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

+ **FAO(OS) 273/2016 & CM Nos.34965-66/2016**

SUMAN SINGH VIRK & ANR Appellants
Through : Mr. Manish Kumar, Mr. Piyush
Kaushik and Mr. Nakul Jain,
Advs.

versus

DEEPIKA PRASHAR & ANR Respondents
Through : Mr. Sanjay Gupta, Mr. Ateev
Mathur, Ms. Jagriti Ahuja and
Mr. Amol Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

% **ORDER**
13.09.2018

This court had heard the arguments on behalf of the parties, with respect to the impugned orders which had directed initiation of proceedings against the appellants, who were arrayed as defendants in the suit. During the course of hearing, the court was of the opinion that since the trial has been prolonged, it would be in the best interest of the parties that the agreed issues are framed. During the pendency of the proceedings, the appellants had moved the applications for amendment being I.A.Nos.9139-40/2016. It is submitted after some

hearing and upon instructions that the said applications would not be pressed and would be withdrawn in the light of the issues proposed and agreed by counsel for the parties (upon instructions). Accordingly, I.A.Nos.9139-40/2016 are dismissed as withdrawn.

The agreed issues, which would be tried in the suit, are as follows :

- (i) Whether the plaintiffs are entitled for a decree of partition in terms of family settlement dated 27.11.2012 in respect of suit property? (OPP)
- (ii) Whether the family settlement dated 27.11.2012 is not binding and not acted upon by the parties? (OPD)
- (iii) Whether the plaintiffs are entitled for a decree of possession for the portion of 4th floor in the suit property? (OPP)
- (iv) Whether the plaintiffs are entitled for reliefs prayed for in paras (c) and (d) of the plaint? (OPP)
- (v) Reliefs.

In the light of the consent of parties and having regard to the age and *inter se* relations between them, this court hereby modifies the impugned orders to the extent that initiation of proceedings under Section 340 Cr.P.C. in the impugned orders shall be kept in abeyance and subject to the final decision in the suit. All rights and contentions of the parties are kept open.

The parties agree that a Local Commissioner may be appointed to record the evidence in the suit. Ms. Shefali Khanna, Advocate (Mob.: 9899623275) is appointed as Local Commissioner to record the evidence. The fees of the Local Commissioner is fixed at Rs.75,000/- to be paid by the parties.

Having regard to the nature of issues, the defendants/appellants should first lead evidence. The appellants shall file their list of witnesses and the affidavit evidences of the concerned witnesses within three weeks. The plaintiffs thereafter shall file their list of witnesses and affidavits of such witnesses within three weeks. In other words, the completion of the filing of list of witnesses and affidavit evidences shall be completed within six weeks.

List before the Local Commissioner for appropriate directions on 03.10.2018.

The appeal and the pending applications are disposed of in the above terms.

Dasti under signatures of the Court Master.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 13, 2018

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