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

Date of Decision: 10th August, 2018

+ **FAO(OS) 125/2018**

RADHA MEHTA

..... Appellant

Through: Mr. Kailash Vasudev with
Ms.Katyayni Chaubhey, Mr. Akash Jondial
& Ms. Mehak Rastogi, Advocates

versus

GEETANJALI KHANNA & ORS.

..... Respondents

Through: Ms. Warisha Farasat with
Ms.Rudrakshi Deo, Advocates for R-1 to R-3.

Mr. A.K. Singla, Senior Advocate with
Mr.Faizan Ahmed, Advocate for R-6

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

CHIEF JUSTICE (ORAL):

CAV. 714/2018

Since the caveator/respondent No.6 has entered appearance, the caveat stands discharged.

CM APPL.31793/2018 (Exemption)

Exemption allowed, subject to just exceptions.

FAO(OS) 125/2018 & CM APPL.31792/2018 (Stay)

1. Challenging an interlocutory order dated 30.07.2018 passed by the learned Single Judge in a pending Civil Suit bearing CS(OS) No.558/2013 appointing a Local Commissioner, this appeal has been

filed under Section 10 of the Delhi High Court Act, 1966. The order in question has been passed on an interlocutory application filed by the defendant No.3 in the suit in question *inter alia* contending that she is unable to enjoy her property which is in possession of the appellant/plaintiff.

2. It is the case of the defendant No.3 that by an order passed on 24.05.2018, the Court had directed for permitting the defendant to enjoy her portion of the property which was in possession of the appellant/plaintiff. By the impugned order, a Local Commissioner has been appointed to ascertain the extent of construction in the entire property as to who is in possession of which portion of the property and after identifying the portion which belong to defendant No.3, the rooms be locked and keys deposited with the Court.

3. Challenging this interlocutory direction, this appeal has been filed primarily on the ground that proper opportunity of hearing has not been granted to the appellant, no notice was issued and the application has been decided behind their back. Inviting our attention to paragraph 29 and 30 of the order passed on 24.05.2018, it is tried to be argued that once the learned Single Judge had held that the Memorandum of Understanding (MoU) cannot be looked for collateral purpose, the impugned order is unsustainable. It is further argued that the Court below failed to consider the vital factor pertaining to the defendant/respondent No.1 having sold her share in the property to a third person and now seeks partition/possession of the property which is contrary to her own sale document under challenge in the suit. Various other grounds were also canvassed at the time of hearing.

However, learned counsel for respondent/defendant No.3 in the suit argued that once the order passed on 24.05.2018 had attained finality and the plaintiff/appellant had not challenged the same, now when the Local Commissioner is being appointed only for implementing the order passed on 24.05.2018, this appeal at interlocutory stage is not maintainable.

4. Having considered the rival contentions, we find that in the detailed order passed on 24.05.2018, *prima facie* assessment has been undertaken by the learned Single Judge and thereafter the finding is that defendant No.3 has a right to enjoy her part of the property and finding that there is no demarcation of the said property, the Local Commissioner has been appointed. Once we are satisfied that the Commissioner appointed is only for the purpose of implementing the order passed on 24.05.2018 and it is only an interim arrangement, provisional in nature, pending finalisation of the suit in question, we see no reason to make any indulgence in the matter at this interlocutory stage.

5. Accordingly, finding no ground, the appeal stands dismissed.

CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 10, 2018

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