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

+ **RFA(OS) 5/2023 & CM APPL.15754/2023**

**DEVENDER KUMAR SINCE DECEASED
THROUGH LRS**

..... Appellant

Through: Mr.Arun K.Chauhan, Advocate
(through VC).

versus

ARUNA BAKSHI & ORS.

..... Respondents

Through: None.

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Date of Decision: 04th August, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present appeal has been filed challenging the order dated 14th February, 2023 passed by a learned Single Judge in CS(OS) 3443/2015 whereby the learned Single Judge has passed a preliminary decree of partition of the suit properties.

2. Learned counsel for the appellants states that the learned Single Judge failed to appreciate that no such order or preliminary decree could be passed without giving the appellants-defendants an opportunity to lead evidence. He further states that due to sad demise of the father of the appellants in



2021, the appellants-defendants are not in possession of any documents to show the existence of an HUF. He, however, reiterates that in the event an opportunity is given to lead evidence, the appellants will be able to summon some relatives to show the existence of HUF.

3. Having heard learned counsel for the appellants as well as having perused the paper book, this Court is of the view that there is no presumption that a business standing in the name of any member of the joint family is a joint family business. [See: *P.S. Sairam Vs. P.S. Rama Rao Pissey, (2004) 11 SCC 320, G. Narayana Raju (Dead) by his Legal Representative Vs. G. Chamaraju, AIR 1968 SC 1276 & Bhuru Mal Vs. Jagannath, AIR 1942 PC 13*]

4. Though there is a presumption that every Hindu family which is joint in food and worship is a Hindu joint family, yet there is no presumption that the estate is joint or the property is the Hindu joint family property. The party who asserts that the property is Hindu joint family has to prove it. [See: *Makhan Singh (Dead) By LRs. Vs. Kulwant Singh, (2007) 10 SCC 602* and *Ravi Shankar Sharma Vs. Kali Ram Sharma, 2014 I AD (Delhi) 609*]

5. The appellants' father in the present case had admittedly passed away in 2021, whereas the suit in the present instance had been filed in 2015. Thus, during his life time, he had ample opportunity to place on record the evidence that was in his possession.



6. In any event the witnesses whom the appellants intend to produce cannot depose contrary to the record or prove documents which are not on record.

7. In the present case, there are only bald assertions about the existence of an HUF. Even if the averments are accepted *in toto*, then also it merely establishes existence of a joint family and not a Hindu undivided family. Consequently, the present appeal along with application being bereft of merits is dismissed but with no order as to costs.

MANMOHAN, J

MINI PUSHKARNA, J

AUGUST 4, 2023
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