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

+ **FAO(OS) 1/2019 & CM APPL. 146-147/2019**

MAHESH KUMAR & ORS

..... Appellants

Through: Ms. Gurkamal Hora Arora with
Ms. Sanyogita Jain, Advs.

versus

ASSAM WOOD PRODUCTS PVT LTD

..... Respondent

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **07.01.2019**

CM APPL. 147/2019 (*exemption*)

Allowed, subject to just exceptions.

FAO(OS) 1/2019 & CM APPL. 146/2019

1. Impugning an order dated 14.11.2018 passed by the learned Single Judge in CS(OS) 379/2017 titled as “*Assam Wood Products Pvt. Ltd. v. Mahesh Kumar & Ors.*”, this appeal has been filed under Order 43 Rule 1 CPC read with Section 10 of the Delhi High Court Act, 1966, *inter alia*, on the ground that the learned Single Judge did not decide the issues in question, namely, Issue No. (i) and (ii) as preliminary issues, instead, postponed its decision to be undertaken after recording of evidence. The issues in question read as under:

“(i) *Whether on the pleadings in the plaint, a suit for mandatory injunction is maintainable?*

(ii) *Whether the suit has been properly valued for the purpose of court fees and jurisdiction and if not, to what effect?”*

2. The suit has been filed by the plaintiff/appellant for declaration that a document dated 18.04.1992 styled as a Special Power of Attorney be declared null and void and illegal and a mandatory injunction be issued to the defendants to vacate the suit property which is a land and building situated at 23/71, Punjabi Bagh (West), New Delhi comprising of 1322.22 sq. yds.

3. Based on the pleadings, the issues have been framed and even though the appellant insisted that the issue be decided as a preliminary issue, the learned Single Judge has found that for deciding the issues in question evidence is required to be recorded as the question which arises for consideration would include the question as to whether the suit has been filed with promptitude against a licensee whose licence has been terminated. Placing reliance on the Supreme Court judgment in the case of *Sant Lal Jain v. Avtar Singh*, (1985) 2 SCC 332 and *Joseph Severance and Ors. v. Benny Mathew and Ors.*, (2005) 7 SCC 667, the learned Single Judge has held that for deciding the aforesaid two issues it would be appropriate to record evidence, determine the status of the defendant as to whether it is of a licensee or an owner and thereafter the issue be decided and for doing so in Para 8 of the impugned order nine issues have been framed and the case has been posted for recording of evidence before the Joint Registrar. The issues read as under:

“(i) Whether the defendant was licensee of the suit property and the license has been validly terminated by the plaintiff?
OPP

(ii) Whether the suit has been filed by a duly authorised person? *OPP*

(iii) Whether the present suit has been filed with promptitude? OPP

(iv) Whether the defendant is the owner of the suit property? OPD

(v) Whether the suit is bad for non joinder of necessary parties? OPD

(vi) Whether the suit is barred by limitation? OPD

(vii) Whether on the pleadings in the plaint, a suit for mandatory injunction is maintainable? OPP

(viii) Whether the suit has been properly valued for the purpose of court fees and jurisdiction and if not, to what effect? OPP

(ix) Relief.”

4. Keeping in view the nature of order passed by the learned Single Bench and the issues framed, we find no error in the discretion exercised by the learned Single Judge in doing so, warranting re-consideration or interference at this interlocutory stage.

5. Accordingly, finding no merit, the appeal stands dismissed. The pending application also stands disposed of.

CHIEF JUSTICE, J

V. KAMESWAR RAO, J

JANUARY 07, 2019

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