



2023:DHC:8666-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.12.2023

+ **FAO(OS) 22/2020 & CM APPL. 1647/2021**

NARENDER JAIN & ANR

..... Appellants

Versus

**ANIS AHMED RUSHDIE (DECEASED)
THR LRS & ORS**

..... Respondents

AND

+ **FAO(OS) 28/2020**

RAVINDER JAIN & ANR

..... Appellants

Versus

**ANIS AHMED RUSHDIE (DECEASED)
THR LRS & ORS**

..... Respondents

AND

+ **FAO(OS) 39/2020**

**SH. BHIKU RAM JAIN, DECEASED
THROUGH LR, MR. VIRENDER
KUMAR JAIN**

..... Appellant

Versus

**SH. ANIS AHMED RUSHDIE
THROUGH LRS AND OTHERS**

..... Respondents

Advocates who appeared in this case:

For the Appellants

: Mr. Dhruv Mehta, Senior Advocate with
Mr. Rahul Malhotra and Ms. Shruti Gupta,
Adv. in FAO(OS) No.22/2020.



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Mr. Pradeep Aggarwal, Mr. Sahil Gupta, Mr. Arjun Aggarwal, Ms. Gurleen Kaur and Mr. Vishal Singh, Advs. in FAO(OS) 28/2020.

Mr. Abhishek Aggarwal, Adv. in FAO(OS) 39/2020.

For the Respondent : Mr. Ashish Dolakia, Senior Advocate with Mr. Sanjay Sharma Darmora and Mr. Yoginder Prashad Uniyal, Advs. for R-1(A).

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

INTRODUCTION

1. These appeals are directed against an order dated 24.12.2019 (hereafter '**the impugned order**') delivered by the learned Single Judge in CS(OS) No.994/1977. The said suit was instituted for specific performance of an Agreement to Sell dated 22.12.1970 (hereafter '**the Agreement to Sell**') in respect of property ad-measuring 5373 sq. yds. bearing No.4 Flagstaff Road, Civil Lines, Delhi (hereafter '**the suit property**'). The said suit was decreed by the Supreme Court in terms of a judgment dated 03.12.2012 rendered in Civil Appeal No.8653/2012 and other connected appeals.



2. The Supreme Court directed specific performance of the Agreement to Sell, albeit at a consideration equivalent to market price as prevailing on the date of the said decision, that is, on 03.12.2012. Since there was no material to determine the said sale consideration, the Supreme Court remitted the matter to the Trial Court (learned Single Judge of this Court) to undertake the exercise of determining the market value of the suit property as on 03.12.2012.

3. The learned Single Judge, passed the impugned order determining the market value of the suit property, as on 03.12.2012, at ₹130 crores. However, the learned Single Judge also directed that on failure of the plaintiffs to pay the said price, the defendant will sell the suit property at the said price within the stipulated period. And, if the defendant also fails to sell the suit property for the aforementioned price within the period of sixty days, the plaintiffs would be entitled to purchase the suit property at ₹75 crores.

4. The appellants in these appeals have challenged the impugned order principally on the ground that the same exceeds the scope of remand, which was limited to determining the market value of the suit property as on 03.12.2012. The appellants contend that the impugned order in effect modifies the decree passed by the Supreme Court.

5. It is also the case of the appellants that the value of the suit property was required to be determined on the basis of evidence led by the parties. Whereas, the plaintiffs had led evidence, the defendant had not led any evidence. It is contended on behalf of the appellants that the



market value of the suit property, as determined by the learned Single Judge, is in disregard of the evidence available on record.

6. The controversy in the present appeal relates to determination of the market value of the suit property as on 03.12.2012.

