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

+ **CS(OS) 699/2022 & I.A. 39179/2024**

DR. KAVITA RUPRAIL

.....Plaintiff

Through: Mr. Tanmaya Mehta, Mr. Divyansh
Rathi, Ms. Sumedha Sindhu and Mr.
Ankit Kumar, Advocates.

versus

KUNAL KWATRA & ORS.

.....Defendants

Through: Mr. Ankur Mahindro, Mr. Ankush
Satija and Mr. Rohit Bishnoi,
Advocates.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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11.09.2024

I.A. 39179/2024 (u/o XXVI Rule 9 r/w S 151 of the CPC by the D-5 to 7)

1. This is an application filed by defendants nos. 5 to 7 seeking appointment of a Local Commissioner for physical demarcation of properties bearing plot nos. 81/1 and 81/2, Block No.2, WHS, Kirti Nagar, New Delhi – 110015 ('suit property') from the adjacent plots bearing Nos.78 and 78/1, Block No. 2, WHS, Kirti Nagar, New Delhi – 110015 [collectively referred as 'properties'] and raising of a partition wall.
2. In addition, the applicants pray that upon conclusion of the demarcation, the keys and possession *qua* the plots bearing nos. 78 and 78/1, Block No. 2, WHS, Kirti Nagar, New Delhi – 110015 ('adjacent plots') be handed over to the defendants no.5 to 7.
3. In this order, this Court is only taking up at the first instance the prayer with respect to demarcation of the properties. The prayer for handing



over of the keys and possession of the adjacent plots will be considered in subsequent stage.

4. Issue notice to the non-applicant/plaintiff.

5. Learned counsel for the plaintiff accepts notice.

5.1. He states that he has no objection with respect to the relief sought for the actual and physical demarcation of the properties as prayed for by the applicants. He, however, states that he reserves his rights to address arguments on the other relief sought by defendant nos. 5 to 7 with respect to handing over of keys and possession of the adjacent plots.

5.2. He states that the keys of all the properties is lying deposited with the registry.

5.3. He states that there is a common super-structure standing on these properties, however, there is no pillar or beam or any other obstruction standing at the dividing plot line between the properties. He states that, therefore, the Local Commissioner after completing the demarcation of the plots standing on the properties be authorized to hire a contractor to raise a vertical partition wall on the dividing plot line from the ground to the roof so that the super-structure also stands partitioned.

