IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 291 OF 2024

Mohan Hirachand Shah ..Applicant
Aged bout 93 years old, Occ : Nil
Indian Inhabitant, residing at Mandava, Post
Dhokwade, Taluka Alibaug, District Raigad,
Presently at : 1701, Chira Bazar,
Opp. Gajdhar Road, Marine Line,
Mumbai – 400 002.

Versus

1. Bina Ketan Samani,
Age about 53 years,
Occ : Agricultural & Business, Indian,
Inhabitant, residing at Mandava, Post
Dhokawade, Taluka Alibag,
District Raigad, Presently at : 1301 C,
Wheel Apartment,

2. Anuradha Yatin Patel,
Aged about 59 years, Occ : Housewife,
Indian Inhabitant, residing at Mandava, Post
Dhokwade, Taluka Alibaug, District Raigad,
Presently at : 1701, Chira Bazar,
Opp. Gajdhar Road, Marine Line,
Mumbai – 400 002.

3. Nanda Mohan Shah,
Aged about 60 years, Occ : Nil,
Indian Inhabitant, residing at Mandava, Post
Dhokwade, Taluka Alibaug, District Raigad,
Presently at : 1701, Chira Bazar,
Opp. Gajdhar Road, Marine Line,
Mumbai – 400 002.

4. Gita Mohan Shah,
Aged about 58 years, Occ : Nil,
Indian Inhabitant, residing at Mandava, Post

Dhokwade, Taluka Alibaug, District Raigad,
Presently at : 1701, Chira Bazar,
Opp. Gajdhar Road, Marine Line,
Mumbai – 400 002.

…Respondents

Mr. Jay Savla, Senior Advocate, with Renuka Sahu & Anoushka John, i/b M.P. Savla & Co, for the Applicant.
Mr. R. M. Hardas, with Ashwini B. Jadhav, i/b Jagdish Reddy, for Respondent No.1.

CORAM: N. J. JAMADAR, J.
DATED : 27th FEBRUARY 2025

JUDGMENT:

1. This revision is directed against an order dated 15th March 2024 passed by the learned Civil Judge, Senior Division, Alibag, whereby an application preferred by the applicant-defendant no.1 for rejection of the Plaint under Order VII Rule 11 of the Code of Civil Procedure 1908 ("the Code") came to be rejected.

2. Shorn of superfluities, the background facts can be stated as under.

2.1 Respondent no.1-plaintiff and respondent nos.2 to 4-defendant nos. 2 to 4 are the daughters of the applicant-defendant no.1.

2.2 Respondent no.1 instituted a suit for partition and separate possession of her 1/5th share in the suit properties asserting that property no. 753 and 752 situated at Dhokawade, Alibag, (suit properties "A" and "B") and land bearing Survey No. 310 situated

at Dhokawade, Alibag (suit property "C") are the ancestral properties of the plaintiff and defendants. Late Hirachand Shah, the grandfather of the plaintiff, was a big businessman and had business interest in various sectors. Defendant No.1 earned income out of the various ancestral properties which came in the hands of defendant no.1. There were other family properties. However, since the dispute in respect of those joint family properties was pending before the Supreme Court, those properties were not included in the instant suit.

2.3 Defendant nos. 2 to 4, especially defendant no. 2 and her husband, were trying to usurp the properties by misrepresenting or occasionally inducing, enticing and pressurizing the defendant no.1, who, on account of his old age, was not in a position to take informed decisions. The plaintiff had thus demanded partition on 15th March 2023. As the defendants refused to partition the suit properties, the plaintiff was constrained to institute the suit.

2.4 Defendant No.1 filed an application for rejection of the Plaint contending, *inter alia,* that there was no cause of action and the suit was an abuse of process of law and vexatious. The plaintiff has suppressed material facts. Suit properties "A" and "B" are the separate properties of defendant no.1 as those properties

were released in favour of defendant no.1 by the brothers of defendant no.1 under a registered Release Deed dated 23rd November 1973. Property "C" was the self-acquired property of defendant no.1 and it has since been sold by defendant no.1 under a registered Sale Deed in the year 2021 to Mr. Alok Agarwal and Ravikumar Sawalka. The Plaint contains bald assertions that the suit properties are ancestral properties. No clear right to sue for partition qua the suit properties is discernible.

