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

+ RFA No.605/2001, CMs No.13387/2015 (of the respondent for directions) & 28013/2015 (by LR of the appellant for directions) & CM No.795/2016 (of the appellant for directions / modification of order dated 11th August, 2015).

KANTA KOHLI (DECEASED) THROUGH LR Appellant
Through: Mr. D.K. Thakur, Mr. Varun Nischal
and Mr. R. Chauhan, Advs.

versus

MUKESH KOHLI Respondent
Through: Mr. Varun Kathuria, Adv.
Mr. S.S. Lingwal, Adv. for non-
applicant Ms. Rohini Bajaj.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.03.2016**

1. This appeal under Section 96 of the Code of Civil Procedure (CPC), 1908 impugns the judgment dated 17th July, 2001 of Smt. Aruna Suresh Additional District Judge (ADJ) in Suit No.223/1995 filed by the sole respondent Shri Mukesh Kohli, finding the respondent/plaintiff to be the sole co-parcener of the Hindu Undivided Family (HUF) and having become the *Karta* thereof on the demise of his father Shri B.R. Kohli and passing a preliminary decree for rendition of accounts in favour of the respondent/plaintiff and against the appellant/defendant no.1 directing the appellant/defendant no.1 to render the accounts of the benefits and earnings including the rents received by the appellant/defendant no.1 from HUF properties and businesses.

2. Notice of the appeal was issued. Vide *ad interim* order dated 25th November, 2003 *status quo* as of then was directed to be maintained with respect to the properties mentioned in paragraph-1 of CM No.1585/2003 and the said order was confirmed on 8th January, 2004 when the appeal was admitted for hearing and ordered to be listed in the category of *Regulars*.

3. The appeal was taken up for hearing on 8th March, 2011 when it was dismissed in default of appearance of the parties. Applications were filed for restoration and for condonation of delay in applying therefor and which remained pending. On 20th January, 2014 the parties were referred to the Mediation Cell of this Court but mediation remained unsuccessful.

4. In the meanwhile the appellant died and application for substitution of her daughter Mrs. Rashmi Seth in her place was filed. Ultimately vide order dated 11th August, 2015 the appeal was restored to its original position and the said Mrs. Rashmi Seth substituted in place of the appellant. On that date, after understanding the controversy, it was also enquired from the counsels as to what purpose keeping this appeal pending would serve inasmuch as the parties if unable to mutually partition the assets would be required to institute a proceeding for partition.

5. On 11th August, 2015 certain directions were also issued with respect to the rent of one of the properties subject matter of dispute being Flat No.105, BMC House, N-Block, Middle Circle, Connaught Place, New Delhi – 110 001.

6. Subsequently on 23rd November, 2015 it was broadly agreed that the joint properties namely the property at Kanpur, Uttar Pradesh and the property aforesaid at Connaught Place, New Delhi will be divided between

the legal heir of the appellant Mrs. Rashmi Seth and the respondent and one Ms. Rohini Bajaj in the ratio of 54% to the respondent, 33.5% to the appellant and the balance 12.5% to the said Ms. Rohini Bajaj. It was further informed that the parties had agreed for the properties to be sold and the sale proceeds thereof to be distributed in the proportion aforesaid. The matter was adjourned to enable the parties to file a Settlement Deed.

7. No settlement deed was filed. Subsequently Mrs. Rashmi Sethi reneged from the aforesaid broad settlement arrived at and accordingly the appeal was listed for hearing.

8. The counsel for the respondent/plaintiff today seeks adjournment stating that the Trial Court record has been lost and the certified copies were applied for and received only a few days back and he requires to study the same.

9. However the appeal being of 2001 vintage i.e. 15 years old, adjournment was refused and the counsel for the appellant/defendant no.1 started making his submissions.

10. I may record that in the suit as originally filed by the respondent Shri Mukesh Kohli, besides the appellant who was impleaded as defendant no.1, the aforesaid Ms. Rohini Bajaj and Mrs. Rashmi Seth were also impleaded as defendants no.2&3. However as aforesaid the decree was filed only against the appellant Ms. Kanta Kohli and not against the aforesaid Ms. Rohini Bajaj and Mrs. Rashmi Sethi. Accordingly the appellant/defendant no.1 Ms. Kanta Kohli in this appeal has impleaded only the plaintiff Shri Mukesh Kohli as respondent and not impleaded Ms. Rohini Bajaj and Mrs. Rashmi Seth who in my opinion ought to have been impleaded being parties

to the suit, notwithstanding the fact that there was no direction in the decree against them but since they also remained bound by the decree being parties to the suit. Mrs. Rashmi Sethi has since been substituted as legal heir of the appellant/defendant no.1.

