



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

% *Reserved on: 16th May, 2024*
Pronounced on: 20th May, 2024

+ **CS (OS) 380/2017**

1. **MS. AMAARA DALMIA (MINOR)**
D/o Rudra Dalmia
Through her natural guardian Rudra Dalmia
R/o 3, Sikandra Road,
New Delhi-110001.

2. **MS. ARMANA DALMIA (MINOR)**
D/o Rudra Dalmia
Through her natural guardian Rudra Dalmia
R/o 3, Sikandra Road,
New Delhi-110001.

3. **MRS. SUMAYA DALMIA**
W/o Rudra Dalmia
Through her natural guardian Rudra Dalmia
R/o 3, Sikandra Road,
New Delhi-110001.

4. **MR. RUDRA DALMIA**
S/o Shivnidhi Dalmia
R/o 3, Sikandra Road,
New Delhi-110001.

..... Plaintiffs

Through: Mr. Jeevesh Nagrath, Mr. Vimal Kumar
Nagrath, Ms. Divya Lal, Mr. Arjun Gaur,
Mr. Vinod Kumar and Mr. Rajat Gupta,
Advocates.

versus

1. **MRS. MRIDULA DALMIA**
W/o Shivnidhi Dalmia
R/o 3, Sikandra Road,
New Delhi-110001.



2. **S.N. DALMIA & SONS HUF**
Through its Karta Mr. Shivnidhi Dalmia
R/o 3, Sikandra Road,
New Delhi-110001.

3. **MR. SHIVNIDHI DALMIA**
S/o Late Shri Ram Krishna Dalmia
R/o 3, Sikandra Road,
New Delhi-110001.

4. **MR. KARUNANIDHI DALMIA**
S/o Late Shri Ram Krishna Dalmia
C/o Vishvanidhi Dalmia
R/o 3, Sikandra Road,
New Delhi-110001.

5. **MR. VISHVANIDHI DALMIA**
S/o Late Shri Ram Krishna Dalmia
R/o 3, Sikandra Road,
New Delhi-110001.

6. **MS. ARCHANA DALMIA**
D/o Late Shri Ram Krishna Dalmia
R/o 3, Sikandra Road,
New Delhi-110001.

7. **MS. LAXMANA DALMIA**
D/o Late Shri Ram Krishna Dalmia
R/o 3, Sikandra Road,
New Delhi-110001.

8. **MRS. NEELIMA ADHAR**
D/o Late Shri Ram Krishna Dalmia
R/o 3/13, Shanti Niketan,
New Delhi-110021.



9. **GAURAV SETH**
S/o Shri Chandra Shekhar Seth
R/o 3, Sikandra Road,
New Delhi-110001.

10. **MR. VINEET NATH**
S/o Shri Chandra Shekhar Seth
R/o Baikuntha Niwas,
Civil Lines, Meerut.

.....Defendants

Through: Mr. Arjun Syal and Mr. Raghuvver Kapur,
Advocates for D-2.
Mr. Amitabh Chaturvedi, Mr. Ankit Monga,
Ms. Rimjhim Suhami, Advocates for D-7.
Mr. Kushagra Pandit, Advocate for D-10.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A.14227/2018 (under Order VI Rule 17 read with Order I Rule 10 read with Section 151 CPC on behalf of plaintiffs for amendment of plaint and impleadment of third parties as defendants)

1. An application has been filed on behalf of plaintiff Nos. 1 to 3 seeking amendment of their plaint.

2. **It is submitted in the application** that the plaintiff Nos. 1 to 3/ applicants have filed the suit for **Partition and Rendition of Accounts of the assets of the S.N. Dalmia & sons HUF** (hereinafter referred to as "HUF")/defendant No. 2. Plaintiff Nos. 1 to 4 and defendant Nos. 1 are the members of the defendant No. 2 HUF and defendant No. 3 is its Karta.

