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

+ **FAO(OS) 342/2016**

SUMANGALI GUPTA Appellant
Through Mr. P.K. Agrawal and
Ms. Mercy Hussain, Advs.

versus

L R GUPTA HUF & ORS Respondents
Through Mr. Manish Vashisht, Mr. Sameer
Vashisht and Ms. Trisha Nagpal,
Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

ORDER

% **25.04.2017**

Appellant has filed the instant appeal impugning the order dated 3.10. 2016 passed in I.A. no.1571/2006 filed by her, for setting aside the order dated 9.1.2006, whereby the suit for partition, rendition of account and injunction filed by Rajiv Gupta against L.R. Gupta (HUF), L.R. Gupta, Sanjay Gupta and Sumangli Gupta, was disposed off.

2. Para 2 of the order dated 9.1.2006, which is relevant to the present controversy, reads as under :

“Now, the parties have resolved all those differences and disputes and have recorded the terms of compromise in the present application

which is signed by the plaintiff as well as the defendants 2 and 3. Insofar as the defendant No.1 is concerned, it is common ground that the said HUF had already been dissolved in 1993. However, Mr L.R. Gupta has signed on behalf of the defendant No.1 by way of abundant caution. Insofar as defendant No.4 is concerned, the learned counsel for the plaintiff states that no relief is claimed against the defendant No.4 and the learned counsel for both the plaintiff as well as the defendants state that there is no dispute with regard to defendant No.4 who happens to be the daughter of Mr L.R.Gupta, the defendant No.2, and the sister of the plaintiff and she has also not chosen to appear in these proceedings throughout, despite service. Therefore, this compromise which is being effected is essentially between the plaintiff on the one hand and defendants 2 and 3 on the other hand. Other terms of the compromise are set out in the application which is exhibited as Exhibit C-1”.

3. The contention of the appellant is that she was never served in the suit and the observations made in para 2 of the impugned order affect her rights. Appellant has relied upon Section 6 of Hindu Succession Act, 1956 as amended with effect from 1st September, 2005. The appellant is the daughter of living co-parcener and as the alleged partition in 1993 is an unregistered document, she has legal rights. In case the appellant is entitled to a share in the HUF, the entire compromise would require review and re-opening.

4. The impugned order dated 3.10.2016 does not decide the application under Order IX, Rule 13 of the Code of Civil Procedure, 1908 (Code) on merits. On the other hand, the impugned order

disposes off the said application recording that the appellant has raised similar or identical contentions in CS(OS) 255 of 2011, which is a suit filed by the appellant for partition, rendition of account, injunction and also declaration that the compromise order dated 9.1.2006 in IA no. 220/06 in CS(OS) No. 1968/2003 is void and nullity.

5. Ld. counsel appearing for the respondent Nos. 1,2 and 3 has submitted that the application under Order IX, Rule 13 of the Code has been filed at the behest of Rajiv Gupta, the 4th respondent before us, who, despite service, has not entered appearance. Rajiv Gupta had filed two applications, I.A.Nos. 11162/2006 and 10004/2007 for setting aside and recalling the order dated 9.1.2006. These applications were dismissed vide the order dated 3.9.2007, which has attained finality.

6. Having heard learned counsel for the appellant and the respondent nos. 1,2 and 3, we are inclined to modify the impugned order dated 3.10.2016 and direct that the IA no. 1571/2006 under order IX, Rule 13 of the Code would be taken up for hearing afresh and be decided on merits. We have passed this order, in view of the statement made by the counsel for the appellant and the respondent Nos.1 to 3 recorded below.

7. Learned counsel for the appellant has drawn our attention to the order dated 13.4.2015. The appellant had vide this order conceded that CS(OS) No.255/2011 would not be proceeded till the decision in CS(OS) No.1968/2003 i.e. application I.A. no. 1571/2006 and in case the said application is allowed, till the disposal of the suit. Learned

counsel for the appellant has stated that CS (OS) No.255/2011 should remain stayed under Section 10 read with section 151 of the Code, till adjudication of IA No.1571/2006 and if the application is allowed till decision of CS(OS) No.1968/2003.

8. Learned counsel for the respondent Nos. 1, 2 and 3 has agreed to the said suggestion. He however, submits that the compromise and settlement between respondent nos. 1, 2 and 3 on the one side and respondent no.4 on the other side would be binding on the said parties.

9. We would only observe that the effect of the said compromise would be examined by the Court, if, considered necessary and required. We clarify that we have not made any comments/observations on merits.

10. The appeal is disposed of in the above terms. No costs.

SANJIV KHANNA, J

ANIL KUMAR CHAWLA, J

APRIL 25, 2017/rc