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

\+ CS(OS) 1321/2010

MASTER GAUTAM YADAV & ORS ..... Plaintiffs
Through: Mr. Mohit Chaudhary and Ms.Damini Chawla, Advocates.

versus

JAGDISH YADAV & ANR ..... Defendants
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

O R D E R

% 19.05.2016

1. On 3.2.2016 the following order was passed:-

> "1. Attention of the counsel for the plaintiffs has been drawn to the judgment passed by this Court dated 18.1.2016 in CS(OS) N.1737/2012 titled as ***Sh. Surender Kumar Vs. Sh. Dhani Ram and Others*** and as per which judgment plaintiffs may not have a cause of action for the present suit inasmuch as mere inheritance of the ancestral properties did not create an HUF after passing of the Hindu Succession Act, 1956 in view of the judgments of the Supreme Court in the cases of ***Commissioner of Wealth Tax, Kanpur and Others Vs. Chander Sen and Others, (1986) 3 SCC 567*** and ***Yudhishter Vs. Ashok Kumar, (1987) 1 SCC 204.***
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> 2. Counsel for the plaintiffs wants to examine the matter.
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> 3. List on 19th May, 2016."

2. Counsel for the plaintiffs states that since the cause of action as stated in the plaint falls foul of the ratios of the judgments of the Supreme Court and of this Court as noticed in the order dated 3.2.2016, but since plaintiffs have a valid cause of action to entitlement to the properties on the basis that an HUF existed either because of inheritance of properties by defendant No. 1 prior to 1956 or possibly because defendant No. 1 creating an HUF before or after 1956 by throwing the property into a common hotchpotch, this matter is prayed to be withdrawn with liberty to file a suit within the four corners of law in terms of the judgments stated in the order dated 3.2.2016.

3. In view of the above the suit is allowed to be withdrawn with liberty to the plaintiffs to file suit giving a complete cause of action in terms of the ratios of the judgments stated in the order dated 3.2.2016.

VALMIKI J. MEHTA, J

MAY 19, 2016
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