3. It is the case of plaintiff Nos. 1 to 3 that when the present suit was filed in August 2017, they were not aware of the other assets of the defendant No. 2, HUF. Though the plaintiffs were aware that defendant No. 2 HUF was a substantial shareholder in Durga Enterprises Pvt Ltd, they



were unaware of the extent of shareholding. It is explained that defendant No. 10 had filed a suit bearing *CS No. 59345/2016* (originally filed as *CS(OS) 730/ 2014* before this Court) for *Declaration and Permanent Injunction* which is pending before the Patiala House Courts in respect of certain shares in Durga Enterprises Pvt Ltd. Pertinently, defendant No. 2 HUF is also a party to that suit. Upon an inspection of the court records in *CS No. 59345/2016*, the plaintiffs became aware the extent of shareholding of defendant No. 2 HUF in Durga Enterprises Pvt Ltd.

4. It is further submitted that defendant No. 2 HUF owned 2350 shares, while the Karta/ defendant No.3 owned 15650 shares in Durga Enterprises Pvt Ltd as on 01.10.2010. It is alleged that the Karta/ Defendant No.3 fraudulently transferred 2350 shares held by defendant No. 2 HUF in his favour. Thereafter, during the period from 01.10.2011 to 29.09.2012, the Karta/ Defendant No.3 gifted all the shares held by him i.e. $15,650 + 2350 = 18,000$ in favour of his sister Archana Dalmia/ defendant No. 6.

5. The plaintiffs further allege that Archana Dalmia/ defendant No. 6 sold these shares for a consideration of Rs. 8500 per share in favour of M/s Pyramid Commodities Pvt. Ltd for a sum of Rs. 15,30,00,000/-. Thereafter, Pyramid Commodities Pvt. Ltd transferred it to Shri Surender Kumar Gupta, Smt. Anita Chaudhary and Shri Vinay Kumar Chaudhary.

6. It is asserted that all the shares that were held by Karta/ defendant No.3 were also put in the defendant No. 2 HUF. Therefore, it has come to the knowledge of the plaintiff that 18,000 shares in Durga Enterprises Pvt Ltd, which is an asset of the defendant No. 2 HUF, has been misappropriated.



7. Thus, the plaintiffs seek consequent amendments to their plaint and the impleadment of the successive transferees/ purchases of the shares of defendant No. 2 HUF in Durga Enterprises Pvt Ltd.

8. **Defendant Nos. 2 & 3 in their reply** to the application have denied all the averments made in the application.

9. It is submitted that the proposed amendments are completely unrelated to the subject matter of the dispute. In fact, the plaintiffs are not entitled to a partition of the immovable property i.e. Sikandara Road Property mentioned in the plaint as it was the individually owned by Karta/ defendant No.3 and did not form a part of the HUF pool.

10. It is further submitted that by seeking to make amendment with respect to the shares in Durga Enterprises Pvt Ltd, the plaintiffs are trying to incorporate time barred reliefs. Moreover, plaintiff No. 4, who is the husband of plaintiff No. 3 and the father of plaintiff No. 1 & 2, was always aware of the proceedings in *CS No. 59345/2016* as he was a defendant in the said suit. Therefore, the plaintiffs are estopped from raising this issue based on the principle of waiver.

11. **Defendant No. 5 & 6 in their reply** to the application have taken similar pleas as Defendant Nos. 2 & 3.

12. **Submissions heard.**

13. **Plaintiff Nos. 1 to 3 have sought to insert para 4A in the plaint** to explain the chain of transactions with respect to the shares of the defendant No. 2 HUF in Durga Enterprises Pvt Ltd.

14. It is stated in paragraph 4A that Pyramid Commodities Pvt. Ltd (proposed defendant No. 11) and Shri Surender Kumar Gupta (proposed



defendant No. 12) purchased the shares of the Durga Enterprises Pvt. Ltd. (proposed defendant No. 15) from Shri Vishwanidhi Dalmia/ defendant No. 5 and Ms. Archana Dalmia/ defendant No. 6, who further sold the same to Shri Surender Kumar Gupta, Smt. Anita Chaudhary and Shri Vinay Kumar Chaudhary (proposed defendant Nos. 12, 13 and 14).

