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

+ CS(OS) 2552/2014 & I.A. 16062/2014 (u/O-XL of CPC), CC 32/2015, I.A. 3270/2015 (u/O-XXXIX R-1 & 2 of CPC), I.A. 14719/2015 (of the defendant no.1 u/O-XXXIX R-4 of CPC), I.A. 16251/2015 (of the defendant no.1 u/O-VII R-11 of CPC), I.A. 21879/2015 (of the counter-claimant u/O-VI R-17 of CPC), I.A. 5123/2016 (u/O-XXXIX R-2A of CPC), I.A. 6219/2016 (of the defendant no.1 for directions), I.A. 14213/2016 (of the defendants no.1&2 for modification of order dt. 29.07.2016), I.A. 14214/2016 (of the defendants no.1&2 for exemption), I.A. 14579/2017 (u/S 151 CPC), I.A. 14580/2017 (u/O-XXXIX R-2A of CPC), I.A. 14286/2018 (u/O-VIII R-1A(3) of CPC) & I.A. 3544/2019 (of the defendant no.1 for directions)

MANJIT SINGH KOCHHAR Plaintiff

Through: Mr. G.S. Raikhy, Advocate

versus

HARJIT SINGH KOCHHAR & ORS Defendants

Through: Mr. Sidharth Yadav, Senior Advocate with Mr. Aman Nandrajog, Mr. Arjun Nanda and Mr. Gaurav Arora, Advocates for Defendant No.1 and Defendant No.2

Mr. A.S. Chandhiok, Senior Advocate with Mr. Pratyush Sharma, Ms. Simran Kohli and Mr. A. Walia, Advocates for defendant No.5

Mr. Ranvir Singh and Mr. Rishi Kumar Singh Gautam, Advocates for the applicant in I.A.10202/2020 and I.A.10203/2020

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL



ORDER

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07.09.2022

I.A. 10202/2020 (of Tej Arjun Singh Kochhar u/O-I R-10 of CPC)

1. The present application has been filed by Sh. Tej Arjun Singh Kochhar/applicant seeking impleadment in the present suit as a defendant. The applicant is son of the defendant no.1.
2. The present suit has been filed seeking reliefs of declaration, permanent injunction, rendition of accounts, dissolution and partition of suit property belonging to the HUF of Late Sh. Manohar Singh Kochhar, grandfather of the applicant.
3. The applicant is presently residing in the suit property at 71, first floor, Sunder Nagar, New Delhi (suit property). The applicant seeks impleadment on the basis that the applicant is a coparcener in the HUF of Late Sh. Manohar Singh Kochhar by virtue of being his grandson.
4. Counsels for the plaintiff and the defendant no.5 do not oppose the present application.
5. Reply has been filed on behalf of the defendant no.1 opposing the impleadment of the applicant. The main reason for opposing the impleadment is that right of the applicant to the estate of late Late Sh. Manohar Singh Kochhar would flow from the defendant no.1, father of the applicant. Since, the defendant no.1 is still alive, the applicant cannot seek impleadment. The impleadment is barred under Section 6 of the Hindu Succession Act, 1956. Defendant No.1 has placed reliance on the judgment of the Supreme Court in **Uttam v. Saubhag Singh**, AIR 2016 SC 1169.
6. In the present case, as per the case set up by the plaintiff in the plaint, the HUF of Late Sh. Manohar Singh Kochhar still continues and there has



been no partition thereof. Therefore, the principles of survivorship would apply in terms of which applicant would be a coparcener in the HUF.

7. The judgment in **Uttam** (supra) has no application to the facts of the present case as in the said case before the Supreme Court, the suit property was not ancestral property and a partition had already taken place by which the plaintiff's father had become separate. Therefore, in terms of Section 8 of the Hindu Succession Act, 1956 the joint family property had to be divided in accordance with the rules of intestate succession and not survivorship.

8. In fact, in **Uttam** (supra), the Supreme Court had observed that when a male Hindu dies after 1956, having an interest at the time of his death in a Mitakshara coparcenary property his interest will devolve by survivorship upon the surviving members of coparcenary.

9. Therefore, the applicant being a coparcener in the joint family property of Late Sh. Manohar Singh Kochhar would be a necessary and proper party for the adjudication of the present suit. This would be without prejudice to the rights and contentions of the parties in the suit.

10. Accordingly, the application is allowed and Tej Arjun Singh Kochhar, the applicant is impleaded as defendant no.6 in the present suit

CS(OS) 2552/2014

11. In view of the order passed above, let an Amended Memo of parties be filed within one week.

12. The defendant no.6 shall file written statement within thirty days.

13. List before the Joint Registrar for completion of pleadings on 1st November, 2022.

14. List before Court on 16th February, 2023 for hearing the remaining



applications.

I.A. 10203/2020 (of Tej Arjun Singh Kochhar u/O-XXXIX R-1 & 2 of CPC)

15. Issue notice.
16. Notice is accepted on behalf of the defendants no.1 and 2 and the defendant no.5.
17. Notice be issued to the remaining non-applicants through all modes.
18. Reply be filed within four weeks.
19. Rejoinder thereto, if any, be filed within two weeks thereafter.
20. List before Court on 16th February, 2023.

AMIT BANSAL, J.

SEPTEMBER 7, 2022
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