

**Saroj Salkan**  
v.  
**Huma Singh & Ors.**

(Civil Appeal No. 6389 of 2025)

06 May 2025

**[Sanjay Karol and Manmohan,\* JJ.]**

**Issue for Consideration**

Matter pertains to the correctness of the dismissal of the partition suit u/Ord.XII r.6 CPC by the Single Judge of the High Court based on the admission, and that too on its own motion without an application being filed by the other party.

**Headnotes<sup>†</sup>**

**Code of Civil Procedure, 1908 – Ord.XII r.6, Ord.VII r.11 – Judgment on admissions – Suit filed by the appellant u/s.6 of the 1956 Act for partition, injunction and accounts involving five properties, held by the appellant’s father against the legal heirs of appellant’s brother and his sister-respondent no. 6 – Parties previously involved in declaratory suits regarding the properties – After completion of pleadings when the partition suit was listed for framing of issues, the Single Judge passed a decree dismissing the partition suit u/Ord.XII r.6 observing that no cause of action arises – Division Bench upheld the decree – Correctness:**

**Held:** Submission that the Single Judge could have dismissed the suit u/Ord.VII r.11 alone and not u/Ord.XII r.6 and that too without any application being filed by the respondents is untenable in law – Ord.XII r.6 gives a very wide discretion to the Court to pass a judgment at any stage of the suit and that too on its own motion, without any application being filed by any party – Ord. XII r.6 authorises the Court to not only pass a decree regarding admitted claim, but also to dismiss the suit – On facts, the effect of the decrees in the declaratory suits, was that the appellant cannot go behind them in the present proceedings – Respondent no.6-sister estopped from contending that property B is owned

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\* Author

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by a co-parcenary/HUF of which she is a member – Furthermore, proviso to sub-section 1 of amended s.6 of the 1956 attracted to the instant case and submission by appellant and respondent no.6 with respect to s. 6 not applicable to the instant case – Also the suit to the extent it challenges ownership of Anand Niketan house is barred by limitation – Order passed by the High Courts upheld – Hindu Succession Act, 1956. [Paras 36-49]

#### **Case Law Cited**

*Uttam Singh Duggal & Co. Ltd. v. United Bank of India [2000] Supp. 2 SCR 187 : (2000) 7 SCC 120; Bhim Rao Baswanth Rao Patil v. K. Madan Mohan Rao [2023] 9 SCR 1218 : 2023 SCC OnLine SC 871; Vineeta Sharma v. Rakesh Sharma and Ors. [2020] 10 SCR 135 : (2020) 9 SCC 1; Maria Margarida Sequeira Fernandes & Ors v. Erasmo Jack De Sequeira (D) Tr. Lrs. & Ors. [2012] 3 SCR 841 : (2012) 5 SCC 370; Rajiv Ghosh v. Satya Naryan Jaiswal, Special Leave Petition (Civil) No. 9975 of 2025; ITDC Limited v. Chander Pal Sood and Son (2000) 84 DLT 337 (DB); Kalyani (Dead) by LRs. v. Narayanan [1980] SCR 1130 : (1980) Supp. SCC 298 – referred to.*

#### **Books and Periodicals Cited**

Mayne's Hindu Law, 11th Edition, p. 347 – **referred to.**

#### **List of Acts**

Code of Civil Procedure, 1973; Hindu Succession Act, 1956.

#### **List of Keywords**

Partition; Dismissal of suit; Consensual decree; Self acquired property; Co-parcenary; Hindu Undivided Family; HUF; Joint Hindu family; Dismissal of the partition suit; Judgment on admissions; Declaratory suits; Partition suit listed for framing of issues; Cause of action; Limitation.

#### **Case Arising From**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6389 of 2025

From the Judgment and Order dated 15.11.2022 of the High Court of Delhi at New Delhi in RFA (OS) No. 51 of 2016

**Supreme Court Reports****Appearances for Parties**

*Advs. for the Appellant:*

Dushyant Dave, Sr. Adv., Shubhankar Sengupta, Aarush Bhatia,  
Ms. Anindita Mitra.

*Advs. for the Respondents:*

P.S. Patwalia, Sr. Adv., Nidhesh Gupta, Sr. Adv., Sameer Singh,  
Ms. Neelam Singh, Purushottam Sharma Tripathi, Ms. Vani Vyas,  
Prakhar Singh, Narendra Prabhakar, Gopal Jha, Nimish Arjaria,  
Umesh Kumar Yadav, Shubhankar Sen Gupta, Aarush Bhatia,  
Sanjay Kumar Singh, M/S. Vachher And Agrud, Sameer Rohatgi,  
Sumit Kumar Sharma, Rajat Sangwan, Ms. Shehla Chaudhary, Md.  
Anas Chaudhary, Mohd. Sharyab Ali, Ansar Ahmad Chaudhary,  
Kartikey Singh.

**Judgment / Order of the Supreme Court****Judgment**

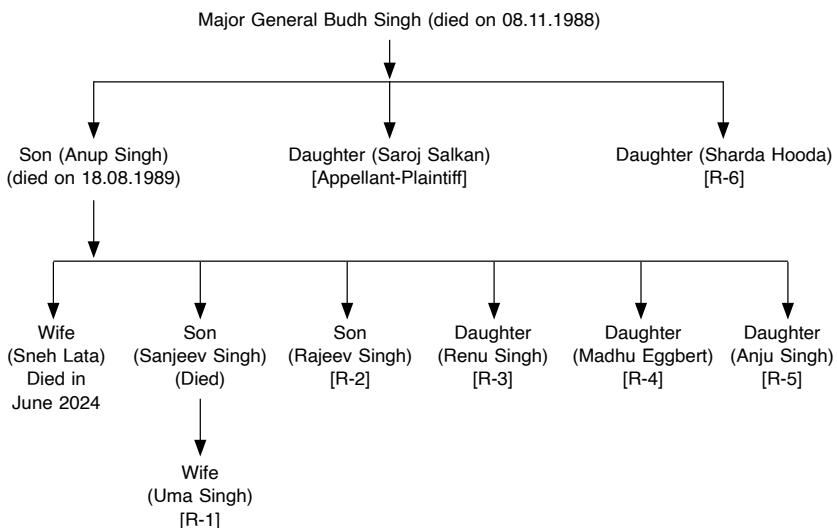
**Manmohan, J**

1. Leave granted.
2. The present Appeal has been filed challenging the impugned judgment and final order dated 15<sup>th</sup> November, 2022 passed by the High Court of Delhi in RFA (OS) No. 51/2016, whereby the Division Bench dismissed the appeal and upheld the Decree dated 5<sup>th</sup> May, 2016 passed by the learned Single Judge in CS(OS) No. 683/2007 dismissing the partition suit under Order XII Rule 6 of the Code of Civil Procedure, 1908 ("CPC") with liberty to approach the competent Court at Sonepat, Haryana for partition of land situated in Barota.
3. The subject suit was filed by the Appellant-plaintiff under Section 6 of the Hindu Succession Act, 1956 for partition, injunction and accounts involving five properties held by the Appellant-plaintiff's father – Late Major General Budh Singh against the legal heirs of Anup Singh i.e. brother of Appellant-plaintiff and her sister, Respondent No.6, who is supporting the case of the Appellant-plaintiff. The five properties that were made the subject matter of the suit for partition were:-
  - (a) Barota Land (72 acres approx. with farmhouse)
  - (b) Agriculture land – 11 acres at Kalupur, Sonepat

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- (c) 8 Bigha of Dairy Plot at Sonepat
- (d) Bhatgaon Land (30 acres of houses, outhouses and orchard)
- (e) C-38, Anand Niketan, New Delhi.

