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

+ **FAO(OS) 301/2017**

MANJU KHANNA

..... Appellant

Through: Mr. Abhimanyu Walia, Advocate

versus

UDAY KHANNA & ORS

..... Respondents

Through: Mr. Ateev Mathur & Ms. Jagriti Ahuja,
Advs. for R-1.

Mr. Jasmeet Singh & Mr. Srivats Kaushal, Advs.
for R-2.

Ms. Sonam Gupta & Mr. Devansh Arya, Advs. for
R-3.

Mr. Asutosh Lohi, Adv. with Ms. Soumya Kumar,
Mr. Sanyam Khetarpal, Mr. Armaan Grover, Advs.
for R-4.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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03.10.2018

This is an unsuccessful applicant's appeal, challenging the order of the learned Single Judge in which he refused to implead her as a party defendant in a pending suit that claimed partition of one property (No.10, Sunder Nagar, New Delhi).

The brief facts are that late Sh. Roop Narain Khanna, who had seven sons, died in 1980. He was survived by his widow besides other

legal representatives/sons. It is not in dispute that the present appellant is the widow of Late Sh. Raj Narain Khanna, who subsequently died in 2002. The suit was filed by one Uday Khanna, the son of the last son of Roop Narain Khanna (Om Narain Khanna). It claimed 1/3rd share in the Sunder Nagar property and contended that the other parties to the suit, the heirs of Sh. Satya Narain Khanna and Sh. Gopal Narain Khanna, too were similar beneficiaries and had accepted the Will. The appellant contended in her application for impleadment that being the widow of a son who had survived, Late Sh. Roop Narain Khanna, she too was entitled to be impleaded and therefore entitled to participate in the proceedings. The learned Single Judge however disagreed and held that to the extent that she sought to challenge the Will, it was open to her to initiate separate substantive proceedings.

We have heard counsel for the parties. The contention of the plaintiff and the other defendants who accept the Will (and who obviously benefit to the extent that they were given 1/3rd share in the suit property) is that the present appellant as well as other branches of the family of Late Sh. Roop Narain Khanna accepted the bequest in terms – and therefore, were estopped from claiming any share in the suit property. It is pointed out that the suit is confined to claiming the share in the Sunder Nagar property and does not disturb in any manner the arrangements that the parties arrived at, after the death of Late Sh. Roop Narain Khanna, in 1980.

This Court is of the opinion that since the frame of the suit is one for partition, the mere circumstance that the plaintiff chose to implead only the beneficiaries of the Will does not in any manner obscure the fact that the other heirs and branches of Late Sh. Roop Narain Khanna's family are to be excluded or were not necessary parties. While the plaintiff - and the others who are parties to the suit may well turn out to be correct i.e. the other branches had accepted the bequest, in respect of the suit property, it is equally possible that the converse may be proved. But the latter is possible only if the other branches are represented – as they ought to have been, since they were necessary parties. It cannot be doubted – that since the decision of the Supreme Court in *Commissioner Of Wealth Tax Kanpur v. Chander Sen* 1986 (3)SCC 567, that the properties of a Hindu dying after 1956, necessarily have to follow the succession prescribed in Section 8 read with the concerned Schedule of the Act. The exception to this of course is where a testamentary disposition is made of any particular property or all properties. In these circumstances, the appellant, undisputedly is and has to be treated as a necessary party. The impugned order is hereby set aside. The appellant is hereby impleaded as a party defendant. Amended memo of parties shall be filed in a week.

The Court notices that though the suit was filed in 2013, much progress has not been recorded. The pendency of the present appeal too has contributed to the delay. In these circumstances, the Court hereby requires the appellant to file her written statement alongwith

documents/additional documents within 4 weeks from today. The reply/replication of the plaintiff and additional written statement (under Order VIII Rule 9 of the CPC) of the other defendants to the appellants written statement shall be filed within 2 weeks thereafter.

The Court is further of the opinion that the learned Single Judge should ascertain the status with respect to the other branches and take appropriate steps for impleading them – in accordance with law. Furthermore, at an appropriate stage – preferably within next three months, the learned Single Judge should also record the statement of the concerned parties i.e. those who assert that the disposition in the Will does or does not bind them or that whether they claim any share in the suit property (No.10, Sunder Nagar, New Delhi). This will hopefully shorten the litigation.

The appeal is allowed in the above terms.

All rights and contentions of the parties are kept open.

Order *dasti*.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

OCTOBER 03, 2018/akv