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

\+ FAO(OS) 2/2019 & CM APPLs. 154-155/2019

REKHA KAPOOR ..... Appellant

Through: Mrs. Mala Goel with Mr. Arun Kumar, Advs.

versus

DR PAVAN CHANDRA & ANR ..... Respondents

Through: None.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **07.01.2019**

CM APPL. 155/2019 *(exemption)*

Allowed, subject to just exceptions.

FAO(OS) 2/2019 & CM APPL. 154/2019

1. This is an appeal filed under Section 10 of the Delhi High Court Act impugning an order dated 12.11.2018 passed by the learned Single Bench whereby the issue framed on 27.04.2018 is said to be postponed for decision after the evidence is led. Appellant is the plaintiff and has filed the suit in question for partition and rendition of accounts. The suit is registered as CS(OS) 178/2017 and pending before the court below. One of the issues framed on 27.04.2018 which is Issue No. (i) reads as under:

> *"(i) Whether at all it is open to the defendants to lead evidence to the effect that notwithstanding the rent of the property being shown as income of the HUF, the property did not vest in the HUF? OPD 1 & 2"*

2. It was the case of the plaintiff that for deciding the aforesaid question as to whether the property does not vest in the Hindu undivided family recording of evidence is not necessary in view of certain documents available on record, namely, returns filed and the property being taxed on the basis that it is a joint family property. It is the case of the appellant even before us, that for deciding the issue leading of evidence is not necessary and on the basis of the admitted fact the issue could have been decided. However, by a detailed order passed, impugned before us on 12.11.2018, the learned court has taken note of the legal position and has recorded a finding to the effect that by merely by filing returns of taxes and getting the property taxed on the basis that it is a joint family property, by itself would not be sufficient to show or to draw a conclusion with regard to intention of late Brig. Brij Chandra in abandoning the character of an individual property. It was found that the property was shown as a Hindu undivided family property by their late father only as a device for saving tax. In fact, the property was not and could not be treated as a Hindu undivided family property. On the contrary, it was an individual property.

3. The learned Single Judge has gone into various aspects of the matter and recorded a conclusion that merely on the basis of payment of property tax a decision with regard to intention of late Brig. Brij Chandra cannot be drawn and the issue requires enquiry which can be done only after evidence

is recorded and the issue has been answered against the appellant by holding that recording of evidence to understand the nature of the property is required. Even though it was emphasized before us that based on the returns and the documents of taxation filed a conclusion can be drawn with regard to nature of the property but taking note of the detailed order passed by the learned writ court wherein reference has been made to various judgments rendered by different High Courts, the finding recorded is, that based on the tax returns filed, a decision in the matter is not possible and in doing so, in our considered view, the learned Single Judge has not committed error so grave in nature that interference into the matter at this stage is called for.

4. The decision on the issue having been made on sound consideration reasonable in nature, we see no reason to interfere into the matter at this interlocutory stage. The appeal is, therefore, dismissed. The pending application also stands disposed of.

CHIEF JUSTICE, J

V. KAMESWAR RAO, J

JANUARY 07, 2019
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