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

+ **FAO(OS) 3/2016 & CM 63/2016**

SOMBIR SINGH SOLANKI

..... Appellant

Through: Mr A.K. Singla, Sr. Adv. with
Mr Abhimanyu Khatri, and Ms Manorma Masih,
Adv.

versus

MANJU & ANR

..... Respondents

Through: Mr Manish Sangwan, Adv.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **21.02.2017**

We have heard the counsel for the parties at great length. We find that the impugned order dated 28.10.2015 has been passed on an application being I.A. No. 6757/2015 which had been filed by the plaintiff/appellant under Order 15 Rules 1 & 2 CPC. The learned Single Judge has gone into the pleadings and has also discussed the merits of the application. However, in paragraph 18 of the impugned order the learned Single Judge has observed as under:-

“Be that as it may the present suit filed by the plaintiff might be maintainable on the basis of title i.e. executed by defendant No.3 husband of defendant No.1, however I am not inclined to pass a decree for possession at this stage as this Court felt that it is a case of trial. Therefore, without expressing any opinion on merit, the present application is dismissed.”

We have tried to analyse this observation of the learned Single Judge but find it difficult to reconcile it with the provisions of Order 15 Rule 1 CPC as also with the provisions of Order 14 CPC. If the learned Single Judge felt that it was a case for trial, it should have been indicated in the order as to what would be the issue on which trial was necessary. That has not been indicated. According to the learned counsel for the appellant/plaintiff, only one issue would survive in the suit and that would be with regard to damages/mesne profits and/or quantum thereof which is prayer (b) of the plaint. According to the learned counsel for the appellant, there can be no triable issue with regard to the relief of possession. On the other hand, the learned counsel for the respondents contended that triable issues arose both on the relief of possession as also in respect of the relief of damages/ mesne profits.

We are afraid that there is lack of clarity in the impugned order as to whether any triable issue arises in the present suit. Consequently, we set aside the impugned order and remit the matter to the trial Court to consider and decide the application under Order 15 Rules 1 & 2 CPC filed by the plaintiff/appellant afresh.

We request the trial Court to decide this application as expeditiously as possible and preferably within three months from today.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

FEBRUARY 21, 2017
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