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

+ **CS(OS) 273/2024**

ANURADHA MALIK NAYYAR & ORS. Plaintiffs

Through: Mr. Sidharth Joshi, Mr. Vikrant
Ballav Sharan, Advs. (VC).

versus

NIRMLA NAYYAR & ORS. Defendants

Through: None.

**CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

ORDER

% **05.04.2024**

I.A. 7670/2024

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. The present suit has been filed for declaration, partition and injunction with the following prayer:

“a. Pass a decree of declaration declaring alleged will of O.P. Nayyar @ Om Prakash Nayyar S/o late Sh. Haria Mal Nayyar allegedly executed on 18.12.2019 be declared as null and void.

b. Pass a preliminary decree of partition in favour of the plaintiffs by giving them 1/5th share of O.P Nayyar in the property bearing no. 11/377 Sunder Vihar, New Delhi - 110087.



- c. A local Commissioner may kindly be appointed to suggest the mode of partition.*
- d. Final decree of partition may kindly be pass after report of the local Commissioner is received by the Hon'ble Court.*
- e. Exemplary cost may kindly be awarded in favour of the plaintiffs and against the defendants.*
- f. Grant permanent injunction in favour of the plaintiffs and against the defendants thereby permanently restraining the defendants from selling, mortgaging, renting or creating any third-party interest in the property in question i.e. 11/377 Sunder Vihar, New Delhi 110087 in any manner whatsoever.*
- g. Any other or further orders, which this Hon'ble Court may deems fit and proper.”*
4. Learned counsel for the plaintiff submits that will dated 22.11.2019 is in fact not a valid will. Learned counsel submits that late Sh. Om Prakash Nayyar who executed the will in favour of his wife was executed by the deceased while he was not in a sound mind.
5. Learned counsel submits that the deceased was 95 years of age at the time of executing the will and was suffering from dementia.
6. Learned counsel submits that therefore the will is liable to be declared as invalid.
7. Let the plaint be registered as suit.
8. Summons be issued to the defendants by all permissible modes, which shall indicate that the written statements must be filed within thirty days from the date of receipt of the summons.
9. The defendants are directed to file affidavit of admission/denial against



the documents filed by the plaintiff, failing which the written statement shall not be taken on record.

10. The plaintiff is at liberty to file replications thereto within fifteen days of filing of the written statements, which shall be accompanied by affidavits of admission/denial, in respect of the documents filed by the defendants, failing which the replications shall not be taken on record.
11. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.
12. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.
13. List before the Joint Registrar (Judicial) on 10.05.2024.

I.A. 7671/2024

14. The present application has been filed on behalf of plaintiff under Section 151 CPC read with Order 39 Rule 1 & 2 for Ad-Interim Exparte Injunction with the following prayer:

“(a) To allow the present application in favour of the plaintiff and against the Defendant and grant ad-interim ex-parte injunction in favour of the Plaintiff against the Defendants by restraining of Defendants their agent(s), assign(s), representative(s), legal heir(s), etc. from selling, letting out, alienating, transferring, creating any third-party interest in the property bearing no. 11/377 Sunder Vihar New Delhi 110087;

Or in the alternative

The Defendants may kindly be directed to maintain status quo in respect of title, construction and possession of the property bearing no. 11/377 Sunder Vihar New Delhi 110087 till the final decision of the present suit. (

b) Pass any other or further order as this Hon'ble Court



may deem fit and proper in the interests of Justice.”

15. Issue notice to the defendants through all permissible modes.
16. List before the Joint Registrar (Judicial) on 10.05.2024.

I.A. 7672/2024

17. The present application has been filed on behalf of petitioner under Section 151 CPC for condoning the delay in re-filing of suit after removing objection/defects.
18. In view of the submissions made, the delay is condoned. Hence, the application stands disposed of.

DINESH KUMAR SHARMA, J

APRIL 5, 2024/AR..