



2024:DHC:7535-DB



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

+ **FAO(OS) 131/2024 & CM APPL. 56058/2024, CM APPL. 56059/2024, CM APPL. 56060/2024, CM APPL. 56061/2024**

VIJAY KUMAR

.....Appellant

Through: Mr. Kirtiman Singh, Mr. Vikhyat Oberoi, Mr. Ravi Sharma, Ms. Nishita Gupta and Mr. Shivam Prakash, Advs.

versus

SHOBHA AGARWAL & ORS.

.....Respondent

Through: Mr. Manish K. Srivastava and Mr. Hardik Vashisht, Advs. for R-4 and R-5.
Mr. Anish Shrestha, Mr. Firoz Khan Advocates
for Defendant/Respondent No. 5
Mr. Abhishek Aggarwal, Advocate
for Ms. Seema Gupta, respondent no 7

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Date of Decision: 24th September, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the judgment dated 19th January, 2024 passed by the learned Single Judge in CS (OS) No.347/2018,

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whereby the application bearing I.A. No. 1010/2021, filed by the Appellant herein under Order I Rule 10 of the Code of Civil Procedure, 1908 for impleadment in the underlying suit, was dismissed on the ground that the Appellant had been unable to show any ownership right in the subject property bearing no. 12-A, Sunder Nagar Market, 2nd Floor. The subject suit has been filed seeking partition of multiple properties including the subject property.

2. It is pertinent to mention that after passing of the impugned judgment, the Defendant No. 1 in the subject suit i.e., father of the Appellant has passed away and the Appellant has been impleaded as a necessary and proper party in the subject suit as a legal heir to the deceased Defendant *vide* order dated 27th May, 2024 passed by the Joint Registrar.

3. By way of the present appeal, the Appellant has challenged the impugned judgment and is seeking a direction to be impleaded in his individual and independent capacity, in addition to his status as a legal heir of the Defendant No. 1 therein.

4. Learned counsel for the Appellant states that an oral settlement was entered into between him and the other parties herein in the first week of December, 2006 whereby it was decided that the Appellant would be the exclusive owner of and run his business from the ground floor of the property and would get the second floor for his residence. He further states that the Learned Single Judge failed to consider that the family businesses of the Appellant were in the nature of an HUF, and he had rights in the subject property as a coparcener until the aforesaid settlement. He further states that the learned Single Judge failed to consider that the Appellant has been running his business from the ground floor of the subject property for a very



long period of time and has acquired a reputation in the market. He further states that the learned Single Judge failed to consider that a no-objection certificate (NOC) dated 19th June, 2011 was issued in favor of the Appellant by his father, the Defendant No. 1 in the subject suit, that allowed him to continue his business in the subject property.

5. After hearing the learned counsel for the Appellant, it is clear that the Appellant has not placed on record any registered document which showcases his vested right of individual ownership of the subject property. One of us (Manmohan, J) in ***Aarshiya Gulati (Minor) Thr. Next Friend and Others Vs. Kuldeep Singh Gulati and Others, 2019 SCC OnLine Del 6867*** and another coordinate learned Single Judge of this Court in ***Sunny (Minor) Vs. Sh. Raj Singh*** (supra) have held that in a suit for partition of a coparcenary or Hindu Joint Family properties, detailed facts have to be averred and there is no presumption as to the existence of an HUF. In ***Sunny (Minor) Vs. Sh. Raj Singh, (2015) 225 DLT 211***, a learned Single Judge of this Court has held “.....I must, at the risk of repetition, note that there exists the legal requirement of discharge of the onus of proof by atleast leading some credible documentary evidence in a case where partition is sought of valuable immovable properties, and oral evidence is not to be treated by courts as sufficient, inasmuch as, rights in immovable properties of defendants cannot be destroyed on account of self-serving oral statements and stand of the plaintiffs that there existed an HUF....”. The Apex Court in the case of ***Suraj Lamps and Industries Private Ltd. v. State of Haryana and Anr., (2009) 7 SCC 363*** has categorically held that unregistered documents cannot be construed as a valid transfer of property. Consequently, the Appellant’s reliance on an Oral Settlement to establish an



individual right of ownership on the subject property is untenable in law.

6. The Supreme Court in *C.W.T vs. Chander Sen, (1986) 3 SCC 567* and *Yudhishter vs. Ashok Kumar, (1987) 1 SCC 204* has categorically held that after the enactment of the Hindu Succession Act, 1956, any property inherited by a male Hindu from his ancestor is held by him as his personal property and it does not acquire the character of a coparcenary property. The averments in the pleadings relied upon do not show the existence of a coparcenary property. It seems that the distinction between a coparcenary property and a HUF has not been appreciated by the Appellant.

7. Even *vide* the aforementioned NOC, the Appellant was only given a right as a permissive user of the subject property. No right of individual ownership can accrue to the Appellant on account of merely being in possession of the subject property. The learned Single Judge, after considering all averments and documents placed on record has rightly held that not a single plea has been made by any of the parties, including the father of the Appellant from whom the appellant claims the right in the property that there was creation of an HUF or that the property is an HUF property.

8. In response to a pointed query, learned counsel for the appellant is not able to state as to whether the alleged HUF had ever filed an Income Tax Return in its own name or independently owned a bank account.

9. Consequently, this Court has no other option but to conclude that the defence of a coparcenary property is nothing but a 'cock and bull story', a moonshine defence which is contrary to facts and untenable in law.



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10. There is also a delay of 119 days in filing the appeal and 46 days in re-filing the same. Accordingly, the present appeal along with applications is dismissed both on merits as well as on the ground of delay.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

SEPTEMBER 24, 2024/N.Khanna

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