



RSA-434-2009 (O&M) & other connected cases [1]

2026:PHHC:013996



130 (2 cases)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 30.01.2026

1.

RSA-434-2009 (O&M)

Vijay Kumar

.....Appellant

Versus

Adarsh Aggarwal

.....Respondent

2.

RSA-435-2009 (O&M)

Vijay Kumar

.....Appellant

Versus

Adarsh Aggarwal

.....Respondent

1.	The date when the judgment was reserved	07.11.2025
2.	The date when the judgment is pronounced	30.01.2026
3.	The date when the judgment is uploaded on the website	30.01.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced.	Full
5.	The delay, if any, of the pronouncement of full judgment and reasons thereof.	Not applicable.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Amit Jain, Sr. Advocate with
Ms. Aeshna Jain, Advocate for the appellant(s)
Mr. Dinesh Arora, Advocate and
Mr. Shivander Malik, Advocate for the respondent.

-:-

HARKESH MANUJA, J. (ORAL)

Vide this common order, abovementioned two Regular Second Appeals are being decided as both have arisen out of common judgments and decrees passed by the Courts below.

2. By way of present appeal(s), challenge has been laid to the judgment and decree dated 19.08.2008 passed by the Court of learned Additional District Judge, Chandigarh, whereby following two appeals were decided:-

- i) CA No.122-2007, tilted as Vijay Kumar Vs. Adarsh Aggarwal;

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ii) CA-197-2003, tilted as Adarsh Aggarwal Vs. Vijay Kumar;

3. Both the aforementioned appeals were preferred against the judgment and decree dated 12.03.2007 passed by the Court of learned Civil Judge (Senior Division), Chandigarh.

4. Briefly stating, the dispute in the present case relates to the rights of the parties with respect to the subject property i.e. Plot No. 123, Industrial Area, Phase-I, Chandigarh and also the validity of Will dated 21.05.1997 allegedly executed by Late Vinod Kumar son of Telu Ram, who happened to be the predecessor-in-interests of the parties to the present *lis*.

5. To understand the relationship between the parties, the pedigree table is extracted hereunder:-

Vinod Kumar			
Vijay Kumar	Anil Kumar	Adarsh	Urmil

For the sake of convenience, the facts are being taken from **RSA-434-2009**.

6. The appellant/ plaintiff being the son of deceased Vinod Kumar filed a suit for declaration, while assailing the validity of Will dated 21.05.1997 allegedly executed by deceased Vinod Kumar allegedly executed in the name of his two daughters – defendants-respondents. In the plaint, besides assailing the validity of Will dated

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21.05.1997, the ownership in possession of the area to the extent of ½ share of Plot No. 123, Industrial Area, Phase I, Chandigarh was also claimed while pleading that the same was jointly allotted in favour of appellant/ plaintiff i.e. Vijay Kumar along with his deceased father Vinod Kumar by the Estate Officer, Chandigarh vide allotment letter dated 30.04.1959 and was thus claimed that the deceased Vinod Kumar, in any case, had no authority to bequeath the same vide Will dated 21.05.1997. The validity of Will was also questioned being surrounded by suspicious circumstances as regards the mental and physical health of the testator, besides the place of residence as stated therein.

7. Upon notice, the respondent / defendant No.2 along with Urmil (defendant No.1) appeared and filed a written statement controverting the stand taken in the plaint. It was pleaded that Plot No. 123, Industrial Area, Phase I, Chandigarh was solely and exclusively allotted in favour of deceased Vinod Kumar. The factum of allotment in favour of appellant/ plaintiff to the extent of ½ share therein was specifically denied. It was also pleaded that the appellant/ plaintiff was in unauthorized occupation of the property being a trespasser. It was stated that the allotment letter was issued in the name of M/s Vinod Kumar Vijay Kumar and the conveyance deed was also executed in favour of the deceased Vinod Kumar being the sole proprietor of firm M/s Vinod Kumar Vijay Kumar and thus, the

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appellant/ plaintiff had no right, title or interest in the said industrial plot. Further, it was stated that the registered Will dated 21.05.1997 was validly executed in favour of defendants by their deceased father. With respect to the residence of deceased Vinod Kumar being mentioned as that of Solan in the Will dated 21.05.1997, it was stated that the deceased was having House No. 141 of HP Housing Board, Solan and thus used to visit and reside there and accordingly, there was no mystery or suspicion about the said residence been mentioned in the Will.