FACTUAL BACKGROUND

7. The appellants in these appeals are sons of Late Sh. Bhiku Ram Jain (since deceased). Late Sh. Bhiku Ram Jain entered into the Agreement to Sell dated 22.12.1970 with Late Sh. Anis Ahmed Rushdie (since deceased) for purchasing the suit property for a total consideration of ₹3.75 lacs. Out of the aforesaid amount, Late Sh. Bhiku Ram Jain had paid a sum of ₹50,000/- as earnest money. The Agreement to Sell was not performed. Accordingly, Late Sh. Bhiku Ram Jain and his two sons [Narender Kumar Jain and Arvind Kumar Jain – appellants in FAO(OS) No.22/2020] filed the suit for specific performance of the Agreement to Sell being CS(OS) No.994/1977. Although, Narender Kumar Jain and Arvind Kumar Jain were not parties to the Agreement to Sell, they were arrayed as plaintiffs no.2 and 3 in the subject suit ostensibly for the reason that in terms of the Agreement to Sell, the suit property was required to be conveyed to Late Sh. Bhiku Ram Jain or his nominees. And, it was averred in the plaint that Sh. Bhiku Ram Jain had nominated Narender Kumar Jain and Arvind Kumar Jain for execution of the sale deed.



8. During the pendency of the said suit, Sh. Anis Ahmed Rushdie expired and his legal heirs were brought on record.

9. The subject suit [CS(OS) No.994/1977] was decreed in favour of the plaintiffs (Late Sh. Bhiku Ram Jain and his two sons Narender Kumar Jain and Arvind Kumar Jain) by a judgment dated 05.10.1983. In terms of the said decree, the plaintiffs had the right to get the sale deed of the suit property executed in either of their names. It was directed that the balance consideration of ₹3.25 lacs would be payable at the time of execution of the sale deed.

10. Aggrieved by the said decision, the defendants filed an appeal [RFA(OS) No.11/1984] which was allowed by the Division Bench of this Court by a judgment dated 31.10.2011. The decree dated 05.10.1983 was set aside and the suit was dismissed.

11. The plaintiffs sought to appeal the decision dated 31.10.2011 of the Division Bench of this Court before the Supreme Court by filing a Special Leave Petition. The Supreme Court granted leave to appeal and allowed the resultant appeal – Civil Appeal (Civil Appeal No.8653/2012) – as well as connected appeals in terms of a common judgment dated 03.12.2012¹. The Supreme Court referred to the appellants in those appeals as plaintiffs but had clarified that the judgment does not in any manner recognize their rights as successors-in-interest of the original plaintiffs.

¹ Reported in (2013) 8 SCC 131: *Satya Jain v. Anis Ahmed Rushdie*



12. As noted above, in terms of the judgment dated 03.12.2012, the Supreme Court set aside the decision of the Division Bench of this Court in RFA (OS) No.11/1984 and decreed the specific performance of the Agreement to Sell. However, the Supreme Court also directed that the sale deed to be executed in favour of the plaintiffs would be at the market price of the suit property as on the date of the said judgment, that is, 03.02.2012. The Supreme Court remitted the matter to the learned Single Judge of this Court to undertake the exercise of making a correct assessment of the market value of the suit property.

13. The learned Single Judge has rendered the impugned order pursuant to the order dated 03.12.2012.

REASONS AND CONCLUSION

14. As is apparent from the above, the controversy in the present appeal is in a narrow compass. The principal question to be addressed is whether the impugned order passed by the learned Single Judge is in conformity with the judgement of the Supreme Court dated 03.12.2012. It would be relevant to refer to the operative part of the judgment dated 03.12.2012 which reads as under:

“28. The discretion to direct specific performance of an agreement and that too after elapse of a long period of time, undoubtedly, has to be exercised on sound, reasonable, rational and acceptable principles. The parameters for the exercise of discretion vested by Section 20 of the Specific Relief Act, 1963 cannot be entrapped within any precise expression of language and the contours thereof will always depend on the facts and circumstances of each case. The



ultimate guiding test would be the principles of fairness and reasonableness as may be dictated by the peculiar facts of any given case, which features the experienced judicial mind can perceive without any real difficulty. It must however be emphasized that efflux of time and escalation of price of property, by itself, cannot be a valid ground to deny the relief of specific performance. Such a view has been consistently adopted by this Court. By way of illustration opinions rendered in ***P.S. Ranakrishna Reddy v. M.K. Bhagyalakshmi:(2007) 10 SCC 231*** and more recently in ***Narinderjit Singh v. North Star Estate Promoters Ltd.:(2012) 5 SCC 712*** may be usefully recapitulated.

