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

+ RFA 361/2007

SHRI SUNIL KANWAR(SINCE DECEASED THROUGH LRS)

..... Appellants

Through: Mr. Sunil Tiwari, Advocate.

versus

MR. ARUN KUMAR

..... Respondent

Through: Mr. Lalit Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **22.02.2019**

1. By the impugned judgment and decree, the original respondent no.1/plaintiff succeeded and he was held entitled to 1/8th share in the suit property. Seven other persons were the six children of late Kanwar Hira Singh and the seventh person was the mother of the parties.

2. Proceedings in this appeal show that an application under Order 22 Rule 10 of Code of Civil Procedure, 1908 (CPC) was filed being C.M. No.8581/2016, and as per this application all the rights, tile and interests of defendant nos.2 to 7 and plaintiff were purchased by Mr. Arun Kumar Jain and who was substituted by an order of the learned Single Judge of this

RFA No.361/2007

page 1 of 3



Court dated 23.1.2017 for all the respondents in this appeal.

3. In my opinion, in terms of the stand of Mr. Arun Kumar Jain that he has become 7/8th undivided owner in the suit property, fresh preliminary decree has to be passed in view of the judgment of the Supreme Court in the case of ***Phoolchand and Ors. Vs. Gopal Lal AIR 1967 SC 1470***. A preliminary decree however cannot be passed without notices first being given to the respondent no.1/plaintiff and defendant nos.2 to 7 in the suit and who were also the original respondents in this appeal. Disposal of C.M. No.8581/2016 does not show that the respondent no.1/plaintiff and defendant nos.2 to 7 in the suit and who were the appropriate respondents in this appeal were served of this C.M. No.8581/2016.

4. Counsel appearing for Mr. Arun Kumar Jain states that he will endeavour to get the vakalatnama on behalf of all the original respondents in this appeal so that an Advocate can appear for these respondents and can confirm the requirement of passing of a fresh preliminary decree giving 7/8th share to Mr. Arun Kumar Jain. It is also clarified that the Advocate who will file vakalatnama will also ensure the necessary requirements of identification and other aspects for appearing on behalf of all the original

RFA No.361/2007

page 2 of 3



respondents in this appeal are complied with.

5. At request, re-notify on 1st April, 2019.

FEBRUARY 22, 2019
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VALMIKI J. MEHTA, J

RFA No.361/2007

page 3 of 3