2.5 The application was resisted by the plaintiff.

2.6 The learned Civil Judge, by the impugned order, rejected the application for rejection of the Plaint. The learned Civil Judge was of the view that from the perusal of the Plaint it cannot be inferred that there was no cause of action and the the plaintiff deserved an opportunity to adduce evidence to substantiate her claim that she was entitled to partition of the suit properties.

3. Being aggrieved, the applicant has invoked revisional jurisdiction of this Court.

4. I have heard Mr. Jay Savla, learned Senior Advocate for the applicant, and Mr. R. M. Hardas, learned Counsel for respondent no.1, at some length. With the assistance of the learned Counsel for the

parties, I have perused the material on record including the documents tendered on behalf of the applicant.

5. Mr. Savla, learned Senior Advocate for the applicant, submitted that the plaint is bereft of the averments which show that the suit properties are the ancestral properties. A solitary and bald assertion that the suit properties are the ancestral properties does not satisfy the requirement of pleading to make out the cause of action. The plaintiff was enjoined to plead and demonstrate as to how the suit properties were the ancestral properties. In the absence of such requisite pleading, the Plaint deserves to be rejected. To lend support to these submissions, Mr. Savla placed reliance on the decisions in the cases of **Anchit Sachdeva And Ors Vs Sudesh Sachdeva & Ors**[1] and **Surendra Kumar Vs Dhani Ram & Ors.**[2]

6. Mr. Savla urged with a decree of vehemence that, in the case at hand, the fact that the suit properties "A" and "B" are not the ancestral properties has been judicially determined by this Court in Second Appeal Nos. 708 of 2008 and 38 of 2009. It has been categorically held that the properties described at sr. no. 16 of the Plaint therein (suit properties "A" and "B" herein) are owned by defendant no.1 exclusively. An appeal preferred thereagainst has also been dismissed by the Supreme Court. Suppressing all these facts, the plaintiff has approached

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1 (2024) DHC 9629.

2 (2016) 4 SCC 68.

the Court for partition by making an omnibus assertion that suit properties are the ancestral properties.

7. Mr. Savla, learned Senior Advocate, further urged that it is not the case of the plaintiff that the separate properties were thrown in a common hotchpotch by defendant no.1. Nor there is a pleading to the effect that the suit property "C" was acquired out of joint family nucleus. In the backdrop of these facts, according to Mr. Savla, a meaningful reading of the Plaint would lead to no other inference than that of no cause of action to sue for partition.

8. To buttress these submissions, Mr. Savla placed reliance on the decisions in the cases of **K. Akbar Ali Vs K.Umar Khan & Ors,**[3] **Dahiben Vs Arvindbhai Kalyanji Bhanusali (Gajra) Dead through LRs & Ors,**[4] **D/o Late Krishna & Ors Vs Nanjudaswamy & Ors,**[5] **The Church of Christ Charitable Trust & Edn Charitable Society Vs M/s Ponniamman Educational Trust**[6] and **Azhar Hussain Vs Rajiv Gandhi.**[7]

9. Mr. Savla further submitted that, though the learned Civil Judge has extracted the principles which govern the exercise of jurisdiction in the matter of rejection of the Plaint, yet, the learned Judge singularly failed to apply those principles to the facts of the case and rejected the

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3 (2021) 14 SCC 51.
4 (2020) 7 SCC 366.
5 (2023) SCC Online SC 1407.
6 (2012) 8 SCC 706.
7 (1986) Supp SCC 315.

application on an untenable ground that the plaintiff deserved an opportunity to adduce evidence to substantiate her claim. Once it was evident that there was no clear right to sue, the Trial Court must have rejected the Plaint.

10. Per contra, Mr. Hardas, the learned Counsel for respondent no.1, supported the impugned order. It was submitted that it is indubitable that suit properties "A" and "B" were ancestral properties. In fact, in the Release Deed, the suit properties "A" and "B" have been referred to as the coparcenary properties. Moreover, the said Release Deed is not a part of the Plaint. At best, it constitutes the defence of defendant no.1 and, thus, cannot be considered at this stage. In light of the undisputed relations between the parties and character of the suit properties, it cannot be said that the plaintiff has no right to seek partition. Therefore, this Court may not interfere with the impugned order in exercise of limited revisional jurisdiction.

