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

DECIDED ON : 22nd NOVEMBER, 2017

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FAO 459/2017

MOHD. AAFAQ Appellant

Through : Mr.Raj K.Chandiwal, Advocate.

versus

MUJEEB REHMAN & ORS Respondents

Through : Mr.Arpit Bhargava, Advocate for R1.

Mr.Joby P.Varghese, Advocate for R2 & R3.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present appeal has been preferred by the appellant – Mohd. Aafaq to challenge the legality and correctness of an order dated 05.06.2017 of learned Addl. District Judge whereby application under Order XXXIX Rule 1&2 CPC in Suit No.970/2017 was dismissed. It is contested by the respondents.

2. I have heard the learned counsel for the parties and have examined the file. The appellant has filed the suit seeking specific performance and permanent injunction on the basis of Memorandum of Understanding-cum-Agreements executed on 16.05.2011 and 15.07.2011. The respondents have alleged that both these MOUs are forged and fabricated.

3. During the course of arguments, it was specifically enquired as to who was in possession of the roof in question. The appellant did not place on record any document to show that the roof in question was in his possession. When asked as to where he was

residing, it was informed that he was residing at a different house nearby. Respondent No.1 claimed that possession of the entire roof has already been handed over to respondents No.2 & 3 in equal portions by way of registered documents for valid consideration.

4. Appellant's only grievance is that the respondents should not construct a gate on the roof in question. This Court finds no harm if the gate on the roof to avoid any untoward incident is erected as per law. To safeguard the interest of the plaintiff (if any) he can be provided with the duplicate key of the lock. This arrangement is agreeable by the learned counsel for the respondents.

5. Accordingly, the appeal stands disposed of with the direction that the gate erected on the roof in question as per law shall be locked and one duplicate key shall be made available to the plaintiff.

6. It is, however, made clear that observations in the order shall have no impact on merits at the time of disposal of the application under Order VII Rule 11 CPC filed on behalf of the respondents.

7. Copy of the order be sent to the Trial Court for information.

(S.P.GARG)
JUDGE

NOVEMBER 22, 2017 / tr