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

+ **FAO(OS) 114/2022 & CM APPL. 44136/2022**

JITENDER SHOKEEN

..... Appellant

Through: Mr. Pushkar Sood with Mr. Satya
Prakash Singh, Advocates.

versus

HITENDER KUMAR SHOKEEN & ORS.

..... Respondents

Through: Ms. Beenashaw N. Soni and Ms. Ann
Joseph, Advocates for R-1.
Mr. Arvind Bhatt with Ms. Ritika
Choubey and Ms. Swastika Singh,
Advocates for respondent no. 7.

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Date of Decision: 03rd November, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present appeal has been filed challenging the order dated 22nd August, 2022 passed by the learned Single Judge in *CS(OS) No. 314/2008*. By way of the impugned order, the learned Single Judge has transposed only the respondent no. 1 herein as plaintiff in the suit filed by their deceased father, Late Shri Bal Kishan Shokeen, for partition of the properties against his brothers. The other legal heirs, viz. the appellant herein as well as respondent nos. 1 to 4, being the other son, wife and daughters of Late Shri Bal Kishan Shokeen, have been continued as defendants in the suit filed on



behalf of Late Shri Bal Kishan Shokeen.

2. The wife as well as the two daughters of Late Shri Bal Kishan Shokeen have not challenged the impugned order, which has been challenged by only the appellant, who is the son of Late Shri Bal Kishan Shokeen and brother of respondent no. 1 herein, who is now the sole plaintiff in the suit filed by their father in terms of the impugned order.

3. Brother of Late Shri Bal Kishan Shokeen filed a suit for partition, being *CS (OS) 2719/2000*. In the said suit, Late Shri Bal Kishan Shokeen filed his counter claim, which was later converted into a suit bearing no. *CS (OS) 314/2008* seeking partition of properties on the basis that the said properties were Hindu Undivided Family (“HUF”) properties. During the lifetime of Late Shri Bal Kishan Shokeen, his legal heirs i.e. the appellant herein, respondent nos. 1 to 4 were impleaded as defendants in the said suit.

4. Respondent no. 1 herein filed his written statement in the suit, wherein he took the same stand as Late Shri Bal Kishan Shokeen that all the properties were Joint Hindu Family Properties. However, respondent no. 2, wife of Late Shri Bal Kishan Shokeen in her written statement submitted that all the properties mentioned in the Schedule of Properties filed along with the plaint, were the HUF properties, except House No. B-5/147, Paschim Vihar, Delhi-110063 and Plot No. 6, Sector 4 Market, North West Avenue, Punjabi Bagh, New Delhi-110026, which were the individual properties of deceased plaintiff, Late Shri Bal Kishan Shokeen.

5. The appellant herein filed a separate written statement taking the same defence as that of his mother, respondent no. 2 herein.

6. Respondent nos. 3 and 4, being the daughters of Late Shri Bal Kishan Shokeen, though were impleaded as parties, failed to contest the suit and did



not file any written statement. Thus, they were proceeded *ex-parte*.

7. Late Shri Bal Kishan Shokeen, the original plaintiff in the suit, died on 8th June, 2021 and is survived by his wife, respondent no. 2 herein, two sons i.e. appellant and respondent no. 1 herein and two daughters i.e. respondent no. 3 and 4 herein.

8. An application being *I.A No. 15300/2021* was filed on behalf of appellant herein before the learned Single Judge under Order XXII Rule 3 read with Section 151 of Code of Civil Procedure, 1908 (“CPC”) seeking impleadment of legal heirs of the deceased plaintiff, Late Shri Bal Kishan Shokeen. By the impugned order dated 22nd August, 2022, the learned Single Judge has transposed only the respondent no. 1 herein as the plaintiff, while the other legal heirs have been continued as defendants in the manner they had been impleaded earlier. Thus, being aggrieved by the order dated 22nd August, 2022 passed by the learned Single Judge, the present appeal has been filed.

9. On behalf of the appellant, it is contended that the application being, *I.A No. 15300/2021* was filed on his behalf to take on record the legal representatives of the deceased plaintiff. However, by the impugned order, the learned Single Judge has proceeded to transpose only the respondent no. 1 herein as a plaintiff, when there was no such prayer in the said application or any pleading to the said effect.

10. It is further contended that no notice had been issued till passing of the impugned order in the application being *I.A No. 7284/2018* filed on behalf of respondent no. 1 herein for being transposed as the plaintiff. Yet, the learned Single Judge proceeded to allow the said application. Thus, the perversity of the order is writ large on the face of it, especially in view of the



fact that *I.A No. 7284/2018* filed on behalf of the respondent no. 1 herein was listed before the learned Joint Registrar with the same impugned order.

11. It is submitted that in the application filed on behalf of appellant herein for bringing on record all the legal representatives of the deceased original plaintiff, respondent no. 1 herein could not have been transposed as plaintiff to the exclusion of other legal representatives.