4. The pedigree table of the family, for quick reference is as under:



5. After completion of pleadings when the partition suit was listed for framing of issues, the learned Single Judge passed a decree of dismissal of the suit observing '*as per admitted pleadings and documents no cause of action arises, no issues are required to be framed and accordingly I exercise my powers under Order XII Rule 6 CPC to pass a decree; decree includes dismissal of a suit...*'. The relevant portion of the impugned order passed by the learned Single Judge is reproduced hereinbelow:-

*"11. Accordingly, the following conclusions can be derived on the basis of the pleadings and the admitted documents on record:—*

*(i) In the subject suit for partition, and properties whereof are stated in para 2 of the plaint, as regards the properties stated in para 2(b) and 2(c), no details of these properties have been provided as required by Order VII Rule 1, Order VII Rule 3 read with Order VI Rule 4 CPC, and hence*

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*the suit plaint is not maintainable for seeking partition of these properties which are alleged to exist, but which really do not exist. This aspect is to be taken note of with the fact that no documents whatsoever have been filed by the plaintiff (assuming such documents form part of the pleadings) which will give the municipal number or the revenue numbers or the areas of these properties. Suit is therefore liable to be and is accordingly dismissed for properties stated in para 2(b) and 2(c) of the plaint being the properties situated at Kalupur and dairy plot at Sonepat in Haryana.*

*(ii) The plaint and the replication as they stand allege existence of HUF and its properties on account of late Gen. Budh Singh having acquired ancestral properties but not only no details are pleaded/given of which are the specific ancestral properties which are acquired by late Gen. Budh Singh, and also it is further not pleaded as to which of these specific properties were inherited by late Gen. Budh Singh prior to 1956. Once there do not exist averments of inheritance of specific properties by Gen. Budh Singh prior to 1956, no HUF of these properties can be said to exist of having come into existence prior to 1956.*

*(iii) The only other way thereafter that HUF and its properties could exist is if Gen. Budh Singh who inherited ancestral properties had thrown the properties into a common hotchpotch, but that too is not the case as set out in the plaint of HUF and its properties being created on account of late Gen. Budh Singh throwing the property or properties into common hotchpotch.*

*(iv) Challenge by the plaintiff to the Judgment and Decree dated 8.3.1977 passed in suit no. 66/1977 on the ground that this decree is collusive and not binding is liable to fail by virtue of Article 59 of the Limitation Act, 1963 inasmuch as challenge in the year 2007 to a judgment and decree passed 30 years back on 8.3.1977 is hopelessly barred by limitation.*

*(v) So far as the property at C-38, Anand Niketan is concerned, once title deeds of this property are admittedly*

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*in the name of late Sh. Anup Singh (and who is now represented by his legal heirs, defendant nos. 1 to 5), the suit is barred by Section 4(1) of the Benami Act read with the fact that no sufficient pleadings exist for existence of HUF and its properties and of the property at C-38, being an HUF property.*

*(vi) So far as the land situated at Barota, Sonepat is concerned and with respect to which the case of the defendant is that late Gen. Budh Singh died leaving behind his Will dated 3.11.1987 and this Will is disputed by the plaintiff, I need not examine the merits of the matter because the suit land is situated at Sonepat, Haryana and therefore in view of Section 16 CPC, suit for this land at Barota, Sonepat on the cause of action that father was the exclusive owner of this property and who died intestate and hence plaintiff as a legal heir will inherit a share in the properties of the father will have to be dealt with and decided by the competent court at Sonepat, Haryana."*

6. The appeal filed by the Appellant-plaintiff was dismissed by the Division Bench vide judgment and order dated 11<sup>th</sup> October, 2022. The relevant portion of judgment and order passed by the Division Bench is reproduced hereinbelow:-

*"16. Barring aforesaid, learned counsel for appellant has neither pleaded nor advanced any arguments nor thrown any light over the legal position nor cited any case laws regarding any of the issues/grounds, especially the relevant quoted provisions of the Code and the Limitation Act, recourse whereto form the very basis of dismissal of suit of appellant by the learned Single Judge under Order XII rule 6 of the Code vide the impugned judgment. In support of her contentions, though learned counsel for appellant has relied upon more than 30 judgments with respect to the law expounded qua HUF, ancestral property, coparcenary, joint family property, so on and so forth but we are afraid the learned counsel for appellant has failed to draw our attention or cite any law regarding the two fundamental issues of pleadings and limitation for maintainability of the present appeal. Appellant, thus failing to cross over the*

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*main obstacles is unable to counter the basic essence of the impugned judgment..."*

**SUBMISSION ON BEHALF OF APPELLANT-PLAINTIFF**

7. Mr. Dushyant Dave, learned senior counsel for the Appellant-plaintiff submitted that the impugned judgment dated 05<sup>th</sup> May 2016 was untenable in law, inasmuch as, the learned Single Judge had dismissed the partition suit under Order XII Rule 6 CPC. He submitted that the plaint could have been rejected and the suit dismissed under Order VII Rule 11 CPC alone. He further submitted that the learned Single Judge could not have dismissed the suit under Order XII Rule 6 CPC and that too on its own motion without an application being filed by the Respondents. In support of his submission, he relied upon the judgment of this Court in ***Uttam Singh Duggal & Co. Ltd. V. United Bank of India 2000 (7) SCC 120*** and ***Bhim Rao Baswanth Rao Patil vs. K. Madan Mohan Rao 2023 SCC OnLine SC 871***. The relevant portion of the judgment in ***Uttam Singh Duggal & Co. Ltd. (supra)*** is reproduced hereinbelow:-

*"As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled". We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed."*

8. He submitted that the learned Single Judge had committed a serious error in holding that a reading of the plaint did not show creation and existence of a Hindu Undivided Family ('HUF') of Late Major General Budh Singh prior to 1956. He emphasised that the plaint

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clearly disclosed that the properties were ancestral in nature and were owned by the HUF of Late Major General Budh Singh. In support of his submission, he relied upon the judgments passed in four Suits filed among some of the parties at different points of time with respect to the five properties that were the subject matter of the present partition suit.

