

**IN THE COURT OF SH. SURINDER S. RATHI: LD. ADDITIONAL DISTRICT
JUDGE-03:PATIALA HOUSE COURT:NEW DELHI DISTRICT**

CS No.58565/16

Meenakshi Dubey Vs. Pankaj Aggarwal

31.08.2016

Present: Shri Pushkar Sood, Ld. Counsel for the plaintiff.
Shri Mayank Goel and Shri Lalruatpuia Sailo, Ld. counsel for the
defendants.

Admission/denial conducted.

Pleadings are complete. Out of the same, following issues are
identified-

ISSUES-

- 1. Whether suit of the plaintiff is not maintainable in the form presented? OPD2.**
- 2. Whether suit has not been valued properly for the purpose of pecuniary jurisdiction and Court fees? OPD1 & 2.**
- 3. Whether plaintiff is entitled to decree of permanent injunction restraining the defendants or any person acting through them or creating any third party rights or from carrying out construction in roof of second floor in suit property no.A-11/25, Vasant Vihar, New Delhi and interfering in the plaintiff's common use of roof of second Floor? OPP.**

4. **Whether plaintiff is entitled to decree of declaration of the Gift Deed dated 02.04.2012 executed by defendant no.2, mother in favour of defendant no.1 brother qua half undivided share in the built up first floor, second floor roof and servant quarter on second floor garage with its roof in the suit property as null and void? OPP.**

5. **Relief.**

No other issue arises or pressed.

Parties to file list of witnesses within ten days. Parties to file evidence by way of affidavit.

In terms of suggestion made by this Court, both the parties have agreed to record evidence by Local Commissioner. The parties agree to the name of **Shri P K Saxena, Retired Additional District & Sessions Judge, Chamber No.347, PHC, New Delhi, & Chamber No.262, High Court of Delhi, Mobile No.9910384668.** As such as prayed as per the Protocol prepared by this Court for recording of evidence by way of LC under Order 18 Rule 4 CPC, **Shri P K Saxena, Retired Additional District & Sessions Judge** is appointed as LC in this case for recording of evidence. From the side of the plaintiff, process should be coordinated by **Shri Pushkar Sood, (Mobile No. 98110010790), Ld. Counsel on behalf of plaintiff** and **Shri Mayank Goel, (Mobile No.9810329623), Ld. Counsel on behalf of defendant.**

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

A. Assignment of case by court for recording of evidence-

1. **Schedule of Evidence-** Evidence shall be recorded preferably on the

same day. If it is not possible on the same day, then on the next day. Evidence shall continue on day to day basis, till conclusion. Any alteration in schedule for recording of evidence if needed shall be decided by the Ld. Commissioner as per convenience of all concerned.

2. **Supply of Dasti Copy to Parties-** Copy of such referral order shall be given dasti to all the parties with one additional copy for placing before Ld. Commissioner for compliance.
3. **Judicial File not to be sent-** It is clarified that the judicial file shall not be sent or summoned for recording of evidence by the Ld. Commissioner.
4. **Affidavit in Chief-** The affidavit of evidence in chief of a witness shall be prepared within two weeks of framing of issues by the Court.
5. **Sharing Copy of Affidavit in Chief-** An advance copy of affidavit may be supplied to opposite party. Even if the same is not supplied, still the opposite side shall come prepared for cross-examination as per pleadings.
6. **Production of Documents for Cross-examination-** In case the opposite side is desirous of production of any document by the witness on any other entity for the purpose of cross-examination, an application requesting the same shall be moved within two weeks of framing of issues.

B. Recording of evidence by the Commissioner-

1. **Place and Time-** Ld. Commissioner shall record evidence only in the Court Complex at his given address or not elsewhere. Evidence shall be recorded between 10.00 AM to 5.00 PM. It can carry on beyond 5.00 PM as well in case both parties agree. It can even be recorded on a holiday if

all the stake holder are comfortable and agreeable.

