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

+ **FAO(OS) 66/2019 and CM APPL. 16118/2019 (stay)**

ARVIND SAREEN Appellant

Through: Ms. Anita Sharoha, Advocate.

versus

RENU VERMA & ANR Respondent

Through: None.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **21.11.2019**

1. The appeal is directed against an order dated 20th February, 2019 of the learned Single Judge rejecting IA No. 7597/2017 filed by the Appellant/Defendant No.2 under Order VII Rule 11 of the Code of Civil Procedure ('CPC'), seeking rejection of the plaint on the ground that appropriate court fee has not been paid by the Respondent/Plaintiff.

2. The Respondent/Plaintiff filed the aforementioned suit CS (OS) 62/2017 against the present Appellant seeking a preliminary decree of partition and separation of 1/3rd undivided share in the immovable property at the B-4, South Extension Part I, New Delhi.

3. According to the Defendant No.2 in the suit, the Plaintiff was never in possession of any portion of the suit property, and therefore, could not avoid

paying the court fees on a mere averment in para 9 of the Plaint that she is in joint possession of the properties with the Defendants.

4. The learned Single Judge observed that the question of whether the Plaintiff was in joint possession of the property in question in terms of the averment made in para 9 as well as in para (x) that she is in occupation of the *Barsati* floor cannot be adjudicated upon at the present stage, since these were disputed questions of the fact.

5. Having heard learned counsel for the Appellant, the Court is not persuaded to take a different view in the matter. Consequently, the impugned order, to the extent that it rejects the application filed by the Defendant No.2 under Order VII Rule 11 CPC for rejection of the Plaint on the ground of appropriate court fee not having been paid by the Plaintiff, calls for no interference.

6. There is also a grievance made about the order passed in IA No. 1923/2017, which was an application by the Plaintiff for taking inventory of the contents of an *almirah* lying on the ground floor of the property in question. The learned Single Judge, has in the impugned order, appointed a Local Commissioner to carry out the above exercise. Having perused the order, the Court does not see any reason to interfere. It will be open to the Appellant to pursue the separate application filed by the Appellant seeking the appointment of a Local Commissioner in accordance with law.

7. The appeal is dismissed in the above terms. The pending application is

also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 21, 2019

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