8. From the pleadings of the parties, following issues were framed:-

- "1. Whether the plaintiff is entitled to declaration to the effect that the WILL dated 21/05/1997 executed by Sh. Vinod Kumar son of Sh. Telu Ram is null and void and not binding on the rights of the plaintiff? OPP*
- 2. Whether that plaintiff is entitled to declaration to the effect that the plaintiff is owner in possession of his own half share of the Plot No.123, Industrial Area, Phase-I, Chandigarh? OPP*
- 3. Whether the suit filed by the plaintiff is not maintainable ?OPD*
- 4. Whether the plaintiff has not come to the court with clean hands? OPD*
- 5. Whether the suit filed by the plaintiff is liable to be dismissed in view of the objection taken in para No.8 of the preliminary objection? OPD*

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**6. Relief.”**

9. During the pendency of case, an additional issue was framed on 7/09/2005, which is as under:-

“5.A Whether the WILL dated 21/05/1997 has been genuinely executed by the executant in favour of defendants No.1 & 2, If so its effect? OPD”

10. The learned trial Court vide judgment and decree dated 12.03.2007 recorded that the execution of Will dated 21.03.1997 (Ex.DW1/A) was not proved in accordance with law by the respondent/ defendant. Further it was recorded that the appellant/ plaintiff also failed to prove his ownership over Industrial Plot No. 123, Industrial Area, Phase I, Chandigarh, to the extent of ½ share. It was rather recorded that the allotment of aforesaid property was in the name of sole proprietorship firm M/s Vinod Kumar Vijay Kumar with Vinod Kumar being its sole proprietor. However, strangely enough, the learned trial Court despite having recorded that the execution of Will dated 21.05.1997 was not proved in accordance with law yet dismissed the suit filed at the instance of plaintiff/ appellant in toto without considering his claim based on natural succession.

11. Aggrieved thereof, two appeals were preferred i.e. (i) CA No. 122 of 2007, titled as **Vijay Kumar Vs. Adarsh Aggarwal** which, mainly, pertained to the entitlement of claim of ownership over the property to the extent of ½ share in Industrial Plot No. 123, Industrial

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Area, Phase I, Chandigarh as well as regarding dismissal of his suit despite the finding upon the validity of Will dated 21.05.1997 been recorded against the respondent/ defendant. Simultaneously, CA No.193 of 2007, titled as ***Adarsh Aggarwal Vs. Vijay Kumar*** was filed so as to assail the validity of Will dated 21.05.1997 by deceased Vinod Kumar in favour of respondent/ defendant and her sister. Vide judgment and decree dated 19.08.2008, the appeal CA No. 122 of 2007 preferred by Vijay Kumar appellant was dismissed, however, CA No. 193 of 2007 was allowed. Hence, the present two separate Regular Second Appeals by the appellant-plaintiff.

12. Impugning the aforementioned judgment and decree dated 19.08.2008, learned Senior counsel appearing on behalf of the appellant/ plaintiff submitted that the findings recorded by both the Courts below to the effect that Mr. Vinod Kumar was the sole proprietor of firm M/s Vinod Kumar Vijay Kumar was against record. Learned Senior counsel while referring to the allotment letter proved on record as Ex.PW1/A read with the affidavit furnished by deceased-Vinod Kumar as Ex.PW1/C submitted that the firm M/s Vinod Kumar Vijay Kumar was in fact a Joint Hindu Family firm consisting of father and son, namely, Vinod Kumar Vijay Kumar and it was nowhere established that Mr. Vinod Kumar was the sole proprietor of the firm M/s Vinod Kumar Vijay Kumar.

