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

+ **CS(OS) 1389/2012**

MANINDER SOOD

..... Plaintiff

Through: **Mr. Viraj R. Datar, Adv.**

Versus

DEEP PAL SINGH & ORS

..... Defendants

Through: **Mr. Hrishikesh Baruah, Mr. Kshitij Paliwal and Mr. Siddhant Kaushik, Advs. for D-1,3&4.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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24.04.2018

1. The plaintiff has instituted this suit against (i) her brother Deep Pal Singh impleaded as defendant No.1; (ii) heirs of her deceased brother Mandeep Singh, impleaded as defendant No.2; (iii) her mother Narinder Kaur impleaded as defendant No.3; and, (iv) her father Ranbir Singh impleaded as defendant No.4, for partition of (a) M/s Ranbir Electric Mart; (b) M/s Ranbir Brothers; (c) a shop at Kailash Colony Market; (d) two godowns at Bhagirath Palace; (e) property No.E-342, Greater Kailash Part-I, New Delhi; (f) E-30, Western Avenues, Sainik Farms; (g) Agriculture land in Hyderabad; (h) a plot in Sainik Farms ad-measuring 500 sq. yards; (i) 2-3 plots in Green Fields, Suraj Kund, Haryana; (g) one built up house and a plot of land in Faridabad; (k) two flats in Amar Colony; (l) three plots in Dehradun; and, (m) shares, FDRs and jewellery and for injunction restraining the defendants from dealing with the said properties.

2. The counsel for the defendants No.1,3&4 states that the said defendants filed a joint written statement and contested the suit. On further enquiry, it is stated that the defendant No.2 as well as his legal heirs did not contest the suit and were proceeded against *ex-parte*.

3. Pleadings in the suit were completed and the following issues framed on 25th February, 2014:

“(1) *Whether the plaintiff is entitled to a decree of partition?*
(OPP)

(2) *What are the properties, business or assets available for partition?* (OPP)

(3) *Whether the plaintiff is entitled to a decree for permanent and mandatory injunction?* (OPP)

(4) *Whether the plaintiff is entitled to a decree of declaration?*
(OPP)

(5) *Whether the plaintiff is entitled to a decree for rendition of accounts?* (OPP)

(6) *Whether there was any Hindu Undivided Family of late Sh. Jodh Singh, if so, its effect?* (OPP)

(7) *Whether the decree of the plaintiff is barred on the principles of estoppels and acquiescence?*
(OPD1,3&4)

(8) *Whether the plaint has not been properly valued and proper court fees has not been paid?* (OPD 1,3&4)

(9) *Relief.*”

and the parties relegated to evidence.

4. Recording of evidence has been concluded and the suit is ripe for final hearing.

5. The counsel for the defendants No.1,3&4 states that the parents of the plaintiff namely the defendants No.3&4 Smt. Narinder Kaur and Ranbir Singh had also filed a suit against the plaintiff for recovery of possession of

a portion of property No.E-342, Greater Kailash Part-I, New Delhi in possession of the plaintiff and in which suit a decree for possession and *mesne* profits was passed in favour of the parents of the plaintiff and against the plaintiff and the defendants have filed a copy of the said judgment along with additional documents under Index dated 18th September, 2017. It is contended that it was the defence of the plaintiff in that suit that the said property No.E-342, Greater Kailash Part-I, New Delhi belonged to the Hindu Undivided Family (HUF) and was a coparcenary property and the plaintiff had a share therein; however in the said judgment, the said issue has been decided against the plaintiff and it has been held that there was no HUF/coparcenary and the property was not of the HUF/coparcenary. It is yet further informed that the plaintiff herein preferred RFA No.460/2017 to this Court against the judgment aforesaid and in which appeal, a compromise has been arrived at between the parties and the plaintiff has withdrawn the appeal and furnished undertaking to the Court to vacate the premises on or before 31st July, 2017. It is further stated that the plaintiff has vacated the said premises. It is thus contended that the finding of non-existence of HUF, between the parties in the suit for possession aforesaid has attained finality and which finding binds the plaintiff in the present suit as well. It is further contended that the claim in the present suit is also on the premise of existence of coparcenary / HUF and the properties being of such coparcenary / HUF and the plaintiff otherwise has no share in any of the properties; the finding aforesaid applies in present suit as well and on basis thereof the present suit has to be dismissed.

6. The counsel for the plaintiff, on enquiry, fairly admits that the claim of the plaintiff with respect to each of the properties of which partition is sought in the present suit is on the same basis as with respect to property No.E-342, Greater Kailash Part-I, New Delhi.

7. I have enquired from the counsel for the plaintiff, whether the plaintiff has been able to prove the existence of HUF in the present suit by any evidence other than that which was before the suit which has been decided against the plaintiff.

8. The counsel for the plaintiff has again fairly replied in the negative.

9. Once that is so, then merit is found in the contention of the counsel for the defendants No.1,3&4, of the findings in the other suit being determinative of the issues in the present suit as well. Once the premise of the plaintiff of existence of the HUF/coparcenery and on which basis the relief of partition has been claimed fails, the present suit has to necessarily fail.

10. Accordingly, Issue No.6 is decided against the plaintiff and in favour of the defendants and resultantly the other issues are also decided against the plaintiff and in favour of the defendants.

11. The suit thus fails and is dismissed.

12. On account of the fairness adopted by the counsel for the plaintiff and in being brief, I am refraining from imposing any costs on the plaintiff.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

APRIL 24, 2018

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