[2019] 103 taxmann.com 7 (Delhi)

PBPT Act : As per section 4, a suit would not lie to enforce any right in respect of property held benami against person in whose name property is held, no defence can be based on any right in regard to any properties held benami

FACTS

• The plaintiffs have filed the suit for permanent and mandatory injunction for removing the defendant, her agents, etc. from one room on the ground floor of the suit property in which defendant was allowed to reside on gratuitous basis. The plaintiff also submitted that defendant is a mere licensee and has no right to continue to reside in the suit property.

• The defendant states that she is in lawful occupation of the property as the property has been purchased from the funds generated after disposing of the joint family property in which the defendant had a right, title and share.

HELD

• Except for a bald plea in the written statement that the suit property has been purchased from funds siphoned off from the family business and another plea raised namely that the suit property was purchased after disposal of the joint family property, there is no other plea raised in the written statement to explain what right the defendant has to reside in the suit property. [Para 21]

• A suit would not lie to enforce any right in respect of the property held benami against the person in whose name the property is held. No defence can also be based on any right in regard to any properties held banami. [Para 34]

• The Pleas raised by the defendant are vague, unsubstantiated and frivolous. The defence raised by the defendant is clearly barred by section 4 of the Prohibition of Benami Property Transaction Act. [Para 37]

• Further, there is a clear averment made in the plaint that the defendant was inducted into the suit property as a licensee. This plea in the plaint has not been specifically denied. Accordingly, a decree of permanent injunction is passed in favour of the plaintiffs and against the defendant restraining the defendant, her agents, servants, etc. from entering the suit property or occupying the suit property or causing any nuisance or interference in any manner with the possession of the plaintiffs. [Paras 44 & 47]

■■■

[2019] 103 taxmann.com 7 (Delhi)

HIGH COURT OF DELHI

Rajeev Tandon

v.

Smt. Rashmi Tandon

JAYANT NATH, J.
CS(OS) 501 OF 2016
FEBRUARY 28, 2019

Prabhjit Jauhar, **Ms. Rosemary Raju**, **Ms. Aishwarya** and **Ms. Upasana Goel**, Advs. *for the Plaintiff.*
Gaurav Mitra, **Vaibhav Mishra** and **Ms. Rashmita Roy Choudhury**, Advs. *for the Defendant.*

ORDER

1. This application is filed by the plaintiffs under Order 12 Rule 6 CPC seeking a decree based on admissions. The plaintiffs have filed the suit for permanent and mandatory injunction. The plaintiffs have prayed for a decree of mandatory injunction in favour of the plaintiffs for removing the defendant, her agents, etc. from one room on the ground floor of the suit property D-404, Defence Colony, New Delhi as shown in the site plan.

2. The case of the plaintiffs is that plaintiff No. 1 is the brother of defendant. Plaintiff No. 2 is the wife of plaintiff No. 1. The plaintiffs are said to be the owners of the ground floor, first floor and second floor of the property being D-404, Defence Colony, New Delhi.

3. The defendant got married on 06.02.1998 and pursuant to her marriage started residing in her matrimonial home in Mumbai. The father of plaintiff No. 1 and the defendant passed away on 12.12.1998. It is pleaded that the plaintiffs out of their own self acquired funds bought the suit property. The basement and ground floor was purchased in the name of plaintiff No. 1 vide sale deed dated 14.06.2001. Similarly, plaintiff No. 2 became the owner of the first and second floor along with roof rights of the suit property vide sale deed dated 14.06.2001. In 2005, the defendant due to various problems in her marriage came back and started living in the one room on the ground floor. The plaintiffs allowed the defendant to reside in the said suit property on gratuitous basis. Litigation was filed by the defendant against her ex-husband. Subsequently, a settlement was arrived at on 26.11.2009 before the Delhi High Court Mediation and Conciliation Centre wherein the defendant received an alimony of Rs.36,50,0000/- from her ex-husband and whereby, divorce by mutual consent was effected.

4. It is pleaded that the defendant is a chronic litigant, well versed with the court procedures and is aware of the rigors of law to extort and blackmail people. It is pleaded that the plaintiffs allowed the defendant to reside in one room on the ground floor being the brother and the entire expenses for running the household, electricity dues, house tax, etc. were taken care of by plaintiff No. 1. It is pleaded that lately, the defendant has been threatening, plaintiff No. 1 to give her share in the self acquired properties and business of plaintiff No. 1. It is further pleaded that she has also misbehaved with the mother of plaintiff No. 1. On 26.09.2016 at 8.30 a.m., the defendant called the police and got a false and frivolous FIR registered against plaintiff No. 1 under Sections 451, 323 and 506 IPC alleging that plaintiff No. 1 had hit the defendant, slapped her and forcibly tried to throw her out of the house. Hence, the present suit has been filed.

5. The defendant has filed her written statement. In her written statement, multiple pleas have been raised. It is pleaded that the property has been purchased from the funds of the joint family business belonging to the late father of the parties, namely, late Sh. Ravi Shankar Tandon and that the property is a *benami* property and even, the defendant has a right in the same. It is further stated that the suit property was as agreed and desired by the late father to be in the joint name of the plaintiffs, defendant and the mother-Smt. Promila Rani Tandon. However, the plaintiffs taking advantage of the untimely death of the father and the matrimonial discord being faced by the defendant siphoned off huge sum of money from the family business by obtaining signatures on multiple documents. It is further stated that the defendant has a right to reside in the suit property in view of the family arrangement by which she was induced to enter into under the promise of being given her due share. Another defence taken is that the suit premises have been purchased from the funds generated after disposing joint family property in which the defendant had an equal right and entitlement.

