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

+ **CS(OS) 563/2022 & I.A. 14882/2022**

PREETI CHOUDHARY

..... Plaintiff

Through: Mr. A.K. Rajput, Advocate.
versus

KULDEEP SINGH & ORS.

..... Defendants

Through: Mr. Tanmaya Mehta, Mr Varun
Mehlawat, Advs for D-1 to 4
(M.9873486348)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **05.04.2024**

1. This hearing has been done through hybrid mode.
2. The present suit is filed on behalf of the Plaintiff-Ms. Preeti Choudhary *inter alia* seeking a decree of partition with respect to property no. H. E-109, Saket, New Delhi 110017 (*hereinafter 'suit property'*). The Plaintiff vide the present suit is also seeking a decree of permanent injunction thereby restraining the Defendants from creating third party interest in the suit property. Further, the Plaintiff is seeking a decree of declaration to declare that the conveyance deed dated 27th September, 2001 is invalid.
3. The present case is a family dispute amongst the legal heirs of Late Sh. Jaswant Singh, who is the grandfather of the Plaintiff and Defendant Nos. 2 to 4. Sh. Jaswant Singh is the father of Defendant No. 1.
4. It is the case of the Plaintiff that the suit property is a joint Hindu family property and in terms of Section 6 of the Hindu Succession Act, 1956, the daughter of a coparcener in a joint Hindu family, shall by birth become a



coparcener in her own right in the same manner as the son. Thereby, the claim of the Plaintiff in the present case, is that she being a descendent of late Sh. Jaswant Singh, is a co-parcener in a joint Hindu family and as such, has equal right and interest qua the suit property, which is ancestral in nature.

5. In the present case, it is not pleaded by the Plaintiff that a joint Hindu family was existing before 1956 or the joint Hindu family was created post 1956 by throwing the property/properties into a common hotchpotch.

6. The Court on 13th September, 2022 put a question to Id. Counsel for the Plaintiff asking him to justify maintainability of the present suit in view of the judgment in *Sh. Surender Kumar v. Sh. Dhani Ram and Ors., (supra)*. Further, the Id. Counsel was given liberty to place additional documents on record. Relevant portion of the order dated 13th September, 2022 is extracted hereinunder:

“3. It has been put to the counsel for the plaintiff whether the present suit is maintainable in view of the judgment of this Court in Sh. Surender Kumar v. Sh. Dhani Ram and Ors., AIR 2016 Del 120.

4. Counsel for the plaintiff seeks time to examine this aspect.

5. At request, list on November, 2022.

6. Liberty is given to the plaintiff to place additional documents on record.”

7. Today, Id. Counsel for the Plaintiff was again asked to justify the maintainability of the present suit. However, the Id. Counsel seeks time to file an application seeking amendment of plaint

8. It has been observed that since passing of the order dated 13th September, 2022, the Plaintiff has only been seeking adjournments in this matter. Vide order dated 24th January, 2024 it was recorded by the Court



that if the Plaintiff is not able to satisfy the Court with regard to the maintainability of the suit, the present suit would liable to be dismissed.

Relevant portion of the said order is hereinunder:

“5. On the next date, if the Plaintiff does not satisfy as to the maintainability of the suit, the suit would be liable to be dismissed.”

9. In the opinion of this Court, there is no averment in the plaint so as to establish that the suit property was inherited by late Sh. Jaswant Singh from his paternal ancestors prior to 1956. Further, there is also no averment in the plaint stating that the Hindu undivided family was created post 1956 by late Sh. Jaswant Singh by throwing properties in a common hotchpotch. Thereby, the Plaintiff has failed to establish that the suit property is in fact the property of a joint Hindu family where she is a coparcener.

10. Accordingly, the suit as filed is dismissed with liberty to the Plaintiff to avail her remedies in accordance with law, if so available. All pending applications are disposed of.

PRATHIBA M. SINGH, J.

APRIL 5, 2024/dj/rks

(corrected & released on 10th April, 2024)