12.1 Learned Senior counsel also pointed to the order dated

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09.08.1985 passed by Estate Officer, Chandigarh (Ex.PW2/72) to submit that even the request made by the deceased-Vinod Kumar for transfer of plot No.123, Industrial Area, Phase I, Chandigarh, exclusively in his favour was declined. In view of the aforesaid, learned Senior counsel pointed out that the factum of Vinod Kumar being held to be the sole proprietor of M/s Vinod Kumar Vijay Kumar was never proved on record and thus the findings recorded by the Courts below to this effect were liable to be set aside. Learned Senior counsel further contended that the execution of the Will dated 21.05.1997 (Ex.DW1/A) was never proved on record in accordance with Section 63 of Indian Succession Act, 1925, for short '1925 Act', read with Section 68 of Indian Evidence Act, 1872, for short '1872 Act', as the attestation of the Will dated 21.05.1997 in accordance with law by two attesting witnesses, was not proved on record. Learned Senior counsel for the appellant/plaintiff also pointed out that the alleged Will was being surrounded by suspicious circumstances as it never saw the light of the day for more than 02 years after the death of testator as the date of execution of the Will in question was 21.05.1997 and the testator died on 28.08.1997 whereas, the Will was produced, for the first time before the Estate Officer, Chandigarh on 28.02.2000. It was thus submitted that both the appeals preferred at the instance of the appellant-plaintiff were required to be allowed thereby decreeing the suit in his favour.

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13. On the other hand, learned counsel for the respondent started his submissions with the application under Order 41 Rule 27 preferred during pendency of the present appeal for seeking permission to lead additional evidence. Learned counsel while referring to Annexure A-1 (certified copy of Civil Suit No.236 dated 31.10.2000 titled as “*Vijay Kumar Vs. Urmil and Anr.*”) submitted that initially a suit for permanent injunction was preferred at the instance of appellant-plaintiff with a prayer for restraining his 2 sisters namely Urmil and Adarsh from interfering in his peaceful possession over Plot No. 123, Industrial Area, Phase-1, Chandigarh. He, therefore, submitted that even at that time, Plot No. 123, Industrial Area, Phase I, Chandigarh being in the exclusive ownership and possession of the respondents-defendants, the cause of action to seek declaration regarding the validity of Will dated 21.05.1997 was although available to the appellant/ plaintiff, however, it was never claimed in the said previous suit. Learned Counsel for the respondents thus submitted that subsequent suit i.e. the present one was clearly barred by Order 2 Rule 2 CPC. In support, he even referred to Paragraph 8 of the preliminary objections from the written statement which reads as under:-

“8. *That a similar suit between the same parties involving the same property and same matter was filed by the plaintiff against the answering defendants and*

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the same remained pending the in the Court of Sh. S.K. Singla, Civil Judge, Jr. Division Chandigarh and the same stands disposed of by Sh. S.K. Singla, Civil Judge (Jr. Division), Chandigarh. As such the present suit by the principles u/s.10 or Section 11 of the Civil Procedure Code and deserves to be dismissed on this ground being hit by principles of sub judice and res-judicata. A similar suit between the parties is also pending in this Hon'ble Court involving the same property and similar facts and law points."

Learned counsel therefore submitted that the present suit preferred at the instance of appellant-plaintiff was clearly barred under the provisions of law and thus, liable to be dismissed.

13.1. Further, learned counsel appearing on behalf of the respondent-defendant while relying upon the cross-examination of PW1-Sangeeta from the office of Estate Office, UT Chandigarh contended that the factum of Vinod Kumar being the sole proprietor of the firm M/s Vinod Kumar Vijay Kumar was duly established on record. He also contended that from the entire reading of cross-examination of PW1 (Sangeeta), it was also established that it was Vinod Kumar who made the application for allotment of the subject property, besides even applying for its possession and as such from the act and conduct of Vinod Kumar as well as from the records of

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the Estate Office, UT Chandigarh, it was fully established that Vinod Kumar being the sole proprietor was acting and performing all necessary acts on behalf of firm-M/s Vinod Kumar Vijay Kumar and in fact was thus, the real allottee of plot in question.

