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

+ **FAO(OS) 456/2015**

SOHAN LAL DEEPAK Appellant

Represented by: Appellant in person.

versus

VISHNU PRIYA BANERJEE & ANR Respondents

Represented by: Mr.Mohit Chaudhary and
Mr.Kunal Sachdeva, Advocates
with R-1 and 2 in person.
Mr.Amit Kumar and Mr.Mohit
Arora, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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01.02.2016

1. The appellant is the husband of Seema Deepak (respondent No.3). Seema Deepak is the daughter of Vishnu Priya Banerjee (respondent No.1). Shipra Roy (respondent No.2) is the second daughter of Vishnu Priya Banerjee.
2. Seema Deepak filed a suit for declaration, partition and injunction, impleading her mother, her sister and her husband as defendant Nos.1, 2 and 3 respectively.
3. Vishnu Priya Banerjee and Shipra Roy filed an application to delete the appellant's name from the memo of parties. The said application has been allowed by the learned Single Judge. The learned Single Judge also noted that a preliminary decree concerning the plot of land had already been

passed.

4. The grievance of the appellant is to he being deleted as a defendant in the suit. Conceding to the point that appellant would have no claim to the lease-hold rights in the land, the appellant claims to have spent money on construction of a building on the land.

5. On October 29, 2015, a consent order had been passed as per which, it was agreed that appellant's wife, Seema Deepak (the plaintiff in the suit) be declared to be the owner of 37% of the property and Vishnu Priya Banerjee as also her daughter Shipra Roy each having 31.5% share.

6. It is apparent that the claim of the appellant that he had spent money on the construction of the building on the plot of land found a reflection in the consent order in as much as the appellant's wife, who otherwise would have 33.33% share in the property, was given 37% share.

7. The consent order further records that the property would be put up for sale and for which the parties may bring an appropriate buyer of their choice.

8. The consent order dated October 29, 2015 has been signed by all the four litigating parties who have been identified in Court by their counsel except appellant No.1 who does not have any counsel.

9. Today we are informed that unless the mother and her two daughters get converted the lease-hold tenure into a free-hold tenure, a good price may not be realised for the property.

10. Parties desire that proceedings in the instant appeal may be terminated binding the parties to the consent as recorded in the order dated October 29, 2015 requiring the preliminary decree declaring share of the parties to be modified and appellant's beneficial claim in the building constructed on the

plea that he spent money for the construction be treated as having merged in his wife being declared as having 37% interest in the suit property.

11. The appeal is accordingly disposed of setting aside the impugned order deleting the appellant as a defendant in the suit and directing that the preliminary decree passed in the suit determining the share of the parties is superseded by a preliminary decree in terms of the consent order dated October 29, 2015 passed in the instant appeal.

12. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 01, 2016

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