15. Plaintiff Nos. 1 to 3 have further sought to substitute paragraph 15 of the plaint with paragraph 15 to 15 C to state that defendant No. 10 had filed a *CS No. 59345/2016 (originally CS(OS) 730/2014)* with respect to certain shares held by him in Durga Enterprises Pvt. Ltd. Defendant No. 2, HUF is also party to this suit as it is a substantial shareholder in Durga Enterprises Pvt. Ltd. The plaintiffs filed an application under Order I Rule 10 CPC this suit and found out that the extent of shareholding of the Defendant No. 2 HUF in Durga Enterprises Pvt. Ltd. However, during the period from 01.10.2010 to 30.09.2011 the shares belonging to the HUF were illegally and fraudulently transferred. Details of the subsequent transfers have been provided. It is explained that all the shares held by the Karta/ defendant No.3 i.e. 18,000 shares in the said Company were actually to be put by him in the said Defendant No. 2 HUF, but were illegally gifted by him to his sister Ms. Archana Dalmia/ defendant No.6. These shares were then sold by defendant No.6 Ms. Archana Dalmia for a valuable consideration of Rs. 8500/- per share which amounts to Rs.15,30,00,000/-.

16. In view of the proposed amendments to be made to the plaint, plaintiff Nos. 1 to 3 have sought the addition of prayer clauses (e) to (h) after the prayer clause (d) for Declaration of title to the shares or its sale proceeds.



17. Admittedly, the plaintiffs have filed the present suit for Partition and Rendition of the assets of the defendant No. 2 HUF in 2017. It is pertinent to note that plaintiff Nos. 1 to 3, by way of these amendments, is trying to include shares owned by the defendant No. 2 HUF which were allegedly alienated by the Karta/ defendant No. 2 before the institution of the present suit i.e. from 01.10.2010 to 30.09.2011.

18. In the case of Beerreddy Dasaratharami Reddy vs. vs Manjunath and Others Civil Appeal No. 7037/2021, the Supreme Court has explained that the right of the Karta to alienate Joint Hindu Family property for fulfilling legal necessities such as payment of government revenues, maintenance of coparceners, conducting marriage and religious functions, payment of debts, acting for the benefit of the estate, etc. is settled and is beyond cavil based on the several judgments of this Court.

19. However, after the alienation, the coparceners have a right to challenge the said alienation as held in Sri Narayan Bal and Others vs. Sridhar Sutar and Others, 2 (1996) 8 SCC 54.

20. Therefore, even if it is assumed that plaintiff Nos. 1 to 3 only recently came to know about the transfer of shares belonging to the defendant no. 2 HUF by the Karta/ defendant No. 3, the only remedy available with them is to seek cancellation of the transfer of shares. However, introducing such fresh pleas and reliefs, apropos the shares already alienated before the institution of the present case, would enlarge the scope of the suit.

21. The Apex Court in M. Revanna vs Anjanamma (Dead) by legal representatives and others, (2019) 4 SCC 332 held that applications for amendment of pleadings ought to be rejected if the amendments change the fundamental character of the suit.



22. In a suit for Partition and Possession, if a relief of Declaration is being sought by way of an amendment, such an amendment would be impermissible as it would change the nature of the suit as held in the case of Basavaraj vs Indira, (2024) 3 SCC 705.

23. Moreover, the plaintiff could only claim partition of the assets of the HUF as held on the date of institution of the suit. **Therefore, the amendments to the plaint sought by plaintiff Nos. 1 to 3 cannot be permitted.**

24. The application under Order VI Rule 17 CPC is accordingly dismissed.

I.A.14343/2018 (under Order XXXIX Rules 1 & 2 read with Section 151 CPC on behalf of plaintiffs for status quo/ disclosure)

25. The plaintiff Nos 1 to 3 have sought directions against the defendants to maintain status quo with respect to remaining amount in the consideration i.e. Rs. 15,30,00,000/- received from the transfer of shares in Durga Enterprises Pvt Ltd allegedly owned by defendant No. 2 HUF.

26. Since the I.A.14227/2018, seeking amendments to the plaint regarding the shares in Durga Enterprises Pvt Ltd held, had been disallowed, the present application is hereby dismissed.

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27. Be listed on 08.07.2024 for framing of issues.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 20, 2024/va