11. To begin with uncontraverted facts. The relationship between the plaintiff and defendants is incontestable. By and large, the material on record indicates that the properties "A" and "B" were acquired by defendant no.1 under the Release Deed dated 23rd November 1973. Whereas the property "C", i.e., Gat No. 310 situated at Mouje Dhokawade, Alibag seems to have been acquired by defendant no.1

under the Sale Deed dated 20th October 2003 from Girish Shah. The parties are at issue over the nature of the aforesaid properties.

12. The plaintiff has approached the Court with a plain and simple case that the plaintiff and defendants are the members of the Joint Hindu Family and the suit properties are ancestral properties of the plaintiff and defendants. There has not been partition by metes and bounds. Thus the plaintiff is entitled to 1/5th share in the suit properties. The plaintiff has not, in terms, referred to the previous proceedings between her father and his siblings and others, in respect of the properties purportedly inherited by them from late Hirachand Shah, the grandfather of the plaintiff. Albeit there is reference to the pendency of a proceeding before the Supreme Court in respect of other properties, though on a tangent.

13. It is in the backdrop of the aforesaid broad tenor of the suit, the prayer for rejection of the Plaint is required to be appreciated. The legal position with regard to the exercise of jurisdiction to reject a Plaint on the grounds prescribed under Order VII Rule 11 of the Code, especially clauses (a) and (d), is well crystallized. Be it a case of "no cause of action" or "suit barred by any law", including the law of limitation, the primary and singular material which deserves to be taken into account is the averments in the Plaint. Undoubtedly, the documents annexed with the Plaint also deserve to be looked into. However, the defence of

the defendants, or for that matter, the contentions in the Written Statement, if filed, or the application for the rejection of the Plaint, to the extent they touch upon the merits of the matter, as distinguished from the grounds for rejection of the Plaint, are of no significance. The defence of the defendants need not be considered at the stage of consideration of the application for rejection of the Plaint.

14. Secondly, the Plaint is required to be a read as a whole and that too in a meaningful and not a formalistic manner. If by resorting to clever drafting an illusion of cause of action has been created; where none exists, by a meaningful reading of the Plaint it has to be ascertained whether the Plaint discloses a real cause of action. Likewise the bar to the suit cannot be permitted to be circumvented either by making hallow averments or by suppressing material facts.

15. Thirdly, the power to reject the Plaint is conferred on the Court with an avowed object of nipping in the bud a worthless and vexatious litigation. If a clear case of "no cause of action" or "bar to the Suit" is made out, the Court must not hesitate in rejecting the Plaint, lest the defendants would be dragged in an unnecessary litigation and would suffer the travails of a long drawn trial.

16. A reference to all the decisions on which reliance has been placed by Mr. Savla, may not be necessary. In the case of **Dahiben (Supra),**

after referring to a large body of decisions, the Supreme Court enunciated the law as under:

> "23.2 The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.
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> 23.3 The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.
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> 23.6 Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.
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> 23.9 In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10 At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.13 If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.15 The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

24.4 If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Ramachandra Murthy v. Syed Jalal, (2017) 13 SCC 174)* held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

17. In the case of **Azhar Hussain (Supra),** the Supreme Court expounded the purpose of conferment of power to reject the Plaint in the following words:

> "12. … The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

18. In the case of **K Akbar Ali (Supra)**, the Supreme Court postulated the law as under

> "7.In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in *ITC v Debts Recovery Appellate Tribunal, AIR 1998 SC 634*, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order VII Rue 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court."

19. On the aforesaid touchstone, re-adverting to the facts of the case, at the outset, it is necessary to note that the thrust of the submission of

Mr. Savla was that the Plaint is bereft of pleading as to the nature and character of the suit properties, apart from chanting a mantra that the suit property is ancestral property. It was urged that such self-serving assertion is of no avail. There must be positive pleading as to the nature of the suit property.

