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

+ **FAO(OS) 37/2023**

RAJINDER SINGH BHATIA

..... Appellant

Through: Mr. Abhishek Aggarwal, Advocate
with Petitioner in Person.

versus

MANJU BHATIA

..... Respondent

Through: Manoj Singh, Advocate along with
Respondent in person.

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Date of Decision: 21st February, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. The present appeal filed under Section 10 of the Delhi High Court Act, 1966 impugns the order dated 10th February, 2023 passed in Interlocutory Application (IA) bearing no. 9927/2021 in CS (OS) No. 172/2021 ('Impugned Order'), filed by the Appellant under Order XII Rule 6 of Code of Civil Procedure, 1908 ('CPC'), whereby the learned Single Judge of this Court dismissed the said application.
2. The Appellant is the original plaintiff and Respondent is the original defendant before the learned Single Judge.
3. The civil suit has been filed by the Appellant for declaration, permanent and mandatory injunction seeking directions *qua* eviction of the Respondent and for recovery of *mesne* profits, damages on account of



unauthorized occupation.

4. The Appellant is the brother of the Respondent. The Appellant has filed the suit in its capacity as the lawful owner of the property bearing no. B-43 and B-44, double storey, Ramesh Nagar, New Delhi (suit property).

5. Learned counsel for the Appellant states that the operative portion of the judgment is at paragraphs 20 and 21. He states that however, the reasons recorded in paragraph 21 are alien to the entire pleadings. He states that paragraph 21 refers to an alleged agreement to sell and a purported fabrication of the said agreement. He states that in the facts of this case, there is no averment of any agreement to sell and consequently, no allegation of fabrication. He states that in the facts of this case, the Respondent has executed a registered relinquishment deed dated 2nd July, 2010 in favour of the Appellant, execution whereof is admitted and the effect of the said relinquishment deed has not been considered by the Court. He states that the existence of relationship of licensor and licensee between the parties has been admitted by the Respondent in her written statement filed in Civil Suit No. 8830/2015; however, the said admission has not been deliberated upon in the operative portion of the judgment. He states that the judgment relied upon in the impugned order pertains to relationship of landlord-tenant and was not attracted to the facts of this case i.e., licensor-licensee. He states that, therefore, the matter be remanded back to the learned Single Judge for consideration.

6. In reply, learned counsel for the Respondent fairly states that the reasons recorded in paragraph 21 of the Impugned Order are out of context and have no concern with the facts in the present proceedings. He, however, states that nonetheless the effect of the relinquishment deed has been



considered by the Court at paragraph 20.

7. We have considered the submissions of the learned counsel for the parties and perused the record.

8. There is an error apparent on the face of record in the facts noted and findings returned by the learned Single Judge at paragraph 21 of the impugned order. The facts noted in paragraph 21 are alien to the controversy and outside the pleadings. We also find that the pleas of the Appellant in his application filed under Order XII Rule 6 CPC and his submissions noted in the impugned order at paragraph 3 to 10 have not been deliberated upon by the learned Single Judge while disposing of the said application.

9. We accordingly set aside the impugned order and restore IA No. 9927/2021 to its original number, for a decision afresh by the learned Single Judge, as per roster bench. It is made clear that the rights and contentions of the parties are left open and the application will be decided uninfluenced by any observations made in this order.

10. With the aforesaid directions, the present appeal is allowed and the pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 21, 2024/hp/ms

Click here to check corrigendum, if any