29. The twin inhibiting factors identified above if are to be read as a bar to the grant of a decree of specific performance would amount to penalizing the plaintiffs for no fault on their part; to deny them the real fruits of a protracted litigation wherein the issues arising are being answered in their favour. From another perspective it may also indicate the inadequacies of the law to deal with the long delays that, at times, occur while rendering the final verdict in a given case. The aforesaid two features, at best, may justify award of additional compensation to the vendor by grant of a price higher than what had been stipulated in the agreement which price, in a given case, may even be the market price as on date of the order of the final Court.

30. Having given our anxious consideration to all relevant aspects of the case we are of the view that the ends of justice would require this court to intervene and set aside the findings and conclusions recorded by the High Court of Delhi in R.F.A.No.11/1984 and to decree the suit of the plaintiffs for specific performance of the agreement dated 22.12.1970. We are of the further view that the sale deed that will now have to be executed by the defendants in favour of the plaintiffs will be for the market price of the suit property as on the date of the present order. As no material, whatsoever is available to



enable us to make a correct assessment of the market value of the suit property as on date we request the learned trial judge of the High Court of Delhi to undertake the said exercise with such expedition as may be possible in the prevailing facts and circumstances.”

15. There is no ambiguity in the aforementioned judgement or the directions issued by the Supreme Court. It is clear that the subject suit [CS(OS) No.994/1977] for the specific performance was decreed in favour of the plaintiffs. The defendants were required to execute the Agreement to Sell and convey the suit property to the plaintiffs at the market value of the suit property as on the date of the decree-03.12.2012. The matter was placed before the trial court for the limited purpose of ascertaining the market value of the suit property as on 03.12.2012.

16. It is material to note that after the said decision was rendered by the Supreme Court, certain applications for modification/clarification (I.A. Nos.3-5 & I.A. D.No.37212 of 2013 and I.A. Nos.12-13 & 14-15 of 2013) were filed before the Supreme Court seeking impleadment/clarification/modification/correction of the judgment dated 03.12.2012. The said applications included an application filed by Sh. Amit Jain, Sh. Rahul Jain and Smt. Aruna Jain claiming that Ms. Sameen Rushdie Momen (legal heir of deceased defendant Anis Ahmed Rushdie) had sold part of the suit property (two parcels admeasuring an aggregate of 1500 sq. yds.) to the said applicants while the matter was pending before the Supreme Court.



17. Narender Kumar Jain and Arvind Kumar Jain (original plaintiffs no.2 and 3 being appellants in FAO(OS) No.22/2020) also filed applications (I.A. Nos.12-13), *inter alia*, stating that Ms. Sameen Rushdie Momen had executed an irrevocable General Power of Attorney dated 04.11.2010 for a consideration in favour of M/s Fine Properties Pvt. Ltd. whereby she had sought to part with her rights and interests in the suit property in favour of the constituted attorney (M/s Fine Properties Pvt. Ltd.) for consideration of ₹4.5 crores. The applicants prayed that in view of the above the defendants were not entitled to any relief as they had already parted with the suit property. The said applicants also filed another application seeking stay of the proceedings in respect of the applications filed by M/s Fine Properties Pvt. Ltd. before the learned Single Judge.

18. In addition, an application was also filed by Chopra Marketing Pvt. Ltd. seeking impleadment in the appeal disposed of by the Supreme Court claiming that it had entered into an agreement to purchase the suit property with the constituted attorneys of defendants.

19. All applications, apart from the application seeking correction of certain errors, were dismissed by the Supreme Court by an order dated 08.05.2013 for the reason that matters sought to be agitated were not subject matter of the appeals disposed of in terms of the judgement dated 03.12.2012.

20. The applications filed by Narender Kumar Jain and Arvind Kumar Jain for seeking modification of the order on the ground that the



defendant had parted with its rights in the suit property in favour of M/s Fine Properties Ltd. was rejected with certain observations. The relevant extract of the order dated 08.05.2013 is set out below:

“18. The aforesaid prayer for modification is based on the additional ground that the same is contrary to the several decisions of this Court reference to which has been made in para 5 of the I.A. We do not consider the abovestated ground to be a justifiable or sufficient cause to alter our direction(s) for execution of the sale deed at the market price inasmuch as the said direction was passed by us in the peculiar facts and circumstances of the present case enumerated below.