20. To buttress this submission, Mr. Savla invited attention of the Court to the decision of Delhi High Court in the case of **Anchit Sachdeva (Supra).** In the said case, the plaintiff therein had instituted a suit seeking partition and other ancillary reliefs in respect of the estate of their grandfather by asserting that the properties owned by their late grandfather were coparcenary properties and they were entitled to a share therein. Adverting to the decision of a Division Bench of Delhi High Court in the case of **Neeraj Bhatia V Sh. Ravinder Kumar Bhatia**,[8] the learned Single Judge enunciated the law as under

> " 33. In these facts, even if this Court were to assume the averments made in paragraph 2 of the plaint to be absolutely correct i.e., that the monies for purchase of immovable properties though standing in the name of defendant nos. 2 and 3 were actually funded by late Sh. Kewal Kishan Sachdeva, the same would not change the character of the ownership of these properties from personal to coparcenary. The properties would still be considered as the individual properties and not be converted into the character of a coparcenary property.

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8 Manu/DE/3086/2024.

> 34. Coparcenary is a creature of Hindu law and it cannot be created by an agreement of the parties. Coparcenary is a legal phenomenon which existed prior to enactment of Act of 1956 and was recognized in respect of properties inherited by a Hindu male from his male ancestors. However, after enactment of Section 8 of the Act of 1956, this position in law changed. Post 1956 individual properties inherited by a Hindu male from his male ancestors retained the character of a separate property in the hands of the Hindu male and did not acquire the character of coparcenary. Thus, after 1956 coparcenary continued only with respect to properties which were already impressed with the character of coparcenary prior to 1956 and in respect of properties which were subsequently blended by coparceners with the pre-existing coparcenary property. However, in the absence of a pre-existing coparcenary property, no coparcenary can be created after 1956 by a male Hindu on his own volition.

21. Applying the aforesaid principle to the facts of said case, the learned Single Judge held that the suit properties therein were not coparcenary properties and the Plaint came to be rejected.

22. In the case of **Surendra Kumar (Supra)** another learned Single Judge of Delhi High Court, referred to a previous decision in the case of **Sunny (Minor) & Anr Vs Sh. Raj Singh & Ors**[9] and extracted the following observations therein:

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9 MANU/DE/3560/2015.

> "7(ii)This position of law alongwith facts as to how the properties are HUF propeties was required to be stated as a positive statement in the Plaint of the present case, but it is seen that except uttering a mantra of the properties inherited by defendant no.1 being 'ancestral' properties and thus the existence of HUF, there is no statement or a single averment in the plaint as to when was this HUF which is stated to own the HUF properties came into existence or was created i.e. whether it existed even before 1956 or it was created for the first time after 1956 by throwing the property/properties into a common hotchpotch"

23. At this stage, it may be apposite to note the import of the decision of this Court in Second Appeal Nos. 708 of 2008 and 38 of 2009, wherein it has been categorically ruled that the property described at Sr. No. 16 (Suit properties "A" and "B" herein) was owned by defendant no.1, exclusively. It would also be imperative to note, at this stage itself, the recitals in the Deed of Release under which the suit properties "A" and "B" came in the hands of defendant no.1. It was, *inter alia,* recorded that the heirs of the deceased Hirachand Shah possessed undivided share in the joint family properties and agreed in their oral partition effected in April 1973 that the suit property be taken by defendant no.1 alone and the parties agreed to allot the same to defendant no.1 (Releasee) absolutely freed and discharged from any share and/or right of any user by the Releasors or any one of them and thereby released and relinquished all their right, title and interest in the suit property (thitherto belonging to the members of the Hindu Family)

and thereby discharged the other coparceners from all obligations to partition the property with the Releasee (defendant no.1) and the suit properties shall remain in exclusive right, possession, control and ownership of the Releasee and that no other member, including the Releasors, shall have any right, claim or interest in the suit property.

24. The pivotal question which comes to the fore is the character of the suit property "A" and "B", which came to be released in favour of defendant no.1 under the said Release Deed. To put in other words, whether the said property retained the character of the coparcenary property and what is the character of the suit properties in the hands of defendant no.1 qua the plaintiff and defendant nos. 2 to 4?

25. Mr. Savla would urge that the property which was acquired by defendant no.1 under the said Release Deed was the absolute and exclusive property of defendant no.1. The judgment of this Court in Second Appeal Nos.708 of 2008 and 38 of 2009 which has the imprimature of the Supreme Court seals the issue by categorically ruling that the suit properties "A" and "B" exclusively belonged to defendant no.1. During the lifetime of defendant no.1, the plaintiff has no right to seek partition of the suit properties.

