

SURENDER KUMAR MALIK (SR. CITIZEN) Vs. RAVINDER KUMAR
MALIK

19.12.2024

Present: Sh. Rajeev Gurung, counsel for plaintiff **through VC**.
Sh. Anil Sharma, counsel for defendant no.1 & 2 alongwith
defendant no.1 & 2.
Counsel for defendant no.6.

Order on the application under Order XXXIX Rule 1 & 2 CPC has already been passed on 15.12.2023 when directions were issued to the defendant not to alienate or sell the suit property till disposal of the present suit and the same has not been challenged.

It is submitted by counsel for plaintiff that no other prayer has been sought by him in his application under Order XXXIX Rule 1 & 2 CPC, therefore, application under Order XXXIX Rule 1 & 2 CPC stands decided and disposed of accordingly.

Pleadings are complete. From the pleadings, following issues are being framed :-

- 1) **Whether the plaintiff is entitled to a decree of declaration for declaring gift deed dated 08.11.2017 executed by defendant no.5 in favour of defendant no.2 qua property no.222, comprised in Khasra No.162, Village Katwaria Sarai, New Delhi-16 as null and void ? OPP**
- 2) **Whether the plaintiff is entitled to a decree of declaration for declaring exchange deed dated 01.08.2022 qua the suit property and executed by defendant no.6 in favour of defendant no.2 as null and void ? OPP**
- 3) **Whether the plaintiff is entitled to a decree of declaration that he is a coparcener and hence the suit property is a coparcenary property and further that the plaintiff is entitled to the share as claimed by him being a coparcener or in alternate decree of declaration that plaintiff is entitled to his share by virtue of a will dated 31.07.2009 ? OPP**
- 4) **Whether the plaintiff is entitled to a decree of possession qua suit property?OPP**

5) Whether the plaintiff is entitled to a decree of mesne profit from July 2022 till the possession is handed over the plaintiff, if yes, at what interest rate ? OPP

6) Whether the plaintiff is entitled to a decree of permanent injunction qua suit property no.A restraining defendant no.6 from creating third party interest ? OPP

7) Whether the plaintiff is entitled to a decree of permanent injunction qua suit property no.B restraining defendant no.1 & 2 from creating third party interest? OPP

8) Relief.

No other issue arises or pressed upon

Counsel for both parties have prayed that evidence may be recorded before the Local Commissioner and both parties have agreed to pay the fee of the Local Commissioner.

Appointment of Local Commissioner.

In the present matter **Sh. Shyam Kumar Tandon, Additional District & Sessions Judge (Retd) Address :- 244, Bank Enclave. Near Laxmi Nagar, Delhi-110092, Mob. No.9811719888** is appointed as **Local Commissioner** for examination of plaintiffs' as well as defendants witnesses under Order 18 Rule 4 CPC at their respective expenses.

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

Recording of evidence by the Commissioner-

1. **Place and Time-** Ld. Commissioner shall record evidence in the Court room/ in the court commissioner's room as per availability. Evidence may also be recorded between 04.00 PM to 06.00 PM on each day in the court and can be carried on beyond this period, if agreed by both the parties.
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. Oath shall be given to the witnesses under examination as a delegate of the Court as per Oaths Act.

3. **Manner of Recording of Evidence-** The evidence shall be preferably typed on a computer or in case of non-availability thereof, it shall be neatly hand written and miscellaneous expenses in this regard shall be borne by the plaintiff. Once started, the evidence shall be concluded either on same day or within the shortest possible time.
4. **Production of Documents for Cross-examination-** In case the opposite side is desirous of production of any document for the purpose of cross-examination, steps be taken well in time.
5. **Exhibition of Documents-** Ld. Commissioner shall exhibit all the original documents sought to be proved by a party on record and photocopies of the documents shall be marked as a Mark unless admitted. In case of any objection to exhibition of the documents by the either side, the objection shall be recorded (if required, 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.
6. **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 and the parties producing a document may be required to show the same to the court at a later stage, if required.

7. **English Language-** The evidence/ proceeding sheets shall be recorded by the Court Commissioner in English language.
8. In case an evidence schedule is fixed and adjournment is sought by the opposite side without 24 hour advance notice, the cost of that day's proceedings shall be borne by the defaulting party.
9. **Question-Answers-** Generally, the evidence shall be recorded in a narrative. However, on the request of a Ld. Counsel, if required, only certain portions of deposition may be recorded in question-answer form, in order to elicit clarity and completeness of answer.
10. **Recording of Objections-** All the objections raised during cross-examination/re-examination shall be recorded in the deposition under title 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.
11. **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.
12. **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.
13. **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.
14. **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.

15. Witnesses to sign all pages- Ld. Commissioner shall obtain signatures of both the sides as well as witnesses on each and every page of recording of evidence apart from signing them himself. Uncertified copy of the evidence recorded on each day shall be provided by the Local Commissioner to the parties and be sent by e-mail as well as the aforementioned IDs.

16. 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.

17. 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.

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 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.

Advisory to Ld. Commissioner-

1. Ld. Commissioner is expected to conduct in an impartial manner, be polite, maintain confidentiality and shall not solicit professional work from the parties, and shall not accept remuneration or any favour in cash or kind from the parties over and above the amount fixed by the Court. He shall be non-judgmental, shall not criticize the professional conduct of

2. litigating parties, lawyers on their understanding of law of either of the parties or ridicule them in any manner. He shall be punctual. 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.
3. **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.
4. **Inspection-** He shall not allow any party to inspect the recorded proceedings in his absence
5. **Recusal-** In case either of the parties or Ld. Counsel for the parties are related or closely known to Ld.LC, he/she shall recuse self from the case and inform the Court.

Remuneration of Ld. Commissioner-

1. **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.
2. **Fee to be paid-** Remuneration for recording of evidence is fixed at Rs.5,000/-per sitting of two hours. 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/ printing shall be reimbursed by the party to Ld. LC. Ahlmad of the court shall provide the court record to enable the examination of the witnesses. 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 of absence of witness/parties on the date of recording the evidence, parties shall inform the Local Commissioner prior to the date fixed for evidence and in case Local Commissioner is not informed in advance, he/she shall be paid full payment by the parties.

3. **To be added as Litigation Cost-** All payments shall be redeemable as cost of litigation at the end of the suit. Both the parties shall exchange the cost budget as per Order XVA Rule 6(q) CPC as amended by the Commercial Courts Act and shall also file the same in the court within one month.

Judicial Intervention during recording of evidence-

1. **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.

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 shared 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.

Copy of the affidavit of the plaintiff witnesses be supplied to the opposing counsel within 10 days by email as well. Defendant to also give the advance copy of the affidavit of all the defendant witnesses before concluding the PE through email as well.

Local Commissioner is directed not to give date of more than 5 working days between two dates and is directed not to give any telephonic adjournments. Local Commissioner is also directed to provide soft copy of evidence recorded on each day to be sent to counsels of both the parties on their respective emails as given above.

Parties shall contact the Local Commissioner within a week from today and get the date fixed for recording of evidence.

Evidentiary affidavit/s of witness/es be filed in advance with copy to other side.

Be listed for report of Local Commissinoer as well as for final arguments on **01.03.2025**.

Interim order, if any, to continue till NDOH.

(Purva Sareen)
District Judge-01, South
Saket Court, New Delhi
19.12.2024