



\$~54

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

+ CM(M) 1623/2019 and CM APPL. 49096/2019

SUMITRA DEVI

..... Petitioner

Through: Mr. P.D. Gupta, Sr. Advocate
with Mr. Atul Gupta, Adv.

versus

RAM NIWAS DAGAR & ANR

..... Respondents

Through: Mr. Bajinder Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

25.07.2022

%

1. By order dated 4th October 2019, the learned Additional District Judge (“the learned ADJ”) adjudicated an application filed by the petitioner (as Defendant 2 in the suit), under Order XIV Rule 5 of the Code of Civil Procedure, 1908 (CPC), seeking modification of Issue (ii) and striking off of Issues (i) and (iv), as originally framed by this Court, *vide* order dated 19th March 2014, when the suit was *in seisin* before this Court prior to enhancement of pecuniary jurisdiction of Trial Courts.

2. The impugned order has, by consent, deleted Issue (iv) and has modified Issue (ii). The petitioner is not aggrieved by the impugned order to that extent.

3. The impugned order, however, holds, *qua* Issue (i), that no
CM(M) 1623/2019



modification or deletion of the said issue was required.

4. Issue (i) incidentally read thus:

“(i) Whether the plaintiff, in part performance of the Agreement to Sell dated 23.02.2001, was put into vacant, peaceful, physical possession of the land agreed to be sold and has since then continued to be in possession of the said land and if so whether the plaintiff, notwithstanding the dismissal of his claim for specific performance, is entitled to retain possession and injunct the defendants from dispossessing him? OPP”

5. Mr. P.D. Gupta, learned Senior Counsel for the petitioner, seeks, after some arguments, to withdraw this petition with liberty to move an application before the learned ADJ with the request to treat Issue (i), as framed by this Court on 19th March 2014, as a preliminary issue.

6. Learned Counsel for the respondent opposes the request and submits that issue would necessarily require trial.

7. I do not express any opinion on whether the Issue (i) is entitled to be treated as a preliminary issue or would require trial.

8. Liberty, however, stands reserved to the petitioner to move an appropriate application before the learned ADJ, if the petitioner so chooses. In case such application is moved, it would be for the learned ADJ to take a decision as to whether the said issue could be decided as a preliminary issue after hearing both sides and to proceed further on



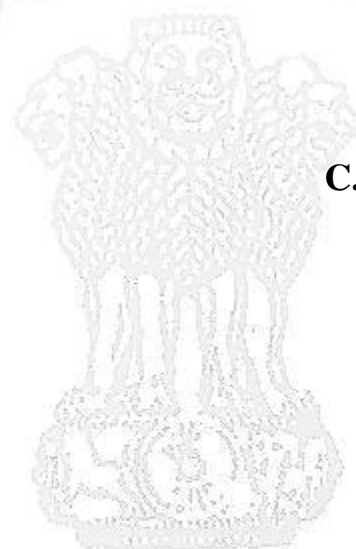
the basis of the decision so taken.

9. Needless to say, in deciding whether the aforesaid issue should be decided as taken as a preliminary issue or to be decided after a trial, the learned ADJ would independently take a decision, uninfluenced by observations contained in the impugned order.

10. This petition stands disposed of in the aforesaid terms. Miscellaneous application is also disposed of.

JULY 25, 2022
r.bararia

C. HARI SHANKAR, J



सत्यमेव जयते