6. I may note that vide order dated 29.09.2016 this court had confined the occupation of the defendant to one room only.

7. I have heard learned counsel for the parties.

8. Learned counsel for the plaintiffs has vehemently pointed out that there is not a whisper in the written statement as to how the defendant claims any right to live and occupy the property. It is pleaded that the defendant had entered into the property as a licensee and is now estopped from claiming title to the property. Reliance is placed on the judgments of this court in the case of *Sagar Gambhir* v. *Sukhdev Singh Gambhir & Anr.,* 231(2016) DLT 247 and *Mr.Ajay Batra* v. *Mr.Y.P.Batra & Ors.*, 2014 (1) AD Delhi 156

to submit that where property is bought from the funds obtained from other sources, the said other sources are barred to claim title to the property under the Prohibition of Benami Property Transaction Act, 1988 and the present suit would accordingly be barred. It is pleaded that there was no joint family property or HUF in existence as has been vaguely alleged.

9. Learned counsel appearing for the defendant has however pleaded that the present application prays passing of a decree based on admissions only. He submits that there are no admissions whatsoever in the written statement or documents to warrant passing of such a decree. It has been pointed out that the defendant herself has filed a suit being CS(OS) 16/2017 where she has sought a decree of partition in respect of 10 properties including the present suit property. In the said plaint which is pending adjudication before this court, it has clearly been stated that the present suit property was purchased by the plaintiffs from the proceeds of the sale of the property being H-336, New Rajinder Nagar, New Delhi and also by usurping the movable properties left behind by Late Sh. Ravi Shankar Tandon like debentures, bonds, etc. The property-H-336, New Rajinder Nagar, New Delhi was an HUF Coparcenary Property share of which devolved upon the defendant herein on the death of the grandfather, namely, Sh. Rikhi Ram Tandon on 03.04.2011 and the grandmother, namely, Smt. Sheela Wati Tandon on 07.06.2014. It is also pleaded that in a suit filed by the uncle-Mr.Rajesh Tandon, the plaintiff herein has himself taken a plea in the written statement that the suit properties which are subject matter of that suit, the defendant herein has an interest in the suit properties and there is non-joinder of her as a necessary party.

10. In the course of hearing, an attempt was made to try and settle the matter. An offer was made by the plaintiff to the defendant that they would purchase her a flat worth approximately Rs.2 crores in her name as final settlement. The defendant however did not accept the said offer.

11. I may first see the averments in the plaint and the response thereof by the defendant in the written statement. In paragraph 3 of the plaint the plaintiff has stated that the defendants were allowed to reside in the suit property on gratuitous basis. Para 3 of the plaint reads as follows:-

> "3.That in the year 2005 the defendant due to various problems in her marriage came back and started living in one room of ground floor of the suit property as the plaintiffs allowed the defendants to reside in the suit property on a gratuitous basis. The defendant filed various cases against her ex-husband under the Domestic Violence Act and also got registered an FIR under Sections 498/406 and also got her ex husband arrested in the aforesaid FIR and pursuant thereto a settlement was executed vide settlement deed dated 26.11.2009 before the Delhi High Court Mediation & Conciliation Centre, wherein the defendant took an alimony of Rs.36,50,000/- from her ex-husband and pursuant thereto the divorce by mutual consent was effected between the defendant and her ex-husband."

12. In response paragraph 3 of the written statement reads as follows:-

> "3. That the content of the Para 3 is denied the averments therein are not related to the present matter in any manner. It is also pertain to mention that the same divorce case was contested by the present advocate of the Plaintiff(s) who is in abrogation of his duties by using and threatening to use confidential and privileged communication, to subserve the false cause of action, being raised herein, he has violated the confidentiality of the lawyer/ client relation and it is for the reason he is contradicting the statements made by his client who he represented in the divorce and related matter(s). It is pertinent to mention herein that the alimony money of Rs. 36.5 Lakhs paid to the defendant was also mischievously siphoned off by the plaintiffs who deposited that the same in a joint bank account and thereafter mis-appropriate the same for which the defendant is trying to ascertain from the record and the present counsel of the Defendant has in violation of his professional duties, refused to even return back the file pertaining to the case in furtherance to the conspiracy of the plaintiff(s) and he is guilty of professional misconduct."

13. Reference may also be had to paragraphs 5 and 15 of the plaint and the corresponding response in the written statement which read as follows:-

> "5. That however out of love and affection the plaintiffs allowed defendant to reside in one room of the ground floor of the suit property, whereas the mother of the plaintiff no.1 continued to reside on the ground floor. The plaintiffs have possession over the portions of the ground floor of the suit property also except one room occupied by defendant. The plaintiff no.1 being the brother was always supporting the defendant and the entire expenses towards running of the household,

electricity, house tax and other allied expenses were taken care of by the plaintiff no.1, though the defendant is a major and the plaintiff no.1 has no right in law to maintain the defendant.

** ** **

15. That the suit property bearing No. D-404, Defence Colony, New Delhi is the self acquired property of the plaintiffs. The defendant being the sister of the plaintiff no.1 has no right to reside or stay in the house owned by the plaintiffs. The suit property is not the shared household of the defendant as defined under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 and the defendant has no statutory right to reside in the suit property contrary to the wishes and desire of the plaintiffs."

Response to the para 5 and 15 of the plaint, the written statement reads as follows

5. That the content of the Para 5 is wrong and denied, it is infact the defendant who is in exclusive occupation of the entire ground floor with a provision for her separate kitchen and it was the defendant who had on account of her love and affection even requested the plaintiffs to lodge the old ailing neglected mother in her portion of the premises. The defendant was consistently looking after the needs of the mother through her own source and expenses. Even the salary being received by the defendant in her account is being clandestinely siphoned off the plaintiff(s) in complete breach of trust.

** ** **

12.That the contents of Para no. 15 are wrong and denied and the reply to the preceding paragraphs be read as a reply to the present paragraphs the same is not been reproduced for the sake of brevity. It is further wrong and denied that the suit property is not a shared household in terms of section 2(s) in terms of the protection of women from Domestic violence Act, 2005. The defendant being a woman fully qualifies for protection in terms of the statute. The defendant falling within the definition of victim.

