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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO(OS) 7/2025, CM APPL. 4948/2025 (Stay) & CM APPL.
4950/2025 (106 days delay in filing appeal)

ASHOK KUMAR MITTALAppellant

Through: Mr. Vivek Sharma, Mr. Abhay
Singh, Mr. V.K. Mehra and Mr.
Rahul Arya, Advocates.

versus

SUMITRA MITTAL & ORS.Respondents

Through: Mr. Brijesh Oberoi and Mr.
Daksh Oberoi, Advocates for
Respondent Nos. 1, 2, 4 and 5.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

ORDER
19.09.2025

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1. The present Appeal has been filed under Section 10 of the Delhi High Court Act, 1966, read with Section 151 of the Code of Civil Procedure, 1908 [“CPC”], against the impugned order dated 02.09.2024 passed by the learned Single Judge in I.A. No. 9164 of 2019 in C.S. (O.S.) No. 426 of 2018, titled ***Shri Ashok Kumar Mittal versus Smt. Sumitra Mittal and Others.***

2. An application filed by the Plaintiff seeking a decree in the suit under Order XII Rule 6 of the CPC, was dismissed by the learned Single Judge. The correctness of that order is challenged in the present



appeal.

3. Learned counsel appearing for the Appellant has been heard at length. He contends that the Defendants have admitted that the residential property in question is jointly owned following the death of Late Sh. Hari Shankar Mittal, their common ancestor (i.e., father). It is submitted that the Appellant is entitled to a one-sixth share in the property in accordance with Section 8 of the Hindu Succession Act, 1956. Accordingly, it is submitted that the Court ought to have decreed the suit in favour of the Appellant.

4. The Defendants, while contesting the Suit, have asserted that Late Sh. Hari Shankar Mittal left behind several other properties, including Shop No. 14, C.S.C., Block-D at Anand Vihar, East Delhi-110092 which was not included in the suit. Hence, the Defendant contends that the Suit is not maintainable on account of partial partition. Furthermore, at the time the impugned order was passed, the Defendants disclosed that Shop No. 5, C.S.C., C Block Market, Anand Vihar, East Delhi – 110092, was also owned by Late Sh. Hari Shankar Mittal.

5. This Court has considered the submissions but finds no merit in the same.

6. A decree under Order XII Rule 6 of the CPC can be passed only if the parties are *ad idem* on all aspects of the matter.

7. In the present case, the Defendants are contesting the suit, while claiming that the Plaintiff has failed to include all the properties left behind by Late Sh. Hari Shankar Mittal.

8. In such circumstances, the learned Single Judge has not erred in refusing to pass any decree under Order XII Rule 6 of the CPC.

9. The present Appeal, along with pending application(s), if any, is



hereby dismissed.

ANIL KSHETARPAL, J

HARISH VAIDYANATHAN SHANKAR, J

SEPTEMBER 19, 2025/nd/ds/her