

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

+ **CS(OS) No.1244/2002**

% **10th October, 2012**

RANBIR SINGH AND ORS. Plaintiffs
Through: Mr. Saurabh Tiwari, Adv.

versus

AMRIT SINGH THRU LR'S AND ORS. EC+ Defendants
Through : Mr. Rajat Aneja, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This suit is filed by son Sh. Ranbir Singh; plaintiff No. 1, and plaintiff Nos 2 to 4; who are the wife and children of Sh. Ranbir Singh. The subject suit is a suit essentially seeking partition of the properties, which came to be owned by the defendant/father-Sh. Amrit Singh, having been inherited by him from his own father, Sh. Lal Singh.

2. The following order was passed in this suit on 03.10.2012:

1. This suit was filed by the son Ranbir Singh against the father Sh.Amrit Singh claiming that the plaintiff had a right in the ancestral properties. Defendant/father expired during the pendency of the suit and is now represented by one son Gurdeep Singh, who claims to be the legal heir, on whom the properties have devolved to the extent mentioned in the registered Will dated 29.9.2003.

2. A reference to the plaint shows that the only cause of action for claiming share in the properties is that the properties were ancestral in the hands of the father. In law, merely because the father inherited ancestral properties, the plaintiff/son does not have a right, and the father/defendant takes the properties as self-acquired in his hands by virtue of two judgments of the Supreme Court in *The Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen & Ors.*; 1986 AIR 1753 and *Yudhishtir v. Ashok Kumar*, 1987 AIR 558.

3. The matter was passed over once as the counsel for the plaintiff wanted to read the judgments. The counsel for the plaintiff after reading of the judgments again seeks time.

4. At request, adjourned to 10th October, 2012, making it clear that no adjournment shall be granted on the next date of hearing.

3. A reference to the said suit plaint shows that the only reason for seeking partition of the suit properties is that these properties were inherited by the defendant Amrit Singh from his father, Sh. Lal Singh. The cause of action averred in the plaint is that once Sh. Amrit Singh inherited properties from his father, Sh. Lal Singh, the properties were ancestral properties, in

which the plaintiffs would automatically have a share therein on account of the same being ancestral in nature.

4. It has been held by the Hon'ble Supreme Court in the aforesaid judgments of *The Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen & Ors.* and *Yudhishtir v. Ashok Kumar (supra)* that after passing of the Hindu Succession Act, 1956, when a person inherits property from his paternal ancestor, the property is inherited as a self acquired property in his hands and not as Hindu Undivided Family property, unless on the date of death the ancestor, an HUF was existing.

5. In the present case, the father of the defendant Sh. Amrit Singh, namely Sh. Lal Singh expired in around 1968. This is admitted before me by the plaintiff No.1, who is present in the Court, although, the date and year of death does not find any mention in the suit plaint. Once, Sh. Lal Singh dies after passing of the Hindu Succession Act 1956, the property inherited by his son namely Sh. Amrit Singh, the defendant, will be self acquired property in the hands of Sh. Amrit Singh, inasmuch as it is not the case of plaintiff in the plaint that at the time of death of Sh. Lal Singh, there already existed an HUF between the parties.

6. In this view of the matter, on the admitted facts, there is no cause of action which is made out as per the plaint, so as to entitle the plaintiff to the reliefs as claimed in the suit. Once the properties are self acquired properties of Sh. Amrit Singh, the plaintiffs cannot claim any right in the same for seeking partition. I may for the sake of completion of narration add that the defendant Sh. Amrit Singh died during the pendency of the suit and he is today represented by his son Sh. Gurdeep Singh, who claims to be one of the beneficiaries under a registered Will dated 29.09.2003 of the father of Sh. Amrit Singh. This Will is the subject matter of the dispute of the testamentary case No. 65/2007, which is pending, and therefore nothing is observed one way or the other with respect to the validity or otherwise of the will dated 29.09.2003 by the present judgment and that issue will be decided in the aforesaid testamentary case.

7. In view of the above, the suit is dismissed leaving the parties to bear their own costs. Since the suit stands dismissed, all the pending applications are disposed of and interim orders will stand vacated, however, the present defendant Sh. Gurdeep Singh will not create any third party interest or transfer the suit properties for a period of four weeks from today, and which period is granted to the plaintiff No.1 or any other person legally entitled for

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filing of an appropriate suit for partition. When such suit is filed and an interim application is filed therein, the interim orders will be passed by the concerned Court without being influenced by the fact that the interim orders in the present suit are being continued for a period of four weeks from today.

8. I may also state that I am continuing the interim orders because in the connected matters CS(OS) 2426/2001 and CS(OS) 1145/2007, interim orders have been passed and the same are continuing with respect to the suit properties

9. The suit is disposed of in terms of the above observations.

I.A. Nos. 16430/2011 & 20179/2011 in CS(OS) 1244/2002

10. These IAs are dismissed as not pressed with liberty to the parties to raise all issues of merits in testamentary case No.65/2007 and CS(OS) 1145/2007. The applications are disposed of accordingly.

VALMIKI J. MEHTA, J

OCTOBER 10, 2012

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