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

\+ CS(OS) 283/2010, IA No.2060/2010 (u/O 39 R-1&2), IA No.4323/2010 (u/O 39 R-4), IA No.9785/2010 (for modification of order dated 21.07.2010) & IA No.19749/2011 (u/O 39 R-1&2)

GURNAM SINGH & ANR ..... Plaintiffs
Through: Mr. M.K. Gahlot, Adv.

Versus

MANOHAR SINGH & ORS ..... Defendants
Through: Mr. Arun Khosla, Adv. for D-3.
Counsel for D-5 (appearance not given)

AND

\+ CS(OS) 3105/2011, IAs No.19967/2011 (u/O 39 R-1&2) & 7380/2012 (u/O 1 R-10)

HARVINDER SINGH BINDI &ANR ..... Plaintiffs
Through: None.

Versus

MANOHAR SINGH ..... Defendant
Through: Mr. Arun Khosla, Adv.

AND

\+ CS(OS) 200/2012 & IA No.1622/2012 (u/O 39 R-1&2)

HARDEEP KAUR ..... Plaintiff
Through: Mr. Deepak Tyagi, Adv.

Versus

JASWANT KAUR & ORS ..... Defendants
Through: Mr. Amit Khosla, Adv.
Mr. Amit Punj, Adv. for D-6,9&10.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.02.2013**

IA No.7498/2012 (of the defendant No.3 u/O 7 R-11 CPC) in CS(OS) 283/2010

1. The two plaintiffs, of which plaintiff No.2 Ms. Nainpreet Kaur was at the time of filing of the suit, stated to be a minor, are the only children of defendant No.1 Sh. Manohar Singh. They have filed this suit for partition of property No.43/43-A, Punjabi Bagh, New Delhi and for declaration that the Sale Deed dated 11.08.2006 executed by the defendant No.1 of the said property in favour of defendant No.2 Sh. Gulshan Chanana is null and void. Declaration is also sought that the Sale Deed dated 08.06.2007 executed by the defendant No.2 Sh. Gulshan Chanana of the said property in favour of the defendant No.3 / applicant Sh. Deepansh Malhotra is also null and void.

2. None appears for defendant No.1 Sh. Manohar Singh and / or defendant No.2 Sh. Gulshan Chanana, though it is stated that a written statement is filed by defendant No.1 Sh. Manohar Singh supporting the case of the plaintiffs. The wife of Sh. Manohar Singh and the mother of the plaintiffs viz. Smt. Gurmeet Kuar, has been impleaded as defendant No.4. She has also not filed any written statement and is not appearing. One M/s Associate India Financial Services Pvt. Ltd. has been impleaded as defendant No.5. The counsel for the defendant No.5 explains that the defendant No.1 Sh. Manohar Singh had mortgaged the property with the said defendant No.5 and the original Title Deeds of the property are in the custody of the defendant No.5. The counsel for the defendant No.5 states

that the defendant No.5, for enforcement of its rights has invoked arbitration proceedings which are underway.

3. The counsel for the applicant / defendant No.3 has argued that though defendant No.1 Sh. Manohar Singh had vide Sale Deed dated 11.08.2006 sold the property to defendant No.2 Sh. Gulshan Chanana and it was recorded in the said Sale Deed that vacant physical possession had been delivered but defendant No.1 Sh. Manohar Singh had expressed difficulties in vacating and in the circumstances a Lease Deed of letting out of the property by defendant No.2 Sh. Gulshan Chanana to Sh. Manohar Singh was executed and registered. It is further informed that the Sale Deed dated 08.06.2007 of the property by defendant No.2 Sh. Gulshan Chanana in favour of the applicant / defendant No.3 Sh. Deepansh Malhotra is witnessed by Sh. Manohar Singh who had then also undertaken to deliver possession within one month. It is further informed that upon the failure of defendant No.1 Sh. Manohar Singh to deliver possession, the applicant / defendant No.3 Deepansh Malhotra determined the tenancy and instituted a suit in the District Court for ejectment of defendant No.1 Sh. Manohar Singh and which was decreed. RFA No.113/2010 preferred against the said decree is stated to have been dismissed on 06.01.2011. It is yet further informed that in the execution of the said decree for ejectment, first defendant No.1 Sh. Manohar Singh filed objections which were dismissed and thereafter the plaintiffs herein filed objections and which were also dismissed and it is only thereafter that the present suit has been filed setting up the plea of the property belonging to a Hindu Undivided Family (HUF) of defendant No.1 Sh. Manohar Singh and the plaintiffs having a share therein by birth. The

counsel for the applicant/defendant No.3 Sh. Deepansh Malhotra contends that in pursuance to an order dated 09.12.2011 in the present suit, the plaintiffs were asked to file documents in support of their otherwise unsubstantiated plea of existence of HUF and though have filed the said documents but the said documents also do not make out a case of any HUF. On this ground rejection of the plaint is claimed. On enquiry as to whether in the objections to the execution petition aforesaid, the plaintiffs took the plea of the property belonging to an HUF of which they were members, the counsel for the applicant / defendant No.3 Sh. Deepans Malhotra states that no such plea was taken.