14. The paras of the plaint as noted above clearly state that the defendant is a mere licensee and has no right to continue to reside in the suit property. The corresponding response in the written statement is vague. There is no categorical denial of the fact that the status of the defendant is that of a licensee. However, to ascertain the complete defence of the defendant, I may also look at some of the other paras of the written statement.

15. In para 1 of the written statement, the defendant states that the plaintiffs have illegally and scrupulously got the property registered in their name which was purchased from the funds of the joint family business belonging to the father of the parties-Late Sh. Ravi Shanker Tandon. It is pleaded that the property is a *benami* property in which the defendant has also a right.

In para 2 of the written statement, the defendant has stated that the suit property as per the desire of the late father was to be in the joint names of the plaintiffs, defendant and the mother. However, the plaintiffs taking the advantage of the death of late Sh. Ravi Shankar Tandon siphoned huge sum of money from the family business. Hence it is pleaded that the sale deeds ought to have been registered in the joint names and are liable to be declared as null and void for which the defendant is initiating separate proceedings.

In para 11 of the written statement, the defendant denies that she has no right to reside in the suit property. She has a right to reside in the suit property in view of the family arrangement as she was induced to enter into the property under the promise of being given her due share.

In para 16 of the written statement, the defendant states that the defendant is in lawful occupation of the property as the property has been purchased from the funds generated after disposing of the joint family property in which the defendant had a right, title and share.

The aforenoted paras of the written statement read as follows:-

"2. That the contents of Para 2 are admitted to the extent they pertain to the marriage and death of the father concerned same are a matter of record. It is denied that the plaintiff have purchased the suit property from their own funds. Infact the suit property was as agreed and desires of the late father to be in the joint names of the Plaintiff(s), defendant and the mother i.e. Mrs Promila Rani Tandon.

However the plaintiff taking advantage of the untimely death of late Sh. Ravi Shankar Tandon and severe matrimonial discord being faced by the defendant the plaintiff taking advantage of the same siphoned off huge sums of money from the family business, by obtaining signature on multiple documents by pressuring the defendant by poisoning her that her ex husband is staking claim to the estate of Late Sh. Ravi Shankar Tandon through her, as such she must sign documents in his favour and he would ensure that her interest is taken care of in the future. Contents of the Para which pertains to registration of sale deed are denied for want of proof even otherwise the sale deed ought to have been registered in the Joint names as stated hereinabove and thus the document is liable to be declared as null and void for which the defendant is initiating separate proceedings. This Hon'ble court will have to lift the veil and ascertain the source of income.

** ** **

11. That the contents of Para no. 14 are wrong and denied. It is vehemently denied that the defendant is a permissive occupier or a gratuitous licensee. It is denied that the defendant has no right to reside in the suit property. The defendant infact is entitled to reside in the said premises in view of the family arrangement she was induced to enter into under the promise of being given her due share. It is denied that the defendant has no legal right to stay in the premises, it is submitted that the suit is liable to be dismissed, the same being without any cause of action and a concoction of lies, suit is based on falsehood, fabrication and made up imaginary allegations with a view to coerce the defendant to give up her legitimate claims rights and entitlements, the same is thus liable to be dismissed at the very threshold. …

** ** **

16. That the contents of Para no. 19 are wrong and denied. It is submitted that the defendant is in legal, lawful occupation of the ground floor in view of her right title and entitlements especially in view of the fact that even the present suit premises has been purchased from the funds generated after disposing of the joint family property in which the defendant has an equal right share and entitlement. The plaintiffs are blowing both hot and cold at one point they are calling the defendant a trespasser, illegal occupant whereas on the other hand they are offering to provide for alternative accommodation for her living (which surprisingly is nothing but a ploy to induce this Hon'ble court to believe their bonafide's and concern for the peaceful living of the parties, which is also evident from the fact that having obtained the order of injunction restricting the defendant to one room in the floor under her use and occupation they have even withdrawn the said offer before the mediator which speaks volume about their modus operandi) it is of almost importance and relevance to mention at this juncture that the mother of the parties herein is not a co plaintiff nor she is aggrieved of any of such alleged nuisance, in fact the defendant through her own resource maintain and looks after the kitchen and other medical expenses of the mother including her day to day care.

** ** **

19. That Cause of action if any has arisen against the plaintiffs whereby this Hon'ble court ought to restrain them causing undue interference in her portion with a view to safeguard her from any other blatant attempt to take the law unto themselves as they have no fear of law or respect for relations, plaintiff is habitual court bird embroiled on multiple litigations one of which a defendant has learnt recently pertains to inheritance of the estate of late sh. Ravi Shankar Tandon, his rights in several properties and business which is pending before this Hon'ble court. The list of assets, list of business, are jointly run by late Ravi Shankar Tandon are as follows:-

1. G-3 South Extension Part-1
2. G-11 South Extension Part-1
3. H-336, New Rajinder Nagar
4. R-670, New Rajinder Nagar
5. X-44 DLF, Phase 3 Gurgaon

6. A-48/41, DLF, Phase 1 Gurgaon
7. Ushnak Mai Mool Chand, Partnership Firm-G-3
8. U.M. Mool Chand-G-9 Partnership Firm
9. Ushnak Sons Private Ltd.
10. Rikhi Ram Tandon (HUF)
11. Ravi Shankar Tandon (HUF)
12. Two Flats in Bellaire Apartments, Gurgaon
13. One shop in MGF Mall, Gurgaon
14. One Shop in Grand Mall, Gurgaon
15. D-261, Second Floor Defence Colony
16. D-404, Defence Colony
17. Various Joint Bank Accounts

And the right entitlement of Ravi Shankar by virtue of being joint owner of the properties is also subject matter of litigation for which the plaintiff has refused to supply any documents or the current status. The defendant is in the process of collating, collecting, consolidating the documents to her best possible means where after she will initiate the requisite legal proceeding she was advised. The plaintiff by manipulating those documents even trying to disentitle the defendant for her legitimate claims and using the present proceeding as a coarse tactic. The defendant hereby categorically declares such black signed documents, deeds, attorneys etc as null and void which were scrupulously, illegally obtained by deceit by the plaintiff by exercising his clout, inducement, coercion and enjoying domination over the defendant taking advantage of her pitiable circumstances brought around on account of untimely death of her father with whom the defendant was extremely attached and her matrimonial discord which was orchestrated by the plaintiffs as such no such further order are called for rather the dated 19.10.2016 needs to be modified in view in the interest of Justice."