19. In paragraph 10 of the judgment dated 3.12.2012, the statement made on behalf of the appellants (Plaintiffs) that they are ready and willing to offer an amount of Rs.6 crores for the property as against the sum of Rs.3.75 lakhs as mentioned in agreement dated 22.12.1970 has been specifically recorded. It is the aforesaid “offer” made on behalf of the appellants/plaintiffs that had led to the direction in question inasmuch as no material was available to Court to find out as to whether the offered amount of Rs.6 crores was, in any way, indicative of the market value of the property. It is in such a situation that the direction to execute the sale deed at the market price and the request to the learned Trial Judge to determine the same came to be recorded in the judgment dated 3.12.2012. It is, therefore, clear that we did not intend to lay down any law of general application while issuing the direction for execution of the sale deed at the market price as on the date of the judgment i.e. 3.12.2012.

20. The exercise by the learned Trial Judge in terms of our judgment dated 3.12.2012 is yet to be made. The aforesaid determination, naturally, will be made by the learned single Judge only after affording an opportunity to all the affected parties and after taking into account all relevant facts and circumstances. Furthermore, any party aggrieved by such



determination will be entitled to avail of such remedies that may be open in law to such a party. In view of the above, we do not deem it to be necessary to cause any variation or modification in the aforesaid direction contained in our judgment dated 3.12.2012.”

21. Pursuant to the orders passed by the Supreme Court, the learned Single Judge undertook the exercise for determining the market value of the suit property as on 03.12.2012.

22. By an order dated 29.01.2014, the learned Single Judge directed that the matter be listed before the Registrar General of this Court on 12.02.2014 for conducting an enquiry regarding the value of the suit property in terms of the decision of the Supreme Court. The said order also specifically granted liberty to the parties to lead evidence on the said question.

23. On 12.02.2014, the Registrar General issued directions to the concerned Sub-Divisional Magistrate (hereafter ‘**the SDM**’) for submitting the valuation report of the suit property. The SDM submitted a report dated 23.04.2014 stating the value of the suit property as ₹51,51,85,000/-. The Registrar General of this Court also nominated M/s ITCOT Consultancy and Services Ltd. to ascertain the market value of the suit property. The said valuer submitted a report valuing the suit property at ₹1,57,95,69,000/-. The parties were also afforded opportunity to cross-examine the SDM and M/s ITCOT Consultancy and Services Ltd. in respect of valuation reports submitted by them.



24. The plaintiffs also produced a valuation report of a valuer (Mr. M.L. Aggarwal) and tendered the same in evidence along with an affidavit of the said valuer. Mr Agarwal was also cross examined. In addition, Mr. Narender Kumar Jain was also examined as PW2.

25. The defendants did not examine any witnesses.

26. After the aforesaid proceedings were concluded before the Registrar General of this Court, the matter was placed before the learned Single Judge.

27. Before the learned Single Judge, it was contended on behalf of the plaintiffs that the defendant had executed a sale deed dated 04.11.2010 and had also executed a General Power of Attorney in favour of the M/s Fine Properties Pvt. Ltd. setting out the consideration at ₹4.5 crores. Additionally, the defendant had also executed a sale deed dated 15.11.2011 in respect of 836.12 sq. mtrs. (equal to 1000 sq. yds.) for a sale consideration of ₹2.20 crores and another sale deed dated 21.11.2011 for another portion of the suit property measuring 418 sq. mtrs. (500 sq. yds.) for a sale consideration of ₹1.1 crores. It was contended that the value of the entire property was ascertainable at ₹11.82 crores based on the consideration as mentioned in those sale deeds.

28. In addition, it was also contended on behalf of the plaintiffs that there were other mitigating factors including that the suit property was tenanted and covered under the Delhi Rent Control Act, 1958. It was



submitted that the suit property was an irregular plot (*shermukhi*) which was not considered auspicious and therefore, its price would be lower than the average price of other properties in the area. It was contended that the market value of the suit property was required to be ascertained by factoring in these attributes and factors, which had the effect of significantly lowering the value of the suit property.

