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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 7/2010**

RISHI KUMAR DHINGRA Appellant
Through: Mr. Mukul Talwar, Senior Advocate
with Mr. Sunil Kumar, Adv.,
Mr. Suresh Kumar, Adv. &
Mr. Ankit Dixit, Adv.

versus

DHINGRA PROPERTIES PVT LTD Respondent
Through: Mr. Arun Vohra, Adv. with
Mr. Dilip Kumar, Adv. &
Ms. Aakriti Vohra, Adv.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

ORDER

% **28.04.2016**

1. Both the learned counsel for the parties have handed over a copy of the proposed issues. I have perused the same. The following issues are emerging from the pleadings of the parties:-

- (i) Whether the suit has been properly valued for the purpose of court fees and jurisdiction? OPP.
- (ii) Whether the suit of the plaintiff is barred by limitation? OPD.
- (iii) Whether Will dated 06.01.1984 of Late Shri S.N. Dhingra was legal and valid and if so, to what effect? OPP.
- (iv) If the answer to issue No.(iii) is in affirmative, whether the plaintiff could have validly transacted the property vide Sale Deed dated 26.06.1989? OPP.
- (v) Relief.

2. In view of the fact that the trial Court judgment and decree where only

one issue was framed has already been set aside with the consent of the learned counsel for the parties, the matter is being remanded back to the trial Court for deciding the additional issues which have been framed afresh by this Court. The trial Court shall give three opportunities each to both the parties to adduce evidence with regard to additional issues which have been framed.

3. Let the parties appear before the learned trial court on 23.05.2016 at 2:00 p.m.

4. The learned trial Court shall make every endeavour to dispose of the matter as expeditiously as possible preferably not later than a year from the first date of recording of evidence.

5. Mr. Talwar, the learned senior counsel for the appellant has further stated that pursuant to the decree which was passed by the learned trial Court, the appellant had deposited a lump sum amount of Rs.10 lacs with the Registrar General of this Court. He continues to deposit a sum of Rs.25,000/- per month as damages/mesne profits w.e.f. 08.09.2010. It has been accordingly contended that till date the appellant has deposited approximately a sum of Rs.32 lacs. It is further stated that since the appellant has taken loan for payment of the aforesaid amount, the same shall be refunded back to him.

6. Mr. Vohra, the learned counsel for the respondent has opposed the

request and contended that in case ultimately he succeeds in the suit before the trial Court, then it will not be in a position to recover the damages/mesne profits on account of illegal occupation by the appellant.

7. I have considered the respective submissions.

8. Having regard to the fact that the judgment and the decree has been set aside, I feel that the interest of justice would be sub-served if 50% of the amount along with interest accrued on the same, which is purported to have been deposited by the appellant with the Registrar General of this Court is refunded back to the appellant.

9. So far as the balance amount of 50% is concerned, the same shall be either remitted back to the trial Court or be kept in a fixed deposit in the name of Registrar General of this Court under the intimation to the trial Court that its disposal is to be dealt with at the time of final judgment being passed in the matter.

10. A copy of the order be sent to the trial Court and a copy of the order be given *Dasti* to the learned counsel for the parties.

V.K. SHALI, J.

APRIL 28, 2016

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