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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO 512/2016

MAHESHWARI DEVI

..... Appellant

Through: Mr. Jaswinder Singh, Advocate.

versus

KAMAL NARAIN & ORS

..... Respondents

Through: Mr. Puyush Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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19.04.2017

1. During the course of arguments it is agreed and accordingly this appeal against the impugned order dated 14.7.2016, and which order disposed of an application under Order XXXIX Rules 1 and 2 CPC, is disposed of in terms of the following consent order:-

(i) Parties will be bound by the doctrine of *lis pendens* contained in Section 52 of the Transfer of Property Act, 1882, and accordingly the impugned order will stand subject to rights of the parties under Section 52 of the Act.

(ii) There are three sets of parties in the suit being the appellant/plaintiff/sister, respondent no. 1/defendant no. 1/brother and respondent nos. 2 to 5/defendant nos. 2 to 5/purchasers. Each of these three sets of parties will complete their evidence positively in five opportunities each.

(iii) Evidence is agreed to be led before a Local Commissioner and it is agreed that Mr. Kuldeep Singh, Retired Additional District Judge, Mobile No. 9868237722 is appointed as a Local Commissioner to record evidence between the parties.

(iv) The Local Commissioner will be paid a lump sum fee of Rs.75,000/- and which will include a total of fifteen hearings. If for any reason the number of hearings before the Local Commissioner increase as per the consent given by the parties then for further hearings the Local Commissioner will be entitled to charge a sum of Rs.5,500/- per hearing. The Local Commissioner will also be paid all administrative and actual costs of recording of the Local Commissioner proceedings.

(v) The cost of proceedings will be shared in three parts. One part will be paid by the appellant/plaintiff/sister, second part will be paid by the respondent no. 1/defendant no. 1/brother and the third part will be paid by the respondent nos. 2 to 5/defendant nos. 2 to 5/purchasers.

(vi) The Local Commissioner is requested to ensure that recording of evidence is concluded to the extent possible within a period of nine months from the first date fixed for recording of evidence.

(vii) Evidence will be recorded by the Local Commissioner within the precincts of Patiala House Courts, New Delhi, and parties will ensure that they make available a chamber space or any other appropriate place for the Local Commissioner to

record evidence.

(viii) Once the recording of evidence is complete, trial court will ensure that final arguments in the case are concluded to the extent possible within a period of four months thereafter.

(ix) Attention of counsels for the parties as also the Local Commissioner is drawn to the judgment of the Supreme Court in the case of *Bipin Shantilal Panchal Vs. State of Gujarat and Anr. (2001) 3 SCC 1*. The Local Commissioner and parties will act in accordance with the ratio of this judgment of the Supreme Court.

(x) It is also agreed that the respondents/defendants do not press their applications under Order IX Rule 9 and under Order VII Order 11 CPC at this stage, however, all issues raised in these applications will be left open for being decided at the stage of final arguments of the suit.

2. The suit is listed before the trial court on 24.4.2017 and counsel for the parties state that they will ensure that they will give assistance to the court so that issues are framed on the next date of hearing fixed before the trial court.

3. The present appeal is disposed of in terms of the aforesaid consent order.

4. A copy of this order be given *dasti* to counsels for the parties.

VALMIKI J. MEHTA, J

APRIL 19, 2017

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