26. Mr Savla also placed reliance on a decision of the Supreme Court in the case of **Uttam Vs Saubhag Singh**[10] wherein it was exposited that, prior to the Amendment in 2005, on a conjoint reading of Sections 4, 8,

10 (2016) 4 SCC 68.

19 of the Hindu Succession Act, 1956, after joint family property has been distributed in accordance with Section 8 on principle of intestacy, the joint family property ceases to be joint family property in the hands of the various person who have succeeded to it as they hold the property as tenants in common and not as joint tenants.

27. Indeed, there is a distinction between the character of the properties inherited by a male Hindu from his ancestor before and after coming into force of the Hindu Succession Act 1956. Where a Hindu male inherits the property in the situation contemplated by Section 8 of the Hindu Succession Act 1956, he does not take it as karta of his own undivided family but takes it in his individual capacity. However, if succession has opened prior to the commencement of the Hindu Succession Act 1956, the parties would be governed by the old Hindu Law, i.e., Mitakshara law.

28. A useful reference, in this context, can be made to a decision of the Supreme Court in the case of **Arshnoor Singh Vs Harpal Kaur And Ors**[11] wherein the distinction between the two situations was expounded as under:

> "7.3. Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him, would get an equal right as coparceners in that property.

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11 (2020) 14 SCC 436.

7.4 In **Yudhishter Vs Ashok Kumar**,[12] this Court held that :

> "10. This question has been considered by this Court in CWT V Chander Sen (1986) 3 SCC 567 : 1986 SCC (Tax) 641, where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Karta of his own undivided family but takes it in his individual capacity."
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> (emphasis supplied)

7.5. After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post–1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property.

7.6 If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the

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12 (1987) 1 SCC 204.

> parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands Vis-a-vis his male descendants up to three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956."

29. It is necessary to note that aforequoted decision in the case of **Yudhishter (Supra)** is the basis of the decisions of the Delhi High Court in the cases of **Anchit Sachdeva (Supra)** and **Surendra Kumar (Supra).**

30. In the facts of the case at hand, in my considered view, a slightly different situation arises for two reasons. First, the undisputed character of the property which was released in favour of defendant no.1 under the Release Deed dated 23rd November 1973. As noted above, the Release Deed refers to the character of the said property as a joint family property and the Releasors being the coparceners of defendant no.1 and the relinquishment of their right, title and interest in the said property in the capacity of the coparceners.

31. Secondly, the consequences that emanate from 2005 Amendment to Section 6 of the Hindu Succession Act 1956 conferring coparcenary right on a daughter by birth like the son.

32. In view of the pronouncement of the Supreme Court in the case of **Vineeta Sharma Vs Rakesh Sharma & Ors**[13] the controversy regarding the nature of the right of a daughter as a coparcener is settled. It has

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13 (2020) 9 SCC 1.

been authoritatively enunciated that the provisions contained in substituted Section 6 of the Act of 1956 confer status of a coparcener on the daughter born before or after the Amendment in the same manner as son with same rights and liabilities. The rights can be claimed by daughter born prior to the coming into force of the Amendment Act 2005, with effect from 9th September 2005 save and except as regards the disposition or alienation, partition or testamentary disposition before the 20th Day of December 2004, as envisaged by Section 6(1) of the Act 1956.

33. In the wake of the aforesaid legislative change and legal implications thereof, the question as to whether the plaintiff in the capacity of a coparcener, is entitled to a share in the suit properties "A" and "B", which *prima facie* appeared to be impressed with the character of the coparcenary properties, when the coparceners of defendant no.1 relinquished their interest therein in favour of defendant no.1 under the Release Deed dated 23rd November 1973, arises for consideration. If this character of the property in the hands of defendant no.1 is kept in view, the declaration that the property "A" and "B" ceased to be the joint family property, post its release by coparceners under the Release Deed, may not be decisvie as regards the claim of the plaintiff as a coparcener. Although it may be termed as a separate property qua other relations,

yet, it may be impressed with the characteristic of coparcenery properties qua the plaintiff.

34. A profitable reference in this context can be made to a decision of the Supreme Court in the case of **Shyam Narayan Prasad Vs Krishna Prasad & Ors.**[14] The observations in paragraphs 12 and 15 are material and hence extracted below.

