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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 72/2017**

RAJ GULATI & ORS

..... Appellant

Through: Mr. V. Shukla, Advocate.

versus

MANOHAR LAL GULATI & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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26.04.2017

1. This Regular Second Appeal is filed by the appellants/defendants against the concurrent judgments of the courts below; of the trial court dated 16.1.2014 and the first appellate court dated 24.10.2016; decreeing the suit for mandatory injunction and directing the appellants/defendants to handover possession of the property bearing no.299/2, Krishna Gali, Chhota Bazar, Kashmere Gate, Delhi.

2. It may be noted that the suit originally was filed by the mother of the parties Smt. Laxmi Devi. The suit was filed on the ground that Smt. Laxmi Devi was the owner of the suit property by a sale deed, and which sale deed was proved and exhibited as Ex.PW3/1 before the trial court. During the pendency of the suit plaintiff-Smt. Laxmi Devi expired and she

was substituted by her legal heirs, and who are the brothers of the present appellants/defendants. There is a Will dated 31.7.1996 said to have been executed by the deceased Smt. Laxmi Devi in favour of Sh. Manohar Lal Gulati and Purshottam Lal Gulati and whose legal heirs are the respondents in this appeal.

3. Therefore, if Smt. Laxmi Devi was alive as on date then nothing would remain in this appeal, and which is not pressed as regards the entitlement of Smt. Laxmi Devi to take possession of the suit property, however, it is argued that since Smt. Laxmi Devi had died without leaving behind any Will dated 31.7.1996 as propounded by Sh. Manohar Lal Gulati and Sh. Purshottam Lal Gulati, and that accordingly the appellants/defendants will also be one of the legal heirs, and hence co-owners of the suit property.

4. Learned counsel for the appellants/defendants points out that a probate petition was filed as regards the aforesaid Will and which probate petition was allowed by the probate court below, but the appellants have challenged in this court vide FAO 278/2009 the judgment of the probate court in FAO 278/2009. Learned counsel for the appellants has also drawn attention of this Court to the order dated 7.3.2017 in FAO 278/2009 by

which possession of the suit property was handed over by the appellants/defendants to the respondents in the present appeal. It is however argued that in case the appellants succeed in FAO 278/2009 then the appellants should be held entitled to re-claim possession of the suit property and also that decree for damages awarded in the present case cannot be executed against the appellants/defendants.

5. Accordingly, while disposing of the appeal as not pressed, it is observed that in case appellants succeed in their FAO 278/2009, then in such case not only the appellants/defendants will be entitled to claim their share as also possession in the suit property bearing no. 299/2 Krishna Gali, Chhota Bazar, Kashmere Gate, Delhi but also that the decree for damages would not be executable against the appellants/defendants who would then be co-owners/co-sharers in the suit property. Of course this court makes no observations one way or the other on merits of FAO 278/2009.

6. In view of the above, this appeal is disposed of as not pressed, however, with the aforesaid observations.

VALMIKI J. MEHTA, J

APRIL 26, 2017

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