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

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Date of Judgment: 16.11.2010

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RSA No.124/2006 & C.M.5106/2006

JEET LAL

.....Appellant

Through: Mr.Suwarn Rajan, Advocate.

Versus

SHIV NATH

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 5.11.2005 which has endorsed the findings of the trial judge dated 4.2.2005 whereby the suit filed by the plaintiff i.e. Shiv Nath for a decree of partition had been decreed; it was a preliminary decree for partition.

Plaintiff Shiv Nath was stated to be residing in Jhuggi No.1231, Motia Khan, New Delhi prior to 1975. Thereafter plot No.R-296 measuring 25 sq. yds. situated at J.J. Colony was allotted to the plaintiff under a rehabilitation scheme. The case was that the defendant Jeet Lal had fraudulently managed to get his name entered into the slip along the name of the plaintiff. On humanitarian grounds the plaintiff had allowed the defendant to reside in the suit property along with his mother as he was known to him. On 27.4.1983, the defendant illegally dispossessed the

plaintiff; since then he is in exclusive possession. Suit no.766/83 was filed by the plaintiff seeking possession of the suit property. It was dismissed on the ground that a suit for possession is not maintainable without seeking partition. This was vide judgment dated 25.1.1991. Plaintiff had been advised to file a suit for partition. Defendant had tried to sell the suit property. Plaintiff filed a suit No.748/91 seeking relief; the statement of the defendant was recorded on 18.12.1996 that he shall not sell the suit property to any third party. The said suit was dismissed as withdrawn.

2. Written statement has contended that the suit property had been exclusively allotted to the defendant and he has exclusive rights over the same.

3. Trial judge had framed three issues. One witness was examined on behalf of the plaintiff and four witnesses were examined on behalf of the defendant. Trial judge held that in terms of the oral and documentary evidence as also the judgment in the earlier suit i.e. in Suit No.766/1983 (decided on 25.1.1991 Ex.PW1/1) which has since attained a finality will operate as res judicata. It had been held that this jhuggi is in the joint names of the plaintiff and the defendant and both are co-owners. Preliminary decree for partition had accordingly been passed.

4. This finding of the trial judge was upheld by the first appellate court vide the impugned judgment dated 5.11.2005. However, the grant of damages was set aside. The trial court had been directed to proceed with passing a final decree for partition.

5. This is a second appeal. It is yet at its admission stage. Court for the appellant has urged that the findings of the two

courts below are perverse; it has merely reproduced the findings given in the judgment Ex.PW1/1 dated 25.1.1991; no independent application of mind has been adverted to.

6. This court is sitting in second appeal and can interfere with findings of fact only if the same are perverse. Ex.PW1/1 dated 25.1.1991 was a suit for possession and mandatory injunction filed by the plaintiff Shiv Nath against Jeet Lal. No challenge was led to this judgment by either party. This judgment had categorically held that in view of the oral and documentary evidence proved before the court, the jhuggi in question i.e. plot No.R-296, J.J. Colony was in the joint names of both Shiv Nath and Jeet Lal. The judgment passed in the said suit dated 25.1.1991 has since attained a finality and will operate as res judicata. These findings reaffirmed by the trial court on 4.2.2005 and again by the first appellate court on 5.11.2005. In no manner it can be said that these findings are perverse. No question of law much less any substantial question of law having arisen in this appeal, the appeal as also the pending application is dismissed in limine.

INDERMEET KAUR, J.

NOVEMBER 16, 2010
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