4. The appearing counsels have been heard.

5. The sole question to be adjudicated in the present suit is whether the property can be said to be of an HUF in which the plaintiffs as the children of defendant No.1 Sh. Manohar Singh can be said to be having a share. If it is not so, the plaintiffs do not have any right to the property to claim partition thereof. The setting aside of the Sale Deeds executed by defendant No.1 Sh. Manohar Singh and the subsequent Sale Deed is also sought on the said basis only and not on any other grounds.

6. To appreciate whether on the averments in the plaint any case of the property belonging to an HUF is made out, it is deemed appropriate to set out paras 1 and 3 of the plaint which are as under:

> *"1. That the plaintiff no.1 and 2 are coparceners in the coparcenary of which defendant no.1 is the Karta being the head of the family and father of plaintiff no.1 and 2. The plaintiff no.1 is the son of the defendant no.1 and plaintiff no.2 is the minor daughter of defendant no.1 and has attained the*

status of coparcener by virtue of The Hindu Succession (Amendment) Act 2005. The plaintiff no.2 is being represented by her brother Plaintiff no.1 as her next friend and being her elder brother. Plaintiff no.1 has no interest adverse to that of plaintiff no.2 and is agitating for the legitimate rights of plaintiff no.2 as well. However, by way of abundant caution and by virtue of Hindu adoption and maintenance Act and provisions of Order XXXII C.P.C., application for appointing him as guardian ad-litem has been filed separately along with the present plaint.

3. That the family history relevant for the present proceedings as acquired by the plaintiff no.1 from various sources and relatives, is pleaded herein. The grand father of the plaintiffs, Sh. Piara Singh had purchased the entire property bearing no.43/43, Punjabi Bagh, New Delhi alongwith his brother Sh. Hazara Singh. The grand father of the plaintiffs Sh. Piara Singh and his brother Sh. Hazara Singh had underwent a partition among themselves whereby the larger property bearing no. 43/43, Punjabi Bagh, New Delhi was divided into two equal shares. By virtue of the partition, Sh. Piara Singh became the absolute owner of the property falling into his share admeasuring 140.46 sq. yds. and later identified and ascribed no.43/43-A, Punjabi Bagh, New Delhi (hereinafter referred as suit property). Sh. Piara Singh had died intestate on 21.08.1995, leaving behind the defendant no.1, five daughters and the plaintiffs as his legal heirs. The five paternal aunts have relinquished their rights in the suit property. By virtue of relinquishment, the plaintiffs and the defendant no.1 thereafter constituted the coparcenary and the defendant no.1 being the father and head of the family became the Karta of the coparcenary. The pedigree table is annexed as ***Annexure-A.****"*

None of the other paragraphs are found to be relevant for the present purpose.

7. It has been enquired from the counsel for the plaintiffs as to how according to the plaintiffs, the property is a property of the HUF of defendant No.1 Sh. Manohar Singh. The counsel for the plaintiffs has argued that since the said property along with another portion thereof, was originally acquired in the year 1967 by the father of defendant No.1 Sh. Manohar Singh viz. Sh. Piara Singh and his brother Sh. Hazara Singh and was subsequently partitioned between them and the defendant No.1 Sh. Manohar Singh inherited the same on the demise of his father on 21.08.1995, the property in the hands of defendant No.1 Sh. Manohar Singh is ancestral and according to the Hindu law his children viz. the plaintiffs would also have a share therein.

8. It is unfortunate that inspite of the coming into force of the Hindu Succession Act, 1956 (HSA) more than half a century ago, the concepts of the ancient Hindu law, as prevalent prior to the coming into force of the said Act, continue to form the basis for a large number of litigations. What has been argued by the counsel for the plaintiffs may have been good law prior to the coming into force of the HSA. The said Act made a significant change and under Section 8 thereof as interpreted by the Supreme Court in ***Commissioner of Wealth Tax, Kanpur, Vs. Chander Sen*** (1986) 3 SCC 567 and ***Yudhister Vs. Ashok Kumar*** (1987) 1 SCC 204 the property inherited by a male after the coming into force of the HSA from his father is held by the said male, as his personal individual property and in which his sons have no right. The counsel for the plaintiffs himself has given the date of demise of the father of defendant No.1 Sh. Manohar Singh as of 21.08.1995. Thus the property inherited by defendant No.1 Sh. Manohar Singh from his father

would be personal individual property of defendant No.1 Sh. Manohar Singh and his children viz. the plaintiffs would not have any right therein, as is sought to have been made out. The Supreme Court in ***Bhanwar Singh Vs. Puran*** (2008) 3 SCC 87 held that having regard to Sections 8 & 19 of HSA, the properties cease to be joint family properties. Similarly, in ***Makhan Singh Vs. Kulwant Singh*** (2007) 10 SCC 602 it was held that a son who inherits his fathers assets under Section 8 of HSA, does so in his individual capacity and not as Karta of HUF.

