

26.04.2024

Present : Plaintiffs no. 2 and 3 in person.
Ms. Manju Mehta, Ld counsel for defendant no. 1
through VC.
Mr. Jasman Singh Sethi, Ld counsel for defendant
no. 2.

Plaintiffs request that the matter be passed over.

Ld. Counsel for defendant no. 2 submits that the matter is listed today for filing of affidavit by the plaintiffs for admission and denial of additional documents and for framing of issues. He submits that he is unable to wait and appear again since he has to attend to his other cases.

He submits that the matter may be passed over and issues may be framed, even though he will not be able to appear before the Court again today.

Matter is passed over.

(Shirish Aggarwal)
Additional District Judge-03
Patiala House Courts, New Delhi

At 11:45 PM

Matter is again called out

Present : Mr. Vivek Srivastava, Ld. Counsel for the plaintiffs
alongwith plaintiffs no. 2 and 3 in person.
Ms. Manju Mehta, Ld. Counsel for defendant no. 1
through VC.
None for defendant no. 2.

Additional affidavit of admission and denial of documents
of plaintiff no. 3 is filed.

Pleadings are stated to be complete and Ld. Counsels for the parties submit that the issues may be framed.

From the pleadings, following issues are hereby framed:-

ISSUES:-

1. Whether the plaintiff is entitled to a decree of declaration that the partnership deed dated 03.09.2011, dissolution deed dated 23.11.2022, affidavit dated 25.11.2011, document of no objection and confirmation are null and void in respect of shop no. 280, First Floor, Palika Bazar, New Delhi? **OPP.**
2. Whether the plaintiff is entitled to a decree for recovery of possession of shop no. 280, First Floor, Palika Bazar, New Delhi? **OPP.**
3. Whether the plaintiff is entitled to a decree for recovery of Rs.2 lakh alongwith interest at the rate of 18% per annum, besides pendent lite and future mesne profits at the rate of Rs.20,000/- per month against the defendant no. 1? **OPP.**
4. Whether the plaintiff is entitled to a decree against defendant no. 1 for rendition of accounts in respect of business of M/s The Target w.e.f 19.09.2017 and money decree for the amount found due payable by defendant no. 1 upon rendition of accounts? **OPP.**
5. Whether the plaintiff is entitled to a decree of mandatory injunction directing the defendant no. 2 to carryout necessary mutation in its records by recording the name of plaintiff no. 1 in place of Sh. Tej Swarup Sachdeva in respect of shop no. 280, First Floor, Palika Bazar, New Delhi? **OPP.**
6. Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendant no. 2 from transferring license of shop no. 280, First Floor, Palika Bazar, New Delhi

from the name of Sh. Tej Swarup Sachdeva to defendant no. 1 without following due process of law? **OPP**.

7. Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendant no. 1 from misusing the documents which have been allegedly executed in his favour by Late Sh. Tej Swarup Sachdeva in respect of shop no. 280, First Floor, Palika Bazar, New Delhi, without due process of law? **OPP**.

8. Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendant no. 1 from creating a third party interest in respect of shop no. 280, First Floor, Palika Bazar, New Delhi, without due process of law? **OPP**.

9. Whether the suit is barred by Law of Limitation? **OPD1**.

10. Relief.

No other issue arises or is pressed for.

Ld. Counsels submit that the issue no. 8 is also an issue involving mixed questions of facts, and as such, cannot be decided as a preliminary issue.

Ld. Counsel for the plaintiffs submits that the issue involves mixed questions of facts since the date of knowledge of the documents is in dispute.

List of witnesses be filed by both the parties with copies exchanged to each other within 15 days from today.

Matter is at the stage of recording of plaintiff's evidence.

Present case has been pending since around 6 years. So that the case can be decided expeditiously, Local Commissioner should be appointed for recording of evidence. Chapter X-A of

Delhi High Court Rules (Practice & Procedure) provides that the Court may, at its discretion direct evidence to be recorded on Commission.

Ld. counsels for the parties have not objected to the same.

So that evidence can be recorded expeditiously and present case can be disposed off at the earliest, this Court is of the view that a Local Commissioner can be appointed for recording of evidence of both the parties.

In view of the same, **Ms. Shweta Mazumdar, Advocate, having mobile no. 9810949199 and office at 10, First Floor, Navjeevan Vihar, New Delhi-110017** is appointed as the Local Commissioner for recording of evidence.

