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

+ RSA 136/2015 & CM No. 6508/2015 (stay)

VIJAY KUMAR AHUJA

..... Appellant

Through: Mr. J.K. Bhola, Mr. R.K. Sharma,
Advocates

versus

KRISHAN KUMAR AHUJA & ANR.

.... Respondents

Through: Mr. Ashok Agrawal, Advocate for
respondent no. 1.
Mr. Rajiv Narain, Advocate for
respondent with respondent no. 2 in
person.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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14.09.2017

1. This RFA arises out of the judgment of the first appellate court dated 11.12.2014 and of the trial court dated 2.7.2011, and by which judgments the present appellant, and who was substituted as a plaintiff on the death of the original plaintiff/father Shri Jagdish Rai Ahuja, has been disentitled to possession of the property being shop No. 142, Gaffar Market, Karol Bagh, New Delhi. This Gaffar Market property admittedly belonged to and was in the ownership of Shri Jagdish Rai Ahuja and Shri Jagdish Rai Ahuja

admittedly would have got the property in case he was alive when the judgment in the suit would have been passed. However, Shri Jagdish Rai Ahuja died before the judgment in the suit was passed and before which the present appellant Sh. Vijay Kumar Ahuja was substituted as a legal heir of the deceased Shri Jagdish Rai Ahuja in terms of the order of the trial court dated 12.3.1999.

2. It is however noted that the trial court while passing the order dated 12.3.1999 has rightly used the expression '*prima facie*' with respect to the alleged Will dated 14.8.1995 of late Shri Jagdish Rai Ahuja relied upon by the present appellant inasmuch as disputed questions of fact and validity of the Will could not have been decided by an interim order without evidence, more so because of Order 22 Rule 5 CPC. Therefore the order dated 12.3.1999 did not finally decide the legal rights of inheritance or entitlement to the estate of late Shri Jagdish Rai Ahuja.

3. Learned counsels for the parties state that late Shri Jagdish Rai Ahuja besides the subject property at Gaffar Market has also left behind various other movable and immovable properties and if there is no Will of late Shri Jagdish Rai Ahuja then all the properties have to be divided between all his

legal heirs who were alive at the time of the death of Shri Jagdish Rai Ahuja, and in accordance with the relevant provisions of the Hindu Succession Act.

4. In view of the aforesaid position, counsel for the appellant does not press this appeal but he states that the appellant will file a comprehensive suit for partition and other reliefs with respect to the immovable and movable properties left behind by late Shri Jagdish Rai Ahuja. Of course, if any proceedings are filed by the appellant, all the legal heirs of late Shri Jagdish Rai Ahuja including the present respondents will have all available defences of facts and law to contest the claim of the appellant for claiming exclusive rights to the suit property as also other properties of late Shri Jagdish Rai Ahuja on the basis of stated Will dated 14.8.1995 of late Shri Jagdish Rai Ahuja.

5. Appeal is accordingly disposed of as not pressed but with the aforesaid observations.

VALMIKI J. MEHTA, J

SEPTEMBER 14, 2017
Godara

RSA 136/2015

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