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

+ **CS(OS) 470/2021, I.A. 15101/2022**

MAHENDER KUMAR SHARMA Plaintiff

Through: Mr. Sidharth Joshi, Mr. Ambareen,
Ms. Nidhi Sharma, Mr. Vikrant B.
Sharan, Advs. (VC).
Plaintiff in person.

versus

SWATI SHARMA Defendant

Through: Mr. Nagender Deswal, Mr. Vishal
Tiwari, Advs.
Defendant in person (VC).

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

% **ORDER**
20.02.2024

I.A. 12827/2021, & I.A. 12938/2022

1. The present application has been filed with the following prayers:

“I.A. 12827/2021

(a) grant ex-parte ad-interim injunction in favour of the Plaintiff and against the Defendant by restraining of Defendant 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. B-203, Lok Vihar, Pitampura, Delhi-110034,

(b) Or in the alternative the Defendant may kindly be directed to maintain status quo in respect of title, construction and possession of the property bearing no. B-



203, Lok Vihar, PitamPura, Delhi-110034 till the final decision of the present suit.

(c) Pass any other such order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case in favour of the Plaintiff.

I.A. 12938/2022

a. To allow the present application in the favour of the plaintiff and against the defendant and issue contempt against the defendant and punish the defendant/contemnor in accordance with law. Further issue direction to open the locks of the door which has been locked by the defendant pursuant to the order passed by this Hon'ble Court.

b. Pass any other or further order which the Hon'ble Court may deems fit and proper in fact and circumstances of the case.”

2. At the outset, both the parties have consented and undertaken that they will not create any third party interest in property No. B-203, Lok Vihar, PitamPura, Delhi-110034.
3. It is not disputed that the plaintiff is in the possession of the ground floor and defendant is in the possession of the first floor.
4. The property is jointly owned by the plaintiff and father of the defendant. Both the parties have also undertaken that they shall not alienate or transfer the possession of the property in favour of any third party till the disposal of dispute.
5. In view of the above, the application stands disposed of.

I.A. 4293/2022

6. The present application has been filed with the following prayer:

“It is, therefore, most respectfully and in the interest of justice prayed that this Hon'ble Court may be pleased to



order the detention of the Plaintiff, his wife and son in civil prison.

Any other order(s)/direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may be passed in favour of the defendant and against the plaintiff.”

7. Learned counsel submits that the present application has been moved to take action against the plaintiff for wilful disobedience of the order of the court by changing the lock of the door.
8. It has been submitted by the defendant that despite the order dated 01.10.2021 the plaintiff broke open the lock of the door of the staircase and put their own lock.
9. Learned counsel for the plaintiff submits that he has never changed the lock and has always had access to the terrace. Learned counsel for the plaintiff submits that he got access to the terrace for the purpose of maintenance of water tanks and dish antenna.
10. This position has been controverted by the defendant who appears in person and the learned counsel for defendant.
11. It has been submitted that in fact defendant had always placed a lock on the staircase and the plaintiff was given access to the same for the purpose of maintaining water tanks and dish antenna as and when required.
12. The defendant's plea is that after the order, the plaintiff broke open the lock of the defendant and replaced it with their own lock for which they have filed a complaint before the police. However, subsequently it has been submitted that now, the it is the defendant's lock there.
13. I consider that right to passage to terrace lies with the plaintiff or the



defendant which is a matter of trial which is required to be adjudicated.

14. Parties have also setup a Memorandum of Family Settlement date 04.06.2007. As per the Memorandum of Family Settlement. the first floor of B-203, Lok Vihar, PitamPura, Delhi-110034 comprises of 3 bed rooms, one D/D two W.C.S. Cum bath rooms, one kitchen, front veranda and back chhaja, alongwith two 'Mezzanines' in the stair case including the roof thereupon at the first floor is in the possession of the defendant.
15. Memorandum of Family Settlement also indicates that the plaintiff and father of the defendant were real brothers and they had jointly purchased this property.
16. I consider that without going into the merits of this case, at present an interim arrangement can be made. The defendant who lives in Bengaluru shall leave a separate key with the local person (Name: Mrs. Geeta Gupta, Mobile No. 7678900762).
17. Learned counsel submits that within 1-2 hour (during the day time) access shall be provided to the plaintiff without any change.
18. Defendant is directed to ensure that the keys of the terrace are provided to the plaintiff within 1-2 hours for the purpose of maintenance of water tanks and dish antenna during the daytime. However, this shall not prejudice the rights of the parties as to their share in the subject matter of the suit property.
19. In view of the above, the application stands disposed of.

I.A. 4295/2022

20. The present application has been filed under Order VII Rule 11 read with Section 151 CPC on behalf of defendant.



21. Learned counsel for defendant seeks permission to withdraw the present application.
22. In view of the submissions made, the present application stands is dismissed as withdrawn.

I.A. 15100/2022

23. The present application has been filed on behalf of the plaintiff under Order XII Rule 6 CPC read with Section 151 CPC for passing the judgment on the basis of admission made by defendant with the following prayer:

“A. Allow the present application in favour of the plaintiff and against the defendant and pass judgment on the basis of the admission made by the defendant and pass a Preliminary decree of partition by giving the plaintiff half share in the property bearing no. B-203, Pitampura, Delhi-34 local commission may be pointed to suggest the mode of partition and a decree of permanent injunction also granted in favour of plaintiff and against the defendant preliminary decree of partition.

B. Pass any order and further order in which this Hon'ble court may deem fit and proper in the facts and circumstances of the case.”

24. Issue notice.
25. Learned counsel for the defendant has accepted the notice and seeks time to file the reply.
26. Let the reply be filed within four weeks with an advance copy to the learned counsel for the plaintiff.
27. Rejoinder, if any be also filed within two weeks thereafter.
28. Learned counsel for defendant submits that he has already moved an application for setting aside the ex-parte order. However, it is not on



record.

29. Let the application be brought on record.

30. List on 17.05.2024.

DINESH KUMAR SHARMA, J

FEBRUARY 20, 2024/AR..