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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA 275/2017 and C.M. Appl. No. 9569/2017 (for stay)

SITA RAM & ORS

..... Appellants

Through: Mr. Alok Kumar and Mr. Amit Kr. Singh, Advocates (Mobile No. 9810127735).

versus

MANOJ KUMAR & ORS

..... Respondents

Through: Ms. Dhan Mohan and Ms. Tanu B. Mishra, Advocates for R-1 (Mobile No. 9811180987).

Mr. A.K. Dey, Advocate for R-2, 4, 5, 6, 7 and 8 (Mobile No. 9540821003).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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21.08.2018

1. This Regular First Appeal under Section 96 CPC is filed by the defendant no. 1 in the suit, the father, impugning the judgment of the Trial Court dated 26.11.2016 by which the trial court has decreed the suit for partition filed by the respondent no. 1/plaintiff/son with respect to property bearing no. RZ F-382, Raj Nagar-II, Palam Colony, New Delhi-110045 on a plot of land admeasuring 200 sq. yards.

2. The only cause of action pleaded in the plaint by the respondent no.1/plaintiff was that the suit property was purchased by the

respondent no. 1/plaintiff's grand-father late Sh. Sri Ram on 5.9.1980 and the grand-father died on 12.11.1996 and consequently the suit property being an ancestral property, therefore, the respondent no. 1/plaintiff has a share.

3. The issue in the present case is covered against the respondent no. 1/plaintiff in terms of two 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*. These judgments of the Supreme Court hold that after passing of the Hindu Succession Act in 1956, any inheritance of a self-acquired property by a father from his paternal ancestors, will not make the inherited property as an HUF property but the father will take the property as his self-acquired property. I have considered this aspect in detail in the judgment in the case of *Surinder Kumar Vs. Dhani Ram and Others, 227 (2016) DLT 217* and the ratio of this judgment is upheld by a Division Bench of this Court in the case of *Sagar Gambhir vs. Sukhdev Singh Gambhir and Ors 241(2017) DLT 98; 2017 (162) DRJ 575*.

4. Therefore, the impugned judgment and decree passed by the trial court is squarely illegal and it is held that the suit filed by the respondent no. 1/plaintiff for seeking a share in the property of the grand-father is misconceived.

5. The impugned judgment dated 26.11.2016 is therefore set aside. Suit of the respondent no. 1/plaintiff for partition will stand dismissed.

6. At this stage, at the request made on behalf of the respondent no. 1/plaintiff and who says that the issue may be sorted out if the appellant no. 1 and respondent no. 1 are referred to mediation, therefore, while setting aside the impugned judgment as stated above, parties are directed to appear before the Delhi High Court Mediation and Conciliation Centre on 18th September, 2018 at 3:00 p.m.

7. It is however clarified that unless there is a settlement between the appellant no. 1 and respondent no. 1 before the Delhi High Court Mediation and Conciliation Centre, the present judgment will stand and bind the parties.

VALMIKI J. MEHTA, J

AUGUST 21, 2018

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