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

+ **CS(OS) 36/2024**

SAHEBDEI AND ORS

.....Plaintiffs

Through: Mr. Akil Rataeeya, Mr. Armaan, Ms. Aroma, Mr. Harsh Gulia and Mr. Sunny Dagar, Advocates

versus

SANTOSH DEVI AND ORS

.....Defendants

Through: Mr. Siddharth Chaudhary and Mr. Akshat Gupta, Advocates for D-6, D-7 & D-8
Mr. Rohit Kumar, Advocate for D-9 to D-11

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **11.12.2024**

I.A. No. 893/2024 (Under Order XXXIX Rule 1 and 2 CPC)

1. This is an application filed by the plaintiffs under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 ('CPC') on the plea that the suit properties are coparcenary properties.
2. Learned counsel for the plaintiffs; however, fairly admits that there are no documents on record evidencing the assertion that the suit properties are coparcenary. He also admits that there is no legal taxing entity of the alleged Hindu Undivided Family ('HUF') in existence.
3. He states that he merely relies upon the assertion made in preliminary submissions para no. 1 of the written statement of defendant nos. 6, 7 and 8,



which contains an admission that late Sh. Jagjit Singh inherited the self-acquired properties of his father late Tek Chand.

4. He also fairly admits that there is no dispute with respect to the valid execution of the registered Will dated 06.11.2001 by late Sh. Jagjit Singh by which the said properties devolved upon his son Mr. Sanjeet (since deceased). He states, however, that the plaintiff has challenged the said Will on the sole ground that late Sh. Jagjit Singh did not have the legal capacity to dispose of the whole property since it was a coparcenary property, except to the extent of his own personal share in the property.

5. In the considered opinion of this Court, the averments in the written statement shows that the suit properties were inherited by late Sh. Jagjit Singh from his father late Sh. Tek Chand as per Section 8 of the Hindu Succession Act, 1956. The properties so inherited were late Sh. Jagjit Singh personal properties. The said properties do not acquire the character of coparcenary property due to the incidence of intestate inheritance. This has been well settled by the Supreme Court in **Commissioner of Wealth Tax, Kanpur & Others v. Chander Sen & Others**¹ and as held be Coordinate Bench of this Court in **Sunny (Minor) & Anr. vs. Raj Singh & Others**².

6. Moreover, late Shri Jagjit Singh had complete authority in law to dispose of the said properties by executing a Will.

7. This Court therefore is of the opinion that there is no prima facie case made out by the plaintiff.

8. At this stage, learned counsel for the plaintiff states that the matter be adjourned to enable him to file additional documents to substantiate his

¹ (1986) 3 SCC 567

² 2015 SCC OnLine Del 13446



assertions in the plaint.

9. At request, adjourned to 21.03.2025.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 11, 2024/rhc/MG