Essentially what the written statement seeks to plead is somewhat contradictory and jumbled up. It is stated that the father desired that the property would be bought in the joint names of the plaintiff, defendant and the mother.

It is also pleaded that the defendant is entitled to reside in the premises in view of the family arrangement, which she was induced to enter into under the promise of being given her due share. It is also sought to be pleaded that the suit premises had been purchased from funds generated after disposing of the joint family property in which the defendant had a right. It is also pleaded that the suit property is bought from funds siphoned off from family business.

16. The substance of the actual defence of the defendant from a perusal of the written statement is that the property in question has been purchased from the joint family fund obtained from the joint family business belonging to the father of the parties. It is also stated that the suit property was bought from the funds generated after disposal of the joint family property in which the defendant had an equal share and entitlement. This is the sum and substance of the defence raised by the defendant in her written statement. It is manifest that the defence is vague, evasive and lacks material particulars. Under Order 8 Rule 3 CPC, a defendant is obliged to deal specifically with each allegation of fact of which he does not admit the truth. Similarly, under Order 8 Rule 4 CPC, if a defendant denies an allegation of fact, he must not do so evasively but answer the point of substance. In the present case, the denials are evasive and cannot be said to be a specific response.

17. I may look closer at the feeble response raised claiming purchase of the suit property from the funds generated from the sale of the joint family property. Would the same be sufficient to deny relief to the plaintiff at this stage. The Division Bench of this court in *Amit Johri* v . *Deepak Johri & Ors.,* 2014 SCC OnLine Del 822 explained the difference between joint property, a joint family property and a joint ancestral property

"13. It may be true that property under Hindu Law can be classified under two heads: (*i*) coparcenary property; and (*ii*) separate property. Coparcenary property is again divisible into (*i*) ancestral property and (*ii*) joint family property which is not ancestral. This latter kind of property consists of property acquired with the aid of ancestral property and property acquired by the individual coparcener without such aid but treated by them as property of the whole family.

14. It may also be true that the three notions: (*i*) joint property, (*ii*) joint family property, and (*iii*) joint ancestral family property are not the same. In all the three things there is no doubt a common subject, property, but this is qualified in three different ways. The joint property of the English law is property held by two or more person jointly, it characteristic is survivorship. Analogies drawn from it to joint family property are false or likely to be false for various reasons. The essential qualification of the second class mentioned above is not joints merely, but a good deal more. Two complete strangers may be joint tenants according to English law; but in no conceivable circumstances except by adoption could they constitute a joint Hindu family, or in that capacity, hold property. In the third case, property is qualified in a two-fold manner, that it must be a joint family property and it must also be ancestral. It is obvious that there must have been a nucleus of joint family property before an ancestral joint family property can come into existence, because the word ancestral connotes descent and hence pre-existence. But because it is true that there can be no joint ancestral family property without pre-existing nucleus of joint family property, it is not correct to say that these cannot be joint family property without a preexisting nucleus, for, that would be identifying joint family property with ancestral joint family property. Where there is ancestral joint family property, every member of the family acquires in it a right by birth which cannot be defeated by individual alienation or disposition of any kind except under certain peculiar circumstances. This is equally true of joint family property. Where a sufficient nucleus in the possession of the members joint family has come to them from a paternal ancestor, the presumption is that the whole property is ancestral and any members alleging that it is not, will have to prove his self-acquisition. Where property is admitted or proved to have been joint family property, it is subject to exactly the same legal incidents as the ancestral joint family property, but differed radically in original and essential characteristics from the joint family is the tie of sapindaship without which it is impossible to have a joint Hindu family, which such a relationship is unnecessary in the case of a joint tenancy in English laws.

15. It may further be true that coparcenary property means and includes: (1) ancestral property, (2) acquisitions made by the coparceners with the help of ancestral property, (3) joint acquisition of the coparceners even without such help provided there was no proof of intention on their part that the property should not be treated as joint family property, and (4) separate property of the coparceners thrown into the common stock

** ** **

16. But, there has to be a properly constituted pleading before principles of law can be attracted. It is trite that depending upon a fact stated a principle of law would be attracted. Issues of law and fact have to be settled with reference to the pleadings of the parties."

18. Hence, the defendant who claims that the property in question was bought from the joint family property had to specifically plead how the existence of a joint family property came into being and other such relevant and material circumstances.

19. In this context reference be had to the judgment of a Coordinate Bench of this Court in *Sagar Gambhir* v. *Sukhdev Singh Gambhir* (*supra*).In the said case the coordinate bench while relying upon another judgment dated 05.05.2016 being CS(OS) 683/2007 titled *Mrs. SarojSalkan* v. *Mrs. Huma Singh & Anothers* quoted from the said judgment as follows:

8. The relevant paragraphs of the judgment in the case of Sunny (Minor) (supra) are paragraphs 6 to 8 and which paras read as under: -

** ** **

7(ii) This position of law alongwith facts as to how the properties are HUF properties 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. This aspect and related aspects in detail I am discussing hereinafter.