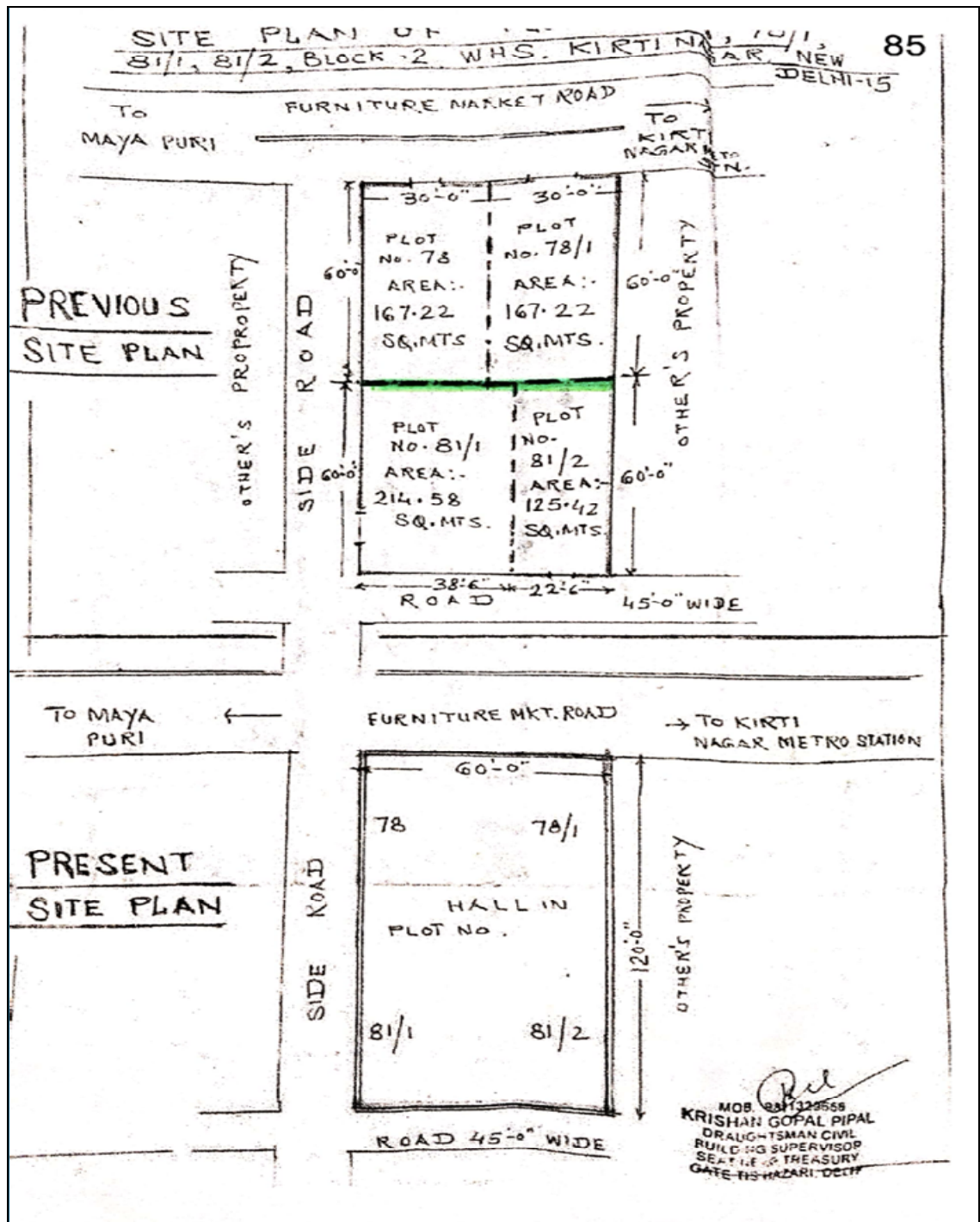
6. Learned counsel for the parties state that considering the scope and nature of the relief *qua* local commission sought in this application, which requires demarcation of the properties as well as supervision of construction of a partition wall (from the ground to the roof), it would, therefore, be appropriate to appoint an Architect as a Local Commissioner.

7. The learned counsel for the parties have jointly suggested the name of Mr. Shashi Bhushan Dhingra (M. No. 921269000) as a Local Commissioner (Architect) for this purpose.

8. The plaintiff has placed on record a site plan, at page 85 along with its documents, (which is not to scale) to indicate the location of the properties



with boundaries; and the location of the plots *qua* each other. The Conveyance Deed(s) with respect to each of these four (4) plots is also on record which indicates the total area of each plot as well as the boundaries of each plot. The site plan also contains a broken line, which indicates the dividing line between the properties. The site plan is reproduced hereinafter:





9. In view of the consensus between the parties, this Court is satisfied with the relief prayed for in this application for appointment of the Local Commissioner since it will assist the Court as well in adjudicating the issues for the relief of demarcation and raising of partition wall. Therefore, the captioned application is hereby allowed.

10. This Court also deems it appropriate to appoint Mr. Bharadwaj S. Iyengar, Advocate (M; 9871900105), who had earlier as well executed a local commission in this matter alongwith Mr. Shashi Bhushan Dhingra (M. No. 921269000) Local Commissioner (Architect).

