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

+ **CS(OS) 709/2023, I.As. 630/2024 & 632/2024**

RENU CAPRIHAN & ANR.

..... Plaintiffs

Through: Mr. Mandeep Singh Vinaik, Ms.
Anjali Sharma, Mr. S. K. Sagar,
Adv. (M. 9810001275)

versus

SANGEETA GROVER

..... Defendant

Through: Mr. Aman Nandrajog & Mr.
Tanveer Singh, Adv. (M.
9999321788)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **11.01.2024**

1. This hearing has been done through hybrid mode.
2. The present suit has been filed by the Plaintiffs praying for a decree of partition of the specified portions of the immovable property, being residential plot of land and building constructed thereon bearing No. M-113, Greater Kailash Part II, New Delhi, 110048, and in particular, partition of the basement, terrace above second floor and other common areas of the said property. Plaintiffs seek to clearly demarcate the land beneath, and demarcate the entitlement of the respective parties to the suit properties, i.e., the land rights, the basement, the terrace, and of all common areas of the residential property.
3. The Defendant has moved an application - **I.A. 630/2024** under Order XXXIX Rule 4 of CPC seeking clarification/modification of order dated 6th



November, 2023. The case of the Defendants is that *status quo* order has been passed, vide the said order despite the fact that the Defendant is admittedly the owner of the basement and the ground floor as recorded in the order itself.

4. The grievance of the Plaintiffs is that the proportionate land ought to be vested in the Plaintiffs and hence the *status quo* order is required.

5. Before proceeding further in this matter, it is noted that an application i.e. **I.A. 632/2024** under Order XXVI Rule 9 CPC has been moved by the Plaintiffs seeking appointment of Local Commissioner.

6. This Court is also of the opinion that the exact status of the said property and the manner in which it has been put to use by the parties needs to be brought on record through a Local Commissioner's report.

7. Accordingly, a Local Commissioner is appointed to inspect the suit property. The mandate of the Local Commissioner is as under:-

- i) The Local Commissioner shall inspect the basement, ground floor, first floor and second floor as also the terrace of the property.
- ii) The Local Commissioner shall determine who is in possession of which portion of the entire property and also with the help of sketches, mark the common areas.
- iii) The Local Commissioner shall take photographs of the basement, especially, of the area where Plaintiff is stated to be running a clinic and the manner in which the Defendant has put the basement to use.
- iv) The Local Commissioner shall also place on record photographs of the terrace and of the common areas in the basement including staircases etc.



- v) Specific reference shall be made by the Local Commissioner to page 45 of the plaint wherein the site plan of the basement is illustrated. In the said site plan, portions marked in green are noted to be common areas. The allegations of the Plaintiffs is that the passage in green is blocked by the Defendant. The same is to be verified.
- vi) The Local Commissioner shall report as to whether the Plaintiffs have any access to the water tank at the back in the basement.
8. The Local Commission shall be executed by 25th January, 2024.
9. Mr. Raunaq Kamath, Id. Counsel, who is present in Court, is appointed as a Local Commissioner to execute the commission in terms of the mandate set out above. The Local Commissioner shall file its report by 1st February, 2024.
10. The fee of the Local Commissioner is fixed as Rs. 1,00,000/- (Rupees One Lakh only), apart from any out-of-pocket expenses that may be incurred by the Local Commissioner, to be paid at the this stage by the Plaintiffs.
11. The Plaintiff and Defendant No.2 are present in the Court.
12. After hearing the parties, who are present in Court, it appears that the main grievance is in respect of the common areas and access to the same. The Plaintiffs' grievance is in respect of access to the water tank in the basement. The Defendant's grievance is in respect of access to the terrace. The parties have agreed to explore an amicable resolution.
13. After the Local Commissioner's inspection and the report being filed, parties shall also hold a meeting in the Chamber of Mr. Mandeep Singh



Vinaik, Id. Counsel for the Plaintiff, so as to attempt amicable resolution of the issues.

14. A meeting shall be held between the parties at Mr. Mandeep Singh Vinaik, Id. Counsel's Chamber being **Chamber No. 334 on 8th February, 2024 at 4.p.m.**

15. Accordingly, parties shall amicably try and resolve the matter in the meeting on 8th February, 2024 where Id. Counsel for the Defendant as well as the Defendant shall also be present. 19. Id. Counsels for the parties are permitted to meet on further dates to attempt a resolution.

16. If no settlement is arrived at on the said date, the matter shall be listed before the Court.

17. Parties shall remain present on the next date of hearing before Court.

18. **I.A. 632/2024** application is disposed of.

19. List on 11th March, 2024.

20. *Dasti.*

PRATHIBA M. SINGH, J.

JANURARY 11, 2024

mr/bh