** ** **

11. I may note that the requirement of pleading in a clear cut manner as to how the HUF and its properties exist i.e whether because of pre 1956 position or because of the post 1956 position on account of throwing of properties into a common hotchpotch, needs to be now mentioned especially after passing of the Benami Transaction (Prohibition) Act, 1988 (hereinafter referred to as 'the Benami Act') and which Act states that property in the name of an individual has to be taken as owned by that individual and no claim to such property is maintainable as per Section 4(1) of the Benami Act on the ground that monies have come from the person who claims right in the property though title deeds of the property are not in the name of such person. An exception is created with respect to provision of Section 4 of the Benami CS(OS) No.1862/2010 Page 11 of 16 Act by its sub-Section (3) which allows existence of the concept of HUF. Once existence of the concept of HUF is an exception to the main provision contained in sub-Sections (1) and (2) of Section 4 of the Benami Act, then, to take the case outside sub-Sections (1) and (2) of Section 4 of the Benami Act it has to be specifically pleaded as to how and in what manner an HUF and each specific property claimed as being an HUF property has come into existence as an HUF property. If such specific facts are not pleaded, this Court in fact would be negating the mandate of the language contained in sub Sections (1) and (2) of Section 4 of the Benami Act.

12. This Court is flooded with litigations where only self- serving averments are made in the plaint of existence of HUF and a person being a coparcener without in any manner pleading therein the requisite legally required factual details as to how HUF came into existence. It is a sine qua non that pleadings must contain all the requisite factual ingredients of a cause of action, and once the ratios of the judgments of the Supreme Court in the cases of *Chander Sen* (*supra*) and *Yudhishter* (*supra*) come in, the pre 1956 position and the post 1956 position has to be made clear, and also as to how HUF and its properties came into existence whether before 1956 or after 1956. It is no longer enough to simply state in the plaint after passing of the Hindu Succession Act 1956, that there is a joint Hindu family or an HUF and a person is a coparcener in such an HUF/joint Hindu family for such person to claim rights in the properties as a coparcener unless the entire factual details of the cause of action of an HUF and each property as an HUF is pleaded.

** ** **

8. I have already reproduced above paras 2 and 3 of the plaint. As per Order VI Rule 4 of the Code of Civil Procedure, 1908 (CPC) and the ratios of the judgments in the cases of *Surender Kumar* (*supra*), *Sunny (Minor) & Anr*. (*supra*) and *Mrs. Saroj Salkan* (*supra*), it was necessary for the plaintiff to state as to how HUF exists specifically either because of the pre 1956 or the post 1956 position. If HUF and its properties are stated to exist because of the pre 1956 position, then, what are the specific properties with their details which were inherited by defendant no.1 had to be mentioned and only on inheritance by the defendant no.1 of such ancestral properties prior to 1956 would defendant no.1 have HUF properties and its funds in his hands. This aspect is conspicuously silent in the plaint. I may note that it is not the case of the plaintiff in the plaint that HUF and its properties were created post 1956 by the defendant no.1 by throwing the properties into a common hotchpotch. Also, at this stage, it is relevant to refer to the observations made in the judgment in the case of Surender CS(OS) No.1862/2010 Page 13 of 16 Kumar (supra) wherein reference is made to passing of the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as 'the Benami Act') and observed that once a property is found to be in the ownership of a particular person by title deeds (and that particular person being the defendant no.1 in the present case as regards the Rajinder Nagar property and the Faridabad property), it is hence the defendant no.1 who would be the owner of such properties and a suit for claiming rights in such properties would be barred by Section 4(1) of the Benami Act. Exceptions to Section 4(1) of the Benami Act are stated under Section 4(3) of the Benami Act and which are firstly of existence of an HUF or secondly of the property being purchased as a trustee/in fiduciary relationship. Since the provision of Section 4(3) of the Benami Act is in the

nature of exception to the provision of Section 4(1), this aspect read with Order VI Rule 4 CPC which requires all necessary particulars to be mentioned in the plaint, plaintiff had to set up a clear cut case by pleading in the plaint as to how HUF and its properties have come into existence and as to how the suit properties are HUF properties once the title deeds of the properties are admittedly in the name of the defendant no.1."

20. The above judgment of the Single Bench of this court was upheld by the Division Bench of this court in an appeal titled as *Sagar Gambhir* v. *Sukhdev Singh Gambhir,* 2017 (162) DRJ 575. The Division Bench noted as follows:-

"13. In the decision reported as 2011 (6) SCALE 677 *Ramrameshwari Devi v. Nirmala Devi in* para 52(a) the Supreme Court highlighted that pleadings are foundation of the claim by a party and it is the bounden duty and obligation of every trial Judge to carefully scrutinize the pleadings and the documents on which the pleadings are predicated. In the decision reported as AIR 1999 SC 1464 *D.M.Deshpande* v. *Janardhan Kashinath Kadam*, the Supreme Court highlighted the relevance of pleading material facts. In the decision reported as AIR 1982 Bom. 491 *Nilesh Construction Co*. v. *Gangu Bai*, with reference to a plea of tenancy, the Bombay High Court highlighted that pleadings must disclose the details with reference to the day when the tenancy was created and the exact nature thereof. In the decision reported as AIR 2006 SC 1828 *Mayar (HK) Ltd. & Ors. v. Owners & Parties Vessel* MV Fortune Express, the Supreme Court highlighted the requirement to read pleadings meaningfully in view of the relied upon documents and see whether the same are not illusory or vexatious."

21. The observations of the coordinate Bench and the Division Bench are squarely applicable to the facts of the present case. Except for a bald plea in the written statement that the suit property has been purchased from funds siphoned off from the family business and another plea raised namely that the suit property was purchased after disposal of the joint family property, there is no other plea raised in the written statement to explain what right the defendant has to reside in the suit property. There is no averment in pleadings as to when the HUF joint family property came into existence especially whether the HUF came into existence prior to 1956 or post 1956 on account of throwing of properties into a common hotch-potch. There is no reference to any Income Tax returns filed by any of the ancestors whereby the properties were shown as HUF/joint family properties.