11. Mr. Shashi Bhushan Dhingra, Local Commissioner (Architect) will carry out following tasks:

(i) He will carry out a demarcation of the properties and identify the dividing plot line between plot nos. 81/1 and 81/2, Block No. 2, WHS, Kirti Nagar, New Delhi on one hand and plot nos. 78 and 78/1, Block No. 2, WHS, Kirti Nagar, New Delhi on the other hand. This dividing plot line has been marked in green (by this Court) on the site plan filed by the plaintiff and is reproduced in this order.

The conveyance deeds of the properties available on the record will be used by the Local Commissioner (Architect) for the purpose of the identification of the dividing green line and demarcation of the same.

(ii) He will take steps for construction of a partition wall on the dividing plot line underlined as 'green' in this site plan from ground till the roof in a manner that the entire super-structure standing on the properties stands divided. The partition wall will be 9 inches wide.

(iii) He will be at liberty to engage a civil contractor of his choice for construction of the partition wall, which includes procurement of material



and labour. The parties shall jointly make payment to the civil contractor upon the invoice being approved by the Local Commissioner (Architect). An initial deposit of Rs.5 lakhs will be made with the Local Commissioner (Architect) to enable him to take steps for engaging the civil contractor for the construction of the partition wall. This initial deposit will be made immediately after the demarcation of the dividing plot line is completed.

(iv) The construction of the partition wall will be carried out under the supervision of Local Commissioner (Architect).

12. Parties jointly state that though a single super-structure exists on all the four plots however, there is no column or beam or any other obstructions standing on the dividing plot line (marked as green by this Court). They, therefore, state that a partition wall clearly and distinctively separating plot nos. 81/1 and 81/2, Block No. 2, WHS, Kirti Nagar, New Delhi from plot nos. 78 and 78/1, Block No. 2, WHS, Kirti Nagar, New Delhi can be constructed. They also consent that if there is any obstruction found by the Local Commissioner (Architect) on the dividing plot line while carrying out the demarcation, then the Local Commissioner (Architect) will have the absolute authority to remove the said obstruction. This Court records that the parties have consented to a clinical/unequivocal demarcation of the properties. The Local Commissioner (Architect) shall bear this mandate in mind while executing the commission.

13. The Local Commissioner (Architect) and Local Commissioner (Advocate) are directed to ensure that the work of demarcation, so as to identify the dividing plot line and construction of partition wall is initiated within two (2) weeks from today and concluded preferably within six (6) weeks from today.

14. The Local Commissioner (Advocate) shall collect the keys of the properties from the registry and handover the keys to the Local



Commissioner (Architect) well as assist him in opening the structure standing on the properties and render all support in the due execution of this Commission.

15. The fee of the Local Commissioner (Architect) is fixed at Rs.2 lakhs at this stage and enhancement will be reconsidered after the conclusion of the commission. The parties will jointly deposit an amount of Rs. 1 lakh with the said Local Commissioner (Architect) towards his fees within one week.

16. The fee of the Local Commissioner (Advocate) is fixed at Rs.1 lakh at this stage and enhancement will be reconsidered after the conclusion of the commission. The parties will jointly deposit an amount of Rs. 50,000/- with the Local Commissioner, (Advocate) within a period of one week.

17. Parties shall jointly bear expenses for travel of the Local Commissioner (Advocate) and Local Commissioner (Architect) along with other miscellaneous out-of-pocket expenses for the execution of the Commission.

18. After the construction of the partition wall is completed, an inspection will be offered to both the parties, after which, the premises will be locked again and keys of the same will be re-deposited by Local Commissioner (Advocate) with the Registrar General of this Court. All other terms and condition of the order dated 09th January, 2024 will continue to apply to the parties herein with respect to non-use of the properties.

19. A report with respect to completion of the local commission will be filed by Local Commissioner (Architect) and Local Commissioner (Advocate) jointly at least two (2) weeks prior to the next date of hearing.

20. List on **17.12.2024**.

21. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated



as a certified copy of the order for the purpose of ensuring compliance. A physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 11, 2024

Mk/ms