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

+ FAO 185/2015 and C.M. Appl. No. 10441/2015

RAJAT GUPTA Appellant

Through: Mr. Palash Singhai, Advocate.

versus

KHUSHI RAM & ANR Respondents

Through: Advocate for R-1 (*appearance not given*).

Ms. Vandana Bhatnagar, Advocate
for R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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11.07.2017

1. This first appeal under Order 43 CPC impugns the order of the first appellate court dated 9.2.2015 by which the first appellate court has set aside the judgment of the trial court dated 7.3.2014 dismissing the suit as not maintainable. The first appellate court by its impugned order has set aside the judgment by observing that the respondent no. 1/plaintiff is allowed to amend the plaint before the trial court and wherein the application for amendment will be filed.

2. The subject suit which was filed by the respondent no. 1/plaintiff was for permanent and mandatory injunction. A reading of the plaint shows that the respondent no. 1/plaintiff claimed rights under the particular agreement to sell in the suit property A-41,

Vasant Vihar, New Delhi, but the date of agreement to sell is not mentioned. The trial court dismissed the suit as not maintainable. The plaintiff was not found to be in possession.

3. It is agreed and accordingly this appeal is disposed of by a consent order that thought the suit is dismissed as not maintainable, actually it will amount to rejection of plaint on account of insufficient pleading of cause of action and format of the suit and the judgment of the trial court dated 7.3.2014 will not operate as *res judicata* as it is not a decision on merits of the matter.

4. Accordingly, the respondent no. 1 plaintiff is allowed to file a fresh suit in accordance with law and in which suit the other parties to this appeal or any other parties to the proposed suit will be entitled to defend the suit on all pleadings of facts and law as available. It is clarified that grant of liberty to file the suit is in no manner reflection on the merits of the suit or the entitlement of the respondent no. 1 to file the suit or approval of the suit which will be filed, etc. etc. and all aspects will be examined by the concerned court before whom the suit which is proposed to be filed by respondent no. 1/plaintiff is filed.

5. The appeal is accordingly disposed of in terms of the aforesaid consent order.

VALMIKI J. MEHTA, J

JULY 11, 2017

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