29. During the course of the proceedings before the learned Single judge, the learned counsel appearing for defendant no.1D, who claimed to be the sole legal heir of original defendant Late Sh. Anis Ahmed Rushdie, stated that he could arrange a buyer who was willing to pay ₹145 crores for the suit property. It is also recorded in the impugned order that on 13.02.2018, the counsel appearing for the plaintiffs stated that he would obtain instructions whether plaintiff no.1 and plaintiff no.2 were willing to pay the price of ₹145 crores if the defendant was successful in finding a serious buyer willing to purchase the suit property at the aforesaid price. It is further recorded in the impugned order that on 13.02.2018, the learned Single Judge had observed that the best procedure for determining the market value of the property was to determine whether the actual buyer is willing to pay the sum of ₹145 crores as stated and accordingly, adjourned the matter to 08.03.2018 to enable the counsel for the defendant to bring a buyer for the aforesaid amount.

30. On 08.03.2018, a statement was made on behalf of the learned counsel for the defendant that he had a buyer willing to offer a sum of



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₹130 crores for the suit property on as is where is basis. On that date, one Mr. Ashok Kumar, S/o Chiranji Lal, R/o 19, Farquhar Road, Birmingham (proposed buyer) was also present in the Court along with demand draft of ₹25 lacs in favour of the Registrar General of this Court.

31. However, the matter regarding the possible sale of the suit property did not proceed any further and rightly so. The issue before the learned Single Judge was limited to ascertaining the market value of the suit property as on 03.12.2012 and not to realise the best price for the suit property.

32. The record shows that the plaintiffs had also raised doubts whether the offer made by defendant no.1D was a *bona fide* offer.

33. The learned Single Judge has also recorded in the impugned order that on 11.04.2018, the learned counsel appearing for the defendant had made a statement that the defendant would be willing to convey the suit property in favour of the plaintiff for a sum of ₹11.82 crores if the proposed buyer failed to purchase the suit property for ₹130 crores. Apparently, this statement was made to persuade the Court to accept that the offer of ₹130 crores was a serious one. However, thereafter the defendant No.1D filed an application [IA No.6188/2018] stating that if the proposed buyer did not purchase the property at ₹130 crores, the Court could determine the market value of the property and the defendant ought not be compelled to sell the suit property at a consideration of ₹11.82 crores.



34. In the aforesaid background, the learned Single Judge has passed the impugned order. The operative part of the said order read as under:

“29. Price of immovable property is incapable of precise determination in Court inasmuch as price, especially of residential properties is not uniform and there may be wide variance in price of adjoining properties. The senior counsels of the plaintiffs are right in listing the said variables as noted hereinabove. It is virtually impossible for the price to be determined by the Court. The contemporaneous sale deeds of adjoining properties are also never a precise indicator of the price of another property. The only way to determine the price is by public auction. However the price which is to be determined of the subject property is of 3rd December, 2012 and not of today. The Courts have however taken judicial notice of market trend of prices of immovable properties and it can be said with reasonable certainty that since December, 2012, the prices have been on the decline.

30. The most authoritative indicator of price of the subject property, was from the offer brought by the defendant, of Rs.130 crores, for the property on as is where is basis. Taking judicial notice of the market trend of price since the year 2012 it can safely be assumed that the price as on 3rd December, 2012 would have been higher.

31. What has however bothered me and which has resulted in delay in pronouncement of this order, is that by merely bringing an offer for Rs.130 crores, the defendant should not derive an unfair advantage. After all, the offer brought by the defendant for purchase of the property on as is where is basis for Rs.130 crores was but an offer, with no certainty of same fructifying. It was felt that the defendant, by bringing an inflated offer, should not be permitted to



wriggle out of the decree for specific performance if the plaintiffs were unable to accept the same.

32. Having given my thought to the matter, I am of the opinion that while determining the price at Rs.130 crores and on plaintiffs failing to pay the said price, a condition should be imposed on the defendant to, within stipulated time sell the property at minimum Rs.130 crores. If the defendant is then unable to so sell the property, the same will clearly establish that the price of the property is not Rs.130 crores. Then, the best indicator of market price would be the circle rate. Though circle rate as on 3rd December, 2012 was reported to be about Rs.51 crores but since the circle rate, the very next day was revised to Rs.75 crores, it is felt that the said circle rate correctly represents the market price as on 3rd December, 2012, rather than the circle rate of Rs.51 crores fixed long back.

