

\$~6

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

+ RFA(OS) 40/2016

SUNNY & ANR

..... Appellants

Represented by: Mr.Sukhbir Singh, Adv.

versus

RAJ SINGH & ORS

..... Respondents

Represented by: Mr.S.N.Kalra and Ms.Jyoti
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **29.09.2016**

1. In view of the admitted position that Tek Chand father of Gugan died in the year 1982 and Gugan died in the year 2008, learned counsel for the appellants states that in view of the law declared by the Supreme Court in the decision reported as 1987 (1) SCC 204 Yudhishtir vs. Ashok Kumar, whatever properties were inherited by Gugan from his father Tek Chand would require the same to be treated as the self-acquired properties of Gugan and thus during Gugan's lifetime suit filed by the appellants, who are the grandsons of Gugan, would not be maintainable.

2. Counsel states that admittedly Gugan was blessed with four sons viz. Harbinder (the father of the appellants), Raj Singh, Preet Singh and Ram Kumar.

3. Counsel states that in that view of the matter the appeal may be permitted to be withdrawn observing that if the appellants sue for partition

of the estate left behind by Gugan, the impugned judgment would not be treated as *res judicata*.

4. Suffice it to state, the impugned judgment is premised on the pleadings that properties inherited by Gugan from his father Tek Chand in the year 1982 were ancestral and thus the grandsons (appellant herein) of Gugan, during his lifetime would not be entitled to sue for partition claiming a share through their father since this assertion is sans a foundation in law.

5. While dismissing the appeal as not pressed we would simply observe that if a suit for partition is filed on the premise that self-acquired properties or properties required to be treated as self-acquired by Gugan are to be partitioned said suit would obviously be decided on evidence led therein and the impugned decision cannot be treated as *res judicata*.

6. Parties shall bear their own costs.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

SEPTEMBER 29, 2016
dkb