11. Today a counsel has appeared for Ms. Rohini Bajaj supporting the present appellant i.e. Mrs. Rashmi Seth and claiming that Ms. Rohini Bajaj has been wrongly left out from the Memorandum of Parties.

12. I have perused the impugned judgment. A perusal thereof shows that the respondent/plaintiff Shri Mukesh Kohli and the aforesaid Ms. Rohini Bajaj were born to Shri B.R. Kohli of his first wife Smt. Ved Kohli who died soon after the birth of respondent/plaintiff Shri Mukesh Kohli and Shri B.R. Kohli re-married Smt. Kanta Kohli and of which wedlock, Mrs. Rashmi Seth was born. The respondent/plaintiff Shri Mukesh Kohli claimed all the properties with respect to which suit was filed including those in the personal name of appellant late Smt. Kanta Kohli to be properties of a HUF of his late father Shri B.R. Kohli. Though the appellant/defendant no.1 Smt. Kanta Kohli who alone contested the suit controverted that there was any HUF but only the following issues were framed by the Trial Court on 1st August, 1997:-

- “1. Whether this court has no territorial jurisdiction to try suit? OPD
2. Whether this court has pecuniary jurisdiction to entertain and try the suit? OPD
3. Whether the plaintiff is entitled to the relief of declaration as prayed for in the plaint? OPP
4. Whether the plaintiff is entitled to a decree for rendition of account as claimed? OPP
5. Relief.”

13. However the Trial Court under Issue no.3 aforesaid went into question whether there was any HUF or not and found in favour of the respondent/plaintiff Shri Mukesh Kohli and accordingly treating Shri Mukesh Kohli as the sole male co-parcener and having become the *Karta* of the said HUF decreed the suit for rendition of accounts as aforesaid.

14. On a perusal of the impugned judgment, I do not find the Trial Court to have mentioned any relevant evidence before it for concluding the existence of an HUF and which was at issue. Needless to state that if there was no HUF, there would have been no decree for rendition of accounts.

15. The only reason given by the Trial Court for holding the properties to be the properties of a HUF is that Shri B.R. Kohli was carrying on business in partnership with his father and brothers; that upon the demise of the father of Shri B.R. Kohli in the year 1961 Shri B.R. Kohli and his brothers continued to carry on business in partnership and upon partition between Shri B.R. Kohli and his brothers, Shri B.R. Kohli was carrying on business in partnership either with Smt. Kanta Kohli or with Shri Mukesh Kohli. The learned ADJ therefrom believed that since Shri B.R. Kohli did not have any individual income and was earlier joint with his father and brothers, there existed a HUF and of which Shri Mukesh Kohli had become the *Karta* on the demise of Shri B.R. Kohli. The said premise for believing the existence of the HUF is clearly erroneous as held recently in ***Surender Kumar Khurana Vs. Tilak Raj Khurana*** MANU/DE/0135/2016 and has also been held by me earlier in ***Neelam Vs. Sada Ram*** MANU/DE/0322/2013.

16. I have as such asked the counsel for the respondent/plaintiff Shri Mukesh Kohli as to how this finding of existence of HUF can be sustained.

17. At this stage the counsel for the respondent/plaintiff Shri Mukesh Kohli states that the impugned judgment and decree be set aside leaving open all pleas to all parties concerned in subsequent proceeding whether by way of a suit for partition or otherwise which may be filed.

18. The counsel for the appellant/defendant no.1 and the counsel for Ms. Rohini Bajaj are agreeable thereto.

19. The aforesaid course of action is found to be reasonable in the context of what is recorded hereinabove.

20. Accordingly, the impugned judgment and decree are set aside giving liberty to the parties and to the aforesaid Ms. Rohini Bajaj to take appropriate proceedings in law with respect to the properties which were subject matter of the suit from which this appeal arises and in which proceedings all pleas available in law will remain open without any weightage being given to the findings in the impugned judgment. The appeal is disposed of leaving the parties to bear their own costs.

Decree sheet be drawn.

21. Needless to state that with the disposal as aforesaid of the appeal the interim arrangement made in the order dated 11th August, 2015 also stands vacated.

22. National Insurance Co. Ltd. is accordingly directed to stop paying the rent of Flat No.105, BMC House, N-Block, Middle Circle, Connaught Place, New Delhi in the name of respondent/plaintiff Shri Mukesh Kohli and subject to further orders which may be passed in any subsequent proceedings between the parties. The respondent/plaintiff Shri Mukesh

Kohli is also directed to issue a cheque for the total amount of rent received by him till date under the order dated 11th August, 2015 in the name of Mrs. Kanta Kohli within two weeks hereof.

RAJIV SAHAI ENDLAW, J

MARCH 22, 2016
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