33. I thus determine the market price of the property as on 3rd December, 2012 at Rs.130 crores, with the following further directions:

- (i) The plaintiffs to, within 60 days of this determination indicate their intention to purchase the property at the said price;
- (ii) On the plaintiffs consenting to purchase the property at the said price, the plaintiffs to within 90 days of today deposit in this Court 10% of the purchase consideration equivalent to Rs.13 crores, by way of earnest money;
- (iii) On failure to deposit the earnest money, the consequences as hereinbelow provided shall follow;



- (iv) If the earnest money is so deposited, the balance sale consideration be paid within 180 days herefrom;
- (v) On the plaintiffs not consenting to purchase the property at the price aforesaid or on the plaintiffs so consenting but not depositing the earnest money or on the plaintiffs depositing the earnest money and not depositing the balance sale consideration, the defendant to within 90 days therefrom enter into an Agreement for Sale of the property at minimum Rs.130 crores on the same condition as to deposit of earnest money and payment of balance sale consideration as applicable aforesaid to the plaintiffs;
- (vi) On the defendant being unable to sell the property to another for minimum Rs.130 crores, the plaintiffs to within 60 days thereof become entitled to purchase the property for Rs.75 crores; and,
- (vii) On the plaintiffs failing to purchase the property for Rs.75 crores, the defendant to stand relieved of the agreement.”

35. The limited scope of remand by the Supreme Court was to ascertain the market value of the suit property as there was no material before the Court to do so. It is relevant to bear in mind that the suit instituted was one of specific performance of the Agreement to Sell which was decreed. Thus, in terms of the order dated 03.12.2012 passed by the Supreme Court, the Agreement was required to be performed by the defendant (successor-in-interest). The only issue that remained was



to fix a consideration which was required to be paid. It is apparent that there was no scope for the learned Single Judge to devise a method for introducing any third party sale.

36. The approach of putting in place two separate sale considerations for the suit property, one determined at ₹130 crores with the further recourse to perform the Agreement at ₹75 crores if the plaintiffs did not pay the said amount and the defendant could not secure the same by further sale, is wholly alien to the scope of determination of the market value of the suit property as on 03.12.2012 for specific performance of the Agreement to Sell, as decreed by the Supreme Court. Clearly, there cannot be two market values of the same property for specific performance of the agreement to sell.

37. There may be some element of subjectivity in determining the price of an immovable property. However, we are unable to agree that the same would be incapable of determination in a Court. It is obvious that the Court would require to determine the value of the property on the basis of material and evidence placed before the Court.

38. It is well settled that the price agreeable by a willing buyer and a willing seller would, in normal circumstances, be accepted as the value of a property. Thus, it would certainly be open for the Court to take into consideration such value if evidence to the said effect was available with the Court. However, it would be erroneous to direct actual sale of the property to determine its value.



39. We are also unable to concur with the learned Single Judge's view that judicial notice could be taken that the price of the property as on 03.12.2012 would be higher than the price of immovable property as on the date of its determination (that is, on 12.12.2019). The assumption that the prices of immovable properties have fallen since 2012 to 2019 does not appear to be supported by any evidence on record. At any rate no material has been alluded to by the Court in arriving at the said conclusion. The mitigating factors as mentioned by the plaintiffs were also required to be considered.

40. It is also material to note that certain parties are also claiming interest in the suit property or part thereof pursuant to Agreements / General Power of Attorney executed by the defendant and/or his predecessors including those executed in the period between 31.10.2011 (the date on which the Division Bench had set aside the decree for specific performance) and 03.12.2012 (the date on which the suit was decreed by the Supreme Court). Plainly, the rights created by the defendant in favour of the other persons, if any, would also be affected if the defendants are compelled to enter into a sale of the suit property on the failure of the plaintiffs to pay the consideration as determined. Clearly, no directions could be issued by the learned Single Judge for the sale of the suit property on the failure of the plaintiffs to pay the consideration as determined.

41. In view of the above, we set aside the impugned order and remand the matter to the learned Single Judge to determine the value of



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the suit property afresh in terms of the directions issued by the Supreme Court.

42. We direct the Registrar to place the matter before the concerned learned Single Judge on 11th December, 2023 and request the learned Single judge to conclude the proceedings as expeditiously as possible.

43. The appeals are allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 05, 2023

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