13.2. Learned counsel appearing on behalf of respondent also submitted that from a conjoint reading of para 4 of the affidavit of Om Parkash-DW2 i.e. the attesting witness read with his cross-examination, statutory requirement of the valid attestation of the Will in question by the two attesting witnesses was duly established on record. In support, learned counsel relied upon the judgment of ***Ganesan through LRs. Vs. Kalanjiam and ors. 2020 (11) SCC 715***; para 5 thereof being relevant is extracted hereunder:-

“5. *The appeals raise a pure question of law with regard to the interpretation of Section 63(c) of the Act. The signature of the testator on the will is undisputed. Section 63(c) of the Succession Act requires an acknowledgement of execution by the testator followed by the attestation of the Will in his presence. The provision gives certain alternatives and it is sufficient if conformity to one of the alternatives is proved. The acknowledgement may assume the form of express words or conduct or both, provided they unequivocally prove an acknowledgement on part of the testator. Where a testator asks a person to attest*

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his Will, it is a reasonable inference that he was admitting that the Will had been executed by him. There is no express prescription in the statute that the testator must necessarily sign the will in presence of the attesting witnesses only or that the two attesting witnesses must put their signatures on the will simultaneously at the same time in presence of each other and the testator. Both the attesting witnesses deposed that the testator came to them individually with his own signed Will, read it out to them after which they attested the Will.”

No other argument has been addressed.

14. I have heard learned counsel for the parties and gone through the paper-book as well as records of the case.

ANALYSIS REGARDING WILL

15. In the present case, the alleged Will dated 21.05.1997 with respect to the subject estate (moveable and immoveable) was allegedly executed by Vinod Kumar in favour of his two daughters, namely, Urmil and Adarsh. The Will was produced on record as Ex.DW1/A. A perusal thereof shows that it was signed by Jagdish Chand and Om Parkash being the attesting witnesses. In order to prove the mandate of Section 63 of the 1925 Act, read with Section 68 of the 1872 Act, one of the attesting witness, namely, Om Parkash appeared as DW2. The contents of his affidavit (Ex.DW2) are



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extracted hereunder:-

***"IN THE COURT OF SH.J.S. BHINDER, CIVIL
JUDGE, J.D. CHANDIGARH.
VIJAY KUMAR VERSUS URMILA & ORS.***

*Evidence by way of Affidavit of Om Parkash S/o late
Sh. Sant Ram, Village Dharampur, Teh. Kasauli,
Distt. Solan, H.P.*

*I, the above named deponent do solemnly
affirm and declare as under:-*

- 1. That I was know to late Vinod Kumar.*
- 2. That the Will dated 21.5.97 was prepared by Sh.
Davinder Thakur. Advocate.*
- 3. That I had signed the Will dated 21.5.97 as one of
the witness.*
- 4. That first of all late Sh. Vinod Kumar had signed
the will after that Sh. Jagdish had signed the will
and at last I had signed the Will as one of the
witness.*

*CHANDIGARH Sd/-Om Parkash (Deponent)
Dated: 13. Nov 2006*

VERIFICATION:

*Verified that the contents of my above said
affidavit are true and correct to my knowledge and no
part of it is false and nothing material has been
concealed therein.*

*CHANDIGARH Sd/-Om Parkash (Deponent)
Dated: 13. Nov 2006"*

A perusal of the aforesaid affidavit shows that the attesting witness, namely, Om Parkash though mentioned the sequence of signatures appended on the Will, however, failed to depose whether the testator Vinod Kumar or even other attesting witness, Jagdish Chand ever signed the Will in his presence. In the

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absence thereof, neither it was established on record that he ever saw the testator having signed the Will in question or even the other attesting witness having attested the signatures of the testator on the Will. Be that as it may, in his cross-examination, DW2 Om Parkash even went on to state that Vinod Kumar-testator did not sign the Will in his presence. In such circumstances, from the deposition of DW2, neither the attestation of the signatures of testator on the Will by Vinod Kumar; nor the attestation by other witness-Jagdish Chand was proved on record.

Thus, it can be safely recorded that the legal and valid execution of Will dated 21.05.1997 (Ex.DW1/A) in terms of Section 63 of the 1925 Act read with Section 68 of the 1882 Act was not proved on record. Consequently, keeping in mind the peculiar facts of the case in hand, the law laid down by the Hon'ble Supreme Court in the case of **Ganeshan's** case (supra), was not applicable to the facts of the present case.

16. As regards the plea raised by respondent/ defendant about non-maintainability of suit being barred by Order 2 Rule 2 CPC, once the application preferred at the instance of respondent/ defendant seeking permission to lead additional evidence stands rejected and in the absence of any such specific plea raised in the written statement, the suit in hand preferred at the instance of appellant/ plaintiff cannot be held to be non-maintainable under Order



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2 Rule 2 CPC.

