

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

+ **CS(OS) No. 1999/2006**
% **Date of Decision: April 30, 2009**

Mrs. Shilpi Jain & Ors.

..... Plaintiffs

! Through: Mr. Rahul Gupta, Advocate

Versus

\$ M/s Anil Kumar Bansal (HUF) & Ors.

.....Defendants

^ Through: Mr. Girish Aggarwal for defendants
No. 1 & 2.
None for defendants No. 3 & 4.
Defendant No. 5 is ex-parte.

CORAM:

HON'BLE MR. JUSTICE S.N. AGGARWAL

1. Whether reporters of Local paper may be allowed to see the judgment? YES
2. To be referred to the reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

S.N.AGGARWAL, J (ORAL)

The plaintiffs have filed this suit against the defendants seeking a declaration that the suit property bearing mustil No. 62, Khasra No. (0-7) admeasuring 36 bigha, 8 biswa situated at village and PO Kanganheri, Tehsil Najafgarh, New Delhi be declared a HUF property owned by defendant No. 1 in view of sale deeds dated 22.07.1988 and 27.02.1989. The plaintiffs have further prayed for a declaration to declare the agreement to sell dated 24.07.2006 between defendants No. 2 to 5 to be void.

2 Briefly stated the facts of the case relevant for disposal of this

suit are that defendant No. 2 is the father of the plaintiffs. Defendants No. 3 and 4 are the mother and grand mother of the plaintiffs. Defendant No. 2 being the father of the plaintiffs is the karta of two HUFs namely Mr. Anil Kumar Bansal (HUF) and M/s Anil Kumar Bansal & sons (HUF) (defendant No. 1 herein). The suit property was purchased in the name of these two HUFs through its karta (defendant No. 2) vide sale deeds dated 22.07.1988 and 27.02.1989.

3 On 24.07.2006, defendants No. 2 to 4 in their individual capacity entered into an agreement to sell the suit property to defendant No. 5 for a total sale consideration of Rs.3.90 crores and have received Rs.39 lacs as advance. The plaintiffs who were the members of the HUFs were not parties to the said agreement to sell except that plaintiff No. 3 being minor at the time of agreement was represented by his father, defendant No. 2 herein.

4 The plaintiffs, feeling themselves aggrieved by the designs of defendants No. 2 to 4 in selling the suit property to defendant No. 5, filed the present suit for declaration and have prayed for a declaration that the suit property be declared to be a HUF property owned by defendant No. 1 and that agreement to sell dated 24.07.2006 entered into between defendants No. 2 to 5 be declared null and void.

5 Two separate written statements have been filed in this suit, one is by defendants No. 1 & 2 and the second by defendant No. 5. Defendants No. 3 and 4 gave a statement to the Court on

20.02.2007 that they did not want to contest this suit. After 20.02.2007, nobody appeared on behalf of defendants No. 3 and 4. Even defendant No. 5 stopped appearing in the suit after filing his written statement. Defendant No. 5 was proceeded ex-parte vide order passed by this Court on 11.08.2008. Thereafter, defendant No. 5 filed an application under Order 9 Rule 7 CPC being IA No. 4633/2009 seeking setting aside of ex-parte order dated 11.08.2008 against him. This application was dismissed in default for non-prosecution vide order passed by this Court on 08.04.2009. Nobody is present on behalf of defendant No. 5 even today. Hence written statement filed by defendant No. 5 does not merit any consideration.

6 Defendants No. 1 & 2 in their written statement have not disputed that the suit property is owned by the HUFs, namely defendant No. 1 in this suit. Defendants No. 1 & 2 have further admitted in their written statement that plaintiffs No. 1 & 2 were not made parties to the agreement to sell as defendant No. 5 did not want them to sign the said agreement. Defendants No. 1 & 2 have also admitted in their written statement that the plaintiffs being the members of the HUFs have a share in the suit property being the co-parceners of the HUFs. However, a plea has been taken by defendants No. 1 & 2 in their written statement that defendant No. 2 being the karta of the HUFs had a right to sell the suit property and it is stated that if the plaintiffs have objection to the sale, defendant No. 2 is ready and willing to return the advance

of Rs.39 lacs received by him from defendant No. 5 because the property belongs to HUFs and cannot be sold if the plaintiffs have objection to the same.

