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

+ **RFA(OS) 108/2014 & CM APPL. 49739/2023**

KULDEEP MANSUKHANI

..... Appellant

Through: Appellant in Person.

versus

INDIRA JHANGIANI & ORS

..... Respondents

Through: None.

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Date of Decision: 25th September, 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)

CM APPL. 49739/2023 (under Order 41 Rules 17 and 19 read with Section 151 Code of Civil Procedure, 1908 (CPC))

1. The present is an application for recalling the order dated 16th August, 2023, by which the present appeal had been dismissed in default and on account of non-prosecution.

2. For the reasons stated in the application, the present application is allowed and the appeal is restored to its original number.

RFA(OS) 108/2014

3. The present appeal lays challenge to the order dated 21st May, 2014 passed by the learned Single Judge in *CS(OS) No. 252/2011*, by which the suit filed on behalf of appellant/plaintiff herein seeking partition of property bearing No. F-75, Kalkaji, New Delhi ("suit property") was rejected as lacking any cause of action.

4. The appellant/plaintiff filed a suit for partition against the defendants for partition of the suit property on the ground that the same was purchased



out of sale of property bearing No. K-68, Lajpat Nagar, New Delhi which was purchased out of the ancestral funds and the same was a Hindu Undivided Family (HUF) property. Thus, the suit property was also an HUF property.

5. It is the case of the appellant/plaintiff that the suit property is a built up property consisting of three storeys, and the family members contributed towards the construction and day to day maintenance of the same. For the purpose of convenience, the suit property was retained in the name of the defendant no.1 and it was agreed that she will look after the property, and that every member of the family shall have joint interest in the property. Thus, the appellant/plaintiff and the defendants have joint interest in the suit property and no one alone has any individual right, title or interest in the suit property.

6. Before the learned Single Judge, it came to the fore that defendant no.1 who was the registered owner of the suit property, had made a gift in respect of the same in favour of defendant no. 10. Defendant no.1 took a categorical stand in the suit proceedings that she being registered owner of the suit property was well within her right to gift the same to any person.

7. On the basis of the pleadings on record, the learned Single Judge proceeded to decide the matter with regard to maintainability of the suit. The learned Single Judge observed that the defendant no.10 had specifically brought forth in the written statement that the suit property had been gifted to him by defendant no.1 by a registered document. The said fact was concurred by defendant no.1.

8. Learned Single Judge came to an unequivocal finding that though it had been pleaded that the suit property was an HUF property, no declaration



to that effect had been sought. No documentary evidence by way of *prima facie* evidence had been placed on record to show as to how and at what point of time the suit property was purchased out of the ancestral funds.

9. It is relevant to note here that Supreme Court in the case of ***Yudhishter Versus Ashok Kumar, (1987) 1 SCC 204*** has held in categorical terms that a property which devolved on a Hindu under Section 8 of the Hindu Succession Act, 1956 is inherited in his individual capacity and he does not take it as karta of his own undivided family. Therefore, after enactment of the Hindu Succession Act, 1956, there cannot be any presumption that the suit property was an HUF property or that the appellant had any share in the same on that account. In the absence of any evidence to establish that the suit property was an HUF property, the contention on behalf of appellant in this regard was rightly rejected by the learned Single Judge.

10. The learned Single Judge further noted that the factum of defendant no.1 being the registered owner of the suit property was not in dispute. Therefore, she was well within her right to have gifted the suit property to defendant no.10.

11. Appellant/plaintiff appearing in person submitted that the gift deed is a forged and fabricated document and that the same was got forcefully executed by defendant no.10 in his favour by abducting the defendant no.1. However, this Court notes that there is nothing on record to show that any First Information Report (FIR) or Complaint was lodged with the Police in this regard either by the appellant/plaintiff or the defendant no.1. Rather, the defendant no.1 supported the case of defendant no.10 when she pleaded that she was within her right to execute gift deed in favour of defendant no.10.



12. The contention on behalf of appellant/plaintiff that the gift deed in favour of defendant no.10 was challenged before the learned Single Judge, is found to be without any substance. Perusal of the documents on record show that while the fact of registered gift deed in favour of defendant no.10 was specifically pleaded in the written statement filed on behalf of defendant no.10 on 18th April, 2011, an application to amend the suit in order to challenge the said gift deed was filed by the appellant/plaintiff only on 16th May, 2014 just before the date, i.e., 21st May, 2014 when the matter was listed for considering the issue as regards maintainability of the suit. Thus, it is seen that the registered gift deed in favour of defendant no.10 was not challenged by the appellant and there was only a feeble attempt by the appellant/plaintiff in this regard in order to avoid a judgment against him. Such dilatory tactics cannot be accepted by the courts. Therefore, this Court finds no infirmity in the finding of the learned Single Judge that the registered gift deed, original of which had been placed on record, was not challenged by the appellant/plaintiff herein.

13. Thus, this Court is of the considered opinion that the suit of the appellant/plaintiff was rightly rejected by the learned Single Judge on the ground that it lacked cause of action.

14. In view of the aforesaid, no merit is found in the present appeal. The same is accordingly dismissed.

MINI PUSHKARNA, J

MANMOHAN, J

SEPTEMBER 25, 2023/ au