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

+ CS(OS) 299/2019

SH. ANEESH GOEL Plaintiff

Through: Mr. Rajesh Rawal, Advocate.

versus

SMT. KHAJANI DEVI AND ORS. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **30.05.2019**

I.As. 8196-8197/2019 (Exemption)

1. Exemption allowed, subject to all just exceptions.

CS(OS) 299/2019

2. Let the plaint be registered as a suit.

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

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

I.A. 8194/2019 (under Order 39 Rule 1 & 2 CPC)

6. The present suit seeks partition, rendition of accounts, *mesne* profits and mandatory injunction in respect of the suit property bearing No. 18/19, Shakti Nagar, Delhi (hereinafter referred to as the “suit property”).

7. The case of the Plaintiff as stated in the plaint is that the Plaintiff is in possession of two room sets on the ground floor with bathroom, store kitchen and verandah; small store room on mezzanine floor; front portion of the first floor consisting of three bedroom set with bathroom (separate shower and WC), kitchen, verandah and balcony (covered); two rooms, one store room and bathroom on second floor (front portion) and roof thereof (front portion) of the subject property. Rest of the portion of the property is in possession of Defendant No.1, Defendant No.2 and his family members as detailed in the plaint. Staircase leading to the first floor and second floor are common areas, besides other common areas as stated in the plaint.

8. The Plaintiff submits that Defendant No. 1 and 2 have illegally and without any right inducted some persons in the subject property and are/ have recovered huge amounts illegally from the said persons without the

consent or permission of the Plaintiff. Particulars of the said persons are not known to the Plaintiff as despite of various requests, Defendant Nos. 1 and 2 have refused to disclose the particulars. It is stated that Defendant No. 1 and 2 have inducted such persons illegally and have/are recovering huge amounts from them since sufficiently long time as detailed in the plaint.

9. The Plaintiff submits that the Plaintiff is owner of 60% undivided share in the subject property. Late Sh. Manohar Lal was owner of 20% undivided share in the subject property which has been inherited by his legal heirs including Defendant Nos. 1 and 2. It is submitted that legal heirs of deceased Sh. Manohar Lal including Defendant Nos. 1 and 2 are entitled to 20% possession of the subject property, whereas Defendant No. 1 and 2 are in actual and physical possession of 65% (approx.) of the subject property i.e. more than three times of the area to which they are entitled in law. As such they are liable to pay damages for use and occupation of the subject property for the portion over and above 20% of the subject property in their use, occupation and possession.

10. Mr. Rajesh Rawal learned counsel for the Plaintiff submits that the suit property is occupied and in possession of different co-owners/persons as set out in the site plan attached with the suit. Plaintiff is in possession of two room sets on the ground floor through his employee who is living there with his family. He submits that Defendant Nos. 1 and 2 have illegally and without any right inducted some persons in the area and in the portion of the property that is in their possession. He argues that the Plaintiff is owner of 60 percent of the undivided share in the suit property and Defendant Nos. 1

and 2 are in actual and physical possession of approximately 65 percent of the property in question. He further urged that Defendant No. 1 and 2 have threatened that they would induct more tenants in the subject property and will create third party rights by way of sale, which would lead to further complications. The Court is satisfied that the Plaintiff has made a *prima facie* case in his favour and the balance of convenience also lies in favour of the Plaintiff and irreparable loss would be caused in case the injunction is not granted. Till the next date of hearing, the Defendants shall maintain status quo with respect to the title and possession of the suit property.

11. Compliance under Order 39 Rule 3 be done within a period of one week.

I.A. 8195/2019 (under Order 26 Rule 9 CPC)

12. By way of this application, the Plaintiff seeks appointment of Local Commissioner to ascertain as to who is in possession and occupation of the suit property. Learned counsel for the Plaintiff argues that Defendant Nos. 1 and 2 have not disclosed or given the details in respect of the persons who are presently in occupation of certain portions of the suit property and has also threatened to induct more such persons and create third party rights in the suit property. Learned counsel for the Plaintiff argues that since he is owner of 60 percent share in the suit property, in order to have an effective resolution of the suit for partition, it is necessary to ascertain as to which party is in possession of the suit property. Accordingly, the Court is satisfied that the appointment of Local Commissioner is necessary in the present case. Accordingly, Mr. Puneet Khurana, Advocate (Mob: 9810341338) is appointed as Local Commissioner. He shall visit the suit

property on 1st June 2019 and make detailed investigations and file a report as to which of the parties are in possession of the suit property and also demarcate and indicate in a site plan, the portion in occupation of such persons who are found to be in possession. The fee of the Local Commissioner is fixed at Rs. 75,000/- to be paid by the Plaintiff. In the execution of such commission, the Local Commissioner is empowered to seek the assistance of the SHO of the area concerned, if required. The SHO of the concerned police station shall render all assistance if a request in that regard is made by the Local Commissioner. The Defendants are directed to cooperate with the Local Commissioner.

13. List before the Joint Registrar for completion of pleadings on 29th August 2019.

14. List before the Court on 9th October 2019.

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

SANJEEV NARULA, J

MAY 30, 2019

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