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

+ CS(OS) 170/2017 & IAs No.4587/2017 (u/O XXXIX R-1&2 CPC),
4588/2017 (for exemption from filing original documents) &
4589/2017 (for condonation of 92 days delay in re-filing)

SATYAWATI

..... Plaintiff

Through: Mr. Virender Kumar Sharma & Ms.
Suman Rani, Advs.

Versus

SURAJ BHAN & ORS

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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18.04.2017

1. The plaintiff has sued her father and siblings for partition of immovable property claimed to have been inherited by the father (defendant no.1 Suraj Bhan) from his own father namely Inder Raj pleading (i) that the plaintiff and the defendants are members of Joint Hindu family; (ii) that the plaintiff by this suit is seeking partition of Joint Hindu property in respect of ancestral properties and other properties purchased from the fund of ancestral properties; (iii) that the plaintiff till date has not been given any share in the properties; (iv) that the plaintiff is the legal heir of late Sh. Inder Raj who died leaving behind Suraj Bhan, Deep Chand as his sons and Kastoori and Shanti as his daughters; (v) that the plaintiff is the daughter of Suraj Bhan; (vi) that Suraj Bhan has acquired / inherited from his father Inder Raj the properties described in para 3 of the plaint; (vii) that the plaintiff has 1/9th share in the properties as the father of the plaintiff namely Suraj Bhan, besides the mother of the plaintiff namely Murti Devi has five

sons and another daughter besides the plaintiff; (viii) that the father of the plaintiff Suraj Bhan has no self acquired property; (ix) that the father of the plaintiff Suraj Bhan has sold some of the properties so inherited by him from his father and from sale proceeds thereof acquired other properties; (x) that the sale consideration of some of the properties has been retained by the father of the plaintiff only; (xi) that the plaintiff on 2nd November, 2016 claimed oral partition and which was denied.

2. The plaintiff, besides the relief of partition, has claimed recovery of Rs.80,000/- being her 1/9th share of the sale consideration retained by the father.

3. Though the plaintiff in the plaint has not stated the date or year of demise of Inder Raj, being the paternal grandfather of the plaintiff, but the counsel for the plaintiff on enquiry, on passover, after taking telephonic instructions, informs that Inder Raj died in November, 1976.

4. The claim of the plaintiff, to a share in the property and hence for partition, being based only on the ground of the father of the plaintiff having inherited the properties of which partition is sought from his own father, it has been enquired from the counsel for the plaintiff, under which law does the plaintiff acquires a share in the properties inherited by her father from his own father. Attention of the counsel for the plaintiff was drawn to the Hindu Succession Act, 1956 which governs succession of a male Hindu, as Inder Raj was and whereunder the property of a male Hindu dying intestate devolves only on his widow and sons and daughters and not on grandchildren.

5. Thus, under the Hindu Succession Act, the properties of Inder Raj (being the paternal grandfather of plaintiff) would devolve on Suraj Bhan (being the father of plaintiff and defendant No.1 in this suit) and not on plaintiff (being the granddaughter of Inder Raj and daughter of Suraj Bhan).

6. This issue has been threshed out in detail as far back as in *Commissioner of Wealth Tax, Kanpur Vs. Chander Sen* (1986) 3 SCC 567 and *Yudhishter Vs. Ashok Kumar* (1987) 1 SCC 204 by the Supreme Court and thereafter repeatedly by this Court in *Master Daljit Singh Vs. S. Dara Singh* AIR 2000 Delhi 292, *Neelam Vs. Sada Ram* 2013 SCC OnLine Del 384, *Harvinder Singh Chadha Vs. Saran Kaur Chadha* 2014 SCC OnLine Del 3413 (DB), *Sunny (Minor) Vs. Raj Singh* (2015) 225 DLT 211, *Mukesh Kumar Vs. Pavitra* 2016 SCC OnLine Del 4907 and *Surender Kumar Vs. Dhani Ram* AIR 2016 Del 120.

7. Unfortunately, the suits continue to be filed under a misconception children have a right in the property inherited by their father from the grandfather.

8. Under the same misconception the counsel for the plaintiff on the first call kept on simply urging that the plaintiff has a right to the properties since the properties had been inherited by her father from the paternal grandfather of the plaintiff.

9. On passover, the counsel for the plaintiff has drawn attention to *Ganduri Koteswaramma Vs. Chakiri Yanadi* (2011) 9 SCC 788.

10. *Ganduri Koteswaramma* supra is with respect to coparcenary property, dealt with under Section 6 of the Hindu Succession Act, as distinct from self acquired property.

11. The plaintiff has nowhere pleaded existence of any coparcenary or coparcenary property. The fact that the case of the plaintiff is not based on coparcenary property is also evident from the fact that all the heirs of Inder Raj or all the properties of Inder Raj which may have been inherited by the other sons and daughters of Inder Raj are not subject matter of suit as would have been the case had there been any coparcenary of Inder Raj. Though till the amendment of the Hindu Succession Act in the year 2005, the daughters did not have a share in coparcenary property but thereafter have. The suit is with respect to the properties which Suraj Bhan alone inherited from Inder Raj and only against wife and children of Suraj Bhan.

12. The property inherited by a male Hindu from his father, after coming into force of the Hindu Succession Act, is held by such male Hindu as his personal property and does not become ancestral or coparcenary property in his hand in which his own children would have a share by birth. Nor does a coparcenary come into existence on a Hindu male inheriting properties from his father under the Hindu Succession Act. The use by the plaintiff of the term “Joint Hindu Family” in the plaint is not in the context of a coparcenary. Jointness is else a facet of a Hindu family.

13. The judgment cited by the counsel for the plaintiff thus does not have any relevance to the facts of the case.

14. The plaint on the averments therein does not disclose any cause of action.

15. Resultantly, the suit is not entertainable and is dismissed.

No costs. Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

APRIL 18, 2017/‘gsr/bs’
CS(OS) 170/2017