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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 101/2019**

SHRI MAHENDER SINGH Plaintiff

Through: Mr. Amit Sherawat, Advocate

versus

SMT. MAYA DEVI & ORS. Defendants

Through: Mr. Faisal Naseem, Advocate with
Mr. Gaurav Ambavta, Advocate
for D-1 to 4

Mr. Abhishek Kumar, Advocate
for D-5

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **07.02.2020**

I.A. 2394/2019 (Application under Order XXXIX Rule 10 of the CPC)

1. This application has been filed by the plaintiff under Order XXXIX Rule 10 of the Code of Civil Procedure, 1908. The plaintiff contends that several properties, of which he seeks partition in this suit, are in the possession of the defendants, from which they are earning rental income. According to the plaintiff, the rental income is in the range of ₹1,30,000/- per month.

2. By an order dated 15.02.2019, the defendants were directed to file a complete statement of accounts of all the rent receipts from various tenants in occupation of the suit properties. An affidavit dated 29.04.2019 has been filed by defendant Nos.1 to 4, from which it emerges that the said defendants are earning rent of approximately ₹49,100/- per month

from the portions of the suit properties which are in their possession. Defendant No.5 has not filed an affidavit, but is present in Court. Learned counsel for the defendant No.5 states, upon instructions, that he is receiving rent of approximately ₹35,000/- per month from the suit properties.

3. By an order dated 07.08.2019, a local commissioner was appointed to determine the extent of construction on the properties, identify the persons in occupation thereof, and the status of tenancy, including the amount of rent. The local commissioner has filed a detailed report. As far as the property which is in the possession of defendant No.5 is concerned [House No.606, Vasudev Bhawan, Chauhan Mohalla, Madanpur Khadar, New Delhi], the report of the local commissioner discloses that defendant No.5 himself furnished various rent agreements with respect to the suit property. There appear to be about 14 rooms and one shop, which have been let out, and from which defendant No.5 is receiving rent. From the report of the local commissioner, it *prima facie* appears that the rent being received by defendant No.5 is to the tune of approximately ₹50,000/- per month.

4. It is also undisputed that the plaintiff is in occupation of agricultural land measuring 1 Bigha, falling in Khasra No.920, Village Madanpur, Khadar, New Delhi, from which he is receiving annual rent of ₹11,000/-.

5. Having regard to the aforesaid facts and with the consent of learned counsel for the parties, the present application is disposed of in the following terms:-

- (a) During the pendency of the suit, the plaintiff will be paid a sum of ₹15,000/- per month towards his share of rent from the suit properties.
- (b) Of the aforesaid amount, ₹7,500/- per month will be paid by defendant Nos.1 to 4 collectively, and ₹7,500/- per month will be paid by defendant No.5.
- (c) Payments as aforesaid will be made through counsel for the respective defendants to learned counsel for the plaintiff.
- (d) The payments shall be made by the last day of each succeeding month, beginning 29.02.2020.
- (e) The aforesaid payments are by way of an interim arrangement, and without prejudice to the rights and contentions of the parties, as may finally be determined when accounts are rendered in the suit. Learned counsel for the plaintiff undertakes that in the event the plaintiff has received more than he is entitled to as a result of this order, the plaintiff will make appropriate restitutions at the stage of final adjudication.

6. The application stands disposed of in these terms.

I.A. 2395/2019 (Application under Order XXXIX Rule 1 and 2 of the CPC, 1908)

1. Learned counsel for the defendants state that the defendants have no objection to the *status quo* order dated 15.02.2019 being made absolute. Consequently, until the disposal of the suit, the parties are directed to maintain *status quo* with regard to the title and possession of the suit properties. However, this will not prevent collection/renewal of rent agreements with the tenants in occupation of the property.

2. Learned counsel for the defendants also undertake that the plaintiff will not be dispossessed from the part of the suit properties which are in his possession.

3. The application stands disposed of.

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List before the Joint Registrar on 24.03.2020, for completion of pleadings, admission/denial of documents and marking of exhibits.

List before the Court on 13.07.2020.

PRATEEK JALAN, J

FEBRUARY 07, 2020

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