

Sushil Kumar Sahni vs.umesh Kumar Sahni

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SooperKanoon Citation : sooperkanoon.com/1216611

Court : Delhi

Decided On : Jul-31-2018

Appellant : Sushil Kumar Sahni

Respondent : Umesh Kumar Sahni

Advocate for Def. : Mr. Jain

Judgement :

\$~7 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Order: July 31, 2018 + FAO(OS) 206/2017, C.M. Appl. No.24796/2017 SUSHIL KUMAR SAHNI Through: Mr. D.S. Chauhan, Advocate Appellant versus UMESH KUMAR SAHNI Through: Mr. Ankit Jain, Mr. Siddharth Nath, Advocates Respondent CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE A. K. CHAWLA %

ORDER

S. RAVINDRA BHAT, J.

(ORAL) The appellants grievance is that by the impugned order, the learned Single Judge in a pending suit granted the plaintiffs/applicants request for proportionate monthly mesne profits determining at ` 10,000/- per month. The learned single Judge also stated that such amount would be deducted from the value of the defendants/appellants share in the property. The parties in these proceedings are contesting two proceedings - C.S. (OS) No.1269/2008, in which

the respondent is the plaintiff and C.S. (OS) No.1467/2010, which was filed by one Vinay Kumar Sahni, the brother of these parties. These two suits were directed to be FAO (OS) No.206/2017 Page 1 of 3 consolidated. By an order passed on 08.07.2013, the court had directed consolidation of the proceedings and at the same time set out the issues for consideration. Learned counsel for the appellant urged that the nature of the issues framed in C.S. (OS) No.1269/2008 as well as some of the issues in the other suit [C.S. (OS) No.1467/2010]. clearly amount to be of contumacious nature vis-a-vis the plaintiffs/respondents entitlement. It is stated that the direction on the issue of mesne profit, in the impugned order, ought not to have been made. Mr. Jain, learned counsel for the respondent/plaintiff urged that the order of the learned Single Judge is merely indicative and does not lead to any adverse consequence. It is submitted that in the event of the plaintiff not succeeding in the suit he would still be entitled to one-third share in the property, whereas such reasoning of the learned single judge is also not correct. It was further submitted that other issues framed in the suit are of formal nature. This court has considered the submission as well as the material on record. At least three of the issues framed in the same suit (C.S. (OS) No.1269/2008) creates serious disputes and would be determined on rival evidence lead by the parties. In the same manner, the court has erred in holding the claim of the plaintiff that he is the owner of the property. That apart, the learned Single Judge recognised while framing the issues that mesne profit was also a matter to be contested. In these circumstances, even an adhoc determination, declaring that one party or the other would be entitled to a specific FAO (OS) No.206/2017 Page 2 of 3 amount that would be eventually deducted from his/her share in the court was not warranted. Accordingly, this court modifies the order of the learned Single Judge; the amount of ` 10,000/-, shall no way be conclusive or binding upon the parties - especially the appellant, who is at liberty to lead such evidence on the issue of mesne profit, in the event of the plaintiff succeeding in the proceedings. The appeal is party allowed in the above terms. S. RAVINDRA BHAT, J A. K. CHAWLA, J JULY31 2018 pkb FAO (OS) No.206/2017 Page 3 of 3