

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

+ **RFA No.779/2016**

% **16th August, 2018**

PANKAJ GAUTAM Appellant

Through: Mr. Himanshu Upadhyaya,
Advocate (M. No.9811254646).

versus

PARMA DEVI & ANR. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. No one is present for the respondents in spite of the matter having been passed over.

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 CPC is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 19.3.2016 by which trial court has dismissed the suit for specific performance filed by the appellant/plaintiff by deciding issue nos.1 and 2 framed as preliminary issues.

3. The following issues were framed in the suit for specific performance:-

“1) Whether the suit is maintainable as framed and presented before the court?.... OPP

2) Whether the suit is barred under any provisions of law; provisions of CPC in general and the provisions of Specific Relief Act, in particular?.....OPD.

3) Whether the plaintiff is entitled to a decree of specific performance of agreement to sell dated 28.07.2015, as prayed for?.....OPP.

4) Whether the plaintiff is entitled to a decree of possession of entire property, as prayed for?.....OPP.

5) Relief.”

4. Issue nos.1 and 2 have been decided against the appellant/plaintiff by holding that the appellant/plaintiff has unnecessarily joined the respondent no.2/defendant no.2 and therefore being not a necessary party the suit is liable to be dismissed on this count. The suit was also held to be liable to be dismissed by deciding issue no.2 against the appellant/plaintiff by reference to Section 17 of the Specific Relief Act, 1963 that there is no indication of the defendant no.1 being the sole owner of the suit property.

5. As per Order XIV Rule 2 CPC, all issues have to be decided together. A suit can be disposed of on a preliminary issue only if the preliminary issue is a legal issue and the same would relate to a

bar of law to the suit or lack of jurisdiction of the court. Issue nos.1 and 2 which have been decided by the impugned judgment cannot by any stretch of imagination be said to be either legal issues or such issues which will show bar to the suit by any law or lack of jurisdiction of the trial court. Non-existing of sole ownership of the respondent no.1/defendant no.1 is not a legal issue but a triable issue and suit of the appellant/plaintiff cannot be dismissed without trial and giving opportunity to the appellant/plaintiff to prove that it is only the respondent no.1/defendant no.1 who is the sole owner of the suit property and with whom the Agreement to Sell was entered into.

6. So far as issue no.1 being decided against the appellant/plaintiff is concerned, it is noted that addition of the unnecessary party is different than non-joinder of a necessary party. At best the respondent no.2/defendant no.2 will be an unnecessary additional party but that aspect neither can cause lack of jurisdiction of the court nor the same is any bar of law for decision of the suit. In any case since this issue is not a legal issue but a factual issue which will require trial, therefore, the same could not have been disposed of as a preliminary issue.

7. In view of the aforesaid discussion, the present appeal is allowed. Impugned Judgment of the Trial Court dated 19.3.2016 is set aside. Suit will now be decided by the trial court after giving opportunities to the parties in accordance with law to prove their respective cases by leading evidence.

8. Parties to appear before the District & Sessions Judge, South West, Dwarka Courts, New Delhi on 26th September, 2018 and the District & Sessions Judge will now mark the suit for disposal to a competent court in accordance with law.

9. Appeal is disposed of in terms of the aforesaid observations.

AUGUST 16, 2018
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VALMIKI J. MEHTA, J