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

+ **FAO(OS) 134/2018 & C.M. Nos. 35936-35937/2018**

MANJEET SINGH

..... Appellant

Through: Mr. Abdes Choudhary with Mr.
Akshat Gupta and Ms. Sakshi, Adv.

versus

NARJEET SINGH & ORS

..... Respondents

Through: Ms. Manpreet Kaur, Adv. for
defendant No.1

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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02.04.2019

The appellant has preferred the present appeal to assail the order dated 30.05.2018 passed in I.A. No. 7735/2018 preferred by defendant No. 6 i.e. the appellant under Order VII Rule 11 CPC. The learned Single Judge has rejected the said application. The respondent plaintiff instituted the suit for partition claiming the properties in the hands of his father i.e. defendant No. 1 to be Hindu Undivided Family (HUF) properties. During the pendency of the suit, defendant No. 1 passed away. The plaint was amended by the plaintiff and he also claimed a share in the property as a natural heir of deceased defendant No.1. The appellant defendant No. 6 denies the right of the plaintiff to his claim based on intestacy of his late father by setting up Wills of defendant No. 1. The learned Single Judge notes in the impugned

order that additional issues were framed consequent upon the amendment of the plaint on 09.05.2018 on the said aspect of intestacy and the Will set up by the contesting defendants. In this background, the learned Single Judge has rejected the application preferred by the appellant under Order VII Rule 11 CPC.

We do not find any merit in the present appeal whatsoever. There is no dispute that the respondent plaintiff is a class I heir of the deceased defendant No. 1. Therefore, if defendant No. 1 has passed away intestate, the respondent plaintiff would have a share in the estate of deceased defendant No.1. That right of the respondent plaintiff is sought to be denied by the appellant by setting up a Will. It was entirely for the appellant to establish the Will at the Trial. Once the plaint have been amended to include the claim based on intestate of defendant No.1, in our view application under Order VII Rule 11 CPC was completely misconceived.

Dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 02, 2019

N.Khanna