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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 770/2015 & I.As. 5786-5788/2015

S. SHUBHOJIT DE

..... Plaintiff

Through: Plaintiff in person.

versus

SH. S.K DE & ORS

..... Defendants

Through: None.

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Date of Decision : 20th March, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for permanent injunction by the plaintiff against his father, mother and brother.
2. Plaintiff, who appears in person, states that defendant No.1-father in 1970 was allotted a leasehold plot bearing No.H-1547, C.R. Park, New Delhi, for a consideration of Rs.60,000/-. He states that his father paid the aforesaid amount from the funds provided by his paternal grandfather. In the plaint, it has been stated that construction over the first floor was carried out with funds contributed by plaintiff and defendant No.2 in the year 2000.
3. In the plaint, it has also been stated that in 2007, defendant No.1 entered into a collaboration agreement with the builder and constructed the property upto third floor along with basement.

4. The plaint also states that due to mis-understanding with the defendants, plaintiff had moved out of the aforesaid property in the year 2007. It is further the case of the plaintiff that since 2012, the defendants have moved to United Kingdom and are staying there.

5. Plaintiff, who appears in person, states that the present suit has been filed to protect the interest of the old and aged parents as they do not have a permanent visa and if some day they return to India, they would have no place to stay.

6. Having heard the plaintiff, this Court is of the view that since there is no averment in the plaint that plaintiff's grandfather had died prior to the coming into force of the Hindu Succession Act, 1956, it has to be presumed that plaintiff's father is the sole and exclusive owner of the C.R. Park property. In ***Yudhishter Vs. Ashok Kumar, AIR 1987 SC 558*** the Supreme Court has held as under:-

“10. This question has been considered by this Court in Commr. of Wealth Tax, Kanpur v. Chander Sen (1986) 3 SCC 567 : (AIR 1986 SC 1753), where one of us (Sabyasachi Mukharji, J.) observed that under the Hindu law, the moment a son is born, he gets a share in father's property and becomes part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by Section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as karta of his own undivided family but takes it in his individual capacity. At pages 577 to 578 (of SCC) : (at p. 1760 of AIR) of the report, this Court dealt with the effect of Section 6 of the Hindu Succession

Act, 1956 and the commentary made by Mulla, 15th Edn., pages 924-26 as well as Mayne's on Hindu Law, 12th Edition pages 918-19. Shri Banerji relied on the said observations of Mayne on 'Hindu Law', 12th Edn., at pages 918-19. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and was unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12th Edn., page 919. In that view of the matter, it would be difficult to hold that property which devolved on a Hindu under Section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-à-vis his own sons. If that be the position then the property which devolved upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house."

(emphasis supplied)

7. Another learned Single Judge of this Court in ***Pradeep Malhotra Vs. Kailash Chander Malhotra (Deceased) Through LRs & Ors., CS(OS) 1252/2008*** decided on ***4th February, 2013*** has succinctly dealt with the concept of ancestral property vis a vis the Hindu Succession Act and held as under:-

*"5. The grandfather of the plaintiff having died after coming into force of the Hindu Succession Act, 1956, the property inherited by the father of the plaintiff from the grandfather of the plaintiff, would be held by the father of the plaintiff as his personal/individual property and the plaintiff will not have any right or share therein. It was so held in **Commissioner of Wealth Tax, Kanpur Vs. Chander Sen** (1986) 3 SCC 567, **Bhanwar Singh Vs. Puran** (2008) 3 SCC 87 and **Yudhishter Vs. Ashok Kumar** (1987) 1 SCC 204 and recently reiterated by this Court in **Mrs. Premwati Vs. Mrs. Bhagwati Devi** MANU/DE/4784/2012, **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."*

8. Admittedly, the lease is in favour of the defendant No.1-father and no proof of any funds having been contributed by the paternal grandfather has been placed on record. The present suit is hit by the Benami Transactions (Prohibition) Act, 1988.

9. In any event, if the plaintiff or his grandfather had advanced any money towards purchase or construction of the suit property, they would only be entitled to recover the said amount. Just by giving loan to the defendant No.1-father, they would not become the owner of the suit property.

10. Consequently, the defendant No.1-father is the sole and exclusive owner of the property.

11. Moreover, as the plaintiff had admittedly shifted out of the suit property in 2007, this Court is of the view that the present plaint is barred by limitation.

12. It is further not understood as to how the present suit can be filed to protect the interest of the aged parents when they have been arrayed as defendants and when the plaintiff has admittedly neither met nor spoken to them since 2012. The assumption and presumption underlying the plaintiff's argument is totally unfounded.

13. Further, the parents are majors and are of sound mind. No application under Order 32 CPC has been filed.

14. Consequently, present suit is bereft of merits, barred by law and it does not disclose any cause of action. Accordingly, present plaint and applications are rejected under Order VII Rule 11 CPC.

MANMOHAN, J

MARCH 20, 2015

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