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

+ **CS(OS) 557/2024**

PAWAN KUMAR

.....Plaintiff

Through: Mr. Mohit Gupta, Ms. Ahisha Gupta,
Mr. Naresh Yadav, Mr. Arpit Kishore
and Ms. Deepakshi Jain, Advs.

versus

SANDEEP KUMAR & ANR.

.....Defendants

Through:

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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22.07.2024

I.A. 33675/2024 (under Section 151 CPC seeking condonation of delay in re-filing the suit)

1. For the reasons mentioned in the application, the delay of 30 days in re-filing the suit is condoned.
2. The application stands disposed of.

I.A. 33674/2024 (under Section 151 CPC seeking exemption from filing original documents)

3. This is an application seeking exemption from filing original documents. Original documents shall be produced/filed, if sought, strictly as per the DHC (Original Side) Rules, 2018.
4. Allowed, subject to all just exceptions.
5. The application stands disposed of.

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6. The plaint be registered as a suit.
7. On filing of process fee, summons be issued to the defendants by all permissible modes.
8. The summons shall indicate that written statement must be filed within thirty days from the date of receipt of summons. The defendants shall also file an affidavit of admission/denial of the documents filed by the plaintiff, failing which the written statement shall not be taken on record.
9. The plaintiff is at liberty to file replication thereto within thirty days after filing of the written statement. The replication shall be accompanied by affidavit of admission/denial in respect of the documents filed by the defendant, failing which the replication shall not be taken on record.
10. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.
11. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.
12. List before the learned Joint Registrar for completion of service, pleadings, admission/denial of documents and marking of exhibits on 25.09.2024.
13. List before Court after completion of pleadings on 18.10.2024.

I.A. 33673/2024 (by plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 CPC)

14. Issue notice to the defendants by all permissible modes.
15. This is a suit for declaration partition, *mesne* profits and permanent injunction. The plaintiff is claiming himself to be the co-owner in the property bearing no.A-101/6, Wazirpur Industrial Area, Delhi -110052 ad measuring about 359.48 sq. Mtrs, comprised of basement, ground floor,



mezzanine floor, first floor with terrace thereupon (hereinafter “the suit property”) in terms of the Will of his mother, who passed away on 20.11.2020.

16. The learned counsel for the plaintiff submits that the plaintiff and the defendants are siblings and the suit property was owned by the mother of the parties, who during her lifetime had executed a Will dated 29.02.2012. After the death of the mother, in terms of the Will the plaintiff has become owner to the extent of 50% share in the suit property.

17. He submits that the defendant no.2, who is the sister of the plaintiff and the defendant no.1, is a proforma party. She has been given another property i.e. One Shop on the Ground Floor at G-12H, Pacific Mall, Site-IV, Sahibabad, U.P by virtue of said Will. However, under the Will the defendant no.2 has no share in the suit property.

18. He submits that the defendant no.2 is not disputing the ownership of the plaintiff in the suit property to the extent of 50%.

19. He further submits that the plaintiff had repeatedly requested the defendant no.1 for partitioning the suit property but the defendant no.1 has not acceded to such requests of the plaintiff.

20. He submits that there is a possibility that the defendant no.1 might create a third party rights over the suit properties which will cause irretrievable loss and injury to the plaintiff.

21. Having regard to the fact that the plaintiff is son of the deceased, who would ordinarily be entitled to his share in the estate, I am of the view that the plaintiff has made out a *prima facie* case for *ad interim* order of *status quo*. The balance of convenience is also in favour of *ad interim* order of the *status quo* being passed. I am satisfied that the plaintiff will suffer an



irreparable loss and injury in case third party rights are created in the suit property before the next date.

22. The parties are, therefore, directed to maintain *status quo* as to the title and possession of the suit property, till the next date.

23. Provisions of Order XXXIX Rule 3 CPC be complied with *qua* the defendants within one week from today and an affidavit of compliance be filed within a period of three days thereafter.

24. Defendants may file replies to the application within four weeks on receipt of notice. Rejoinder thereto, if any, be filed within a period of four weeks thereafter.

25. List before the learned Joint Registrar for completion of service and pleadings on 25.09.2024.

26. List before Court on 18.10.2024.

27. Order *dasti* under the Signatures of the Court Master.

VIKAS MAHAJAN, J

JULY 22, 2024/dss