2. **Chronology of Recording-** Ld. Commissioner shall proceed to record the examination by first recording the deposition of litigating party before examining additional summoned witnesses.
3. **Oath to Witnesses-** Ld. Commissioner shall give oath to the witnesses under examination as a delegate of the Court as per Oaths Act.
4. **Recording of Evidence-** The evidence shall be preferably typed on a computer or in case of non- availability shall be neatly hand written.
5. **Time Frame-** Ld. Commissioner shall conclude the recording of evidence preferably on the same day or within shortest time possible but not later than within 30 days of assignment of a case, which is extendable by another 30 days in case the evidence is not concluded despite best efforts as per Order 18 Rule 4 CPC.

Both PE and DE shall be concluded within 15 days each of initiation. In case there are more than two witnesses for each side, one week per witness may be added to the 15 day period.

6. **Comfortable Sitting Space-** All the witnesses and their Ld. Counsel shall be provided comfortable sitting space.
7. **Exhibition of Documents-** Ld. Commissioner shall exhibit all the documents sought to be proved by a party on record. In case of any objection to exhibition of the documents by the either side, the objection shall be recorded in some detail and left open with an assurance that mere marking of such exhibits will not be treated as conclusive proof

thereof and that admissibility of such document shall be decided by the referral Court at final stage.

8. **Original Documents to be Retained by Parties-** Ld. Commissioner shall make an observation in the record of evidence of all original documents produced and he shall sign the exhibits with an endorsement OSR wherever necessary.
9. **English Language-** On the first date, when all the concerned parties appear before the Commissioner, he shall proceed to record the cross-examination and re-examination, if any, of a witness in English language.
10. **Adjournments-** Once started the cross-examination shall be continued on day to day basis. In case of any hardship viz. ill health etc. the case can be deferred for a day or two not later than three days.
11. **Question-Answers-** On the request of Id. Counsel cross-examining the witness, portions of deposition may be recorded in question-answer form.
12. **Recording of Objections-** All the objections raised during cross-examination/re-examination shall be recorded in the deposition under titled objections and shall be left open for the decision of the Court at the stage of final arguments. Witness shall not refuse to the answer the question raised.
13. **Questions to be allowed-** In case Ld. Commissioner finds any question not related to the fact and issue, he shall record his objection but shall allow the question to be put and witness must answer.
14. **Assisting the Witness-** In case witness is unable to understand the

question put to him, Ld. Commissioner shall elaborate the same in an easy to understand manner in an impartial way.

15. **No Third Person Intervention-** Ld. Commissioner shall ensure that the witness is not assisted by his Ld. Counsel or any other third party while under cross-examination.
16. **Recording of Demeanor of Witness-** Ld. Commissioner shall record the demeanor of the witness where ever it is found pertinent and necessary for sharing with the Court.
17. **Witness to sign all pages-** Ld. Commissioner shall obtain signatures of both the sides on each and every page of recording of evidence apart from signing them himself.
18. **Copy of Evidence-** All interested parties shall be provided uncertified copy of the evidence recorded, free of cost.
19. **Safe keep of Original Deposition-** Ld. Commissioner shall keep the original depositions in his safe custody till such time they are filed in the Court in original upon completion of each witness individually.
20. **Miscellaneous Proceedings-** Ld. Commissioner shall maintain a miscellaneous proceeding sheet for each day of work and shall submit it in the Court with the report.
21. **Hostile Witness-** In case a witness is sought to be declared hostile, than Ld. LC shall refer both the parties to Court within three days for exercising powers U/s. 154 Evidence Act.

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 with an endorsement that witness shall appear before the address of Ld. Commissioner for recording of evidence on scheduled date, time and place.
2. **Diet Money-** Diet money shall be paid to such witness by summoning party as per rules.

