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

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Judgment delivered on: 30.09.2019

+ C.R.P. 207/2017 & CM. APPL. 34545/2017

HRIDAY KUMAR CHATURVEDI

..... Petitioner

versus

MASTER DAKSH & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Gaurav Bhatt, Advocate.

For the Respondent: Mr. R.P.A. Jaiswal, Advocate for R-1

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 03.08.2017 whereby application of the petitioner under Order 7 Rule 11 CPC has been dismissed.
2. Respondent no. 1 had filed the subject Suit for Partition and possession of suit property. Petitioner is the father of Respondent No. 1 and Respondent No. 2 is the Aunt of the Respondent No. 1 i.e. sister of the petitioner.
3. It was contended by respondent No. 1 in the plaint that he was

the son of the petitioner and his paternal grandfather had died on 30.07.2013 and his paternal grandmother had died on 15.11.2011 leaving behind two properties bearing Nos. C-36 and C-40, Raju Park, Devli, Khanpur, Delhi besides ancestral property at the native place in the village Ramgarh, Post: Sigri, District Azamgarh, Uttar Pradesh, details of which would be furnished by the petitioner and respondent no. 2 (defendants in the suit).

4. Subject application under Order 7 rule 11 CPC was filed by the petitioner, inter-alia, contending that the properties in Delhi were self-acquired properties of the father of the petitioner and on his demise, he have been inherited them in his individual capacity. Further it was contended that the Courts at Delhi did not have the territorial jurisdiction, in as much as, none of the alleged ancestral properties are situated in Delhi.

5. Learned counsel for the respondent no. 1 submits that respondent no. 1 has been neglected by his father and as such has been deprived of the assets and benefits of the ancestral properties. He further contends that respondent no. 1 has initiated appropriate proceedings seeking maintenance and other reliefs as available to respondent no. 1 in law.

6. Subject plaint filed by respondent no. 1 seeks partition of two sets of properties. One set of properties i.e. Properties bearing Nos. C-36 and C-40, Raju Park, Devli, Khanpur, Delhi and the other being the

alleged ancestral properties situated at native place in village Ramgarh, Post: Sigri, District Azamgarh, Uttar Pradesh, details of which as per the plaint are not available with respondent no. 1/plaintiff and he is seeking the details from the petitioner as well as respondent no. 2.

7. In so far as the properties in Delhi are concerned, it is admitted by respondent no. 1 in his reply to the application of the petitioner under Order 7 Rule 11 CPC that the said properties were the self-acquired properties of Mr. Sanjeevan Chaturvedi (paternal grandfather) and that they are not ancestral properties.

8. Reference may be had to the judgment of the Supreme Court in '*Commissioner of Wealth Tax, Kanpur & Others Vs. Chander Sen & Others (1986) 3 SCC 567*' wherein the Supreme Court has held that whenever a son inherits a property in the situation contemplated by section 8 he does not take it as karta of his own undivided family but takes it in his individual capacity.

9. In the present case, the properties situated in Delhi admittedly are not ancestral or HUF properties and were the self-acquired property by late Mr. Sanjeevan Chaturvedi himself and accordingly the properties in Delhi have devolved on the petitioner in terms of Section 8 of the Hindu Succession Act. He has not taken the properties in Delhi as Karta of HUF of which respondent no.1 would be a member but has taken them in his individual capacity.

10. Since the properties in Delhi are owned by the Petitioner in his individual capacity, respondent no. 1 cannot claim partition of the said properties and the Suit qua the same is barred.

11. In so far as the alleged ancestral properties are concerned, none of them are situated within the territorial limit of the State of Delhi. Accordingly, a Suit would not be maintainable in Delhi with regard to the ancestral properties and the respondent no. 1 would have to initiate the proceedings in an appropriate court having appropriate territorial jurisdiction.

12. The Learned Trial Court has clearly committed an error in the impugned order dated 03.08.2017 in as much as the learned Judge has though noticed that there is an admission that the properties situated at Delhi are self-acquired properties but has rejected the application solely on the ground that there was no denial of existence of ancestral properties at Azamgarh.

13. If there are any ancestral properties situated outside the territorial limits of the court at Delhi, in terms of Section 16 of the Code of Civil Procedure, Suit would lie only in the Court within whose the territorial jurisdiction the properties are situated.

14. In view of the above, the impugned order dated 03.08.2017 is set aside. The application of the Petitioner under Order 7 rule 11 is allowed. Consequently, the plaint filed by the Respondent No. 1 is rejected.

15. This is without prejudice to the right of the Defendant No. 1 to initiate appropriate proceedings before a court of competent territorial jurisdiction. The petition is accordingly allowed in the above terms.

16. It is clarified that this Court has neither considered nor commented on the claim of the respondent no. 1 with regard to the ancestral properties or the denial thereof by the Petitioner.

17. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 30, 2019

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