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

+ **CS(OS) 169/2022**

PREETA SINGH

..... Plaintiff

Through: Mr. J.P. Sengh, Senior Advocate with
Mr. Preet Pal Singh, Mr. Saurabh
Kalia and Ms. Sonali Jain, Advocate.

versus

NEENA GULERIA

..... Defendant

Through: Ms. Angeli Dayal Koura, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **24.03.2022**

CS(OS) 169/2022

1. Let the plaint be registered as a suit.
2. Issue summons. Summons are accepted by Ms. Angeli Dayal Koura, counsel for the Defendant. The written statement shall be filed by the Defendant within 30 days from today. Along with the written statement, the Defendant shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.
3. Liberty is given to the Plaintiff to file replication within 15 days of the receipt of the written statement. Along with the replications, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, be filed by the Plaintiff, without which the replication shall not be taken on record. If any of the parties wish to seek inspection of any documents, the



same shall be sought and given within the timelines.

4. List before the Joint Registrar for marking of exhibits on 4th July, 2022. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.
5. List before Court for framing of issues thereafter on 19th April, 2022.

I.A. 4592/2022 (from filing the original/certified copies of the documents)

6. Exemption is granted, subject to all just exceptions.
7. The Plaintiff shall file clearer and legible copies of exempted documents along with originals, compliant with practice rules, before the next date of hearing.
8. Accordingly, the application stands disposed of.

I.A. 4591/2022 (under Order XXXIX Rule 1 and 2 read with Section 151 Code of Civil Procedure, 1908 for appropriate directions)

9. Briefly stated, Plaintiff and Defendant are sisters. The Plaintiff seeks partition of property bearing Mustatil No. 40 Killa No. 25 Min, situated in Village Mehrauli, Tehsil Mehrauli, New Delhi, property (also known as B-21, Block B, Avenue-9, Church Road, New Delhi-110070). It is alleged that the afore-noted property is jointly owned by the Plaintiff and the Defendant.
10. There are three separate Sale Deeds executed in respect of three distinct properties. Two of the sale deeds are in the name of Plaintiff and Defendant exclusively and the third one is in their joint names. A site plan is enclosed with the plaint – indicating the location of said three plots identified by as B-20, 21 & 22 and also by Khasra/ Killa numbers [*hereinafter*, “*suit*”



properties”]

11. Plaintiff contends that property bearing Mustatil No. 40 Killa No. 25 Min, situated in Village Mehrauli, Tehsil Mehrauli, New Delhi (also known as Farm No. B-20, Block B, Avenue-9, church Road, New Delhi-110070) [*hereinafter, referred as “B-20”*] is owned exclusively by her; the property bearing Mustatil No. 41, Killa No. 21/1, Min (0-8), Village Mehrauli, Tehsil Mehrauli and Mustatil No. 40 Killa No. 25 Min (1-3) (also known as Farm No. B-22, Block B, Avenue-9, Church Road, New Delhi-110070) [*hereinafter, referred as “B-22”*] is owned exclusively by the Defendant; and property bearing Mustatil No. 40 Killa No. 25 Min, situated in village Mehrauli, Tehsil Mehrauli, New Delhi (also known as Farm No. B-21, Block B, Avenue-9, Church Road, New Delhi-110070) [*hereinafter, referred as “B-21”*] is jointly owned by the parties.

12. Plaintiff contends that the joint property viz. B-21 is in exclusive occupation of the Defendant, however, the Plaintiff has access thereto. According to the Plaintiff, the Memorandum of Understanding (“MoU”) dated 27th February, 2021, suffered from certain factual inaccuracies *qua* the identification of the properties *vide* the revenue record numbers.

13. On the other hand, counsel for the Defendant, controverts the allegations and submits that B-21 exclusively belongs to the Defendant. She submits that the Defendant has made substantial investment in raising construction thereon. It is also contended that parties had agreed to consider and treat B-22 as the joint property and not B-21. There is construction on the



said plot. Plaintiff is occupying the rear portion and the Defendant is in the front portion of the said property. Plaintiff cannot now turn around and claim that B-21 is joint property.

14. During the course of the arguments, counsel for the Defendant has also stated that a portion of plot No. B-21 has been sold by the Defendant, however, she is unable to show any sale deed. The counsel is directed to produce the sale deed, if any, on the next date of hearing.

15. Further, since counsel for the Defendant has asserted that B-21 is exclusively owned by the Defendant, she is afforded an opportunity to produce the relevant document to support her contention, as the documents placed on record by the Plaintiff, do not *prima facie* confirm the above position.

16. Mr. J.P. Sengh, Senior Counsel for the Plaintiff, states that a Local commissioner may be appointed to verify the ground reality and whether the plot in question – which is claimed by the Defendant to be exclusively owned – is factually correct in terms of the revenue records.

17. Accordingly, Mr. Kritagya Kait [Contact No. +91-9968955368] is appointed as the Local Commissioner and is directed to visit the properties viz. B-20, B-21 and B-22, as described above, verify the possession of the parties in respect thereof. Further the local commissioner shall also submit a site plan depicting the location of the three suit properties with reference to sale deeds enclosed along with the plaint. For this purpose, he would take



assistance of the Local Patwari/ Tehsildar who is directed to identify and demarcate the plots in question, on the basis of three sale deeds referred above. The Local Commissioner shall visit the location where the afore-noted suit properties are situated along with the Tehsildar/ Patwari/ concerned Revenue Authority officer – for identifying the properties. On the said date, parties and their counsel shall be permitted to remain present to answer the queries of the Local Commissioner/ Revenue Authority officer. Counsel for the parties and the concerned SDM of District Mehrauli shall lend full assistance to the Local Commissioner in carrying out the inspection and provide all necessary documents/ site plan, etc. as requested by the Local Commissioner. The Local Commissioner shall also be at liberty to take assistance from an Architect for preparing the site plan of the suit properties. The Local Commission shall also be permitted to carry out videography and photography of the site.

18. The fee of the Local Commissioner is fixed as Rs. 1,00,000/-, which shall be borne by the Plaintiff.

19. Counsel for the Defendant, without prejudice to her rights and contentions, states that the Defendant would not create any third-party interest(s) in respect of property identified as B-21. Her statement is taken on record and shall bind the Defendant till the next date of hearing.

20. The Local Commissioner will endeavour to complete the commission and file a report at least three days before the next date of hearing.



21. List before Court for consideration of Local Commissioner's Report on 19th April, 2022.
22. The Local Commissioner shall visit the premises on 29th March, 2022 and on other dates, as may be required.
23. As requested by the counsels, parties are referred to mediation. The Media Centre is requested to appoint Mr. Sudhanshu Batra, Senior Advocate as the Mediator in the present suit.
24. The parties shall appear before the Mediation Centre on 1st April, 2022.

SANJEEV NARULA, J

MARCH 24, 2022

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