ANALYSIS REGARDING OWNERSHIP IN POSSESSION OF SUIT PROPERTY

17. The next question for consideration before this Court is whether the appellant-plaintiff was entitled for declaration to the effect that he owned and possessed half share of Plot no. 123, Industrial Area, Phase -I, Chandigarh alongwith his father as an allottee thereof.

18. From perusal of the allotment letter Ex. PW 2/40 and Conveyance Deed dated 28.11.1960 Ex. P1/B along with depositions of the appellant-Vijay Kumar (PW2) and Sangeeta, Clerk, Estate Office Chandigarh (PW1) it is clear that the property concerned was allotted in the name of proprietorship firm M/s Vinod Kumar Vijay Kumar and not to any individual. It was contended by the learned Senior Counsel appearing on behalf of the appellant that by virtue of affidavit by Vinod Kumar (deceased) dated 29.11.2005 Ex. PW 1/C, it was established that the firm Vinod Kumar Vijay Kumar was a 'Joint Hindu family firm' consisting of father and son, being proprietor of Hindu Steel Fabrication Corporation. It was further mentioned in the affidavit that Vinod was the manager and Karta of the joint Hindu family as well as the natural guardian of his son Vijay Kumar and hence, was authorized to execute the conveyance deed on his own behalf and on behalf of his minor son.

18.1. In Hindu law, general principle is that every Hindu family

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is presumed to be joint unless the contrary is proved. A Hindu Undivided Family (*hereinafter "HUF"*) is a family that consists of all persons lineally descended from a common ancestor, including their wives and unmarried daughters; is a family-based entity that automatically exists by law and is primarily recognized for tax purposes, while a Joint Hindu Family Firm is a business entity formed by members of a HUF depicting as to how that family unit conducts commerce, governed by Hindu Law, with the Karta making decisions. Logically, for a Joint Hindu Family firm to exist, it is necessary to first establish the existence of HUF and then only it has to be proved that the business was being run by the said HUF in form of a Hindu Joint Family Firm. While every Hindu Family enjoys presumption of being joint, no such presumption attaches to a Hindu Joint business and existence thereof must be proved on record thoroughly by leading positive evidence. Thus, the mere averment in the affidavit of Mr. Vinod Kumar (deceased) stating M/s Vinod Kumar Vijay Kumar to be a Joint Hindu Family firm is not sufficient to afford it the status of being one in the humble opinion of this Court. Also, since Joint Hindu Family firm is merely a business style under which HUF operates their business and does not enjoy any separate legal existence per se, the appellant was required to prove that M/s Vinod Kumar Vijay Kumar was a business run by his Hindu Undivided Family, for which no cogent evidence has been led by appellant, rather the contention

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of the appellant that M/s Vinod Kumar Vijay Kumar is a Joint Hindu Family firm in name of only two people – Vinod Kumar (father) and Vijay Kumar (son) is contradictory to the possibility of the same being run by a HUF as both the facts cannot exist simultaneously.

19. Further, in Hindu Law, by Sir Dinshaw Fardunji Mulla, 23rd edition, at page 338, it is written that:

“As long as a family remains an undivided family, two or more members of it, whether they are members of different branches, or of one and the same branch of the family, can have no legal existence as a separate independent unit; but all the members of a branch or of a sub-branch, can form a distinct and separate corporate unit within the larger corporate family and hold property as such. However, the law does not recognise some of the members of a joint family belonging to different branches or even to a single branch, as a corporate unit. Any acquisition of property by some such persons could be held by them only as co-sharers or co-tenants and the property would pass by inheritance and not survivorship.”

