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

+ RFA(OS) 89/2018

SHARMISHTHA DEY

..... Appellant

Through Mr. A.K. Sen and Mr. Ritesh Khatri,
Advocates

versus

SOURAVI MONDAL & ORS

..... Respondents

Through Mr. Pramod Kumar Ahuja, Advocate for
respondent no.1.
Mr. Loiht Ganguly, Advocate for
respondents no.2 and 3.
Mr. Vijay Joshi, Senior Panel Counsel for
UOI/respondents no.4 and 5.
Mr. Pawan Kawrani and Mr. Mukesh
Sachdeva, Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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18.01.2019

The appellant is aggrieved by the order dated 11.12.2017 passed by a learned Single Judge of this Court.

It may be noted that a suit was instituted by Ms. Souravi Mondal against her mother, brother and sister for partition of a residential house no.G-1355, Chittranjan Park, New Delhi and commercial Shop no.1039, Ward No.XVI, Plot no.1333/1121, Block no.B, Gali no.17, Naiwala, Karol Bagh, New Delhi and for permanent injunction restraining the defendants from dispossessing her from property no.G-1355, Chittranjan Park, New Delhi being CS(OS).554/2017. The appellant herein, was arrayed as defendant no.3. However, at the stage of issuance of summons, the suit was dismissed as not maintainable on the ground

that since the plaintiff had admitted that the suit property at Chittranjan Park was in the name of the mother of the plaintiff, the plaintiff merely by averring that the sale consideration for the said property had flown from her father and that the mother was merely a caretaker of the property, such a suit would not be maintainable as the claim would be in the teeth of the Prohibition of Benami Property Transactions Act, 1988. Accordingly, by an order dated 11.12.2017, the Court rejected the plaint/dismissed the suit. No appeal was preferred by the plaintiff.

An identical suit has been instituted by defendant no.3, appellant herein raising identical reliefs as claimed by Ms. Souravi Mondal in the earlier suit.

Learned counsel for the appellant submits that the issue decided in Suit no.554/2017 on 11.12.2017 filed by Souravi Mondal was in the absence of the appellant herein as none had been served prior to passing of the order and thus, the order would not bind the appellant and accordingly the second suit would be maintainable. However, it is contended that the observations made by the learned Single Judge in Suit no.554/2017 are coming in the way of the appellant herein in the proceedings pending before the learned Single Judge in the suit filed by her as the learned Single Judge is of the view that the Court would be bound by the order passed in Suit no.554/2017.

Heard.

Although we find that no orders are required to be passed as the learned Single Judge would consider the submissions of the parties and the earlier order before deciding the matter, however all parties present before us and who are parties before the learned Single Judge agree that the learned Single Judge where the identical suit is pending may take an independent view in the matter while deciding the subsequent suit. It is ordered accordingly.

With the above agreed directions, the appeal is disposed of. It will be open for the parties to address their arguments in the subsequent suit before the

learned Single Judge and it would be open for the learned Single Judge to decide the matter in accordance with law.

The appeal is disposed of in above terms.

G.S.SISTANI, J

JYOTI SINGH, J

JANUARY 18, 2019

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