9. He stated that the suit for declaration being Suit No. 671/1 of 1972 (hereinafter referred to as "Suit I") filed by the present Appellant along with her sister (Respondent No.6) and minor sons of their brother Anup Singh on 25<sup>th</sup> March, 1972 proceeded on the basis that the Barota and Bhatgaon lands were HUF properties. He stated that the Trial Court decreed that suit because Major General Budh Singh (Late father of Appellant-plaintiff, Respondent No.6 and Anup Singh himself) appeared and filed a written statement and so did Anup Singh accepting the claim of the plaintiffs therein. He emphasised that the Trial Court decreed Suit I on 06<sup>th</sup> April, 1972 declaring plaintiffs No. 1 to 4 to be owners in possession of the Barota land detailed against their name in para no.4 of the plaint and holding that Late Major General Budh Singh (defendant therein) has no right, title or interest in the same.
10. Mr. Dave, learned senior counsel, stated that subsequently, a second suit being Suit No. 66/1977 (hereinafter referred to as "Suit II") was filed by Late Major General Budh Singh against his daughters alone i.e. Appellant-plaintiff and Respondent No.6 claiming Barota lands decreed in favour of his daughters to be his personal property, fearing that the lands may be declared excess land under the Haryana Land Ceiling Act. He pointed out that Suit II was predicated on the premise that the decree passed in Suit I was declared a nullity qua Appellant-plaintiff and Respondent no. 6 herein by Collector Surplus.
11. He stated that the present Appellant-plaintiff and sister-Respondent No.6 filed a written statement in Suit II categorically averring that "*Though the defendants got a decree in their favour in the year 1970 regarding the land detailed in para No.1 of the plaint but no right or title was recognised or admitted by the our/us authorities and the plaintiff continued to be owner in possession of the said land and as such the decree of the Sub Judge Sonipat dated 7.4.72 was declared a nullity in the eyes of law and could not be accepted upon. The plaintiff continued to be owner in possession of the said land.*"

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12. He stated that the Trial Court passed a consensual decree in the said suit on 08<sup>th</sup> March, 1977 declaring the decree dated 04<sup>th</sup> March, 1972 passed in Suit I as a nullity. He submitted that since Suit II had been decreed, therefore, the partition claimed under the Suit I did not, in any event, survive.
13. He emphasised that a third suit being Suit No. 219/1978 (hereinafter referred to as "Suit III") was filed by Anup Singh against his own father categorically averring that Barota and Bhatgaon properties were ancestral properties and that the sisters on account of having been married had no interest or title in the ancestral properties and were no longer members of the HUF. The said suit was decreed on admission on 6<sup>th</sup> October, 1978.
14. He lastly stated that sons of Anup Singh filed a suit for declaration being Suit No. 622/1984 (hereinafter referred to as "Suit IV") against Mr. Anup Singh their own father with regard to Anand Niketan house. He stated that this suit was also decreed on admission of defendant therein on 03<sup>rd</sup> January, 1985.
15. Mr. Dave submitted that with these documents on record the learned Single Judge could not have dismissed the suit for lack of particulars and the Division Bench could not have dismissed the Appeal on the ground that the said decrees were not challenged, completely overlooking that the sisters, Appellant-plaintiff and Respondent No.6, were young at that point of time and were under the influence of the powerful personality of their late father and therefore agreed to sign papers as directed. According to him, it is a matter of common knowledge that daughters in most Hindu families have little or no say whatsoever. He contended that, be as it may, the existence of HUF stood proved in the said proceedings. He emphasised that the decrees against the sisters were clearly sham decrees only to override the provisions of the Ceiling Laws as the plaint in Suit II clearly averred that the Collector Surplus did not accept the decree passed in Suit I.
16. Lastly, Mr. Dave, learned senior counsel, submitted that the impugned judgments frustrate and negate the statutory amendment brought about by Parliament in the Hindu Succession Act 1956, by substituting Section 6 with effect from 09<sup>th</sup> September, 2005. He submitted that the learned Single Judge and Division Bench failed to appreciate that the amended Section 6 had retroactive application. In support of

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his submission, he relied upon the judgment of this Court in ***Vineeta Sharma vs. Rakesh Sharma and Ors. (2020) 9 SCC 1***, wherein it has been held as under:-

**“54. ... The goal of gender justice as constitutionally envisaged is achieved though belatedly, and the discrimination made is taken care of by substituting the provisions of Section 6 by the 2005 Amendment Act.**

xxxx                  xxxx                  xxxx                  xxxx

**60. ... Though the rights can be claimed, w.e.f. 9-9-2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener....**

**61. ... Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act.**

xxxx                  xxxx                  xxxx                  xxxx

**67. The proviso to Section 6(1) and Section 6(5) saves any partition effected before 20-12-2004. However, Explanation to Section 6(5) recognises partition effected by execution of a deed of partition duly registered under the Registration Act, 1908 or by a decree of a court. Other forms of partition have not been recognised under the definition of “partition” in the Explanation.**

xxxx                  xxxx                  xxxx                  xxxx

**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 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....”**

**Supreme Court Reports****SUBMISSION ON BEHALF OF OTHER SISTER, RESPONDENT NO.6**

17. Mr. Nidhesh Gupta, learned senior counsel appearing on behalf of sister-Respondent No.6, stated that in view of the admission in Suit IV filed by Shri Sanjiv Singh and Shri Rajiv Singh against Anup Singh that 'joint family owned ancestral/co-parcenary family properties both in Village Bhatgaon and Village Akbarpur Barota', the contention of the Respondents that Barota land was a grant in favour of Late Major General Budh Singh and therefore it was his self-acquired property was misplaced. He submitted that once there was an admission by the opposite party that the property was co-parcenary, more so, in an earlier suit, the existence of the property being co-parcenary cannot be disputed in the present proceedings.
18. He further stated that the Respondent Nos.1 to 5 had admitted in their written statement (filed in the subject suit) that the Bhatgaon property was ancestral property of Late Major General Budh Singh and that he had sold some land in Bhatgaon and with the sale proceeds had purchased the plot in Anand Niketan.
19. He also contended that Suit II had been filed by Late Major General Budh Singh with clear intent to reverse the revenue entries in favour of the Appellant-plaintiff and Respondent No.6. He emphasised that the alleged admissions with respect to Late Major General Budh Singh being the owner of the Barota property were made by the Appellant-plaintiff and Respondent No.6 herein as the decree dated 07<sup>th</sup> April 1992 (in Suit I) had not been accepted by Collector Surplus and that the said decree had been declared collusive. He submitted that the Courts below had failed to appreciate the pleading of Respondent Nos.1 to 5, not only in the earlier proceedings but also in the written statement in the present proceedings.
20. In any event, he submitted that the Appellant-plaintiff and Respondent No.6 should have been given an opportunity to explain the alleged admissions in Suit II during the trial of the present case.

