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

+ RFA 337/2015 & CM No.11257/2015 (for amendment of plaint)

PREM PRAKASH SHARMA Appellant

Through: Ms. Savita Singh, Adv.

Versus

NARESH KUMAR SHARMA & ORS Respondents

Through: Mr. Rajiv Ranjan Drivedi, Adv. for
R-1,2,5&6.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.01.2016**

1. This proceeding was originally filed as Civil Revision Petition (C.R.P.) impugning the order dated 31st January, 2015 of the Court of Mr. Naveen Arora, Additional District Judge (ADJ)-06, South District, New Delhi dismissing in limine CS No.389/2014 filed by the appellant for declaration that his is the owner of half portion of House No.349, Masjid Moth, New Delhi.

2. Vide order dated 26th March, 2015, the counsel for the petitioner (in C.R.P.) was asked to satisfy about the maintainability of the Revision Petition. On the next date of hearing i.e. 8th May, 2015, the counsel for the petitioner stated that revision petition be treated as a Regular First Appeal (RFA). Accordingly, the C.R.P. No.39/2015 was converted into an RFA and ordered to be re-numbered and listed before the appropriate Bench. Thereafter, the present number to this appeal was given and notice thereof issued to the respondents.

3. The counsel for the respondents No.1,2,5&6 appears. None appeared for the respondents No.4&7 on 26th August, 2015, inspite of service. Notice to the respondent No.3 who remained unserved was issued for today.
4. The appellant has not taken any steps for service of the respondent No.3.
5. None appears for the respondents No.4&7 today also. They are proceeded against *ex-parte*.
6. The counsel for the respondents No.1,2,5&6 states that the parties be referred to mediation.
7. However, need is not felt to adjourn this appeal for service of the respondent No.3 or to refer the parties to mediation for the reasons below mentioned.
8. The appellant/plaintiff had filed the suit (from which this appeal arises) for the relief aforesaid pleading that (i) Sh. Yad Ram Sharma, father of the appellant/plaintiff and the seven respondents/defendants was the owner of Properties No.349 and 352, Village-Masjid Moth, New Delhi and died intestate, leaving the appellant/plaintiff and the seven respondents/defendants as his only legal heirs; (ii) as per oral settlement amongst the said legal heirs of Sh. Yad Ram Sharma, the respondents No.3 to 7 being sisters did not claim any share in the houses aforesaid and it was agreed that while House No.352, Village-Masjid Moth will vest exclusively in the respondent No.2 Sh. Dayanand Sharma, House No.349, Village-Masjid Moth would be shared equally between the appellant/plaintiff and the respondent No.1 Sh. Naresh Kumar Sharma and the appellant/plaintiff

has been living in his portion of the house qua which declaration was sought in terms of the said family settlement.

9. The learned ADJ vide order dated 27th November, 2014, when the suit first came up before him, observed that since it was not the plea of the appellant/plaintiff that the sisters namely the respondents/defendants No.3 to 7 had executed any relinquishment deeds, the relief of declaration could not be granted. The suit was adjourned to enable the counsel for the appellant/plaintiff to satisfy. However, vide order dated 31st January, 2015 the suit was dismissed, observing that as per law, the relief of declaration sought by the appellant/plaintiff could not be granted without relinquishment deeds.

10. Though notice even of the suit was not issued to the respondents/defendants but the respondents/defendants No.1,2,5 & 6 have filed a reply to the appeal before this Court pleading that the respondent/defendant No.1 has got relinquished in his favour from the respondents/defendants No.2,5&6 and that the respondent/defendant No.1 thus has 4/7th share in the properties of the father. A copy of the registered Relinquishment Deed dated 9th September, 2015 whereby the respondents/defendants No.2,5&6 have relinquished their shares in property No.349, Masjid Moth in favour of the respondent/defendant No.1 is annexed to the said reply.

11. Finding that the appellant/plaintiff though had paid court fees of Rs.20/- only had filed the suit before the District Judge claiming valuation to be Rs.15 lakhs, I have enquired whether not the appellant/plaintiff ought to have paid court fees on the said valuation of Rs.15 lakhs only.

12. The counsel for the appellant/plaintiff states that since the appellant/plaintiff is in possession of the portion of the property qua which declaration is sought and is not claiming any consequential relief, the court fees paid was proper.

13. Since the suit was dismissed *in limine* without issuing notice to any of the respondents/defendants, need is not felt to await the service of notice of this appeal on the respondent No.3.

14. I am of the view that the learned ADJ erred in dismissing the suit *in limine* on the ground on which it was dismissed. The learned District Judge failed to notice that the law recognises the concept of family settlement and qua which it has been held in ***Kale Vs. Deputy Director of Consolidation*** (1976) 3 SCC 119 that the technical rules are not allowed to come in the way. It cannot thus be said that in the absence of a registered Relinquishment Deeds, there could be no family settlement. Of course since the respondents No.1,2,5 & 6 now appears to be denying the said family settlement, only trial of the suit would disclose whether in fact there was a family settlement as claimed by the appellant/plaintiff or not.

15. Since the matter has to be remanded, I do not deem it appropriate to make any further observations or to adjudicate the aspect whether appropriate court fees was paid on the plaint or not and whether without paying the same, the suit was maintainable before the Court of the ADJ or not.

16. The appeal is thus allowed; the order dated 31st January, 2015 is set aside and the suit remanded to the ADJ for proceeding further in accordance with law.

17. The parties to appear before the ADJ-06, South District, New Delhi on 16th February, 2016.

18. The learned ADJ will issue notice to the respondent/defendant No.3 who has not been served in this appeal and thereafter proceed to decide the matter and if the parties want to be referred to mediation, would be so referred.

No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 18, 2016

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