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

+ **RFA 630/2022**

RAJENDER KISHAN GUPTA Appellant
Through: Mr. Apurv Parashari and
Mr. Jai Allagh, Advocates.
versus

SURENDER KISHAN GUPTA AND ORS. Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **16.12.2022**

CM APPL. 53131/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

RFA 630/2022 & CM APPL. 53130/2022 (Stay), 53132/2022 (condonation of delay)

3. By the present appeal, Appellant is seeking setting aside of the impugned judgment and preliminary decree dated 06.02.2021 passed by the Trial Court, whereby the Trial Court has passed a preliminary partition decree in favour of the Plaintiffs in the suit who are Respondents No. 1 and 2 herein, partitioning certain properties which, according to the Appellant, is his self-acquired properties. Appellant is Defendant No. 3 before the Trial Court.
4. It is the case of the Appellant that during 1980-1990 various properties were acquired by him and his wife and they have bhumidari rights in them. In 1991, Respondents No. 1 and 2 herein, who are legal heirs of Kishan Chand Gupta, instituted a suit for partition and rendition of accounts being CS No. 3124/1991. The disputes of the joint family of the deceased father of the Appellant and his brothers was referred to an Arbitral Tribunal and an Award dated 31.03.1973,



was passed by the learned Adjudicators, partitioning the then existing joint family properties between the five branches of late Kishan Chand Gupta and his brothers.

5. It is further stated that Respondent No. 1 had initially preferred suit No. 878/1991 before this Court assailing the sale deed dated 19.01.1990 whereby Appellant/his Wife had purchased certain properties. The suit was dismissed in default on 12.03.1996. In the meantime, another suit no. 3124/1991 was filed for partition, dissolution and rendition of accounts as well as permanent injunction by Respondents No. 1 and 2 in 1991. It is in this suit that the Trial Court has passed a preliminary decree, which is impugned before this Court.

6. Grievance of the Appellant as put forth by the learned counsel is that the Trial Court fell in error by travelling into statutorily prohibited jurisdiction to adjudicate upon lands covered under the Delhi Land Reforms Act, 1954 (DLR Act). Section 185 of the said Act prohibits and excludes the jurisdiction of Civil Court from adjudicating upon agricultural lands covered under the said Act, since the power of partition of such lands is conferred exclusively upon the Revenue Assistant. Being a Bhumidari land, the Trial Court has no jurisdiction to pass the preliminary decree.

7. It is further submitted the agricultural lands as mentioned in the appeal were purchased by the Appellant and his wife and are their self-acquired properties, which have been erroneously subjected to partition by the Trial Court. Additionally, the Trial Court has overlooked the fact that the sale deed dated 19.01.1990 was challenged by the Plaintiffs in the suit before this Court being suit No. 878/1991, which stood dismissed in default and therefore, the dispute regarding cancellation of the sale deed and consequently partition of the self-acquired properties of the Appellant through the sale deed, has

attained finality.



8. Issue notice to the Respondents, through all permissible modes, returnable on 01.08.2023.

9. *Dasti* in addition.

10. Till the next date of hearing, operation of impugned judgment and preliminary decree dated 06.02.2021, shall remain stayed.

JYOTI SINGH, J

DECEMBER 16, 2022/rk