**SUBMISSION ON BEHALF OF RESPONDENT NO.2**

21. At the outset, Mr. P.S. Patwalia, learned senior counsel for the Respondent No.2 contended that no cause of action had arisen *qua* properties at Kalupur, Bhatgaon land and dairy plot at Sonepat, as

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they do not exist. He pointed out that the plaint did not disclose any details or exact description and area cross referencing with revenue/municipal records with respect to land at Kalupur and dairy plot at Sonepat.

22. He further stated that the Appellant-plaintiff had given up her claim in respect of Barota land in the written submissions filed before the Division Bench and the same had been recorded by the Division Bench in the impugned judgment as under:-

*"12. It is to be noted, that based on the pleadings of the parties, finding no details qua two ancestral properties, being Kalupur land and Dairy plot, by appellant and denial of the same by respondents, learned Single Judge vide the impugned Judgment dismissed the suit of the appellant qua the said two properties in limine, which has not been challenged before this Court. Similarly, qua the Barota land also, appellant during the course of arguments and in written submissions submitted as under:—*

*"With regard to the plea of the land Barota being agricultural property and covered by the Punjab Land Revenue Act It is stated that since the defendant have propounded a will the matter has to be adjudicated in court the legal consequences of which will bear upon the said property."*

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*35. It is reiterated that the dismissal of the suit qua the three ancestral properties being Kalupur land, Dairy plot and Barota land by the learned Single Judge has not been challenged before this Court, and therefore there is no requirement for us to venture into the same. The suit of appellant qua the two ancestral properties being Kalupur land and Dairy plot, stands dismissed in limine vide impugned judgment of the learned Single Judge and qua the Barota land appellant has been rightly granted liberty to approach the appropriate forum at Sonepat, Haryana having appropriate jurisdiction, as in light of Section 16 of the Code, that the cause of action qua the Barota Land arises there."*

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23. He emphasised that the Appellant-plaintiff had herself admitted in her replication that the Barota land was awarded to Late Major General Budh Singh as a gallantry award during the second world war. He submitted that it is settled law that a grant/award is the self-acquired or personal property of the awardee, which implies that Barota land was self-acquired property of Late Major General Budh Singh and not an HUF property. In any event, he stated that the Barota land which was the only property owned by Late Major General Budh Singh devolved upon his paternal grandsons by way of a registered Will dated 03<sup>rd</sup> November, 1987.
24. He further stated that, admittedly, C-38, Anand Niketan house was purchased by Late Major General Budh Singh in 1968 and then on a request made by Late Major General Budh Singh, the same was transferred by the Government to Anup Singh, by a duly registered perpetual sub-lease deed, way back on 3<sup>rd</sup> April, 1970.
25. Learned senior counsel for the Respondent No.2 laid considerable emphasis on the pleadings, prayer and judgments passed in the four suits by the Sonepat Court, the same are reproduced hereinbelow:-

**I. a) Parties to the Suit**

In the Case No.671/1 of 1972 (**Suit I**, decreed on 06<sup>th</sup> April, 1972) titled ***Sanjiv Singh, Rajiv Singh, Saroj Salkan and Sharda Rani vs. Gen. Budh Singh and Anup Singh***, there were four plaintiffs and two defendants.

**b) Relevant averments in the plaint**

*2...Gair mumkin situated in the village Barota Tehsil Sonipat according Jamabandi for the year 1966-67 is owned by the defendants and plaintiff No.1, due to ancestral property the same comes in equal share and on which the plaintiff and defendant No.1 are having possession on their share of the said separately as owner under the following manners and the parties are having no concern with the petition of another. The copy of the JAMABANDI is annexed.*

*3. That the land situated at Village Bhatgaon Tehsil SONIPAT was the property of the parties and the defendant no.2 is having possession on it. The same comes under the share of defendant No.2 in mutual partition and the defendant No.2 is an absolute owner and possession of*

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*the entire land situated at Village Bhatgaon. Therefore, the defendant No.2 is having no concern with the land as mentioned in para No.1 because the plaintiff and the defendants are entitled to get equal share in the above said property as mentioned in para No.1 as a legal heirs.*

4. That due to the mutual partition the plaintiffs and defendant No.1 are the owner and possessors as under and no concern of one owner to the share of another owner. Details of the land of plaintiff no.1 to 4 and the defendant No.1 is as under :-

a) The share of landlord namely Sanjeev Singh i.e. plaintiff No.1 is as under:-

*Khewat No.49, Khata No.67 Musttil and Killa Nos.*

7			
21	22	23	24
8-0	8-0	8-0	7-1
8			
21	0/1	10	
7-11	7-0	7-11	7-12
7-11	7-0	7-11	7-12
10			
7	8	9	10
7-12	8-0	8-0	8-0
<i>measuring area 114 kanals 19 marla</i>			

*The share of owner Rajeev Singh Plaintiff No.2 is as under:-*

*Khewat No.19 Khata No.67 Mustatil and Killa Nos.*

11								
6	7	8	13	14	15	16	17	18/1
8-0	8-0	8-0	8-0	8-0	8-0	8-0	8-0	1/11
11								
24	25	11	12	19	20			
8-0	8-0	8-0	8-0	8-0	8-0			

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*Measuring 113 Kanals 11 Marla*

c) *the share of owner Smt. Saroj Salkan plaintiff No.3 is as under:- Khewat No.49 Khata No.67 Mustail and Killa Nos.*

			1			3	
			23		1	2	
			0-13		5-0	7-7	8-0
			3				
8	9	10	11	12	13	19/2	20
8-0	8-0	8-0	8-0	8-0	8-0	3-12	8-0
			4				
5	6	15	16	24	25	6	
0-12	2-14	4-8	7-06	1-8	8-0	8-0	

*Measuring area 113 kanals 6 marlas*

d) *That the share of owner Kumari Sharda Rani plaintiff No.3 is as under:-*

*Khewat No.49 Khata No.67 Mustatil and Killa Nos.*

				6		
			4	6	7	8
			414	8-0	7-12	0-11
						13
						3-14
			6			
14	15	16	17	18	23	24
8-0	8-0	8-0	7-9	7-16	8-0	8-0
						25
						8-0
			11			
3	4	5				
7-11	7-11	7-1				

*Measuring area 109 Kanals 19 marlas*

E) *That the share of owner Budh Singh is as under Khwa No.49, Khata No.67 Mustatil and Killa Nos.*

