

14.07.2026

Present : Sh. Daniyal Abbas, Ld. counsel for the plaintiff.
Ms. Minakshi Sharma, Ld. proxy counsel for the
defendant.

**Order on application under order 26 Rule 13 r/w
section 151 of CPC for appointment of Local Commissioner:**

1. It is mentioned in the application that the present suit was instituted by the plaintiff seeking partition, permanent injunction and mesne profits in respect of the built-up property bearing No. 21/235, Trilok Puri, New Delhi-110095. Vide judgment and preliminary decree dated 17.05.2025, this Court was pleased to pass a preliminary decree of partition in respect of the suit property and declared the respective shares of the parties as follows: (i) Sh. Ramsewak and Smt. Rajkali (Legal Representatives of the plaintiff) – 1/3rd share; (ii) Smt. Shivkali (Defendant No. 1), Sh. Ram Sanjeevan (Defendant No. 2) and Mrs. Renu (Defendant No. 3) – jointly 1/3rd share; and (iii) Smt. Jagpati (Defendant No. 4) – 1/3rd share. Since the preliminary decree has already been passed and the final decree is yet to be drawn after effecting partition of the suit property, it has become necessary to appoint a Local Commissioner to partition the suit property by metes and bounds and work out the respective shares of the parties in terms of the preliminary decree. It is, therefore, most respectfully prayed that the Court may be pleased

to appoint a Local Commissioner to carry out the partition of the suit property bearing No. 21/235, Trilok Puri, New Delhi-110095, by metes and bounds.

2. The defendant has opposed the application, contending that the same is not maintainable in its present form and is liable to be dismissed. It is submitted that the suit property cannot be partitioned by metes and bounds and reliance has been placed upon the judgment in *Trinity Infraventures*, wherein it was held that a suit for partition cannot be employed to adjudicate questions of title against third parties such as DUSIB, though the built-up superstructure may be partitioned amongst the parties without affecting the rights of DUSIB. It is further contended that the suit property is a Government property and that Late Sh. Ram Yadav, the father of the plaintiff, was merely a licensee in respect thereof. Consequently, upon his demise, no inheritable estate remained in the suit property. It is also submitted that the proposed Local Commissioner has no authority or capacity to partition or effect division of the suit property by metes and bounds and, therefore, no useful purpose would be served by his appointment. The defendant has further averred that the present application is a gross abuse and misuse of the process of law. While the contents of paragraphs 1 and 2 of the application have been stated to be matters of record, the prayer clause has been specifically denied as being false and incorrect. Accordingly, it has been prayed that the present application be dismissed in the interest of justice.

3. Learned counsel for the plaintiff addressed arguments in support of the application and reiterated the averments contained therein.

4. Learned counsel for defendant no. 1 opposed the application, advanced arguments on the lines of the reply filed on behalf of defendant no. 1, and reiterated the averments made therein.

5. I have heard the learned counsel for the parties, carefully perused the record, and duly considered the submissions advanced as well as the relevant provisions and judicial precedents applicable to the facts and circumstances of the present case.

6. The objections raised in the reply are beyond the scope of adjudication of the present application. This Court has already passed a preliminary decree, wherein the issues sought to be reagitated by way of the present objections were duly considered and decided. The said preliminary decree has attained finality. Consequently, any objection which, directly or indirectly, seeks to challenge or reopen the findings recorded therein cannot be entertained at this stage. The present proceedings are confined to the stage of passing the final decree. The only question that now remains for consideration is the mode in which the suit property can be partitioned by metes and bounds. For this purpose, the appointment of a Local Commissioner is necessary to inspect the

property and submit an appropriate report regarding the feasibility and mode of partition.

In view of the same and in the interest of justice, the present application is allowed.

Accordingly, **Ms. Meenakshi Sharma, Advocate, Enrollment No. D/2887/11, Mobile Nos. 9891878260 and 8076652141**, is hereby appointed as the Local Commissioner in the present matter. The Local Commissioner is directed to issue prior notice to all the concerned parties regarding the visit to the suit property for execution of the commission. The Local Commissioner shall visit the suit property on the date so fixed and assess the feasibility of partition of the suit property by metes and bounds.

While assessing the feasibility of partition, the Local Commissioner shall take into consideration the common convenience of the parties, including staircase, common parking, and other common areas/facilities, if any. The Local Commissioner shall also be at liberty to take assistance of a draughtsman for preparation of a site plan clearly indicating the manner in which the suit property may be partitioned amongst the parties in accordance with the rights ascertained by the preliminary decree.

The fee of the Local Commissioner is fixed at Rs. 10,000/- upon successful execution of the commission. In case the commission could not be executed for any reason, including obstruction, the Local Commissioner and/or the parties shall be at liberty to approach this Court, and in such an eventuality, the fee of the Local Commissioner shall be Rs. 2,000/-. The said fee shall be

borne by the plaintiff. Any additional expenses incurred towards photography, engagement of draughtsman, or any other incidental expenses shall also be borne by the plaintiff. However, the total costs of the commission shall form part of the costs in the suit.

The report of the Local Commissioner be filed on or before the next date of hearing, i.e., **14.09.2026**.

Accordingly, the application stands disposed of.

Copy of this order be given dasti to the Local Commissioner as well as to the parties.

(Vikas Garg)
DJ-05/East/KKD
Delhi/14.07.2026