

\$~9

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

+ **CS(OS) 142/2016**

SHRI HITESH SAINI

..... Plaintiff

Through: Mr. Jitendra Singh, Adv.

versus

SHRI RAJAN SAINI & ORS

..... Defendants

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

%

23.03.2016

1. While reading the suit plaint, this court made earnest endeavours to understand this plaint running into 21 pages. Very frankly it was near impossible for this court to understand if any legal cause of action was made out in the plaint with respect to the four properties which are subject matter of each of the prayer clauses in the plaint. The claim of ownership of an immovable property must be predicated on a legal cause of action as to how ownership arises of a particular property in favour of the plaintiff. Also, it is noted that after 1956 inheritance of a property of a male ancestor from his paternal ancestor is only a self acquired property and not

as an HUF property in his hand in view of the judgment of the Supreme Court in the case of *Yudhishter Vs. Ashok Kumar, (1987) 1 SCC 204*. I have dealt with the ratio of *Yudhishter Vs. Ashok Kumar (supra)* in the judgment delivered in the case of *Sunny(Minor) & Ors. Vs. Raj Singh & Ors. 225(2015) DLT 211* and *Surinder Kumar Vs. Dhani Ram 227(2016) DLT 217*.

2. It is therefore not found as to how any Joint Hindu Family or a Hindu Undivided Family (HUF) exists as per the averments in the plaint much less for the plaintiff who is 20 years old to claim rights in any of the immovable properties as per the prayer clauses of the plaint.

3. It is also seen that the suit plaint would be hit by Section 4(1) of the Benami Transactions (Prohibition) Act, 1988, once the properties are admittedly not in the name of the plaintiff unless the plaintiff by a proper cause of action brings out his case in the exceptions contained in Section 4(3) of the Benami Transactions (Prohibition) Act, 1988 of existence of an HUF or properties being purchased in the trust and which essential ingredients are even remotely not mentioned in the present suit.

4. In view of the above, at this stage, it is prayed that the suit be allowed to be withdrawn but liberty granted, of course in accordance with law, to file a fresh suit not only mentioning the present order, but also facts showing proper existence of a legal cause of action which would be stated in the new suit plaint for the reliefs to be claimed to the immovable properties.

5. The suit is allowed to be withdrawn with the aforesaid liberty.

VALMIKI J. MEHTA, J

MARCH 23, 2016

ib