19.1. In the present case, M/s Vinod Kumar Vijay Kumar is essentially a corporate unit made by 2 members of the joint family consisting of father Vinod Kumar and his minor son Vijay Kumar as claimed by the appellant, however, such a corporate unit holds no recognition under the Hindu law. Then, in such circumstances, whereby some members of joint family have formed a separate unit

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by themselves, the discussion by the Hon'ble Apex Court in case of ***Bhagwan Dayal v Reoti Devi reported as AIR 1962 SC 287*** finds relevance wherein it was held that the rights inter-se between the members who have acquired the said property would be subject to the terms of the agreement whereunder it was acquired. The relevant portion thereof is extracted hereunder:-

“Ordinarily, the manager, or by consent, express or implied, of the members of the family, any other member or members can carry on business or acquire property, subject to the limitations laid down by the said law, for or on behalf of the family. Such business or property would be the business or property of the family. The identity of the members of the family is not completely lost in the family. One or more members of that family can start a business or acquire property without the aid of the joint family property, but such business or acquisition would be his or their acquisition. The business so started or property so acquired can be thrown into the common stock or blended with the joint family property in which case the said property becomes the estate of the joint family. But he or they need not do so, in which case the said property would be his or their self-acquisition, and succession to such property would be governed not by the law of joint, family but only by the law of inheritance. In such a case, if a property was jointly acquired by them, it would not be governed by the law of joint family; for Hindu law does not recognise some of the members of a joint family belonging to different branches, or even to a

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single branch, as a corporate unit. Therefore, the rights inter se between the members who have acquired the said property would be subject to the terms of the agreement where under it was acquired, the concept of joint tenancy known to English law with the right of survivorship is unknown to Hindu law except in regard to cases specially recognized by it. The acquisitions made by the members of different branches jointly cannot be impressed with the incidents of joint family property. They can only be co-sharers or co-tenants, with the result that their properties pass by inheritance and not by survivorship."

19.2. A perusal of the record shows that besides the affidavit of Mr. Vinod Kumar (deceased) dated 29.11.2005 (Exhibit PW1/C) stating the M/s Vinod Kumar Vijay Kumar to be a joint Hindu family firm, no evidence has been brought on record to establish the nature of the said arrangement. From the deposition of PW1 Miss Sangeeta, Clerk, Estate Office, Chandigarh, it had come forth that there was no document on record in her office case file showing any letter pad or letterhead or Partnership Deed or Memorandum of Articles of Association of M/s Vinod Kumar Vijay Kumar. No such document was produced before this Court either by the appellant to establish his claim. Further, since the law does not recognize a separate corporate entity by some members of the joint family coupled with the fact that there is a severe lack of evidence to ascertain the nature of M/s

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Vinod Kumar Vijay Kumar on record, the same is not proved to be a Joint Hindu Family firm. It is pertinent to mention here that it has not been claimed or proved to be a partnership firm either, rather the status of the firm remains ambiguous.

20. However, even though the appellant has failed to prove M/s Vinod Kumar Vijay Kumar to be a Joint Hindu Family Firm, the question as to whether the appellant is also the proprietor of the same still needs to be addressed. A perusal of the record shows that no estate document was appended by the appellant that clearly stated him to be a proprietor of M/s Vinod Kumar Vijay Kumar rather, all the documents related to the property in question, addressed by the Estate Office, Chandigarh including the allotment letter, possession letter, copy of notice for misuse of the suit property etc. were in name of M/s Vinod Kumar Vijay Kumar and not in the individual name of the appellant. Even the order dated 09.08.1985 passed by Estate Officer, Chandigarh (Ex.PW2/72) declining the request made by the deceased Vinod Kumar for transfer of the property in question in his favour, does not come to the rescue of the appellant as it was a simple denial without citing any reason whatsoever and as such, cannot be colored with the assumption that the reason for declining the request was due to appellant being the other proprietor of M/s Vinod Kumar Vijay Kumar.

20.1. Furthermore, Ms. Sangeeta, Clerk, Estate officer,

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Chandigarh (PW1) in her deposition had stated that a Deed of partnership dated 05.09.1962 was submitted with them which was executed between Vinod Kumar, Lal Chand, Mehar Chand and Ishar Dass and in para 2 of the said partnership deed, it has been mentioned that Vinod Kumar was the sole proprietor of concern M/s Vinod Kumar Vijay Kumar. She had further admitted that she could not say whether the affidavit exhibit PW 1/C was considered or not while issuing the allotment letter and conveyance deed. It may be noticed here that there was not a single positive document annexed by the appellant that directly described him to be the proprietor of concern M/s Vinod Kumar Vijay Kumar coupled with the overall deposition made by Ms. Sangeeta who appeared as appellant-plaintiff's own witness, did not inspire confidence of this Court to hold him to be the proprietor of M/s Vinod Kumar Vijay Kumar. Since the appellant was the one asserting himself to be the owner of the suit property, onus was on him to prove the same and he was not been able to discharge the burden. Therefore, at this juncture, this Court is not inclined towards interfering with the concurrent finding of the learned Courts below holding Mr. Vinod Kumar to be the sole proprietor of firm M/s Vinod Kumar Vijay Kumar.

