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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : November 16, 2009

Judgment delivered on : November 25, 2009

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F.A.O. (OS) No. 103/2009

% Mr. B.S. Oberoi ... Appellant
Through: Mr. Aman Lekhi, Senior Advocate
with Mr. Vinay Sharma, Advocate.

versus

Sh. P.S. Oberoi & Others ... Respondents
Through: Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Jasmeet Singh,
Advocate for Respondent No. 1.
Mr. H.S. Phoolka, Senior Advocate
with Mr. Kaneer Faisal and Mr.
Sharat Kapoor, Advocates for
Respondent No. 2 and 4.
Mr. Tejas Karia and Ms. Nisha,
Advocates for Respondent No. 9 to
12.

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SUNIL GAUR, J.

1. Appellant is the Plaintiff, who is challenging order of 5th February, 2009 of the learned Single Judge, directing the Appellant to pay court fee on his share in the suit property in a

partition suit, as the Appellant is said to be in symbolic possession of the suit property. Appellant claims that the aforesaid order of the learned Single Judge, impugned in this appeal, also requires that the plaint be amended by the Appellant to seek cancellation of the Sale Deed.

2. The impugned order is an outcome of the hearing by the learned Single Judge on the question of the maintainability of the suit and he has found Appellant's suit to be very much maintainable. Cross objections to the maintainability of the suit were preferred in this appeal by the Respondents, which, vide order of April 13, 2009 stand disposed of, by observing that summons of the suit have not yet been issued to the Respondents and therefore, it would be always open to the Respondents as Defendants to raise all the objections in respect of maintainability of the suit by filing an appropriate application before the learned Single Judge.

3. Learned senior counsels for the parties were heard at length by us. Learned senior counsel appearing for the Appellant had stated, during the course of the arguments, that without prejudice to his rights, the Appellant is ready to pay the court fees, as directed by the learned Single Judge in the impugned order. On this, learned senior counsel appearing for the Respondent

asserted that the valuation of the suit property is much higher than the one reflected in the impugned order.

4. In view of the aforesaid stand taken by learned senior counsel for the Appellant, we need not to dwell upon this aspect any further as it would be open to the Respondents to claim an issue at the appropriate stage regarding the valuation of the suit property.

5. It has not been disputed before us that one of the reliefs sought by the Appellant in his suit is of declaration of the alleged *Agreement to Sell* of June 2, 2006 being null and void and not binding upon the Appellant/Plaintiff. It is also not in dispute and it stands reflected in the impugned order that the Sale Deed in pursuance to the aforesaid *Agreement to Sell* has been executed. In this context, learned Single Judge in the impugned order has noted as under:-

“Thus, this relief has become infructuous and in case, Plaintiff intends to proceed with the cancellation of the Sale Deed, he will have to amend the suit and pay the court fees at the entire value of the property involved in the Sale Deed. Plaintiff accordingly is given liberty to amend the suit and properly value the suit and pay the court fees within four weeks from today. ”

6. Learned senior counsel for Respondents rightly contends that the aforesaid concluding paragraph of the impugned order is not a positive direction to the Appellant/Plaintiff to amend his suit and if Appellant wants to continue with his suit, without amending it, he can do so, as other reliefs are also claimed by the Appellant in his plaint.

7. In view of the foregoing narration, impugned order cannot be faulted with. Appellant is granted four weeks to pay the court fees in terms of the impugned order and to correspondingly amend the plaint with regard to court fees within the above said time frame.

8. This appeal is disposed of in the above terms.

Sunil Gaur, J.

Vikramajit Sen, J.

November 25, 2009

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