I may also note that the suit property was bought by a registered conveyance deed on 14.06.2001. The defendant came back from her matrimonial home in 2005. She has now in 2017 filed a suit seeking to raise pleas about existence of a joint family property/family business being the source of funds to claim rights in the suit property. The plea is clearly belated. There is also no challenge to the registered deed conveying title to the plaintiffs dated 14.06.2001. The vague unsubstantiated pleas claiming purchase of the property from siphoning off of the family business or sale of HUF property cannot be allowed to be sustained. Such pleas does not constitute any meaningful defence.

22. It is settled law that while considering an application under Order 12 Rule 6 CPC the court can ignore vague and unsubstantiated pleas. Order 12 Rule 6 CPC reads as follows:-

"6. *Judgment on admissions*.—(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of an party or of its own motion and without waiting for the determination of any other question between the parties, make such Order or give such judgment as It may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

23. The Division Bench of this court in *Vijay Myne* v. *Satya Bhushan Kaura,* 142 (2007) DLT 483 (DB) held as follows:-

"12. It is not necessary to burden this judgment by extracting from the aforesaid authoritative pronouncent as the learned Single Judge has accomplished this exercise with prudence and dexterity. Purpose would be served by summarizing the legal position which is that the purpose and objective in enacting the provision like Order 12 Rule 6, CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as

such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored."

24. Similarly, reference may also be had to the judgment of the Division Bench of this court in *Delhi Jal Board* v. *Surendra P. Malik, 104 (2003) DLT 151* wherein this court had laid down the following tests:-

"9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment."

25. Reference may also be had to the observation of this court in the case of *Sagar Ghambhir* v. *Sukhdev Singh Ghambir (supra)* where this court held as follows:

"10. In view of the above, it is clear that the suit as per the pleadings, documents and the undisputed/admitted position does not show existence of a cause of action with respect to HUF and its properties. At the cost of repetition, and also so stated in para 12 in the judgment in the case of *Surender Kumar* (*supra*), it is to be noted that Courts are flooded with litigations which are frivolous in nature, simply by making vague and illusionary allegations of facts as to the traditional concept of HUF and which no longer exists after 1956 as per the ratios of the judgments of the Supreme Court in the cases of *Yudhishter* (*supra*) and *Commissioner of Wealth Tax, Kanpur and Others* (*supra*). Obviously, such litigations are in the nature of speculations only and are against the spirit of the Benami Act which intends to give finality to the ownership of the properties in the name of a particular person by means of title deeds in the name of a particular person. As per the pleadings and admitted documents in the present case, there is no legal cause of action with the necessary ingredients existing/averred with respect to existence of HUF and its properties, and it may be again noted at the cost of repetition that there are only general and vague averments in paras 2 and 3 of the plaint, of the defendant No.1 inheriting ancestral properties in Pakistan without giving details as to what those imaginary properties were. The suit on the basis of such imaginary cause of action cannot be allowed to continue and cause harassment to the defendants."

26. Clearly, vague, unsubstantiated and evasive pleas have been held to be sufficient ground to hold that there are admissions in the pleadings and a decree is liable to be passed under Order 12 Rule 6 CPC. As noted above, the pleas taken by the defendant in the written statement are vague, inconsistent and do not in any manner whatsoever show that any worthwhile defence is raised or any right exists in favour of the defendant to enable her to continue to occupy the suit property.

27. In my opinion, the defence taken by the defendant is vague and unsubstantiated and a mere attempt to prolong the present litigation. Accordingly, no defence is available to the defendant. The present application under Order 6 Rule 12 CPC is liable to be allowed.

28. I may also note that the written statement herein was filed on 02.11.2016. On or around 11.01.2017, defendant filed a suit being CS(OS) 16/2017 titled as *Rashmi Tandon* v. *Rajeev Tandon & Ors.* In the plaint of that suit, she states that she is occupying a portion of the present suit property being a coparcener of the estate of late Sh. Rikhi Ram Tandon along with late Sh. Ravi Shankar Tandon. Late Sh. Rekhi Ram Tandon, the grandfather of the defendant is said to have died on 03.04.2011. In para 8 of the said plaint being CS(OS) 16/2017, the said defendant who is the plaintiff there states as follows:-

"8. That the Defendant No.1 and his wife, namely, Jagriti Tandon i.e. defendant No. 2 purchased the property and premises at D-404, Defence Colony, New Delhi from the proceeds of the sale of the property H-336, New Rajinder Nagar, New Delhi and also usurped the entire movable properties left behind by late Sh. Ravi Shankar Tandon along with late Sh. Rekhi Ram Tandon like shares, debentures, bonds, fixed deposits, etc. The sale consideration for the said property No. D-404, Defence Colony, New Delhi have been funded from the sale proceeds of the property, H-336, New Rajinder Nagar, New Delhi which was HUF Coparcenary Property share of which devolves upon the plaintiff upon the death of the grandfather Sh.Rikhi Ram Tandon on 03.04.2011 and grandmother Smt. Sheela Wati Tandon on 07.06.2014."

29. In aforesaid suit the following reliefs are sought:-

"*a*. Decree of Partition in respect of immovable properties and movable properties:-

a. G-3 Building South ex-Part I, New Delhi

b. G-11 Building South ex-Part I New Delhi

c. D-404, Defence Colony, New Delhi

d. X-44 DLF, Phase III, Gurgaon

e. DA-48/41, DLF Phase I, Gurgaon

f. D-261, Second Floor Defence Colony.

g. Two flats in Bellaire Apartment, Gurgaon

h. One Shop in MGF Mall, Gurgaon

i. One Shop in Grand Mall Gurgaon

j. Shares, Debentures, Bonds, Fixed Deposits, Joint Bank Accounts, etc. left by Late Sh. Ravi Shankar Tandon.

b. Pass a Decree of Rendition of Accounts against defendants in respect of business establishment M/s Ushnak Mal Mool Chand, M/s. UM Mool Chand India emporium, M/s. Ushank Sons Pvt. Ltd. and Subhash & Co. & Shares, debentures, bonds, fixed deposits receipts, various bank accounts of Late Sh. Ravi Shankar Taondon from 1998 when he expired as well as Joint Bank accounts of plaintiff and defendant No.1 operated by defendant No.1.

c. Pass a decree of rendition of accounts against defendants in respect of mesne profits and rent received as well as sum received towards interest of PPF and other investments including Dividends received.

d. Pass a decree of recovery of Rs.36.5 lakhs against defendant No. 1 alongwith interest @ 24% per annum with effect from 2010."