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			10				
11	12	13	14	17/2	18	19	
8-0	7-16	8-0	8-0	8-0	8-0	8-0	
			10				
20	21	22	23	24			
8-0	8-0	7-16	7-16	0-13			
			16				
1	2	3/4	9	10/1			
7-11	7-11	4-7	8-12	7-4			

*Measuring area 119 Kanals 14 Marlas situated in the Village Akbarpur Barota Tehsil Sonipat.*

*E) That the share of owner Budh Singh is as under Khwa No.49, Khata No.67 Mustatil and Killa Nos.*

			10				
11	12	13	14	17/2	18	19	
8-0	7-16	8-0	8-0	8-0	8-0	8-0	
			10				
20	21	22	23	24			
8-0	8-0	7-16	7-16	0-13			
			16				
1	2	3/4	9	10/1			
7-11	7-11	4-7	8-12	7-4			

*Measuring area 119 kanals 14 marlas situated in the Village of Akbarpur Baroa Tehsil Sonipat.*

c) **Prayer**

*Measuring 119 kanals 11 marla situated in the Village Akbarpur Barota Tehsil Sonipat is possessed as occupier and declare owner and on this land defendant No.2 have no concerned and defendant No.1 only owner agriculture*

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*land as written in para No.4 and the mutation of the parts about their lands may kindly be mutate in the revenue records. It is also prayed that the costs of the case may also be awarded in favour of the plaintiffs and against the defendants. Any other or further order which this Hon'ble Court may deem fit and proper may also be passed. It is prayed accordingly.*

d) **Judgment**

*1. The brief facts of the present suit for declaration are that plaintiffs 1 and 2 are sons of defendant No.2 and defendants 3 and 4 are daughters of defendant No.1. The defendant No.2 is son of defendant No.1. That land detailed in para 2 of the plaint was owned by defendant No.1 but it was ancestral in his hand. As such plaintiffs 1 to 4 had also a share in the same. That in the year 1971 it was partitioned between plaintiffs 1 to 4 and defendant No.1 in the manner as detailed in para 4 of the plaint. Plaintiff No.1 got the land detailed in sub para (k) plaintiff No.2 got the land detailed in sub para (kha) plaintiff No.3 got the land detailed in para (ghe) plaintiff No. 4 got the land detailed in sub para (Ghhe). The remaining land remained with defendant No.1. That defendant No.2 got the land situated in village Bhatgaon. That parties are in possession of the land which came to their share since then as owners. That the land detailed in para 5 of the plaint was kept joint. As defendant started claiming titled the present suit for declaration was filed.*

*2. Defendant No.1 appeared through Sh. S.P. Jain Advocate Sonepat and filed a written statement. Defendant No.2 appeared in person and also filed a written statement .... the suit of the plaintiffs is liable to be decreed.*

*3. For the above reasons I pass a decree declaring plaintiffs 1 to 4 to be owners in possession of the land detailed against their name in para No. 4 of the plaint. Defendant has no right, title or interest in the same.*

*4. Parties are left to bear their own costs.*

**Saroj Salkan v. Huma Singh & Ors.****II. a) Parties to the Suit**

In the case No.66 of 1977 (**Suit II**, decreed on 08<sup>th</sup> March, 1977) titled as **Major General Budh Singh vs. Saroj Salkan and Sharda Hooda**, there was one plaintiff and two defendants.

**b) Relevant averments in the plaint**

1. *That the plaintiff (Late Gen. Budh Singh) was owner of land measuring 113 kanals 6 marlas comprised in Khewat No.49, Khata No.67 rectangle and kila No.1/23.... and land measuring 110 kanals 9 marlas comprising in Khewat No.49 Khata No.67 rectangle and kila no... situated in the area of village Akbarpur Barota, Tehsil and district Sonepat vide jamabandi for the year 1966-67 alongwith other land as detailed in the said jamabandi of the jamabandi 1966-67 is attached herewith.*
2. *That the defendant in the year 1972 on 24.3.72 alongwith the sons of Anup Singh Sanjeev Singh and Rajeev Singh filed a declaratory suit against the plaintiff in the court of Sub Judge, Sonepat and the above said land detailed in para No.1 if the land was declared the ownership of the defendants whereas the said land was owned and possessed by the plaintiff at that time and now also the said land detailed in para No.1 of the plaint continuous to be owned and possessed by the plaintiff because the said decree of the Sub Judge Sonepat dated 7.4.72 was not accepted by the Collector surplus and the land detailed in para No.1 was assessed and calculated in the area of the plaintiff. The said decree was declared collusive between the parties and under the eyes of law as provided under sections 8 and 12 of the Haryana Land Ceiling Act the above said transfer under the decree does not effect the rights of the original owner i.e the plaintiff and the plaintiff continues to be owner in possession of the said land.*

**c) Prayer**

*That the plaintiff prays for a decree for declaration to the effect that the land detailed in para No.1 of the plaint continues to be owned and possessed by the plaintiff*

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*and the revenue entries in the name of the defendants are wrong and ineffective as the decree of the civil court dated 4.3.72 has been declared a nullity by the civil court and the defendants have no right, title with the same be passed in favour of the plaintiff against the defendants with costs. Any other relief deemed proper be also awarded.*

d) **Decree/Judgment**

1. *The plaintiff has filed this suit for declaration to the effect that the plaintiffs are owners in possession of the suit land and that the defendants have no concern or titled thereto-.*
2. *The defendants appeared through counsel and filed written statement admitting the claim of the plaintiffs. Statements of parties/counsel have been recorded.*
3. *Since the parties are not on issue on any of the points, the suit is decreed as prayed for leaving parties to bear their own costs.*
4. *Decree-sheet be drawn accordingly.*

III. a) **Parties to the Suit**

Thereafter, **Suit III** being Suit No.219/1977 was filed by Anup Singh against his own father Late Major General Budh Singh praying for a declaration that Anup Singh was the owner as well as in possession of the Barota land covered by Suits I and II.

b) **Relevant averments in the plaint**

1. *That agricultural land measuring 119 kanals 14 marlas, and 56 kanals 16 marlas totaling 16 kanals 12 marlas, comprising in Khewat No. 52, Khatauni No.64, rectangles and killa No.....situated in the area of village Akbarpur, Barota Tehsil and distt. Sonepat vide jamabandi for the year 1971-72 along with other land in the same village and other villages such as Bhatgaon, as ancestral land of the parties and as shown in the name of the defendant No.1 in the previous Revenue Records. The copies of the jamabandi are attached herewith*

