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

+ **FAO 276/2007**

O.P.BHALLA

..... Appellant

Through: Mr. Atul Nigam, Adv.

versus

VIJAY KUMAR & ORS.

..... Respondents

Through: Mr. Alok Bhachawat and Ms. Tavishi
Chandra, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **14.07.2017**

1. During the course of arguments, it is agreed and accordingly this appeal is disposed of with the consent order that in the suit only one legal issue arises for determination and on the determination of this issue the suit itself would be decided. This issue has to be a preliminary issue because it is a legal issue inasmuch as the existence of an earlier judgment and decree in suit no. 973/2002 titled as ***O.P.Bhalla Vs. Ms. Sudesh Sharma & Ors.*** is an undisputed fact. This judgment and decree is dated 19.8.2004.

2. Order 14 Rule 2 CPC allows disposal of a suit on a preliminary issue where the preliminary issue is a legal issue and is a legal bar to the suit.

Section 11 CPC will be a legal bar to the suit and the earlier judgment dated 19.8.2004 being an admitted fact is a legal issue.

3. Accordingly, the following preliminary issue is framed for decision in the suit by the trial court:-

“Whether the suit of the plaintiff is barred by Section 11 CPC in view of the judgment dated 19.8.2004 in suit no. 973/2002 titled as ***O.P.Bhalla Vs. Ms. Sudesh Sharma & Ors.?***”

4. Trial court is now requested to hear arguments and dispose of the suit within a period of six months of receiving of the copy of the present order of this Court.

5. Parties to appear before the District and Sessions Judge (South) Saket Courts, New Delhi on 21st August, 2017, and the District and Sessions Judge will mark the suit for disposal to a competent court in accordance with law in terms of the order passed today.

6. Trial court record be positively sent with the copy of the order to the District and Sessions Judge (South) Saket Courts, New Delhi as the trial court record is lying in this Court.

VALMIKI J. MEHTA, J

JULY 14, 2017/ib