

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

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Date of decision: October 12, 2018

+ FAO(OS) 51/2018

JITENDER GOGNA

..... Appellant

Through: Mr. Sanjeev Sindhwani, Sr. Adv. with
 Mr. Siddharth Aggarwal, Adv.

versus

AJIT GOGNA & ORS

..... Respondents

Through: Ms. Jhumjhum Sarkar, Adv. for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this appeal is to the order dated 31st January, 2018 whereby the learned Single Judge has determined the amount of mesne profit with regard to the property in question to be of Rs.40,000/- per month and also held that if the defendant no.1 does not file the original of the Will, the plaintiff or any of the other defendants shall apply to the court for decreeing the suit forthwith.

2. Mr. Sanjeev Sindhwani, learned counsel appearing for the appellant would submit that the case in hand being of Partition, the claim, if any, has to be for rendition of accounts not of Mesne Profit. Be that as it may, he submits that the learned Single Judge has determined the amount of Mesne

Profit with regard to the property in question which is in possession of the appellant, to be Rs.40,000/- per month on the submission made by the plaintiff (the respondent no.1 herein) and the defendant no.2 in the Suit without leaving any scope to contest the same by the appellant herein. He states the appellant can produce evidence to contest the same.

3. That apart, it is also his submission that the learned Single Judge has bound the appellant to produce the Will, otherwise the plaintiff and the other defendants in the Suit have been given the power to apply to the court for decreeing the suit which according to him, is contrary to the provisions of the Indian Succession Act, 1925 more specifically Section 237 inasmuch in the absence of a primary evidence, a party to the Suit shall be within its right to produce the secondary evidence.

4. On the other hand, learned counsel appearing for the respondent no.2 would justify the order passed by the learned Single Judge.

5. Having heard the learned counsel for the parties, this court is of the view that appropriate for the appellant is to file an appropriate application before the learned Single Judge seeking review of the impugned order on the grounds as urged by the learned Sr. Counsel for the appellant today before us.

If such a review application is filed before the learned Single Judge within a period of one month from today, the same shall be decided by the Id. Single Judge in accordance with law.

CM No. 11689/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

OCTOBER 12, 2018/ak