D. Advisory to Ld. Commissioner-

1. **Impartial-** Ld. Commissioner shall conduct himself in an impartial way and behave in an indiscriminate manner while recording of evidence.
2. **Polite-** Ld. Commissioner shall be polite with the witness and other stake holder while recording of evidence.
3. **Confidentiality-** Ld. Commissioner shall maintain confidentiality during the whole process.
4. **Keeping distance-** Ld. Commissioner shall not solicit professional work from the parties.
5. **Integrity-** Ld. Commissioner shall not except remuneration or any favour in cash or kind from the parties over and above the amount fixed by the Court.
6. **Non-judgmental-** Ld. Commissioner shall not criticize the

professional conduct of litigating parties, lawyers on their understanding of law of either of the parties or ridicule them in any manner.

7. **Punctuality-** Ld. Commissioner shall adhere to punctuality and shall not make excuses like he is engaged in some personal Court work etc.

8. **Coordination-** In case of any foreseen circumstances warranting change of dates of hearing, for his own case or the request of other side, he shall apprise the other side in advance via phone call, email, sms etc.

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

10. **Inspection-** He shall not allow any party to inspect the recorded proceedings in his absence.

E. Remuneration of Ld. Commissioner-

1. **Quantum-** In terms of Order 18 Rule 4 CPC the remuneration for the purposes of Commissioner shall be fixed by the Court.

2. **Mode of Payment-** Such remuneration shall be paid by the party directly for each day's work either by way of cash, cheque or draft against due receipt.

3. **Cost to Parties-** Each party shall bear the cost of leading its evidence, separately.

4. **Fee to be paid-** Remuneration fee for recording of evidence is fixed at Rs.2,000/- per hour or Rs.5,000/- for a three hours session whichever

is less, which shall include the cost of typing, hiring of a stenographer and supply of copy of deposition. The Stenographer can either be arranged by a litigating party on its own cost or in case the same is arranged by Ld. LC, then the actual cost of typing shall be reimbursed by the party to Ld. LC.

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

6. **Legal Service Authority to bear Cost for Eligible Persons-** Parties who are found to be financially not sound by the Court or are eligible to free legal service under Legal Services Authority Act, 1987, may not be asked to pay this fee and under a separate order of the Court the same shall be borne by DSLSA/DLSA.

F. Judicial Intervention during recording of evidence-

1. **Parties to Cooperate-** It is expected that both the sides will cooperate with Ld. Commissioner as well as each other and record evidence in a peaceful manner.

2. **Dissolution of stalemate-** In case of any conflicting circumstances they shall resolve issues at their own level with the active help of Ld. Commissioner.

3. **Court Intervention-** However, in case of any unforeseen situation requiring judicial intervention, Ld. Commissioner shall fix date and time for joint appearance of both sides before the Court for removal of any such impediment.

G. Miscellaneous Applications-

1. **Moving the Application-** In case either of the party is desirous of moving any miscellaneous application viz. amending of pleadings, interim injunction etc. they shall share an advance copy with the opposite side and reply thereof, if any, shall be prepared within seven days.

2. **Date of Hearing-** Upon receipt of reply, both the sides shall get the application fixed for disposal in the Court in with the help of Reader of the Court and shall not wait till next date fixed for hearing.

All such miscellaneous applications shall be separately registered, numbered and indexed as an extension of main suit number.

3. **Evidence not to be stalled-** It is clarified that, unless Ld. Counsel is of the view that the application is such that evidence cannot be recorded before its disposal, the recording of PE/DE shall continue unabatedly.

At the request of parties, let the copy of this order be also sent to plaintiff as well as Id. Counsel for plaintiff and apart from defendants at their following email IDs:

Plaintiff's counsel email ID:	pushkarsood03@gmail.com
Defendant's counsel email ID:	mayankgoel@yahoo.com
LC's email ID:	padamksaxena@gmail.com

Parties are directed to appear before Ld. LC on **21.09.2016 at 2.00 PM.**

To come up for final arguments on **16.12.2016.**

(Surinder S. Rathi)
ADJ-03/PHC/NEW DELHI
31.08.2016