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

+ RFA 489/2018 and C.M. Nos.25525/2018(stay) & 25526/2018
(exemption)

VED PARKASH

..... Appellant

Through: Ms. Suman Chaudhary, Advocate.

versus

MAHA SINGH (DECEASED) THR LRS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **04.07.2018**

1. Though this appeal is filed against the impugned order dated 6.2.2018 by which the trial court has dismissed the application filed under Order 22 Rules 4 & 9 read with Order 1 Rule 10 CPC on account of the same being hopelessly time barred as the original defendant no.4/Sh. Suraj Singh whose female heirs were sought to be impleaded had expired much before filing of the suit, and the female legal heirs were to the knowledge of the appellant/plaintiff as also the fact that even one legal heir of defendant no.4/Sh. Suraj Singh had expired before filing of the suit, it is brought to the notice of the counsel for the appellant that the suit plaint lacks the necessary

ingredients of the legal cause of action because inheritance of ancestral property after 1956 does not make the inheritance as an HUF property. This is held by the Supreme Court in the judgments 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 have been referred to by this Court in its judgment in the case of ***Surinder Kumar Vs. Dhani Ram and Others, 227 (2016) DLT 217*** and accordingly the suit lacking cause of action was dismissed. The principles laid down in the case of ***Surinder Kumar (supra)*** have been approved by the Division Bench of this Court in the case of ***Sagar Gambhir Vs. Sukhdev Singh Gambhir and Ors. 2017 (241) DLT 98***.

2. In view of the aforesaid position, *dehors* the aspect of the impugned judgment dismissing the application under Order 22 Rules 4 & 9 read with Order 1 Rule 10 CPC, and by applying the ratio of the aforesaid judgments of the Supreme Court and of this Court as also the Division Bench of this Court, and since in the suit plaint the only averments for claiming rights in the suit property by the appellant is on the ground of property being ancestral property, therefore, the suit plaint is rejected for

lacking cause of action.

3. Since the suit plaint is rejected for lacking cause of action, therefore the plaintiff can, in accordance with law including the aspect of limitation, and as specified under Order 7 Rule 13 CPC, file a fresh suit by averring in the suit plaint to be filed all the necessary averments of a legal cause of action as required by law.

4. This appeal is accordingly disposed of in terms of aforesaid order.

VALMIKI J. MEHTA, J

JULY 04, 2018
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