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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA 968/2017 & CM Nos. 41824/2017 (stay) & 41825/2017
(Exemption)

HARPAL SINGH & ORS

..... Appellants

Through: Mr. Avanish Kumar, Advocate.

versus

RAM GOPAL & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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20.11.2017

1. This First Appeal under Section 96 CPC is filed by the appellants/defendants against a final decree dated 21.8.2017.

2. Learned counsel for the appellants presses this appeal only on a limited issue that there is an observation made against the appellants at internal pages 5 and 6 of the impugned judgement dated 21.8.2017 that the appellants are recovering rent, and it is argued that in the preliminary decree dated 21.4.2015 there was no order for rendition of accounts against the appellants and even in the final decree the fact is that there is no decree for rendition of accounts, and in case of passing of such a final decree for

rendition of accounts the same could not have been passed unless disputed question of fact as to whether the appellants were or were not receiving rent were decided after the respective parties were heard.

3. I have gone through the preliminary decree dated 21.4.2015 and admittedly by the preliminary decree the only direction, issued are as per para 11 of the judgment dated 21.4.2015 thereby giving $1/9^{\text{th}}$ share in the properties to the plaintiff, $1/9^{\text{th}}$ share in the suit properties to Sh. Sohan Pal and $7/36^{\text{th}}$ share in the suit properties to the defendant nos. 2,3,4 and 5. There is also a decree for permanent injunction. However, there is no decree for rendition of accounts as against the present appellants/defendants.

4. Once in a preliminary decree there is no direction for rendition of accounts, then no such direction can be passed in a final decree i.e by the impugned judgment dated 21.8.2017, and if such a decree had to be passed it could only be after deciding this disputed question of fact whereby the court had to hear both the parties, and if there was a seriously disputed question of fact, then to decide the same after parties are allowed to lead evidence on respective cases.

5. In my opinion, the apprehension of the appellants/defendants is

unjustified that they will be liable to render accounts with respect to the rent being received inasmuch as in the operative para of the final decree dated 21.8.2017 there is no such direction. Assuming that the judgment dated 21.8.2017 is to be read to contain a direction of rendition of accounts against the appellants, then, it is observed that before this direction becomes operative, the trial court will give adequate opportunity to the appellants to prove their defences that they are not receiving rent with also equal opportunity to the other side to establish that the rental is being received by the appellants from the suit properties.

6. This appeal is accordingly disposed of by observing that there are no decrees for rendition of accounts as against the appellants/defendants and before such an operative decree has to exist or come into existence against the appellants then the trial court will give adequate opportunity to the parties with respect to this aspect. It is however made clear that other operative directions of the final decree dated 21.8.2017 will continue to operate as the same are not challenged and the same pertains to the sale of the suit properties and which will be done by the trial court in accordance with law.

7. The appeal is disposed of with the aforesaid observations.

VALMIKI J. MEHTA, J

NOVEMBER 20, 2017

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