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

+ **FAO 132/2016 & C.M.No. 11047/2016**

JEE RAM & ANR Appellants

Through: Mr. Ankit Gupta, Advocate.

Versus

PARMA NAND & ORS Respondents

Through: Mr. Feroz Ahmed, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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02.05.2018

This appeal impugns an order dated 02.02.2016 declining the interim relief sought by the appellant on the ground that the parties/siblings were in settled position of portions of land for many years during the lifetime of their father. Each one has propounded a separate Will seeking separate area of their fathers' property. The brothers are holding different parcels of their fathers' contiguous land. Probate of the said Wills are still under consideration. The appellant had sought restraint of construction/additional construction and creation of third party rights in the properties held by his brothers. The interim relief was declined, *inter alia*, on the ground that on the land in his possession, the appellant himself had made constructions without permission from the municipal authorities. The other siblings, excluding respondent No.1, too had carried out similar unauthorized construction in the lands under their respective possession. The appellant primarily objects to the following observation in the impugned order:-

“15. During the course of arguments, Id.counsel for the defendant no.1 has contended that he is ready to give statement to construct the house by leaving 1 square yard by the side of the house of the plaintiff. According, to the site plan prepared by the architect, next to the house of the defendant no.1, there is vacant land and again there are house of Kiranwati, Ramsharan and Yadram, which are already stand constructed. The construction of house of the plaintiffs and the defendants are all seen (sic) to be unauthorized and illegal and none of the parties has got or sanctioned any building plan from the concerned MCD. Plaintiffs have also seen (sic) to be raised unauthorized and illegal construction, as no sanction plan has been filed by the plaintiffs. While, the plaintiffs themselves have raised unauthorized and illegal construction, but they want to restrain the defendants from raising unauthorized and illegal construction in their portions. So, in view of above facts and circumstances, there is no prima facie case in favour of the plaintiffs. Nor any balance of convenience lies in their favour and they will not suffer any irreparable loss or injury, which cannot be compensated in the form of money. Had there been any plots lying vacant in the shares of the defendants, then, situation could have been something else. But the houses have already been constructed and even otherwise, the defendant no.1 who is just adjoining to the house of the plaintiff is ready to leave 1 square yards, which is in excess and he has also offered the payment according to the circle rate, according to the area of the defendant no. 1 and other defendants cannot be restrained unnecessarily. Accordingly, the application u/o 39 rule 1 and 2 is dismissed being merit less.”
(emphasis supplied)

The learned counsel for the appellant states that there was no occasion to make the aforesaid observations. To a query put to the learned counsel, whether any of these parties had sought permission from the Municipal Corporation to raise constructions, the answer is in the negative. In the circumstance, the Court is unable to see how the appellant is singularly

prejudiced because each of these parties before the Court has carried out construction without requisite sanctioned plan. Clearly the appellant has not been singled out or adversely prejudiced by the aforementioned observation in the impugned order. Furthermore, it would always be open to the parties to initiate process for action to be taken against his neighbours in case of violation of Building Bye-laws.

In view of the above, there is no merit in the appeal. It is accordingly dismissed. The pending application also stands disposed off.

A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

NAJMI WAZIRI, J.

MAY 02, 2018

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