30. In the said suit filed by the defendant being CS(OS)16/2017 some additional facts are pleaded. A plea sought to be raised in that suit that the present suit property was purchased from the sale proceeds of property No.H-336, New Rajinder Nagar, New Delhi, which is a HUF Coparcenary property, share of which devolved upon the plaintiff on the death of grandfather on 03.04.2011.

I may only note that for the purpose of adjudication of the present suit I may take into consideration the pleadings raised in the present suit only. Reference in this context may be had to the judgment of the Supreme Court in the case of *Ram Sarup Gupta (Dead) By Lrs.* v . *Bishun Narain Inter College & Ors.,* [1987] 2 SCC 55, where the court held as follows:

"6. The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the license was irrevocable as contemplated by Section 60(b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and

purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings, instead; the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal. In *Bhagwati Prasad* v. *Shri Chandramaul* [1956] 1 SCR 286 a Constitution Bench of this Court considering this question observed:

If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to reply upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."

31. Reference may also be had to the judgment of the Supreme Court in *Bachhaj Nahar* v. *Nilima Mandal & Anr.,* [2008] 17 SCC 491 where the Supreme Court reiterated the above position. Hence for the purpose of adjudication for the present application and the suit, I confine myself to the defence taken by the defendant in the written statement filed in this suit.

32. I may note, that apart from the above ground for allowing the present application, there are two more grounds why this application be allowed. The first issue is whether the claim of the defendant would be barred under the Prohibition of Benami Property Transaction Act, 1988. I may look into the said plea.

33. Section 2(9) defines a benami transaction as follows:

"2. In this Act, unless the context otherwise requires,—

** ** **

(9) "benami transaction" means,—

(A) a transaction or an arrangement—

(*a*) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(*b*) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

(*i*) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(*ii*) a person standing in a fiduciary capacity for the benefit of another person towards

whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;

(*iii*) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for property has been provided or paid out of the known sources of the individual;

(*iv*) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

** ** **"

Section 4 of the Prohibition of Benami Property Transaction Act, 1988 reads as follows:

"Prohibition of the right to recover property held benami.

4. (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property."

34. Hence, a suit would not lie to enforce any right in respect of the property held *benami* against the person in whose name the property is held. No defence can also be based on any right in regard to any properties held *benami*.

What the defendant had sought to plead is that the present suit property has been bought by the plaintiffs in the name of the plaintiffs out of the funds generated from the family business/funds generated after disposing of the joint family property.

35. Reference may be had to the judgments of this court in *Ajay Batra & Ors.* v. *Y.P.Batra and Ors. (supra)*. That was a case in which the plaintiff had argued that one of the properties in Defence Colony being HUF property the same be partitioned declaring share of each parties in accordance with law. As there was a plea that the rent of the property was being credited in the account of Y.P.Batra, HUF, the court held as follows:-

"15. I have wondered as to how the plaintiff/s can maintain the suit for declaration and partition of properties which are in the name of either Mrs. Geeta Batra or Mrs. Jaya Batra or Ms. Deeksha Laxmi Wadhera Batra and the title whereof is in their names, even if it is the admitted position that the sale consideration thereof flowed from Mr. Y.P. Batra.

** ** **

18. The Benami Transactions (Prohibition) Act 1988 vide Section 4(1) thereof prohibits such a suit. Though section 4(3)(a) of the Act makes the said prohibition inapplicable to the case where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners of the family, however neither could Mrs. Geeta Batra, Mrs. Jaya Batra & Ms. Deeksha Laxmi Wadhera Batra be said to be coparceners of Mr. Y.P. Batra HUF nor is there any plea in the plaint to the said effect nor is it pleaded that the property was held for the benefit of the coparceners of the family. Thus the claim of the plaintiff/s qua the aforesaid six properties cannot be said to be exempt from the prohibition contained in the Benami Act.

19. Not only so, Section 3 of the Benami Act makes the prohibition contained therein against entering into a benami transaction inapplicable to purchase of property by a person in the name of his wife or unmarried daughter and also provides that the property shall be presumed to have been purchased for

the benefit of the wife or the unmarried daughter. The plaintiff/s having not pleaded any case for rebutting the said presumption."

36. Similarly, another Bench of this court in *Ramesh Advani* v.*Hiro Advani & Ors. MANU/DE/2025/2013* held as follows:-

"21. The Supreme Court in *Makhan Singh* v. *Kulwant Singh*, [2007] 10 SCC 602 held that there is no presumption of a property, being joint family property, only on account of existence of a joint Hindu family and the person who asserts so has to prove that there was a nucleus with which joint family property could be acquired. Thus from the mere plea of existence of a joint Hindu family at the time of acquisition of the plot and construction thereon and from the absence of any plea of a nucleus and rather the assertion of the property having been acquired by the father from his self acquired funds, it has but to be held that there is no plea in the plaint of the property at the time of acquisition/construction being of a coparcenary or of the defendant no. 1 holding the same for the benefit of coparceners in the family.

** ** **

23. The Supreme Court in *Mayor (H.K.)* v. *Vessel M.V. Fortune Express,* [2006] 3 SCC 100 and recently followed by the Division Bench of this Court Santosh Malik Vs. Maharaj Krishan MANU/DE/0448/2012 while upholding the order of rejection of the plaint on the ground of the claim therein being barred by the Benami Act, held that the plaint has to be read meaningfully and not formally and it is the duty of the Court to see whether a real cause of action has been made out in the plaint or something illusory has been projected and that after so reading, vexatious plaints have to be thrown out. In fact during the course of hearing it was repeatedly asked from the counsel for the plaintiff whether there was anything else to show that there was a coparcenary in fact in existence at any time; whether any Income Tax returns thereof were filed; whether there was any other joint property of the parties earlier or now. The counsel candidly admitted that there is none.