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2. That the above said land, detailed in para No.1 of the plaint along with other lands were wrongly entered in the names of Shrimati Saroj Salkan and Smt. Sharda daughters of the defendant, as owners in the Revenue Records in the year 1971-72 but the defendant after filing a suit in the Civil Court get the revenue records corrected and the above said lands as detailed in para No.1 of the plaint were again reverted in the name of the defendant and mutations No.2335 and 2336 were duly entered and sanctioned in the name of the defendant as owners and since the defendant is shown as owner of the above land as detailed in para No.1 of the plaint. Copies of the mutations are attached herewith.
3. That the plaintiff and the defendant constitute a Joint Hindu Family being father son and the said daughters Smt. Saroj Salkan and Smt. Sharda who have since been married, have no more remained members of the Joint Family and of the ancestral property in question, including land detailed in para No.1 of the plaint, being ancestral property constitutional Hindu Joint family parients to the said property being coparceners of the Hindu Joint Family are sons of the Hindu Joint Family in equal shares.
4. That the defendants disrupted the Hindu Joint family in the month of December, 1977 and divided all the Hindu Joint Family property in his hand of which the defendant was holding as Karta of the Joint Hindu Family at his own instance and the land detailed in para No.1 of the plaint was given to the plaintiff in the said family partition by the defendant.
5. That since December, 1977 when the land detailed in para No.1 of the plaint was given to the plaintiff in partition, the plaintiff is owner in possession of the same and the defendant has no right or title over the said land.

**c) Prayer**

*That the plaintiff prays for decree for declaration to the effect that the land detailed in para No.1 of the plaint is owned and possessed by the plaintiff and the defendants*

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*has no right or title over the same, be passed in favour of the plaintiff against the defendant with costs.*

d) **Judgment**

*In view of the admitted written statement as also admitted statement dated 29.9.78, the suit of the Plaintiff is liable to be decreed and is hereby decreed to the effect that the Plaintiff is the owner in possession of this suit land described in the heading of the Plaintiff. However, parties hereto have to bear their own costs. Decree Sheet is drawn accordingly.*

**IV. a) Parties to the Suit**

**Suit IV** being Suit No.622/1984 was between Anup Singh and his sons, where they constituted Joint Hindu Family and pertained to the Anand Niketan house. The said house was partitioned between them by virtue of the decree passed in the Suit.

b) **Relevant averments in the plaint**

1. *That the parties to the suit are governed by Hindu Law and they constitute a Joint Hindu Family, defendant as Karta of the Hindu Joint family and joint family owned ancestral / coparcenary family properties both in Village Bhatgaon and Village Akbarpur Barota and in the said Hindu Joint Family properties, the plaintiffs had birth right being co-parcener of the Hindu Joint family and therefore, the owner of 1/3<sup>rd</sup> each in the said properties and defendant was owner of 1/3<sup>rd</sup> share.*

2. *That the defendant about 10 years back sold away the coparcenary property i.e agricultural land measuring about 30 acres situated at Village Bhatgaon and joint family house, which formed the nucleus of the Joint Hindu family, by act of good management and out of the said sale consideration, the defendant purchased the plot No. C-38, situated at Anand Niketan, New Delhi and thereafter constructed a house thereon which is known as Khoti No. C-38, situated at Anand Niketan, New Delhi, shown in the site plan attached and bounded as under:-*

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*North: Service Lane 15' wide*

*South: Road 45' wide*

*East: Plot No. C-37*

*West: Plot No. C-39*

*3. That besides the above said house as detailed in para No.3, of the plaintiff, the said Hindu Joint family also, owns land in the name of the defendant, measuring 2 kanals 19 marlas, comprising Khewat No. 167, Khata No. 179, situated in the area of Village Lehlara, Teh. and Dist. Sonepat, vide Jamabandi for the year 1977-78, which was also purchased from Joint Family funds in the name of the defendant and in which also the plaintiffs and the defendant are owners in possession of 1/3<sup>rd</sup> share each. The copy of Jamabandi is attached.*

c) **Prayer**

*That the plaintiffs, most respectfully prayed that the decree for declaration to the effect that the plaintiffs are owners in possession of 2/3<sup>rd</sup> share of the properties i.e house C-38, Anand Niketan, New Delhi and shown in the site plan attached and land as detailed in paras No. 3 & 4 of the plaint and the defendant is only owner in possession of 2/3<sup>rd</sup> share in the same, be passed in favour of the plaintiffs and against the defendant, with costs. Any other relief which the Ld. Court deems fit and proper be also passed.*

d) **Judgment**

*1. The present suit has been instituted by the plaintiffs for declaration to the effect that the plaintiffs are owners in possession of 2/3<sup>rd</sup> share of the properties i.e. House C-38, situated in Anand Niketan, New Delhi and shown in the site plan attached and detailed in para no.3 and 4 of the plaint.*

*2. The suit is being not contested by the defendant. He has filed his written statement admitting the suit of the plaintiffs and has also got recorded his statement on oath to the same effect.*

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*3. Accordingly, the suit of the plaintiffs succeeds and a decree for declaration to the effect that the plaintiffs are owners in possession of 2/3<sup>rd</sup> share of the house situated in Anand Niketan New Delhi and shown in the site plan and detailed in para no.3 and 4 of the plaint, and the defendant is owner in possession of the remaining 1/3<sup>rd</sup> share in that house, is passed in favour of the plaintiffs and against the defendant, with no orders as to the costs, decree sheet be prepared accordingly and the file be consigned to the record room with due compliance.*

26. Learned senior counsel for Respondent No.2 submitted that effect of the four decrees was that the Appellant-plaintiff and Respondent No.6 stood ousted from all the properties of Late Major General Budh Singh.
27. He contended that the Appellant-plaintiff was required to furnish details as to how and when the self-acquired property was thrown into the fold of the co-parcenary property by Late Major General Budh Singh. He stated that the plaint lacked averments regarding exact details of specific date/month/year of creation of HUF for the first time by throwing property into common hotchpotch. He contended that a mere averment in the plaint that a Joint Hindu Family or HUF exists, was not enough, as detailed facts were required to be categorically stated as to when and how the properties had become HUF properties. Such averment had to be made by factual references *qua* each property claimed to be an HUF property. He emphasised that the plaint was silent about facts as to when (i.e. the exact date, month and year and whether before or after coming into force of the Hindu Succession Act, 1956) and how the personal property of Late Major General Budh Singh was thrown into the common hotchpotch to form an HUF.
28. He submitted that it is well settled law that when pleadings do not give sufficient details, the Court is not required to frame issues and can dismiss the claim or pass a decree on admission. In support of his submission, he relied upon the judgment passed by this Court in ***Maria Margarida Sequeira Fernandes & Ors v. Erasmo Jack De Sequeira (D) Tr. Lrs. & Ors. 2012 (5) SCC 370***, wherein it has been held as under:-

*"74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or*

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*pass a decree on admission. On vague pleadings no issue arises. Only when he so establishes, does the question of framing of an issue arise. Framing of issue is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case."*

29. He lastly stated that the Appellant-plaintiff by way of the instant suit had indulged in luxurious litigation. He pointed out that such act of the Appellant-plaintiff had been condemned by the Division Bench in the impugned judgement, wherein it was observed as under:-