9. This Court has also thereafter followed the said judgment in ***Master Daljit Singh Vs. S. Dara Singh*** AIR 2000 Delhi 292, ***Bharat Bhushan Maggon Vs. Joginder Lal*** MANU/DE/5332/2012 and ***Pratap Vs. Shiv Shanker*** 164 (2009) DLT 479. Another Single Judge recently in ***Mrs. Premwati Vs. Mrs. Bhagwati Devi*** MANU/DE/4784/2012 has specifically held that no HUF comes into existence upon a Hindu male inheriting the property on the demise of his father after the coming into force of the HSA.

10. In this regard, it may be noticed that though the plaintiffs have described themselves as coparceners and the defendant No.1 Sh. Manohar Singh as the Karta but from the pleadings and the arguments addressed, it is clear that the HUF / coparcenary is stated to have come into existence only for the reason of the property having been inherited by defendant No.1 Sh. Manohar Singh from his father and not otherwise.

11. There is yet another important factor. It is the case of the plaintiffs themselves that after the demise of the father of defendant No.1 Sh. Manohar Singh, the sisters of defendant No.1 Sh. Manohar Singh released the share inherited by them from the father in favour of defendant No.1 Sh.

Manohar Singh. If there was any HUF/coparcenary since the life time of father of defendant No.1 Sh. Manohar Singh, the question of the sisters of defendant No.1 Sh. Manohar Singh inheriting any share in the property or relinquishing the same in favour of defendant No.1 Sh. Manohar Singh did not arise. The right of the daughters in an HUF came into existence only pursuant to the amendment of the year 2005 to the HSA and at the time of demise of the father on 21.08.1995, had there been any HUF there would have been no question of execution of the registered Relinquishment Deeds. It is in any case the case of the plaintiffs that the property was the self acquired property of the father of defendant No.1 Sh. Manohar Singh.

12. Thus from the averments made in the plaint, the plaintiffs have failed to make out any cause of action.

13. The suit is accordingly dismissed.

14. The plaintiffs are also burdened with costs to be assessed in accordance with law. Advocate's fee is assessed at Rs.30,000/-.

15. Decree sheet be drawn up.

16. As far as the claims of the defendant No.5 are concerned, the same are not for adjudication in the present suit and thus no observation with respect thereto is made.

CS(OS) 3105/2011

17. This suit is for specific performance of an Agreement dated 09.09.2011 of sale of the same property. The Agreement to Sell of which special performance is claimed of a date subsequent to the Sale Deed by defendant No.1 Sh. Manohar Singh in favour of Sh. Gulshan Chanana.

18. Vide *ex parte* order dated 13.12.2011 in this suit, interim order sought was granted subject to the plaintiffs depositing the balance sale consideration of Rs.60,00,000/- by way of an FDR in this Court. None has appeared for the plaintiffs today. On the last several dates also, none has been appearing for the plaintiffs.

19. The office noting is that the FDR has not been filed. The plaintiffs are apparently not interested in pursuing the suit. In any case, the non deposit of the FDR also shows the non readiness and non willingness of the plaintiffs to perform their part of the contract and which performance is fatal to a suit of specific performance.

20. With the observation aforesaid, the suit is dismissed for non-prosecution.

CS(OS) 200/2012

21. This suit is filed by one of the sisters of Sh. Manohar Singh for partition.

22. As observed above, the said sister of Sh. Manohar Singh along with other sisters relinquished the share inherited by them from their father in the property in favour of Sh. Manohar Singh.

23. Though Sh. Deepansh Malhotra ordered on 25.07.2012 to be impleaded as the defendant in this suit has filed photocopy of the said Relinquishment Deed, it has emerged that the original thereof is in possession of M/s Associate India Financial Services Pvt. Ltd. defendant No.5 in CS(OS) No.283/2010 and whose counsel states that the original Relinquishment Deed has been filed in the arbitration proceeding pending

before Sh. G.S. Jugti, Additional District Judge (Retd.), Delhi.

24. The counsel for the plaintiff on enquiry as to whether the plaintiff admits her signature on the Relinquishment Deed states that the plaintiff is not present in the Court today.

25. The plaintiff is directed to appear in person before this Court on 25th February, 2013.

26. The original arbitration record containing the Relinquishment Deed is requisitioned. The counsel for M/s Associate India Financial Services Pvt. Ltd. to inform Mr. G.S. Jugti, Additional District Judge (Retd.) of today's order and who is requested to send the arbitration record containing the registered Relinquishment Deed in this Court on that date. Copy of this order be given to the counsel for M/s Associate India Financial Services Pvt. Ltd. for ensuring compliance by Mr. G.S. Jugti, Additional District Judge (Retd.).

27. It is clarified that the order of *status quo* in this suit shall not come in the way of execution of the decree for ejectment of Sh. Manohar Singh from the property at the instance of Sh. Deepansh Malhotra.

28. List on 25th February, 2013.

RAJIV SAHAI ENDLAW, J

FEBRUARY 15, 2013
'gsr'..