24. Merely because a person at the time of acquisition of the property may be residing with his parents and siblings and merely because the sale consideration has flown from the parents or from some other siblings is not enough to bring a case within the exception aforesaid to the prohibition contained in Benami Act. It cannot be lost sight of that benami transactions prevalent earlier, generally were between family members and hardly ever in the name of absolute strangers, and if pleas as in the present case were to be held to be falling within the exception clause, would negate the legislative intent of prohibiting actions to enforce rights in respect of property held benami."

37. The plaintiff has failed to aver the basic requirements to show or plead about existence of any Hindu undivided family or joint family property. As noted above the pleas raised by the defendant are vague, unsubstantiated and frivolous. The defence raised by the defendant is clearly barred by Section 4 of the Prohibition of Benami Property Transaction Act. The exception to the Act as stated in section 2(9)(A)(i) or (iv) are not applicable.

38. I may also note that after the amendment to the Benami Transaction (Prohibition) Act under Section 2(9)(A)(b)(iv), a transaction with any person in the name of his brother or sister where the names of brother or sister appear as joint owner in any document and the consideration for such property has been paid from the known sources of the individual then the property would not be a *benami* transaction. In the present case, there is no such title document existing which would take the defence out of the ambit of The Prohibition of Benami Property Transactions Act.

39. The next reason why the present application should be allowed is that it is an admitted fact which has not been categorically denied by the defendant in her written statement that she has come into possession of the suit property as a licensee. Being a licensee, it is not for her to now start claiming title to the property. Reference may be had to Section 116 of the Evidence Act, which reads as follows:

"116. *Estoppel of tenant; and of licensee of person in possession*.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

40. This Court in the case of *Association for Voluntary Action* v. *The Child Trust & Another,* 2013 (9) AD (Del) 180*,* has already held that in terms of above provisions, defendant cannot be permitted to deny that the plaintiff had title at the time when the license was given.

41. In *Bansraj Laltaprasad Mishra* v. *Stanley Parker Jones* AIR 2006 SC 3569, the Hon'ble Supreme Court in paragraphs 14 and 15 held as under:-

> "14. The "possession" in the instant case relates to second limb of the Section. It is couched in negative terms and mandates that a person who comes upon any immoveable property by the license of the person in possession thereof, shall not be permitted to deny that such person had title to such possession at the time when such license was given.
>
> 15. The underlying policy of Section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppels has been incorporated by the legislature in the said section."

42. In *Vishal Builders Pvt. Ltd.* v. *Delhi Development Authority & Ors.,* 2006 (130) DLT 667, this court held that no person who comes into possession of an immovable property on the basis of license or permission of the person in possession thereof can be permitted to deny that such person had a title to such property when such license was given. Similar is the view of the judgment of this Court in the case of *Desh Raj Singh* v. *Triveni Engineering & Industries Ltd. & Anr.,* 2006 (130) DLT 120.

43. Reference may also be had to the judgment in the case of *Sant Lal Jain* v. *Avtar Singh* [1985] 2 SCC 332 where the Hon'ble Supreme held as follows:-

> "6. ..... In *Milkha Singh* v. *Diana*, it has been observed that the principle once a licensee always a licensee would apply to all kinds of licences and that it cannot be said that the moment the licence it terminated, the licensee's possession becomes that of a trespasser. In that case, one of us (Murtaza Fazal Ali, J. as he then was) speaking for the Division Bench has observed:
>
> After the termination of licence, the licensee is under a clear obligation to surrender his possession to the owner and if he fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under s. 55 of the Specific Relief Act. We might further mention that even under English law a suit for injunction to evict a licensee has always been held to be maintainable."

44. There is a clear averment made in the plaint that the defendant was inducted into the suit property as a licensee. This plea in the plaint has not been specifically denied which is clear from the paras of the plaint that were noted above especially paras 3, 5 and 15 of the plaint read with the relevant paras of the written statement. Instead the defendant has chosen to raise vague and unsubstantiated plea about the suit property having been bought from funds siphoned off from the family business/from sale of joint family property. I have already rejected the said pleas above. Hence there is no proper denial of the averment in the plaint that the defendant was inducted as a licensee. As noted in the above judgments once a licensee would always be a licensee. The license given in favour of the defendant stands terminated. The defendant would clearly be liable to be evicted.

45. I may note one more aspect regarding the defence of the defendant. In para 12 of the written statement the defendant denies that the present suit property is not a shared household in terms of Section 2(5) of The Protection of Women from Domestic Violence Act. Other than this one sentence there is no attempt to plead application of the said Act. In the course of arguments, no submissions to this effect were also made.

46. I may only add that this court has not taken any view on the merits or demerits of the plea raised by the defendant in her suit that has been filed being CS(OS) 16/2017. Present adjudication is confined to the plaint herein and the defence raised in the written statement filed by the defendant and the documents thereof. Hence, the findings recorded herein would not prejudice the defendant in her adjudication of the said afore-noted suit.

47. Accordingly, the present application is allowed.

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Accordingly, a decree of permanent injunction is passed in favour of the plaintiffs and against the defendant restraining the defendant, her agents, servants, etc. from entering the suit property or occupying the suit property or causing any nuisance or interference in any manner with the possession of the plaintiffs. A decree of mandatory injunction is also passed in favour of the plaintiffs and against the defendant directing the defendant, her agents, associates, etc. to remove any article from the suit property i.e. one room on the ground of the suit property as shown in the site plan. No costs

Accordingly, the suit stands disposed of. All pending applications, if any, also stand disposed of.

The parties should bear their own cost.

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