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

\+ **CS(OS) 249/2016 and I.A. No. 6401/2016 (for stay)**

SH MUKESH KUMAR & ANR ..... Plaintiffs

Through: Mr. Mukesh Kr. Verma, Advocate.

versus

SH SATNAM ..... Defendant

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

O R D E R

% **01.06.2016**

1. A reading of the plaint shows that the suit would be barred by the provision of the Benami Transactions (Prohibition) Act, 1988, inasmuch as, the properties which are purchased in the name of certain persons would be owned by those certain persons and other persons such as the plaintiffs cannot claim rights in these properties unless there is shown existence of an HUF or properties having been purchased in trust.

2. In the present case, no case is set up for the properties having been purchased in trust. The only issue is whether there is existence of an HUF. A perusal of the plaint shows that except making bland averments and which do not satisfy the requirement of Order 6 Rule 4 CPC, it is not stated as to how HUF came into existence i.e., pre 1956 or post 1956. This is required 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*** and which hold that inheritance of ancestral properties after passing of the Hindu Succession Act, 1956 does not result in creation of HUF. I have dealt with this aspect in detail in the cases of ***Surender Kumar Vs. Dhani Ram and Ors., 227 (2016) DLT 217*** and ***Mrs. Saroj Salkan Vs. Mrs. Huma Singh and Ors***. in CS(OS) No. 683/2007 decided on 5.5.2016, wherein I have made observations as to the averments which have to be made to make a complete cause of action of existence of HUF and its properties in pre 1956 and the post 1956 position.

3. At this stage and in view of what is stated above, counsel for the plaintiffs seeks permission to withdraw the suit with liberty to file a fresh suit. Liberty is granted, of course, if the plaintiffs make out a case of existence of HUF and its properties and making requisite pleading and averments as required in terms of judgments of the Supreme Court in the cases of **Commissioner of Wealth Tax (supra)** and ***Yudhishter*** **(supra)** and as further elaborated by this Court in the case of ***Surender Kumar*** **(supra).** Of course, if the plaintiffs have a right on an independent legal cause of action to claim any right in any of the suit properties, obviously that cause of action being not a subject matter of the present suit or existence of HUF and its properties, hence the plaintiff can always file a suit on the basis of such cause of action, of course without in any manner opining on the merits and

maintainability of the said suit and which aspects will be gone into by the Court before whom the said suit comes up for hearing.

4. Suit is accordingly allowed to be withdrawn with the aforesaid liberty.

5. Plaintiff will mention the factum of this order in the suit which is proposed to be filed and will also file a copy of this order in the fresh suit which is to be filed.

VALMIKI J. MEHTA, J

JUNE 01, 2016

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