21. Now, with respect to the contention as to the property concerned is a Joint Hindu Family Property, in law, though the family might be joint, yet there is no presumption that the property owned by

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any member or members of the joint family is property of Hindu joint family. The member asserting the property to be joint family property, must prove by cogent and convincing evidence. The counsel for both the parties have relied upon various authorities and principles, the most relevant decisions are extracted hereafter for the sake of convenience. The Hon'ble Apex Court in ***Bhagwat Sharan v.***

Purushottam (SC) 2020(2) AIR Supreme Court 2361 has held that:

"The Privy Council in Appalaswami v. Suryanarayanamurti, I.L.R. 1948 Mad.440 held as follows:

"The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property"

The aforesaid view was accepted by this Court in Shrinivas Krishnarao Kango v. Narayan Devji Kango and Ors. (1955) 1 SCR 1 In D.S. Lakshmaiah and Ors. v. L. Balasubramanyam and Ors. (2003) 10 SCC 310 this Court held as follows:

"The legal principle, therefore, is that there is no presumption of a property being joint family property

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only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available."

Similar view was taken in Mst Rukhmabai v. Lala Laxminarayan and Others. (1960) 2 SCR 253 and Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade (2007) 1 SCC 521. The law is thus well settled that the burden lies upon the person who alleges the existence of the Hindu Undivided Family to prove the same."

Also, in **Goli Eswariah v. Commissioner of Gift Tax, A.P. 1970 AIR**

Supreme Court 1722 it was held that:-

"6. To pronounce on the question of law presented for our decision, we must first examine what is the true scope of the doctrine of throwing into the 'common stock' or 'common hotchpot'. It must be remembered that a Hindu family is not a creature of a contract. As observed by this Court in Mallesappa Bandeppa Desai v. Desai Mallappa, (1961)3 SCR 779 that the doctrine of throwing into common stock inevitably postulates that the owner of a separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. The existence of a coparcenary

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is absolutely necessary before a coparcener can throw into the common stock his self acquired properties. The separate property of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by him into the common stock with the intention of abandoning his separate claim therein. The separate property of a Hindu ceases to be a separate property and acquires the characteristic of a joint family or ancestral property not by any physical mixing with his joint family or ancestral property but by his own volition and intention by his waiving and surrendering his separate rights in it as separate property. The act by which the coparcener throws his separate property to the common stock is a unilateral act. There is no question of either the family rejecting or accepting it. By his individual volition he renounces his individual right in that property and treats it as a property of the family. No longer he declares his intention to treat his self acquired property as that of the joint family property, the property assumes the character of joint family property. The doctrine of throwing into the common stock is a doctrine peculiar to the Mitakshara School of Hindu law. When a coparcener throws his separate property into the common stock, he makes no gift under Chapter VII of the Transfer of Property Act. In such a case there is no donor or donee. Further no question of acceptance of the property thrown into the common stock arises.”

21.1. The conspectus of the above pronouncements is that a property is rendered to be Joint Family property when: -

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First, where a member, having acquired property in his individual capacity, voluntarily throws such property into the common stock or hotchpot of the joint family, with a clear and unequivocal intention to abandon his exclusive ownership therein. Such conduct must unmistakably show the intention of the holder of self-acquired property to waive his separate rights and to blend the property with the joint family estate. Second, when investment for a business activity which enabled the acquisition of separate property, itself comes from the joint family nucleus with a clear understanding and intention that though the business is separate, it is always treated as joint family property. In either eventuality, it is imperative to establish that the person acquiring the property is a coparcener of a joint family, and that there exists coparcenary property with which the self-acquired property could be blended. There must exist a common hotchpot, originating from a joint family nucleus or ancestral property, into which the self-acquired property is alleged to have been thrown.