7 From the pleadings of the parties, following issues were framed in the suit on 11.08.2008.

- 1. Whether the suit property is owned by HUF the defendant No. 1? OPP.*
- 2. Whether the agreement to sell dated 24th July, 2006 between the defendants No. 2 to 4 and the defendant No. 5 is void? OPP.*
- 3. Relief.*

8 The plaintiffs in their evidence have filed only one affidavit of plaintiff No. 1 to prove their case stated in the plaint. No evidence has been produced by any of the defendants.

9 I have heard the arguments of Mr. Rahul Gupta, learned counsel appearing on behalf of the plaintiffs and of Mr. Girish Aggarwal appearing on behalf of defendants No. 1 & 2. I have also gone through the entire case file with utmost care. My findings on the above issues are as follows:-

ISSUE NO. 1

10 The plaintiffs claim that the suit property is a HUF property owned by defendant No. 1. They have proved the sale deeds of the suit property and they are Ex. P-1 and Ex. P-2. A perusal of these two sale deeds makes it clear that the suit property was purchased in the name of the HUFs being defendant No. 1 herein. In fact defendant No. 2 who is the karta of the HUFs has admitted in his

written statement that the suit property is a HUF property. No evidence has been placed by the defendants on record to rebut the fact that the suit property was purchased in the name of the HUFs and that as on date, the said property is owned by the HUFs. I, therefore, hold that the suit property is owned by defendant No. 1 (HUFs).

11 This issue is decided in favour of the plaintiffs and against the defendants.

ISSUE NO. 2

12 It is not disputed that the plaintiffs are the members of the HUFs (defendant No. 1) and that they are entitled to have a share in the suit property being the members of the HUFs. Defendants No. 1 & 2 in their written statement have admitted that at least plaintiffs No. 1 & 2 were not associated or made parties to the agreement to sell dated 24.07.2006 entered into between defendants No. 2 to 5. Defendant No. 2 has taken a stand in his written statement that he was competent to sell the suit property and this stand taken by him, in my view, is not tenable in law because the law is well settled that the karta of a HUF can sell the property owned in the name of HUF only in case of legal necessity for family needs. There is no evidence on record to show that defendant No. 2 being the karta of the HUFs had agreed to sell the suit property to defendant No. 5 for any family need and therefore the alleged transaction of sale by him at least to the extent of the plaintiffs' share in the suit property has to be declared null and void. The Court has been

informed that defendant No. 5 who had agreed to purchased the suit property from defendants No. 2 to 4 has already filed a suit for specific performance of agreement to sell dated 24.07.2006 and that suit filed by him is stated to be pending in this Court. The legality and validity of the right of defendants No. 2 to 4 to sell their share in the suit property will be considered by the Court in the suit for specific performance filed by defendant No. 5. However, the agreement to sell dated 24.07.2006 is void to the extent of the plaintiffs' share in the suit property as they are admittedly the members of the HUFs and were not made parties to the said agreement to sell.

13 In view of the above, I hold that the agreement to sell dated 24.07.2006 is void to the extent of the plaintiffs' share in the suit property. This issue is decided accordingly in favour of the plaintiffs and against the defendants.

RELIEF

14 In view of my findings on the above issues, this suit is decreed in the following terms:-

1 The suit property bearing mustil No. 62, Khasra No. (0-7) admeasuring 36 bigha, 8 biswa situated at village and PO Kanganheri, Tehsil Najafgarh, New Delhi is declared to be a HUF property owned by defendant No. 1 and

2 The sale agreement dated 24.07.2006 between defendants No. 2 to 4 and defendant No. 5 is declared void to the extent of the plaintiffs' share in the suit property.

15 In the peculiar facts of this case, the parties are left to bear

their own costs.

April 30, 2009
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S.N.AGGARWAL
[JUDGE]