

\$~31

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

+ **CS(OS) 267/2019**

VANDANA SHARMA

..... Plaintiff

Through: Mr. Sanjeev Goyal and Ms. Kriti
Gupta, Advs.

versus

AMAN MALLICK

..... Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

%

20.05.2019

I.A. 7369/2019 (Exemption)

1. Exemption allowed subject to all just exceptions.

CS(OS) 267/2019

2. Let the plaint be registered as a suit.

3. Issue summons to the Defendant through all modes upon filing of Process Fee.

4. The summons to the Defendant shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. 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.

5. Liberty is given to the Plaintiff to file a replication within 15 days of the

receipt of the written statement. Along with the replication, 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.

6. List before the Joint Registrar for marking of exhibits on 22nd August, 2019. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

7. List before Court on 23rd September, 2019.

I.A. 7368/2019 (under Order 39 Rule 1 & 2 CPC)

8. The Plaintiff in the present suit seeks partition and permanent injunction in respect of Plot No. 125, Saket, New Delhi-110017 admeasuring 250 sq. yds. (hereinafter referred as 'the suit property'). Plaintiff and Defendant are brother and sister.

9. The case of the Plaintiff as stated in the plaint is that the suit property was originally allotted to Plaintiff's father Late Sh. Gian Chand Mallick by virtue of lease deed dated 11th November, 1974. The father of the parties constructed a three storey house on the said plot. The said property is exclusive self acquired property of Late Sh. Gian Chand Mallick who died intestate on 25th July, 1998 and was survived by Plaintiff, Defendant and their mother Mrs. Kamla Mallick. In 2013, both Plaintiff and Defendant executed a relinquishment deed in favour of their mother and thereby the mother of the parties became the absolute and exclusive owner of the suit

property. Late Mrs. Kamla Mallick has executed a Will in respect of the suit property, dated 22nd November 2018, whereby the suit property has been bequeathed to the Plaintiff and Defendant in equal shares.

10. Learned counsel for the Plaintiff states that first floor of the suit property was leased out by late Mrs. Kamla Mallick vide lease deed dated 5th March 2019 and after her demise, Plaintiff and Defendant are entitled to receive the lease rent.

11. Learned counsel for the Plaintiff submits that the Will dated 22nd November, 2018 is a registered Will and it specifically revokes the earlier Will dated 19th June, 2018 and also the Will dated 27th July 2018. It is also argued that after the demise of the mother of the parties, the Plaintiff has sought partition of the suit property, however, Defendant has refused to do so and has threatened to sell the suit property on the basis of Will dated 19th June, 2018, which the testator has revoked by the later Will dated 22nd November, 2018. It is also argued that in terms of lease deed dated 5th March, 2019, the tenants are required to attorn the lease in favour of Plaintiff and Defendant. Despite the specific condition to this effect contained in the lease, the Defendant has misappropriated the share of the Plaintiff for the month of May, 2019. Plaintiff has apprehension that the Defendant is negotiating the sale of the suit property and therefore seeks restrain orders against the Defendant.

12. The Court is satisfied that the Plaintiff has made out a *prima facie* case. The balance of convenience also lies in his favour. In case, the *ex-parte* ad-interim injunction is not granted, Plaintiff would suffer irreparable loss. In

view of foregoing reasons, till the next date of hearing, Defendant is directed to maintain the status quo with respect to the suit property.

13. Let provisions of Order 39 Rule 3, CPC be complied within three days from today.

14. This order be given *dasti* under signatures of the Court Master.

SANJEEV NARULA, J

MAY 20, 2019

Pallavi