The terms of the assignment of the case are as under:-

- 1. Chronology of Recording-** The Local Commissioner shall first record testimony of the ligating party and thereafter, of its witnesses. Oath shall be given to the witnesses under examination as per Oaths Act by the Local Commissioner.
- 2. Exhibition of Documents-** The Local Commissioner shall exhibit all the documents on record sought to be proved by a party. In case of any objection to the documents being exhibited, the objection shall be recorded and left open with an assurance that mere marking of such exhibits will not be treated as the document having been proved. The objection and admissibility of such document shall be decided by this Court.
- 3. Original Documents to be retained by parties-** The Local Commissioner will make an observation in the record of the original documents produced. She shall sign the exhibits with an

endorsement 'OSR' wherever necessary and the party which produced the document may be required to show the same to the court at a later stage, if required.

4. English Language- The evidence/proceeding sheets shall be recorded by the Court Commissioner in English language. Once started, the cross-examination shall preferably continue on day-to-day basis.

5. Question & Answers- On the request of either or both the parties, the Local Commissioner may record testimony in question & answer form so that there is clarity about the deposition.

6. No Third Person Intervention- The Local Commissioner will ensure that the witness is not assisted/prompted by his Counsel or any other third party while under cross-examination.

7. Recording of Demeanour of Witness- The Local Commissioner will record the demeanor of the witness wherever it is found pertinent and necessary for sharing with the Court.

8. Witnesses to sign all pages- The Local Commissioner will obtain signatures of both the parties and witness on every page of testimony, besides signing it himself. Uncertified copy of the evidence recorded will be provided by the Local Commissioner to the parties.

9. Safe keep of Original Deposition- The Local Commissioner will keep the original depositions in her safe custody till such time they are filed in the Court in original.

10. Miscellaneous Proceedings- The Local Commissioner will maintain a miscellaneous proceeding sheet for each day of work and will submit it in the Court with his report.

Summoning of Official Witnesses-

1. Summons from Court- In case a litigating party is desirous of summoning an official witnesses, it shall obtain summons from the Court.

2. Diet Money- Diet money shall be paid to such witness by summoning party as per rules.

Advisory to Local Commissioner-

i. The Local Commissioner is expected to conduct herself in an impartial and polite manner. She is expected to maintain confidentiality and shall not solicit professional work from the parties. She shall not accept remuneration or any favour in cash or kind from the parties over and above the amount fixed by the Court. She shall be non-judgmental, shall not criticize the professional conduct of litigating parties, lawyers on their understanding of law or ridicule them in any manner. She shall be punctual. In case of any foreseen circumstances warranting change of dates of recording of evidence, she shall apprise the parties in advance via phone call, email, sms etc.

ii. No Third Party Sharing- She shall not allow the deposition to be inspected by any third party and shall not share a copy thereof with any stranger without permission of the Court.

iii. Inspection- She shall not allow any party to inspect the recorded proceedings in her absence.

Remuneration of the Local Commissioner-

Fee to be paid- Remuneration for recording of evidence is fixed at Rs. 6,000/- per sitting of two hours. For work done beyond two hours, Rs. 3,000/- for each additional hour will be paid. The Stenographer will be arranged by the party whose evidence is being recorded at its own cost and in case Stenographer is arranged by Local Commissioner, then the actual cost of typing/printing shall be reimbursed by the party to the Local Commissioner. In case the evidence is recorded in the Court Complex, the Ahlmad of the Court shall provide the Court record to enable the examination of the witnesses and cost of Rs.500/- per sitting shall be paid to the Ahlmad. Ahlmad shall ensure the safe custody of the Court record during the proceedings. In case the Local Commissioner records the evidence in his office/out of Court, parties may get the certified copy of the documents, if required, for the purposes of using the same during evidence. Remuneration to the Local Commissioner and other costs shall be incurred by the party whose evidence is being led.

To be added as Litigation Cost- All payments shall be redeemable as cost of litigation at the end of the suit.

The Local Commissioner shall provide copy of evidence and proceedings of each date to both the parties through email/soft copy and shall endeavour to complete plaintiff's evidence by the next date of hearing.

Advance copy of the affidavit of evidence be filed by Ld. counsel for plaintiff after supplying advance copy to the Ld. Counsel for the defendant.

Both the parties are directed to appear before the Local Commissioner on 09.05.2024 at 3:00 PM, on which date, the Local Commissioner will make a schedule for recording of evidence as per the mutual convenience of the Ld. Counsels and the Local Commissioner.

To come up before this Court for final arguments on 12.12.2024.

Copy of this order be given dasti to Ld. Counsels for the parties and be also sent to the Local Commissioner immediately.

(Shirish Aggarwal)
Additional District Judge-03
Patiala House Courts, New Delhi
26.04.2024