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

\+ RFA 698/2019, CM APPL.No.34456/2019

DINESH CHANDRA GUPTA

..... Appellant

Through : Mr.Surender Chauhan and Mr.Siddhartha Singh, Advs. with appellant in person

versus

SATISH CHANDRA GUPTA

..... Respondent

Through : Mr.Vidit Gupta and Ms.Divya Gupta, Advs. with respondent in person

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% **15.11.2019**

This appeal is against the judgment dated 28.03.2019 whereby a suit for recovery of possession, damages and injunction filed by the appellant herein was decreed in favour of respondent on the basis of Will Ex.*PW1/1* of late Smt.Bishan Devi, the late mother of the appellant and the respondent. Admittedly, probate of the said Will Ex.*PW1/1*, has been obtained by the respondent. The respondent was held to be an absolute owner of the subject property vide the impugned judgment and a decree for possession and mesne profits was passed in his favour and against the appellant, hence this appeal.

On 02.08.2019 the following order was passed by this Court:

Learned counsel for the appellant while conceding that the probate of the will dated 30.10.1981, executed by the mother of the

appellant and the respondent, who are brothers, had been granted in favour of the respondent, submits in view of the appellant's old age as also the fact that he along with his wife had been residing in the suit premises since 1940, an oral understanding had been arrived at between the parties permitting them to continue staying in the suit premises for their remaining lifetime. He submits that the said fact is evident from a perusal of the ex-parte order allowing the respondent's probate petition which specifically notes that though the appellant had initially opposed the grant of probate, he had not appeared at the time of final hearing. He further submits that the appellant is not claiming ownership rights in the property and is pressing the present appeal only qua the entitlement of the appellant and his wife to stay in the suit premises during their lifetime. He submits that since the parties are closely related to each other, there is a possibility of an amicable settlement.

Upon the appellant filing process fee, issue notice to the respondent, limited to the aforesaid aspect as to whether the appellant and his wife have the right to stay in the suit property, by ordinary process and speed post, returnable on 17.09.2019.

Keeping in view the fact that the parties are closely related, the respondent and the appellant are directed to remain present in the Court on the next date so that the matter can be taken up in the Chambers, if the need so arises.

Till the next date of hearing, the parties shall maintain status quo qua title and possession of the property in question.

The parties are present in person. The learned counsel for the respondent in the presence of the respondent says if the appellant intends to say in the premises for his and his wife's lifetime, the appellant must pay mesne profits to the respondent @ Rs.5,000/- per month. The appellant however expressed financial difficulty in paying the arrears, hence, as agreed, between the parties, they being real brothers, the appellant shall pay only 50% of the arrears till 30th November, 2019 within three months from today and would continue paying the user charges @ Rs.5,000/- per month w.e.f. 1st December,

2019. The water and electricity charges shall be paid by the appellant as per actuals.

It is reiterated that such concession is granted by the respondent to the appellant as also to appellant's wife but it shall not be extendable to their children, at any cost. An undertaking to this effect be filed by the appellant as also by his wife and children, as agreed, within four weeks from today.

The parties, hopefully, would live peacefully together and would not interfere in each other lives, as agreed by them.

In the circumstances, the appeal stands disposed of. Pending applications, if any, also stand disposed of.

YOGESH KHANNA, J.

NOVEMBER 15, 2019
VLD