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

+ **RFA 1025/2016**

BHRAM PRAKASH & ORS

..... Appellants

Through: Mr. Bharat Gupta & Mr. Varun
Tyagi, Advocate for Appellant No.3
(M-9810444651).

versus

ABHAY RAJ & ORS

..... Respondents

Through: Mr. Abhinav Agnihotri, Advocate
(M-9200744888).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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22.05.2018

1. Late Sh. Hukum Singh, was the owner of land measuring 7 bighas and 9 biswas situated on Mustatil No.45 Kila No.45/2 Village Jonapur, Tehsil Hauz Khas, Delhi (*hereinafter 'suit property'*). He had three sons, Sh. Babu Ram, Sh. Chander and Sh. Prabhu. The Plaintiff No. 1 - Mr. Abhay Raj is the grandson of Late Sh. Hukum Singh and son of Sh. Babu Ram. The suit for permanent injunction was filed by the Plaintiffs seeking interim injunction to the following effect:

"1. Pass a decree of permanent injunction in favour of the plaintiffs and against the defendants thereby permanently restraining the defendants their heirs, servants, agents etc or any person claiming under the defendants from interfering with possession and occupation of the plaintiffs in the suit property i.e. land measuring approx 2038 square yards and more particular described in the red color in the site plan

enclosed with the plaint.”

2. The said suit was decreed by the Trial Court vide impugned judgment and order dated 29th July, 2016. The Trial Court, after evidence was led by the Plaintiff, and the Defendants being ex-parte, granted an injunction in the following terms:

“16. In view of the above discussions, I am of the considered view that the plaintiffs are entitled for a decree of permanent injunction. Accordingly, the suit is decreed in favour of the plaintiffs and against the defendants No.1 to 6 thereby the defendants No.1 to 6, their heirs, servants, agents etc. or any person claiming under them are restrained from interfering with the possession and occupation of the plaintiffs in the suit property i.e land ad-measuring 2038 square yards approximately as shown in red colour in the site plan Ex. PW/1.”

3. The grievance of the Appellants herein is not in respect of injunction that has been granted by the Trial Court, but in respect of the following observation in paragraph 15 of the judgment of the Trial Court is as under:

“...But in the instant case, the plaintiffs have proved that the properties left behind by Late Sh. Hukum Singh were partitioned as per Family Understanding and each party is in peaceful possession of their respective share. The plaintiffs are merely seeking protection of their settled possession in the suit property and they are neither seeking partition nor possession of the suit property.

4. The Appellants were Defendants No.1 to 5 before the Trial Court and as recorded in order dated 17th February, 2017, they confined the relief in this appeal only in respect of the observations in paragraph 15 and the fact

that the Trial Court, in the subject suit, was not adjudicating upon the factum of whether there was a family understanding between the parties and whether a partition had in fact taken place.

5. Counsels have made submissions in the appeal. It is submitted that all the remaining Defendants support the case of the Plaintiff.

6. The admitted position is that the suit filed by the Plaintiffs was not for partition of the property or for declaration based on the family understanding. It was only based on the fact that they are in possession of a particular portion of the suit property and that ought not to be disturbed from enjoying that. The Trial Court has not had the occasion to adjudicate the validity or otherwise of the family understanding in the present suit. Both parties therefore submit that while confirming the injunction, it is sufficient if it can be clarified that the impugned order shall not be read as barring the parties from seeking any declaration, partition or other reliefs in respect of the family understanding.

7. The observations in the impugned judgment shall not be taken as being an approval of the family understanding or a rejection thereof. The relief having been sought only in respect of injunction and no declaration for the family understanding, the observation in paragraph 15 shall not be binding in any proceedings relating to the Family Understanding or Partition, if filed in future. With these observations, the appeal is disposed of.

PRATHIBA M. SINGH, J

MAY 22, 2018/Rahul