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

\+ CS(OS) No.19/2017, IA No.562/2017 (under Order XXXIX Rules 1&2 CPC) & IA No.563/2017 (under Section 151 CPC for direction).

RISHI KUMAR MITTAL ..... Plaintiff

Through: Mr. Susheel Kumar Pandey, Adv.

versus

SHRI RAJENDRA KUMAR MITTAL & ANR ..... Defendants

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

<u>O R D E R</u>

% **16.01.2017**

1. This is yet another suit filed under the misconception that a *Hindu* has a share by birth in the self acquired property of the grandfather inherited by his father on the demise of grandfather after the commencement of the Hindu Succession Act, 1956.

2. The plaintiff, claiming to be the son of the defendant no.1 Mr. Rajendra Kumar Mittal and the brother of the defendant no.2 Mr. Pradeep Kumar Mittal, has instituted this suit for partition of immoveable property but the particulars whereof are not set-out anywhere in the body of the plaint or even in the prayer paragraph seeking partition; only in the prayer paragraph for permanent injunction, the number of the property is disclosed as 207, Sukhdev Vihar, New Delhi (first and second floor with terrace).

3. It is *inter alia* the case of the plaintiff (i) that the said property was acquired though in the name of the father of the plaintiff i.e. the defendant no.1 but out of the funds generated by the grandfather of the plaintiff late Shri Lachhmi Narain out of the shop/business in the name and style of M/s

Lachhmi Narain Rajendra Kumar at 5121, Rui Mandi, Sadar Bazar, Delhi – 110 006 and of which business the grandfather of the plaintiff Shri Lachhmi Narain was the sole proprietor; (ii) that Shri Lachhmi Narain had purchased the Sukhdev Vihar property in the name of the father of the plaintiff; (iii) that similarly Shri Lachhmi Narain had purchased other properties from his own monies in the name of his other sons; (iv) that Shri Lachhmi Narain expired in the year 1995; (v) that the plaintiff along with his father has been residing in the said property, after his marriage also; (vi) that in the year 2004-05 the property was re-constructed with the basement and ground floor belonging to the builder and the first floor and second floor with terrace rights continuing to belong to the father of the plaintiff i.e. defendant no.1; (vii) that the property "is therefore a joint Hindu property of the plaintiff as well as of defendants. The plaintiff is therefore entitled for 1/3rd share or the market value of the property"; (viii) that though the plaintiff after re-construction also was residing with his father on the first floor of the property but was in the year 2012 compelled to leave owing to the conduct of the defendant no.2; (ix) that the plaintiff learnt that the property had been sold for about Rs.10,00,00,000/- approximately under some Court order; and, (x) however the Advocate for the plaintiff when contacted informed that the property is still in the name of the defendant no.1 and has not been transferred.

4. The aforesaid averments do not disclose any cause of action for the reliefs of partition or injunction claimed. It is the categorical averment of the plaintiff that the property was acquired by the grandfather of the plaintiff though in the name of the father of the plaintiff. Even if we ignore the

provisions of *Benami* Transaction (Prohibition) Act, 1988 and hold that the property belonged to the grandfather of the plaintiff who died in the year 1995, the plaintiff being a grandson would not have a right or share therein. On demise of grandfather, the property would be inherited by the father of the plaintiff i.e. defendant no.1, and plaintiff would have no right or share therein.

5. I have enquired from the counsel for the plaintiff as to how the plaintiff has a share.

6. The counsel for the plaintiff states that the plaintiff has a share as this is an "ancestral property" and on further prodding, what is an ancestral property, the counsel for the plaintiff states that the property which is owned by the grandfather of the plaintiff would be ancestral property.

7. On asking, under what law, he says "co-parcenary". However there are no averments in the plaint of any co-parcenary and the only averments are of the grandfather of the plaintiff having with his own monies acquired the property in the name of the father of the plaintiff.

8. After coming into force of the Hindu Succession Act w.e.f. 1955, in any property inherited by a *Hindu* from his father, his sons do not have a share. Inspite of this law having been clarified by the Supreme Court as far back as in ***Commissioner of Wealth Tax Vs. Chander Sen*** (1986) 3 SCC 567 and ***Yudhishter Vs. Ashok Kumar*** (1987) 1 SCC 204 and repeatedly held by this Court in ***Harvinder Singh Chadha Vs. Saran Kaur Chadha*** (2014) SCC OnLine Del 3413 (DB) and ***Mukesh Kumar Vs. Pavitra*** MANU/DE/2287/2016, ***Surender Kumar Vs. Dhani Ram*** (2016) 227 DLT 217 and ***Kavita Vs. Samunder Singh*** (2013) 203 DLT 621 and

being more than 60 years old, the misconception continues and suits continue to be filed.

8. Finding that the plaintiff, under such advice, has been made to spend Rs.3,36,000/- on court fee, option was given to the counsel for the plaintiff for refund of part of the court fee if withdraws the suit. However the said option has not been accepted.

9. At this stage, the counsel for the plaintiff states that the suit be permitted to be withdrawn.

10. Not wanting a litigant to suffer for mistaken advice, it is deemed appropriate to direct refund to the plaintiff of the court fees paid on the suit less Rs.50,000/-.

11. The suit is dismissed as withdrawn.

12. A certificate entitling the plaintiff to refund of the court fees paid less Rs.50,000/- be issued to the plaintiff.

RAJIV SAHAI ENDLAW, J

JANUARY 16, 2017
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