12. Learned counsel for the appellant has drawn the attention of this Court to the legal notice dated 19th October, 2022 issued on behalf of respondent no. 1 herein to the tenant of the property bearing no. 6, North West Avenue, Punjabi Bagh Club Road, Delhi-110026. In the said legal notice, it has been stated on behalf of respondent no. 1 herein that the appellant herein does not have any *locus standi* to the ownership of the said property in view of the respondent no. 1 having been transposed as the plaintiff in place of their late father. Thus, by way of the said legal notice, it was stated on behalf of respondent no. 1 herein that the appellant herein was unlawfully and fraudulently receiving the rent from the said tenant. Therefore, it is contended on behalf of the appellant that the respondent no. 1 is trying to take undue advantage of the impugned order dated 22nd August, 2022 by which respondent no. 1 has been transposed as plaintiff in the suit filed on behalf of their father i.e. Late Shri Bal Kishan Shokeen.

13. On the other hand, learned counsel appearing on behalf of respondent no. 1 has justified the impugned order passed by the learned Single Judge.

14. Learned counsel appearing for respondent no. 7 submits that the dispute between the appellant and respondent no. 1 is essentially confined to properties listed at serial nos. 5 and 6 in the Schedule of Immovable Properties filed along with the plaint, that are being claimed by the appellant



herein as individual properties of Late Shri Bal Kishan Shokeen. There is no dispute with respect to rest of the properties as being HUF properties.

15. We have heard learned counsel for the parties and perused the record.

16. Perusal of the plaint filed on behalf of Late Shri Bal Kishan Shokeen demonstrates that he claimed partition of the properties on the basis that the same were HUF properties. This stand as taken by original plaintiff Late Shri Bal Kishan Shokeen, was reiterated by respondent no. 1 herein. However, the appellant and respondent no. 2 in their written statement took a varying stand that the properties of which partition were sought, were all HUF properties except House No. B-5/147, Paschim Vihar, Delhi-110063 and Plot No. 6, Sector 4 Market, North West Avenue, Punjabi Bagh, New Delhi-110026.

17. Though learned counsel for appellant no. 1 submitted that in his Evidence by way of Affidavit, Late Shri Bal Kishan Shokeen had deposed that the aforesaid properties were his individual properties, fact remains that no amendment to the plaint was ever carried out by Late Shri Bal Kishan Shokeen in order to incorporate the said facts. The plaint, as it stands even today, is to the effect that all the properties of which partition are sought, are HUF properties. Therefore, the stand of appellant and respondent no. 2 that properties being House No. B-5/147, Paschim Vihar, Delhi-110063 and Plot No. 6, Sector 4 Market, North West Avenue, Punjabi Bagh, New Delhi-110026, were individual properties of Late Shri Bal Kishan Shokeen, is clearly not in absolute consonance with that of the original plaintiff, Late Shri Bal Kishan Shokeen. Thus, no infirmity is found in the impugned order passed by the learned Single Judge wherein it has rightly been held as follows:



“13. The deceased plaintiff-Bal Kishan Shokeen (original plaintiff) has died on 08th June, 2021 and it is not under challenge that he is survived by his wife-defendant No. 6, his two sons, namely, Shri Hitender Kumar Shokeen-defendant No.4 and Shri Jitender Shokeen-defendant No.7 and two daughters, namely, Smt. Vandana Shokeen-defendant No. 8 and Smt. Vaneeta Dabas-defendant No.9. They are all the legal heirs of the plaintiff and are already impleaded as defendants in the present matter. The only issue which is now being raised is who is to be transposed to represent interest of the deceased Bal Kishan Shokeen. As is evident from the Written Statement of the defendant Nos. 6 and 7, wherein they have claimed one property out of all mentioned in Annexure D-1 to be the individual property of deceased plaintiff-Bal Kishan Shokeen, their interest is not in absolute consensus with that of the deceased plaintiff-Bal Kishan Shokeen. On the other hand, the defendant No. 4 has re-affirmed in his Written Statement that all the properties were HUF as was mentioned by the deceased plaintiff-Bal Kishan Shokeen in his original plaint.

14. Considering the facts and submissions made, the defendant No. 4-Hitender Kumar Shokeen is hereby transposed as plaintiff.

15. In so far as two daughters, namely, Smt. Vandana Shokeen-defendant No. 8 and Smt. Vaneeta Dabas-defendant No.9 are concerned, they have not chosen not to contest the present suit and have not filed their Written Statements. Therefore, they continue to be party as defendants in the present suit.

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19. It may be noted that this is a suit for partition, wherein all the parties are essentially on the same footing. The defendant Nos. 1, 2 and three have their own right to protect their interests and merely because defendant No. 4- Hitender Kumar Shokeen is transposed as the plaintiff, their interest would not be prejudiced.”

18. However, this Court is of the considered opinion that merely because respondent no. 1 has been transposed as plaintiff in the suit filed on behalf of Late Shri Bal Kishan Shokeen, the same does not give him any entitlement to write any letters to the tenants in the property bearing Plot No. 6, Sector 4 Market, North West Avenue, Punjabi Bagh, New Delhi-110026 to claim any interest in the said property. Thus, it is clarified that none of the parties will



rely on the impugned order dated 22nd August, 2022 passed by the learned Single Judge to claim any interest in the properties being House No. B-5/147, Paschim Vihar, Delhi-110063 and Plot No. 6, Sector 4 Market, North West Avenue, Punjabi Bagh, New Delhi-110026.

19. Accordingly, the present appeal is disposed of with the aforesaid clarification, along with the pending application.

MINI PUSHKARNA, J

MANMOHAN, J

NOVEMBER 3, 2023
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