cause of action para above, are also rooted through the amended section 6. As such, the suit, having been filed in December 2007, is well within the limitation period of three years.

126. Issue no. 5 is answered accordingly.

Issue no. 6: Whether the amendment to Section 6 of the Hindu Succession Act by Act No. 39/2005 is violative of the constitutional



rights of the defendants No. 2 to 4 under Articles 14 and 300A of the Constitution of India? OPD

127. As regards, issue no. 6 is concerned, the issue no. 6 challenges the vires of section 6 of the Hindu Succession (Amendment) Act, 2005 for which no evidence nor any argument has been raised by the either of the parties. In a suit *interse* between the parties, the court cannot adjudicate the vires of a statute.

128. Hence, issue no. 6 is decided against the defendants.

Issue no. 7: Whether on account of the marriage of the plaintiff/Dr. Pushp Lata to a Muslim, she has ceased to have any right, if any, to the property under section 19 of the Special Marriage Act, 1954 or otherwise? OPD

129. In this regard, the plaintiff in her replication to the written statement of defendant no. 2 has categorically stated as under:-

“That it is wrong and denied that plaintiff ceased to be a Hindu owing to her marriage to a Muslim of Pakistani origin. She was re-married to a Muslim of Indian origin having British Nationality and never converted from Hinduism. It was a civil marriage. She did not even change her name. The plaintiff has brought up her second son from the said marriage as a Hindu who respects all religions. His first name is Ajay. It is specifically asserted that the plaintiff was and continues to be a Hindu throughout. She is entitled to claim her rights as a coparcener under the Hindu Succession (Amendment) Act. The suit is very much maintainable and merits being



decreed. Rests of the contents of this para of the written statement as stated are wrong and denied.”

(emphasis supplied)

130. Further the plaintiff no. 1 in her evidence by way of Affidavit deposed as under:-

“.....At an early age, in 1958, the Plaintiff No. 1 was forced into an unhappy marriage that she endured for sixteen years. During this period she worked hard to complete her Bachelor's and Master's degrees and started working to gain economic independence. While working, simultaneously, enrolled for the Ph.D. degree and received her doctorate from Kanpur University in 1974. All this time, while she was working, she was also taking care of the family and looking after her son Ashish Singh who was born on 22/5/1964. In April 1974 she left India, with her son, to study abroad, first In Alexandria, Egypt where the Defendant No. 2 was working and later at London University. She moved to UK, in September 1974, with her son, with initial financial help from her father. DefendantNo. 2. In his autobiography on page 181, the Defendant No.2 stated about the Plaintiff No. 1 that "She has been through a difficult and nerve-racking process while studying particularly in UK". The complete autobiography of Defendant No. 2, Dr. Ram Das is placed as Exhibit P/1. Plaintiff No.2 obtained divorce from her



husband and raised her son single handedly. Her son, Ashish Singh obtained his Ph.D. degree from the Bath University of UK and is now a senior executive in a multinational firm. Plaintiff No.1 received her second Doctorate from the London University in 1980 and married her colleague Dr. ZainUl Haque. The couple got married at the Registrar's office and both continued to follow their own religions. Plaintiff No. 1's second son Ajay who was born on 11.01.1983, has been brought up to respect all religions. The Plaintiff No. 1 worked in UK and retired in May 2007.”

131. PW1's cross examination dated 29.11.2018, in this regard reads as under:-

“29.11.2018

I was Indian Citizen at the time of my second marriage in the year 1980. My husband late Mr. Muhammad Zainul Haque had his origin from Patna in India. It is wrong to suggest that he and his family migrated to Pakistan. Vol. I am not aware as I did not have any concern with this fact. It is wrong to suggest that Nikah was performed between me and my husband Mr. Muhammad Zainul Haque in 1980. My father did not attend my marriage with Mr. Haque. Vol. I did not even invite anyone. It is correct that my husband did not convert to Hinduism at the time of our marriage. It is correct that our marriage was witnessed by two Muslim gentlemen.

Q. Were you ever divorced by your husband during his lifetime?

Ans. No. It is correct that my son Mr. Ajay Haque was born



from my marriage to Mr. Muhammad Zainul Haque. It is correct that I and my late husband Mr. Haque continue to reside together in the same house after our marriage in 1980. I was divorced with my first husband somewhere in 1978 but I do not remember the exact date. My son Sh. Ashish Singh was around 14 years of age when I was divorced. I do not remember when I first met Mr. Haque but it was after 1974 as I had gone to England in 1974. It is correct that no objection was raised by the witnesses to my marriage with Mr. Haque that I was marrying a Muslim being a Hindu lady.