21.2 In the present case, mere averment in the affidavit of Mr. Vinod Kumar (deceased) stating M/s Vinod Kumar Vijay Kumar to be a Joint Hindu Family firm is not enough to construe that he intended to throw the property in question into the hotchpot of his family. Rather, it has been deposed by Ms. Sangeeta, Clerk, Estate that in the Deed of partnership dated 05.09.1962, executed between Vinod Kumar, Lal Chand, Mehar Chand and Ishar Dass, Vinod Kumar is

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mentioned as the sole proprietor of the concern M/s Vinod Kumar Vijay Kumar. Further, the appellant mentioning the suit property to be the address for his own individual business cannot give it the color of Joint Property either. The instances presented are not enough to deduce Vinod Kumar's clear intention that he wanted to blend his property with the ancestral property. Even if we construe the actions of Vinod Kumar as intentional to renounce his right in property in question, the same had to be for the whole Hindu Undivided Family for an HUF to come into existence, after putting the property into hotchpot, it could not have been in his own and the name of appellant only. The said claim of the appellant has been consistent throughout that only he and his father had share in the property, then the same cannot be considered as Joint Family property.

21.3. Further, while it is settled law that HUF/Hindu Joint family can come into existence after 1956 if an individual's property is so thrown, it is equally true that once property is thrown into common hotchpot, the exact details of the specific day/month/year etc. of creation of the HUF for the first time by such act, have to be clearly pleaded and mentioned which is the legal requirement because of Order VI Rule 4 CPC which provides that all necessary factual details of the cause of action must be clearly stated which is also lacking in the case in hand. There are no specific averments in the plaint claiming that the property in question was thrown into the hotchpot of

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family for it to be a Joint family property and thus, cannot be regarded so.

21.4. Moreover, no evidence has been brought on record to show sufficient nucleus/income of Hindu Joint Family and that the property in question had been purchased from the said nucleus. Also, once the appellant has failed to prove M/s Vinod Kumar Vijay Kumar to be run by a Joint Hindu Family or Joint Hindu Family Firm or coparcenary not been established, the question of the properties having been acquired from the earnings of coparcenary/Joint Hindu Family Business itself does not arise and the properties would not be of the HUF or of coparcenary. Therefore, from the discussion hereinabove, since neither the M/s Vinod Kumar Vijay Kumar was proved to be of a Hindu Joint Family firm, nor the property concerned was proved to be a Joint property, appellant cannot be regarded as owner of half share of the property.

21.5. Also, even assuming *arguendo* that the property in question was a Hindu Undivided Family Property/Joint Family property as pleaded by the appellant, it is needless to say that Hindu Joint Family Firm is different from a partnership firm as the latter is governed by principles enshrined in the Partnership Act, 1932. Mulla in his Treatise Hindu Law 21st Edition has pointed out the following points of difference between partnership and Hindu Joint Family firm:-

"In a joint family business no member of the

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family can say that he is the owner of one-half, one-third or one-fourth. The essence of joint Hindu family property is unity of ownership and community of interest and the shares of the members are not defined".

and the Hon'ble Apex Court in ***Nanchand Gangaram Shetji v. Mallappa Mahalingappa Sadalge & Ors.; (1976) 2 SCC 429*** has held as under:-

"37.....In a joint Hindu family business, no member of the family can say that he is the owner of one-half, one-third or one fourth. The essence of joint Hindu family property is unity of ownership and community of interest, and the shares of the members are not defined. Similarly, the pattern of the accounts of a joint Hindu family business maintained by the karta is different from those of a partnership. In the case of the former the shares of the individual members in the profits and losses are not worked out, while they have to be worked out in the case of partnership accounts."

Thus, even if the same was held to be Hindu Joint Family firm, the appellant could not have claimed that he was the owner of one-half of the share of the property concerned. Therefore, from the discussion made hereinabove, the property in question is held to be in the name of M/s Vinod Kumar Vijay Kumar, through its proprietor Vinod Kumar and the appellant thus cannot be declared to be owner in possession



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of the same to the extent of half share.

23. Further, the Will dated 21.05.1997 is held to be invalid and thus declared null and void.

24. Accordingly, both the appeals are disposed of in the abovementioned terms.

25. Pending misc. application(s), if any, shall also stand disposed of.

30.01.2026
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned?
Whether Reportable?

Yes/No
Yes/No