*"47. We condemn the act of appellant, who in a very half-hearted, almost callous manner, chose to initiate this luxurious litigation wasting the precious time of the legal machinery by setting it into motion without any cause or purpose. The suit contains half-baked facts which are not permissible in law. Nothing stopped appellant from filing requisite proof to establish her case qua the Barota land; to challenge the previous judgment dated 08.03.1977 passed in Suit II; to challenge the title deeds in favor of late Mr. Anup Singh qua Anand Niketan property; take appropriate steps qua Bhatgaon land. The initiation thereof by appellant is a gross abuse of the process of law. Clever drafting and illusory basis cannot make the suit maintainable if it does not have any material basis. Learned Single Judge has rightly exercised his powers under Order XII rule 6 of the Code by nipping it in the bud, thereby closing the chapter of disputes qua the five ancestral properties involved."*

**SUBMISSION ON BEHALF OF RESPONDENT NO.3**

30. Mr. Narendra Prabhakar, learned counsel for Respondent No.3 stated that the present suit filed by Appellant-plaintiff was founded on two erroneous assumptions, namely, that there was a presumption of Joint Hindu Family property despite no specific averment in the plaint that a Joint Hindu Family had been constituted post 1957 and that all the decrees passed by the Courts below were false and inconsequential.
31. He submitted that in law there is a presumption that every Hindu Family which is joint in food and worship is a Joint Family; but there

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is no presumption that the estate is joint or that the properties of the family members belong to the Hindu Joint Family.

32. He stated that Sanjiv Singh (son of Anup Singh) sold a part of Barota land to Respondent No.6 vide sale deed dated 23<sup>rd</sup> January 1992 and subsequently, the said property was sold by Respondent No.6 to one Kuldeep Khatri vide sale deed dated 12<sup>th</sup> January 2000. He submitted that the aforesaid documents, by way of deemed fiction incorporated in Order XII CPC stood admitted by Respondent No.6.

**REJOINDER ARGUMENTS**

33. In rejoinder, Mr. Dushyant Dave and Mr. Nidhesh Gupta, learned senior counsel for the Appellant-plaintiff and Respondent No.6 fairly stated that their clients were confining their relief to Barota and Anand Niketan properties. They candidly stated that they were not pressing any relief *qua* lands at Kalupur, Sonepat, Bhatgaon and Dairy Plot at Sonepat.
34. They submitted that even if the rights with regard to Barota and Anand Niketan properties had reverted back to Late Major General Budh Singh they continued to remain co-parcenary properties in which the Appellant-plaintiff and Respondent No.6 continued to have a share. They stated that this position had been admitted by Mr. Anup Singh in paragraph 3 of the plaint filed in Suit III (which has been reproduced hereinabove).
35. They further submitted that decrees passed in the four suits were not partition decrees as the said decrees had been passed in declaratory suits.

**REASONING****ORDER XII RULE 6 CPC AUTHORISES THE COURT TO DISMISS THE SUIT ALSO**

36. Having heard learned senior counsel and learned counsel for the parties, this Court is of the view that the submission that the learned Single Judge could have dismissed the suit under Order VII Rule 11 CPC alone and not under Order XII Rule 6 CPC and that too without any application being filed by the Respondents, is untenable in law.
37. Recently, a coordinate Bench of this Court in ***Rajiv Ghosh vs. Satya Naryan Jaiswal, Special Leave Petition (Civil) No.9975 of 2025***

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***dated 07<sup>th</sup> April, 2025*** has upheld the view of the Division Bench of the Delhi High Court in ***ITDC Limited vs. Chander Pal Sood and Son, (2000) 84 DLT 337 (DB)*** that Order XII Rule 6 CPC gives a very wide discretion to the Court to pass a judgment at any stage of the suit and that too on its own motion i.e. without any application being filed by any party. In the said judgment, it was also held that Order XII Rule 6 CPC, authorises the Court to not only pass a decree regarding admitted claim, but also to dismiss the suit. The relevant portion of the judgment in ***Rajiv Ghosh*** (*supra*) is reproduced hereinbelow:-

*"36. A Division Bench of the Delhi High Court very correctly laid down the following interpretation of the provision of O. 12, R. 6, CPC, in the decision of ITDC Limited v. Chander Pal Sood and Son, reported in (2000) 84 DLT 337 (DB): (2000 AIHC 1990) :*

*"Order 12, R. 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing."*

xxx

xxx

xxx

*39. This rule authorizes the court to enter a judgment where a claim is admitted and to pass a decree on such admitted claim. This can be done at any stage. [See: Uttam Singh (*supra*)]. Thus, a plaintiff may move for judgment upon admission by the defendant in his written statement at any stage of the suit although he has joined issue on the defence." [See: Brown v. Pearson, (1882) 21 Ch D 716]. Likewise, a defendant may apply for dismissal of the suit on the basis of admission by the plaintiff in rejoinder."*

**EFFECT OF FOUR DECREES. APPELLANT-PLAINTIFF CANNOT GO BEHIND THEM**

38. This Court is of the opinion that it is important to appreciate the effect of four suits filed by different parties to this litigation between 1971 and 1984.

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39. Suit I for declaration (being Suit No.671/1) was filed by the present Appellant-plaintiff along with her sister Respondent No.6 and minor sons of their brother Anup Singh on 25<sup>th</sup> March, 1972 against Late Major General Budh Singh and Anup Singh with respect to Barota and Bhatgaon lands. There was no pleading in the said suit that any HUF was created post 1957. On the contrary, in the said plaint, it was averred by the Appellant-plaintiff and Respondent No.6 themselves that upon a mutual partition in 1971, the land situated at Barota was partitioned between the parties as detailed in paragraph 4 (four) of the plaint and the land situated at Village Bhatgaon, Tehsil Sonepat fell in the share of Anup Singh and that he was the absolute owner and in possession of the entire land situated at Village Bhatgaon.
40. Though Suit I was decreed by mutual consent in accordance with paragraph 4 (four) of the plaint, yet Late Major General Budh Singh filed Suit II (being Suit No.66/1977) against his two daughters alone i.e. Appellant-plaintiff and Respondent No.6 herein without impleading either his son (Anup Singh) or his paternal grandsons, who were parties to Suit I praying for a declaration that Late Major General Budh Singh continues to be the owner of the land situated at Village Barota and his daughters have no right or title in the said land as the decree of the civil court dated 4<sup>th</sup> March, 1972 had been declared a nullity by the Collector Surplus. It is pertinent to mention that in Suit II, Late Major General Budh Singh did not pray before the Court for a declaration of nullity of the decree dated 4<sup>th</sup> March, 1972 passed in Suit I. Late Major General Budh Singh in Suit II also did not seek recall of the decree dated 4<sup>th</sup> March, 1972 to the extent it granted relief to his paternal grandsons or to his son (Anup Singh). Consequently, the Court in Sonepat had no occasion and did not declare the decree in Suit I to be a nullity, in its entirety.
41. Therefore, on a co-joint reading of the pleadings, prayers and judgments/decrees in Suits I and II to which the Appellant-plaintiff and Respondent No.6 were parties along with their father (Late Major General Budh Singh), this Court is of the view that Appellant-plaintiff and Respondent No.6 had accepted their father as the absolute owner of Barota land. The effect of the decree in Suit II is that ownership of the entire Barota land stood reverted to Late Major General Budh Singh and the Appellant-plaintiff and Respondent No.6 stood ousted from the HUF of Late Major General Budh Singh. The

