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

+ **CS(OS) 265/2016**

SMT VEENA ARYA & ORS Plaintiffs

Through: Mr. Anand Prakash and Mr. Ravi
Dhoopan, Advocates.

versus

SH SHASHI BHUSHAN RAJPAL & ORS Defendants

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **30.05.2016**

1. This suit is liable to be dismissed *in limine* in view of the fact that no averments are made as required by law of existence of an HUF and its properties. It is now settled law 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* that inheritance of ancestral property does not create an HUF after 1956. I have had an occasion to consider these judgments in the case of *Surender Kumar Vs. Dhani Ram and Ors., 227 (2016) DLT 217*, wherein I have given all the scenarios and the necessary

averments which must exist as a pleading in the plaint as to how an HUF is created, and therefore, how a suit for partition of an HUF lies, post 1956 position or as per the pre 1956 position. A reading of the present plaint shows that except bland averments made of existence of an HUF no details are given as how an HUF was created on account inheritance of ancestral property prior to 1956 or creation of HUF for the first time after 1956 by throwing of property into a common hotchpotch. Uttering of mantras of existence of an HUF is not a pleading as required by law of existence of an HUF and its properties because Order 6 Rule 4 CPC requires detailed pleading of existence and creation of an HUF and which aspect I have dealt with in the case of ***Surender Kumar (supra)***.

2. In view of the above, counsel for the plaintiffs seeks liberty to withdraw the suit and he states that liberty will be given to file a fresh suit and in which suit plaintiffs will ensure that complete pleadings are made of a complete legal cause of action as to how an HUF and its properties came into existence, whether pre 1956 and post 1956. Keeping in view the ratio of the judgment in the case of ***Surender Kumar (supra)*** it is also said that if plaintiffs find that there is no HUF and its properties, then in such a case

fresh suit will be filed not only on the ground that property belonged to the father and the father died intestate i.e there is no valid Will of the father late Sh. Jagan Nath Rajpal.

3. Suit is allowed to be withdrawn with the aforesaid liberty.

4. Plaintiffs will also mention the factum of the present order in the fresh suit which the plaintiffs will file and also file a copy of the same in the fresh suit.

VALMIKI J. MEHTA, J

MAY 30, 2016

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