> "12 It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship.
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> 15. In Rohit Chauhan V Surinder Singh And Ors, 2013 (9) SCC 419, a contention was raised by the defendant No. 1 that after partition of the joint Hindu

14 (2018) 7 SCC 646.

family property, the land allotted to the share of defendant No. 2 became his self acquired property and he was competent to transfer the property in the manner he desired. It was held that the property which defendant No. 2 got by virtue of partition decree amongst his father and brothers was although separate property qua other relations but it attained the characteristics of coparcenary property the moment a son was born to defendant No. 2. It was held thus:

> "A person, who for the time being is the sole surviving coparcener as in the present case Gulab Singh was, before the birth of the plaintiff, was entitled to dispose of the coparcenary property as if it were his separate property. Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten. But, in the present case, it is an admitted position that the property which Defendant 2 got on partition was an ancestral property and till the birth of the plaintiff he was

> the sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. As observed earlier, in view of the settled legal position, the property in the hands of Defendant 2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth Defendant 2 could have alienated the property only as karta for legal necessity. It is nobody's case that Defendant 2 executed the sale deeds and release deed as karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale deeds and release deed, the parties can work out their remedies in appropriate proceeding."

35. The matter can be looked at from another perspective. The branch of defendant no.1 can be considered to be a constituent of the larger coparcenery comprising the various branches of late Hirachand

Shah, when the coparceners released their interest in the properties "A" and "B", infavour of defendant no.1. In that event, the nature of the property held by the branch headed by defendant no.1 may not alter till there is a partition amongst the members of the said branch. In the case of **Revanasiddappa And Anr Vs Mallikarjun And Ors,**[15] in the context of the provisions contained in Section 16 of the Hindu Marriage Act 1955, the Supreme Court expounded the aforesaid concept in the following words.

> "63. It has been submitted before us that the child who is conferred with legitimacy under Sections 16(1) and Section 16(2), would not have a share in the partition of the 'larger coparcenary' but would have a share in the coparcenary that comprises of the child's father and the father's legitimate children. It has been urged that the latter coparcenary, this child would be at par with the other children of the father born from a valid marriage, and that such parity of treatment for the purpose of coparcenary property is the purpose of the law.
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> 64. We must clarify that it is true that the Hindu Law recognises a branch of the family as a subordinate corporate entity, within the fold of the larger coparcenary comprising many such branches. However, even such branches can acquire, hold and dispose of family property subject to certain limitations. The nature of property held by such a

15 (2023) 10 SCC 1.

> branch, until partitioned among the members of the branch does not cease to be that of a joint family property of all the coparceners of the branch. Now, since the child conferred with legitimacy under Section 16 is not a coparcener, the branch comprises the father and his children born out of the valid marriage. As such, the property, once partitioned from the larger coparcenary, and in the hands of the father, for his own branch, is not the father's separate property, until the partition happens within the branch. It continues to be the coparcenary property in which the children from his valid marriage have joint ownership. Thus, in view of the restriction in Section 16(3), in this property- not being the exclusive property of the father- a child covered by Section 16(1) and 16(2) is not entitled."

36. The conspectus of aforesaid consideration is that in the peculiar facts of the case, character of the properties "A" and "B" in the hands of defendant no.1 and the entitlement of the plaintiff to have a share therein in view of her status as a coparcener with defendant no.1, warrants adjudication. Therefore, it cannot be said that the plaintiff has no clear right to sue. Resultantly, the plaintiff cannot be non-suited at the threshold on the ground that the Plaint is bereft of cause of action.

37. Before parting, it is necessary to clarify that this Court has delved into the legal issues qua the character of the properties "A" and "B" in a little detail only for the purpose of deciding the prayer for rejection for

the Plaint on the ground that in view of the governing law it is sans a cause of action. These observations are, therefore, confined to the consideration of the prayer for rejection of the Plaint. All issues would, however, remain open for consideration and the Trial Court is expected to decide the suit on its own merits and in accordance with law without being influenced by any of the observations hereinabove.

38. Hence the following order.

: O R D E R :

(i) Civil Revision Application stands rejected.

(ii) By way of abundant caution, it is made clear that consideration is confined to the determination of the prayer for rejection of the Plaint and the Trial Court shall not be influenced by any of the observations made hereinabove while finally adjudicating the Suit.

[N. J. JAMADAR, J.]