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

+ **FAO 43/2015 & CM No.3000/2015 (Stay)**

MAHABIR SINGH Appellant

Through: Mr. V. Shukla, Adv.

versus

PRABHA GAUTAM Respondent

Through: Mr. Ashok Anand, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **27.08.2015**

1. This matter has been heard for quite some time.
2. This appeal has been directed against the trial court order dated 10.11.2014.
3. To be noted, this is the second round of appeal. In the first instance, the appellant/plaintiff had approached this court against the trial court order dated 1.12.2012, whereby his application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 (in short the CPC), was dismissed.
4. Being aggrieved, the appellant/plaintiff had filed an appeal in this Court, which was numbered as FAO 201/2013. That appeal was filed on 4.3.2013. In the said appeal, this Court, vide order dated 16.4.2014, had directed that demarcation of the suit property should be carried out by using the Total Station Method.
- 4.1 The appeal was, thereafter, taken up finally on 30.9.2014. At that

stage, the Court noticed that there were two reports which had been generated; one, which the SDM got generated by engaging an agency by the name of M/s. Mapage Infrastructure Private Limited (in short MIPL), and the other, which the respondent obtained from M/s. T. & T.S. Engineering Consultancy (I) Private Limited (T. & T. S. Ltd.).

5. Insofar as the report of MIPL is concerned, it concluded that the suit property formed part of Khasra No.687.

6. On the other hand, as per the report generated by the other agency, i.e. T. & T. S. Ltd., the suit property fell in Khasra No.658.

7. Having regard to the aforesaid, the court remanded the matter to the trial court for a fresh consideration of the appellant/plaintiff's application under Order XXXIX Rules 1 and 2 of the CPC, albeit after setting aside the impugned order dated 1.12.2012.

7.1 It is, in this background, that order impugned in the instant appeal came to be passed.

8. In the appeal, several points and counter points have been raised but what has emerged categorically, is that, the respondent is in possession of the suit property.

9. As a matter of fact, the respondent/defendant had filed a suit for injunction, i.e. Suit No.11/2010, which was withdrawn after it came to the notice of the concerned court that the instant suit, which is numbered as Suit No.409/2011, had been filed by the appellant/plaintiff for possession.

9.1. This order was passed on 12.8.2014, in Suit No.11/2010.

10. In these circumstances, counsel for the respondent/defendant states that he is willing to make a statement (based on which this appeal can be disposed of), to the effect that the respondent/defendant shall maintain the

status quo as to the title and possession till the conclusion of the suit proceedings. It is ordered accordingly.

10.1 Needless to say, the continuation of the suit proceedings will not impact the criminal proceedings, which, I am told have been initiated at the behest of the respondent/defendant.

11. The appeal is disposed of in the above terms.

12. Having regard to the above, counsel for the appellant says that he does not wish to prosecute the appeal any further. The said statement is taken on record.

RAJIV SHAKDHER, J

AUGUST 27, 2015

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