

18.12.2023

Present: Sh. Mahmooel Hasan, Id. Counsel for the plaintiff.
Ms. Meenakshi, Ld. Counsel for the defendant.

Ld. Counsel for the plaintiff undertakes to file an affidavit in support the replication positively on the NDOH.

Pleadings are complete.

Ld. Cousnel for plaintiff presses for his application under Order 39 rule 1 and 2 CPC seeking restraint against the defendant for not creating any third party interest in the suit property i.e. plot measuring 70 Sq. yards falling in Khasra no. 19, in Abadi of Pratap Nagar, Village Saboli, Delhi.

Ld. proxy. Counsel for the defendant submits that he has no instructions on behalf of the defendant in this regard.

Pass over was also given to proxy counsle for the defendant to take instructions from the main counsel of the defendant, but che was unable to take the same even after taking the pass over.

In view of the above, let their be status quo with respect to possession and title of the suit property till the pendency of the present suit.

Accordingly, the application under **Order 39 Rule 1 and 2 CPC is disposed of as allowed.**

Pleadings are complete. Out of the pleadings, following issues arise:-

1. Whether the plaintiff is entitled to decree of possession?

OPP.

2. Relief ?OPP

No other issue has been pressed for.

Counsel for parties jointly request for appointment of Local Commissioner appointed by this Court. I have considered submissions of parties and the backlog of pendency which is around 1300 in my court. It would be appropriate if local Commissioner be appointed in present suit

for recording of such evidence. In view thereof, Advocate Sh. Bijendra Kumar Gautam, Enrollment no. D-3804/09, O/o Chamber no. 9, Civil Supply building, Tis Hazari Courts, Delhi - 110054, Mobile no. 9899205088 is hereby appointed as local commissioner in this case for recording of evidence with conditions as follows:-

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

Evidence- Evidence shall be recorded preferably on the same day fixed by Local Commissioner. 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.

B. Recording of evidence by the Commissioner-

1.Place and Time- Ld. Commissioner shall record evidence only at the place convenient to both sides and in case of no consensus, at the Karkardooma Court Complex. 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.

2.Oath to Witnesses- Ld. Commissioner shall give oath to the witnesses under examination as a delegate of the Court as per Oaths Act.

3.Chronology of Recording- Ld. Commissioner shall proceed to record evidence of litigating party first before examining any other witnesses.

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 4CPC. Both parties' i.e of plaintiff and

defendant evidence shall be concluded within 30 days of its initiation. In case there are more than two witnesses for each side, one week per witness may be added to the 30 days period.

2.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.

3.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.

4.English Language- Ld. Local Commissioner, shall proceed to record evidence in English language only.

5.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. **If witness of a party is present and is available for examination in chief and cross-examination but opposite party or their Counsel is not available for evidence, only one adjournment for a witness may be granted by LC. If LC is satisfied that there are reasonable grounds for seeking adjournment for evidence that particular day. No second adjournment for cross-examining of the same witness shall be granted by LC in any circumstances. If no adjournment is sought and opposite party is absent, the LC shall close the right of cross-examination of that particular witness and proceed further with evidence as per law.**

6.Question-Answers- On the request of Id. Counsel cross-examining the witness, portions of deposition may be recorded in question-answer form and questions shall be numbered for each witness.

7.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.

8.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.

9.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.

10.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.

11.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.

12.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.

13.Copy of Evidence- All interested parties shall be provided uncertified copy of the evidence recorded, free of cost.

14.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.

15. 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.

16. 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 the 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 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. 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 either by way of cash, cheque or draft against due receipt.

3. Cost to Parties- The parties shall bear the cost of recording of their respective evidences.

4. Fee to be paid- Remuneration fee for recording of respective evidences by Local Commissioners is fixed at Rs.15,000/- (plus Rs. 1000/- per additional witness, if witnesses are more than 6 with a maximum cap of Rs. 20,000/-). 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.

It is further clarified that if any party wishes to cancel the date, they will inform the LC three clear days in advance regarding the same date in writing through email and by way of telephonic message also.

E. Judicial Intervention during recording of evidence-

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

2. 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.

F. Miscellaneous Applications-

1. Moving the Application- In case either of the parties 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.

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.

Parties are directed to appear before Ld. Local Commissioner for recording of evidence/pending cross examination of witness on **21.12.2023 at 02.00 pm.**

Ld. LC is directed to file report in the present matter on or before NDOH.

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Put up the matter after conclusion of evidence of parties on
21.03.2024.

Copy of this order be given dasti to counsels for both the
parties as well as sent to Ld. LC.

(Ankur Jain-II)
Additional District Judge-02, Shd District
Karkardooma Courts/Delhi 18.12.2023