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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 725/2024 & I.A. 38837/2024, I.A. 38838/2024**

YASHPAL TYAGI AND ORS

.....Plaintiffs

Through: Mr. Anuroop P.S., Mr. Gaurav
Bidhuri and Mr. Anurag Kumar,
Advocates

versus

HIMADRI SHEKHAR AND ORS

.....Defendants

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **09.09.2024**

CS(OS) 725/2024

1. This suit has been filed for partition of suit lands forming part of khasra no. 22/15 (4-02), 23/1 (4-16), 23/10 (4-16), 23/11 (3-00) total measuring 16 bigha 14 biswas situated in the revenue estate of village Jharoda Majra, Burari, Delhi ('Suit Land').
2. Learned counsel for the plaintiffs' states that the plaintiffs and defendants are all the lineal descendants of late Sh. Ram Narain, who was the recorded bhumidar of the suit land.
3. Upon steps being taken by the plaintiffs, issue notice to the defendants through all modes. Affidavit of service be filed within two (2) weeks.
4. The summons shall indicate that written statement(s) must be filed within thirty days from the date of receipt of summons. The defendants shall also file affidavit(s) of admission/denial of the documents filed by the plaintiff, failing which the written statement(s) shall not be taken on record.
5. The plaintiffs are at liberty to file replication(s) thereto within thirty days after filing of the written statement(s). The replication(s) shall be



accompanied by affidavits of admission/denial in respect of the documents filed by the defendants, failing which the replication(s) shall not be taken on record.

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

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

8. List the matter before the Joint Registrar (J) for completion of service and pleadings on **06.11.2024**.

9. List the matter before Court on **13.12.2024**.

I.A. 38837/2024 (Under Order XXXIX Rule 1 & 2 of CPC, 1908)

10. This is an application filed by the plaintiffs under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 ('CPC') seeking an ex-parte, ad-interim injunction, thereby restraining the defendants from transferring, alienating or parting with the possession of the suit land.

11. Learned counsel for the plaintiffs' states that the plaintiffs and defendants are all the lineal descendants of late Sh. Ram Narain, who was the recorded bhumidar of the suit land.

11.1. He states that the family tree has been set out at paragraph '3' of the plaint. He states that the plaintiff no. 1 along with plaintiff nos. 2 to 4 [who are the legal heirs of plaintiff's brother, late Sh. Satya Pal Tyagi] are claiming their respective shares in the estate of their grandfather late Sh. Ram Narain through their father, late Sh. Yagya Dutt Tyagi.

11.2. He states that even though the suit land has been urbanised, it is currently being cultivated and the plaintiffs are in joint possession of the suit land along with the defendants.



11.3. He states, however, since the village Jharoda Majra has since been urbanised, the defendants intend to change the use of the suit land and carved out plots for the purpose of sale.

11.4. He states that this would necessarily require partition of their shares in the property so as to enable sale of carved out plots.

11.5. He states that with the issuance of the notification under Section 507 of the Delhi Municipal Corporation Act, 1957 dated 16.05.2017, the provisions of Delhi Land Reforms Act, 1954 have ceased to apply to the suit land and therefore, it has become necessary to file the present suit for partition.

12. Issue notice to the defendants through all permissible modes. Affidavit of service be filed within two (2) weeks.

13. Reply to the application be filed within four (4) weeks after service positively. Rejoinder, thereto, if any, be filed within two (2) weeks thereafter.

14. The plaintiff has relied upon the copy of the *Khatoni* for the year 1995-96 issued on 07.10.2022, which records the name of the plaintiff no.1, names of predecessor-in-interest of the defendants and name of late Sh. Satyapal, the father of the plaintiff nos. 3 and 4 herein. The title of the plaintiffs in the suit land is therefore prima facie evident from the document placed on record. In the facts noted hereinabove, the plaintiffs have made out prima facie case in their favour for maintaining a claim for partition. Since, the parties are in joint possession of the suit land, it would be in the interest of the parties to partition the land before selling the same to third parties. Accordingly, the defendants are restrained from parting with possession or creating third party interest in the title and possession of the



suit land, until the next date of hearing.

15. List the matter before the Joint Registrar (J) on **06.11.2024**.

16. List the matter before the Court on **13.12.2024**.

17. Provisions of Order XXXIX Rule 3 of CPC shall be complied with within one week. Affidavit of compliance be filed within a period of one (1) week thereafter.

18. 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. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J
SEPTEMBER 9, 2024/rhc/MG