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

+ RSA 60/2016 and C.M. No.7509/2016 (stay)

TEJA SINGH

..... Appellant

Through: Mr. S. Satyanarayan, Advocate.

versus

JAGDISH CHAND

..... Respondent

Through: Mr. Deepak Khosla, Advocate for
respondent No.1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **19.07.2016**

1. It is noted that the judgment of the first appellate court remands the suit for fresh decision to the trial court on issue nos.15 and 16. Also, the first appellate court has made no observations with respect to issue no.7 which was decided in favour of the appellant/defendant no.1. I have pointed out to the counsel for the parties the provisions of Order 41 Rules 23, 23A and 24 of Code of Civil Procedure, 1908 (CPC) and which have been recently expounded upon by the Supreme Court in the judgment in the case of *Lisamma Antony and Another Vs. Karthiyayani and Another (2015) 11 SCC 782* whereby it is seen that once evidence exists on all issues, appellate

court should not remand the matter to the trial court but should decide the suit itself by applying the provision of Order 41 Rule 24 CPC.

2. At this stage, it is therefore agreed that the impugned judgment of the first appellate court dated 27.5.2011 be set aside inasmuch as neither the suit could have been remanded for fresh decision to the trial court and also because issue no.7 has not been decided by the first appellate court. The first appellate court after remand will now decide all issues afresh.

3. I may note that since pursuant to the impugned judgment of the first appellate court the trial court thereafter has passed a preliminary decree but since the impugned judgment is set aside all consequential judgments on the basis of the impugned judgment including the decree passed by the trial court consequently on 24.9.2011 is also set aside. The respondent no.1/plaintiff will be entitled to refund of the entire court fee paid in case the respondent no.1/plaintiff has done so pursuant to passing of the preliminary decree dated 24.9.2011. It is clarified that in case the first appellate court pursuant to the present order arrives at a finding in favour of the respondent no.1/plaintiff, then, it is the appellate court which will pass the decree and there will be no remand to the trial court to decide the issues in the suit

afresh.

4. Parties to appear before the District & Sessions Judge (Central), Tis Hazari Courts, Delhi on 26th August, 2016 and the District & Sessions Judge will mark the first appeal for disposal to a competent court in accordance with law.

VALMIKI J. MEHTA, J

JULY 19, 2016

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RSA No.60/2016

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