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

+ RFA(OS) 92/2019 & C.M. APPL.50468-50471/2019

SUKHBIR SINGH CHOUDHARY & ANRAppellants
Through: Mr. Chinmoy Pradip Sharma, Mr.
Shailesh Kumar Sinha, Mr. Kush Sharma and Mr.
Nishchaya, Advocates

versus

RAJINDER PERKASH CHOUDHARY & ANRRespondents
Through: Mr. Mudit Sharma and Ms. Snigdha
Sharma, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

% **ORDER**
22.11.2019

1. The appellants (defendants in CS(OS) 406/2018) are aggrieved by an order dated 23.10.2019, passed by the learned Single Judge allowing an application moved by the respondents/plaintiffs under Order 20 Rule 18 CPC, praying *inter alia* for passing a preliminary decree in respect of premises No.C-10/3, Vasant Vihar, New Delhi.

2. By the impugned order, the application moved by the respondents/plaintiffs was allowed and a preliminary decree has been passed declaring the appellants No.1 & 2 and the plaintiffs as 1/3rd owners each of the undivided shares in the suit property. Aggrieved by the said order, the appellants have filed the present appeal.

3. Mr. Chinmoy Pradip Sharma, learned counsel for the appellants states that while passing the impugned order, the learned Single Judge overlooked the fact that in the written statement filed by them, the appellants had categorically stated that the respondents/plaintiffs had relinquished their respective shares in the suit property in favour of the appellant No.1 by virtue of a Relinquishment Deed executed on 28.08.2017, copy whereof was filed in Reply to the I.A.No.9834/2019.

4. The aforesaid submission is disputed by the learned counsel for the respondents/plaintiffs, who submits that no argument on the above lines was addressed by learned counsel who was appearing for the appellants before the learned Single Judge on 23.10.2019, when the impugned order came to be passed. The only ground taken to oppose the application for preliminary decree moved by the respondents/plaintiffs was that a piecemeal preliminary decree ought not to be passed since there is another property of the late father of the parties that had been fraudulently sold by the respondents/plaintiffs.

5. At this stage, Mr. Sharma, learned counsel for the appellants states on instructions that since neither he, nor the counsel on record in the appeal had appeared before the learned Single Judge, it would be appropriate if he is permitted to withdraw the present appeal while reserving the right of the appellants to file an application before the learned Single Judge bringing to her notice, the factum of the Relinquishment Deed dated 28.08.2017, purportedly executed by the respondents/plaintiffs.

6. Without making any observations on the maintainability or the merits of such application, if so filed by the appellants, the present appeal is disposed of, alongwith the pending applications, with liberty granted to the appellants as prayed for.

HIMA KOHLI, J

ASHA MENON, J

NOVEMBER 22, 2019

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