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

+ RFA(OS) 29/2016 & C.M.Nos.13119-13122/2016

SURENDER KUMAR

..... Appellant

Through: Mr.Bharat Bhushan Bhatia, Advocate

versus

DHANI RAM & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **30.05.2016**

1. The grievance urged by the appellant is that the learned Single Judge rejected his plaint on the ground that the pleadings did not disclose the cause of action. The appellant relies upon certain documents and averments (made for the first time in the appeal) to state that his grandfather Jage Ram had acquired title as a coparcener of a HUF and consequently when the appellant's grandfather inherited the properties or shares thereof he did so as a coparcener. These submissions and averments were not made in the suit – quite naturally this led the Single Judge to conclude that Jage Ram's properties devolve upon his heirs not as coparcenary property but under Section 8 of the Hindu Succession Act and by reason of the decision of the Supreme Court in *Commissioner of Wealth Tax, Kanpur & Ors. vs. Chander Sen & Ors.* (1987) 1 SCR 516.

2. Consequently, this Court is of the opinion that an appeal on the ground that in fact Jage Ram acquired title not as heir to his father but

as the coparcener cannot be now a valid ground in the appeal – since it was never urged in the suit – nor was any supporting document produced along with the plaint. Consequently, the learned counsel requests for liberty to approach the Single Judge with the review application and also seek leave to amend the suit appropriately. He requests that the Court may indicate that the appeal had been listed on 08.04.2016.

3. The appeal is dismissed as withdrawn with liberty to approach the Single Judge to urge the necessary grounds in review proceedings. If an application for review is made along with condonation of delay, the fact that the appellant-plaintiff had approached this court now shall also be kept in mind. Request for review and any other application may be considered on its merits.

4. The appeal along with the pending applications is dismissed as withdrawn.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MAY 30, 2016

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