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revenue entries in the name of Appellant-plaintiff and Respondent No.6, to their knowledge, stood declared as wrong and ineffective. As the said decrees and findings were within the knowledge of the Appellant-plaintiff and Respondent No.6, they are bound by the same. Consequently, this Court is in agreement with the view of the Division Bench in the present case that, "*the issue of ownership in favour of late General has already been settled way back on 08.03.1977, which has neither been challenged nor set aside or modified or appealed by anyone much less the appellant before us. Thus, a decree by a Court of law is for all purposes final and binding upon all parties, including the appellant, involved therein. Such a decree, if not set aside is for perpetuity...*".

42. Thereafter, Suit III (being Suit No.219/1977) was filed by Anup Singh against his own father Late Major General Budh Singh praying for a declaration that Anup Singh was the owner as well as in possession of the Barota land covered by decrees passed in Suits I and II, except that part of the Barota land that fell in the share of Respondent No.6 by virtue of the decree passed in Suit I. Even this portion of Barota land which was owned by Late Major General Budh Singh (in view of the decree passed in Suit II) was willed by him in favour of his paternal grandsons (i.e. sons of Anup Singh). As Suit III was decreed by consent, Barota land is governed by the same.
43. Since the decrees passed in Suits II and III were never challenged by the Appellant-plaintiff and Respondent No.6 before any competent Court, despite they are having knowledge of the same, they cannot go behind the said decrees in the present proceedings and argue on the basis that they are a nullity and do not bind them. In this regard, the learned Single Judge has correctly observed, "*averring in a suit of the year 2007 that decree passed way back on 8.3.1977 i.e. 30 years back is to be treated as collusive and hence not binding cannot help the plaintiff because as per the decree, the father did act as the owner of the Barota land*".

**RESPONDENT NO.6 CAN'T CONTEND THAT BAROTA IS OWNED BY HUF/ COPARCENARY**

44. Moreover, as Respondent No.6 had on her own volition purchased part of Barota land from Sanjiv Singh (son of Anup Singh) vide sale deed dated 23<sup>rd</sup> January 1992 and subsequently sold the said

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property to a third party vide sale deed dated 12<sup>th</sup> January 2000, this Court is of the view that Respondent No.6 is estopped from contending that Barota property is owned by a co-parcenary/HUF of which she is a member.

**AMENDED SECTION 6 OF HINDU SUCCESSION ACT, 1956 IS NOT APPLICABLE**

45. This Court is also of the view that while the decrees in Suits II, III and IV were declaratory decrees, yet they were grounded on the consensus (between the parties) that the properties stood partitioned amongst the family members. This Court says so, not only, on the basis of admission by Appellant-plaintiff and Respondent No.6 in the plaint filed in Suit I, but also because without a partition *inter se* between the parties, the declaratory decrees could not have been passed. It is settled law that partition need not be effected in any particular/standard format. Accordingly, this Court is of the view that the decrees passed in Suits II, III and IV amount to a recognition and acceptance of the fact of partition between the parties prior to 20<sup>th</sup> December 2004. Consequently, the proviso to sub-Section 1 of amended Section 6 of Hindu Succession Act, 1956 is attracted to the present case and arguments advanced by Appellant-plaintiff and Respondent No.6 with respect to Section 6 are not applicable to the present case.

**C-38, ANAND NIKETAN HOUSE**

46. As far as C-38, Anand Niketan house is concerned, it was admittedly purchased by Late Major General Budh Singh in the year 1968 and thereafter on a request made by him, the said house was transferred by the cooperative society to Anup Singh by a duly registered perpetual sub-Lease Deed dated 03<sup>rd</sup> April, 1970. Despite, the registered sub-Lease Deed in the name of Anup Singh, being within the knowledge of the Appellant-plaintiff and Respondent No.6, it was never challenged for thirty-seven long years prior to the filing of the present suit. Consequently, the suit to the extent it challenges ownership of C-38, Anand Niketan house is barred by limitation.
47. In fact, in the plaint filed in Case No.671/1 being Suit I, it was admitted by the Appellant-plaintiff and Respondent No.6 that upon mutual partition in 1971, the land situated in village Bhatgaon, Tehsil Sonepat fell in the share of Anup Singh and that he was the absolute owner and in possession of the said land. Consequently, the subsequent

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sale of the Bhatgaon property or use of its sale proceeds to purchase the Anand Niketan plot and construct a house thereon would not give any cause of action to the Appellant-plaintiff and Respondent No.6 to file a fresh suit for partition.

48. Further, the averments qua co-parcenary/Joint Hindu Family owned ancestral property in Suit IV was only in the context of HUF of Anup Singh and his two sons to the exclusion of Appellant-plaintiff and Respondent No. 6. In Mayne's Hindu Law, 11<sup>th</sup> Edition, p. 347, it has been held that members of a branch, or of a sub-branch, can form a distinct and separate corporate unit within the larger corporate family and hold property as such. Such property will be joint family property of the members of the branch *inter se*, but will be separate property of that branch in relation to the larger family (See: **Kalyani (Dead) by LRs. vs. Narayanan, 1980 Supp SCC 298**). Consequently, this Court is of the opinion that the averments of co-parcenary/Joint Hindu Family/ ancestral property in Suit IV deal with the co-parcenary/HUF of Anup Singh to the exclusion of Appellant-plaintiff and Respondent No.6 and give no right or cause of action to the latter to file a suit for partition.
49. Also, Suit IV was premised on the basis that Appellant-plaintiff and Respondent No.6 have no right in the properties of their father- Late Major General Budh Singh as partition of HUF of Late Major General Budh Singh and HUF of Anup Singh had already taken place. It was in pursuance to the said pleadings that a decree of partition of Anand Niketan house was passed and the said house in its entirety was partitioned between Anup Singh and his two sons.

**CONCLUSION**

50. Keeping in view the aforesaid findings, this Court is of the view that the present appeal is devoid of any merit. Accordingly, the present appeal is dismissed.

*Result of the case:* Appeal dismissed.

<sup>†</sup>Headnotes prepared by: Nidhi Jain