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

+ CS(OS) 16/2016 & I.A 288/16(stay), I.A 289/16 (U/o 32 Rule 1 and 2 CPC) & 291/16 (delay in re-filing suit)

KUNWAR DIGRAJ SINGH JAIN

..... Plaintiff

Through: Mr. Diwan Singh Chauhan, Advocate.

versus

KUNWAR RAJENDRA SINGH JAIN & ORS

..... Defendants

Through

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

**ORDER**

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**08.01.2016**

1. I have brought to the notice of the counsel for the plaintiff the judgment delivered by this Court in the case of ***Sunny (Minor) & Anr. Vs. Sh. Raj Singh & Ors.*** CS(OS) No. 431/2006 decided on 17.11.2015, and as per which inheritance of an ancestral property after 1956 does not automatically make the inherited property as an HUF property. After 1956, if property is inherited even from a paternal ancestor, HUF is not created unless HUF was existing even prior to passing of the Hindu Succession Act, 1956. The only other way in which an HUF can come into existence after 1956 is if an individual's property is thrown into a common hotchpotch for

creating of an HUF.

2. Also, as per the Benami Transactions (Prohibition) Act, 1988 ordinarily if a property stands in the name of a particular person, such person is necessarily the owner unless facts exist to bring the case within the exceptions engrafted in Section 4(3) of the Benami Transactions (Prohibition) Act, 1988.

3. A reference to the plaint shows that except making averments of inheritance of ancestral properties, and which as stated above cannot create an HUF, taken with the fact of immovable properties being of a company, no cause of action is pleaded as to how plaintiff will derive co-ownership rights in the suit properties.

4. At this stage, counsel for the plaintiff prays for and is granted liberty to withdraw the suit with liberty to file a fresh suit provided in the fresh plaint plaintiff makes out a case as to existence of an HUF and its properties in terms of the ratio in the case of *Sunny (Minor) (supra)*.

5. The suit is accordingly allowed to be withdrawn subject of course to the limited liberty as stated above.

**VALMIKI J. MEHTA, J**

**JANUARY 08, 2016/ib**