

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

+ **CS(OS)No.189/2003**

% **15th October, 2012**

PURAN CHAND OBEROI Plaintiff
Through: Mr. Vivek Vidyarthi, Advocate

versus

JITENDER OBEROI & ORS. Defendants
Through : Mr. Rajan Sharma, Advocate for
Defendant No. 1.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The subject suit for partition has been filed by Sh. Puran Chand Oberoi son of late Sh. Ram Chand Oberoi. The defendant No. 1 is the brother of the plaintiff i.e another son of late Sh. Ram Chand Oberoi. Defendant Nos. 2 to 5 are the daughters of late Sh. Ram Chand Oberoi i.e the sisters of the plaintiff and the defendant No. 1. The subject suit for partition is predicated on the facts that the father of the plaintiff and defendant No. 1, namely, late Sh. Ram Chand Oberoi inherited properties from his father late Sh. Moti Shah Oberoi by virtue of a Will dated

06.08.1965, and therefore, the properties are ancestral in the hands of late Sh. Ram Chand Oberoi, and consequently, plaintiff has a right/share in the properties inherited by late Sh. Ram Chand Oberoi from his father late Sh. Moti Shah Oberoi.

2. As per the judgments of the Supreme Court in the cases of **The Commissioner of Wealth Tax, Kanpur and Ors. Vs. Chander Sen & Ors., AIR 1986 SC 1753** and **Yudhister Vs. Ashok Kumar, AIR 1987 SC 558**, a male Hindu who inherits properties from his paternal ancestors after passing of the Hindu Succession Act, 1956, inherits the properties as self-acquired properties in his hands unless there existed a Hindu Undivided Family (HUF) at the time of the death of the paternal ancestor.

3. In the present case, the plaintiff admits that the properties were inherited by his father late Sh. Ram Chand Oberoi from his own father late Sh. Moti Shah Oberoi (i.e the grand-father of the plaintiff and the defendant No. 1) under a Will of late Sh. Moti Shah Oberoi dated 06.08.1965. There is no challenge in the plaint that late Sh. Moti Shah Oberoi could not have made the Will dated 06.08.1965 as the properties were HUF in his hands. In fact, a reference to the plaint shows that there is no averment at all of any HUF existing at the time of death of the grandfather Sh. Moti Shah Oberoi on 18.10.1965.

4. In view of the above admitted facts and the position of law, this

suit can be disposed of on the principles contained in Order XII Rule 6 of Code of Civil Procedure, 1908 (CPC) inasmuch as only the admitted contents of the plaint are being referred to. As per the admitted position, the position which emerges is that the properties inherited by the father of the plaintiff, namely, late Sh. Ram Chand Oberoi would be self-acquired properties in his hands, and to such self-acquired properties plaintiff would have a right inasmuch the plaintiff himself admits in para 5 of the plaint that the father Sh. Ram Chand Oberoi died leaving behind a Will dated 22.09.1994. Para 5 of the plaint states that in fact the plaintiff was made executor of the Will of the father late Sh. Ram Chand Oberoi dated 22.09.1994. As per this Will plaintiff is disinherited and the father Ram Chand Oberoi bequeathed the suit properties to defendant No.1 exclusively.

5. Issues in this case were framed on 21.07.2009 and no issue was got framed by the plaintiff that the father late Sh. Ram Chand Oberoi did not execute any Will dated 22.09.1994 and this was because the plaintiff himself admits the Will and it is averred in the plaint that the plaintiff was made the executor of this Will.

6. In view of the above, late Sh. Ram Chand Oberoi's properties were self-acquired in his hands, and since Sh. Ram Chand Oberoi died leaving behind a Will dated 22.09.1994 in which the plaintiff has not been given

any share in the properties, the subject suit for partition will not lie and is wholly misconceived. As per the Will dated 22.09.1994, the defendant No. 1 has been bequeathed the properties by the father late Sh. Ram Chand Oberoi to the exclusion of the plaintiff, and who, therefore, cannot ask for partition.

7. In view of the above, the suit is dismissed leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

OCTOBER 15, 2012
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