(At this stage, attention of the witness is drawn to Ex.PW1/B).

I am not aware about the intricacies of Marriage Act, 1949 as mentioned in para no. 1 of my affidavit. I do not remember as to when I became a British Citizen. I was not made aware of the facts at the time of my marriage with Mr. Haque that it was a permanent and a civil contract and not a ritual. There was no Kazi present at the time of our marriage. I am not aware at all about the antecedents of two Muslim gentlemen, who witnessed my marriage with Mr. Haque. However, I can say with certainty that none of them was a Kazi. I say so because both witnesses were my husband's friend and as told by him one was an accountant. I do not remember the name of my husband's friend who was an accountant. I cannot tell the exact time of my marriage with Mr. Haque but it was perhaps in the morning. It



is wrong to suggest that no Muslim rituals were performed on my son Mr. Ajay Haque after his birth. I am a Doctor in Botany. It is wrong to suggest that Khatna ceremony was performed on my son Mr. Ajay Haque. My husband did not accompany me to any temple during the subsistence of my marriage.

.....

Q. Did you ever inform any Muslim Cleric disclosing that you are still practicing Hindu Religion despite being married to a Muslim?

Ans. No.

It is wrong to suggest that my statement that I was practicing Hindu Religion even after marrying a Muslim is a false statement with an objective, to claim partition from my father and step brothers. It is wrong to suggest that my husband late Mr. Haque was never welcomed by my father in his house at Delhi. I have not filed any photograph separately showing that there were close terms between my father and my husband Mr. Haque. Vol. I have already placed on record the Autobiography of my father, which contain photograph showing close terms between my father and my husband Mr. Haque. No letter has been filed by me on record of this case to show that my father had written to my late husband affectionate letters showing his love towards him. Vol. my father affectionately wrote letters appreciating qualities of my husband and myself but I have not put them on record in the present case.”



- 132.** The burden of proving that plaintiff No. 1 ceased to be a Hindu owing to her marriage to Dr. Zain Ul Haque, a Muslim of Pakistani origin residing in the United Kingdom, rests entirely on the defendants. However, the defendants have failed to discharge this burden, as no evidence has been presented to substantiate the claim that plaintiff No. 1 renounced Hinduism or formally converted to Islam.
- 133.** The plaintiff no. 1 in her evidence by way of affidavit (Exhibit PW 1/A) has categorically stated that pursuant to her civil marriage to Dr. Zain Ul Haque, she continued to follow her religion i.e. Hinduism.
- 134.** To my mind, merely marrying a Muslim does not result in an automatic conversion from Hinduism to Islam. In the present case, aside from a bare averment made by the defendants, no substantive evidence has been produced by the defendants to prove that the plaintiff no. 1 underwent a recognized process of conversion to Islam. In the absence of such proof, the claim of conversion solely on the basis of marriage cannot be accepted. Since the plaintiff no. 1 has not changed her religion, she is entitled to claim her share in the HUF properties.
- 135.** Hence, issue no. 7 is held against the defendants.

Issue no. 8: Relief

- 136.** In the present suit, the plaintiffs had sought a decree of declaration that the plaintiffs are entitled to 1/4th share each in the HUF properties as described in para 7 above, on the ground that the plaintiffs are coparceners in the HUF, after the Hindu Succession (Amendment) Act, 2005 came into force i.e. on 09.09.2005.



- 137.** In view of my findings given in issue nos. 1, 2 and 3, I have held that the plaintiffs are only entitled to their share (1/4th each) in the amount lying credit in the PPF Account bearing no. 10485058884, in the name of HUF held with the SBI, Friends Colony East, New Delhi.
- 138.** Apart from that, the plaintiffs are also entitled to properties bearing no. Plot Nos. C-1034 and C-1035 situated at Sushant Lok 1, Gurgaon, Haryana in view of the affidavit filed by defendant nos. 3 and 4, whereby they have given up all their rights, title and interests in favor of the plaintiffs as an act of a goodwill gesture.
- 139.** Hence, the present suit is partially allowed.
- 140.** Decree sheet be prepared accordingly.

JASMEET SINGH, J

JANUARY 23, 2025/*priyesh*