

\$~8.

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

+ **FAO(OS) 332/2016**

RAVINDER SINGH

..... Appellant

Through Mr. Lalit Gupta, Mr. Siddharth Arora &
Ms. Rishipa Sarraf, Advocates.

versus

PARMINDER KAUR KHURANA

..... Respondent

Through Mr. R.P. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

22.05.2017

%

Learned counsel for the appellant, with a view to expedite the hearing and decision of the suit, states that he would not, at this stage, press his appeal against dismissal of the application under Order VII, Rule 11 read with Order XII, Rule 6 of the Code of Civil Procedure, 1908. This statement, he submits, is being made without prejudice to rights and contentions of the appellant that the suit filed is frivolous and based upon wrong facts.

2. Learned counsel for the appellant, however, submits that the appellant should not have been called upon to lead evidence and prove the Will of the father at the first instance, for the respondent has stated that properties registered in the name of the appellant were Joint Hindu Family property and this claim has to be established and proved by the respondent. Second objection is with regard to payment of Rs.1 lac by the appellant to the Court Commissioner, who is to record evidence. Learned counsel submits that the appellant, who is the defendant in the suit, should not be asked to pay the entire fee of the Court Commissioner. The impugned order observes that the

Court Commissioner's fee would be part of the cost of the suit.

3. Learned counsel for the respondent fairly states that the matter may be referred to the Joint Registrar for recording of evidence. Learned counsel for the appellant agrees to the said statement. To this extent, the impugned order appointing a Local Commissioner for recording of evidence of the parties is accordingly set aside.

4. Learned counsel for the respondent is again fair when he states that the onus to prove that the immovable properties registered in the name of the appellant were Joint Hindu Family properties would be on the respondent-plaintiff. He states that the respondent-plaintiff would accordingly lead evidence on the said issue, at the first instance.

5. Recording the aforesaid statements, we dispose of the present appeal. The impugned order is modified to the extent indicated above. We clarify that we have not modified or interfered with other directions in the impugned order. We also clarify that we have not expressed any opinion on merits. There would be no order as to costs.

6. The suit will be listed before the Joint Registrar (Judicial) on 17th July, 2017 for fixing date for recording of evidence.

SANJIV KHANNA, J.

C.HARI SHANKAR, J.

MAY 22, 2017
VKR