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

+ CS(OS) 455/2024

DEEPAK KRISHAN TEWARI & ANR. Plaintiffs

Through: Mr. Ashutosh Nagar, Mr. Kunal Taneja, Mr. Ishan Harlalka, Advocates [999666398].

versus

MRS RUPA SHARMA & ANR. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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29.05.2024

I.A. 30875/2024 (for exemption) & I.A. 30876/2024 (for exemption)

The applications for exemption are allowed, subject to the plaintiffs granting inspection of the documents filed, as and when required to do so, or filing the original documents at the stage of admission/denial.

The applications stand disposed of.

CS(OS) 455/2024

1. The plaint be registered as a suit. Issue summons to the defendants by all permissible modes on filing of process fee. Summons may also be issued to defendant No. 1 through learned counsel appearing on her behalf in CS(OS) 413/2024.

2. The summons shall indicate that written statements must be filed within thirty days from the date of receipt of summons. The defendants shall also file affidavits of admission/denial of the documents filed by the



plaintiff, failing which the written statements shall not be taken on record.

3. The plaintiff is at liberty to file replications thereto within thirty days after filing of the written statements. The replications 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.

4. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.

5. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

6. I am informed that the plaintiffs have yesterday been served with the suit papers in a suit [CS(OS) 413/2023] which has apparently been instituted by defendant No. 1 against the plaintiffs with regard to the basement, ground floor and 50% of the first floor of the suit property [A6/12, Vasant Vihar, New Delhi]. Summons have been issued in the said suit by an order dated 17.05.2024 an *ex-parte ad-interim* order has been passed directing the parties to maintain *status quo* regarding possession of the suit property.

7. Subject to orders of Hon'ble Judge In-Charge (Original Side), list the present suit alongwith CS(OS) 413/2024 on 10.07.2024.

8. List before the Joint Registrar for completion of service and pleadings, admission/denial of documents and marking of exhibits on 18.07.2024.

I.A. 30873/2024 (under Order XXXIX Rule 1 and 2 of CPC), I.A. 30874/2024 (under Order XXXIX Rule 1 and 2 of CPC)

1. Issue notice. Notice may be served upon the defendants by all



permissible modes. Notice may also be issued to defendant No. 1 through learned counsel appearing on her behalf in CS(OS) 413/2024.

2. Plaintiff No. 1 in the present suit is the son of plaintiff No. 2. The defendants are the daughter of plaintiff No. 2 and her husband.

3. The suit concerns an immovable property [A6/12, Vasant Vihar, New Delhi]. The property was originally leased under a perpetual sub-lease deed dated 10.10.1969 by the President of India to Major K.K. Tewari, who is the father of plaintiff No. 1 and the husband of plaintiff No. 2.

4. The original owner died on 04.01.2015. Plaintiff No. 2 is stated to have inherited the suit property under a registered Will dated 24.07.2003 executed by Major K.K. Tewari. Delhi Development Authority has also executed a conveyance deed in favour of plaintiff No. 2 dated 13.02.2017. She thereafter entered into a construction collaboration agreement with a third party, pursuant to which the second floor in the reconstructed building and proportionate share of 22.5% in the land has vested in the third party and/or its nominee. It is stated in the plaint that the rest of the property continued to be the exclusive property of plaintiff No. 2. She executed a registered Will dated 18.01.2024, by which she intended to bequeath her share in the suit property to plaintiff No. 1. However, by a registered gift deed dated 25.04.2024, it is stated that plaintiff No. 2 has gifted the basement, ground, first floor, third floor and the roof rights of the suit property to plaintiff No. 1.

5. The perpetual sub-lease deed in favour of Major K.K. Tewari dated 10.10.1969, the will dated 24.07.2003 executed by him, the conveyance deed dated 13.02.2017, and the registered gift deed dated 25.04.2024,



have all been placed on record with the plaintiffs' list of documents.

6. It is the contention of learned counsel for the plaintiffs that the gift deed was executed by plaintiff No. 2 in favour of plaintiff No. 1 in the backdrop of an unauthorised withdrawal of Rs.90 lakhs from the bank account of plaintiff No. 2 by her daughter (defendant No. 1) on 09.12.2023. It is contended that plaintiff No. 2, who is 94 years of age, had inducted her daughter as a signatory to her bank account, although the money lying therein was the exclusive property of plaintiff No. 2.

7. Learned counsel for the plaintiffs submits that defendant Nos. 1 and 2 have been illegally occupying the basement and ground floor of the suit property, although they have no right, title or interest in the suit property. Injunctions are therefore sought against any hindrance to the plaintiffs in the enjoyment and use of the first and third floor and terrace of the suit property, and also restraining the defendants from creating any third party interest in the suit property.

8. As noted above, learned counsel for the plaintiffs states that a suit has recently been filed in this Court by defendant No.1 with regard to some portions of the suit property. Learned counsel states that a notice has also been affixed upon the suit property, which states that the property (excluding the second and third floors) is the subject matter of the suit [CS (OS) 413/2024] filed by defendant No. 1, in respect of which the Court has passed an order of *status quo*. A copy of the order dated 17.05.2024 in the said suit has been handed up to the Court, alongwith a photograph of the notice.

9. Having regard to the aforesaid facts, and particularly to the chain of documents described above upon which the plaintiffs claim title, the



plaintiffs have made out a *prima facie* case for grant of an *ad-interim* order of *status quo* with regard to title and possession of the suit property (basement, ground floor, first floor, third floor and terrace). The balance of convenience is also in favour of such an order been passed. I am satisfied that the plaintiffs would suffer irreparable loss and injury, if third-party interests are created in the suit property at this stage.

10. I also note that this order aligns with the order of *status quo* dated 17.05.2024 passed in CS(OS) 413/2024. By the said order, the parties have been directed to maintain *status quo* with regard to possession of the parts of the suit property, which are the subject matter of the said suit. By virtue of this order, the same order is passed with regard to the subject matter of the present suit, which includes parts of the suit property which are not subject matter of CS(OS) 413/2024.

11. Provisions of Order XXXIX Rule 3 of the Code of Civil Procedure, 1908, be complied with within one week from today, and affidavit of compliance be filed within three days thereafter.

12. The defendants will be at liberty to apply for variation, vacation or modification of this order, if necessary.

13. Replies to the application may be filed within three weeks. Rejoinder thereto, if any, may be filed within two weeks thereafter. List on 10.07.2024.

14. Learned counsel for the plaintiff points out that the first floor of the property is tenanted under a lease executed by plaintiff No. 2 in favour of a third party. Although it is stated that the lease is not due to expire before the next date of hearing, learned counsel states that the tenant has expressed an intention to vacate early. The order passed today will not



come in the way the property being vacated by the tenant, but no further third party rights may be created therein until the next date of hearing.

PRATEEK JALAN, J

MAY 29, 2024/“Bhupi”/