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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 889/2024

**LT COL ANIL OHRI RETD THROUGH SPECIAL
POWER OF ATTORNEY HOLDER PARIVESH OHRI**

.....Plaintiff

Through: Mr. Sarojanand Jha, Mr. Tushar
Kumar, Mr. Suraj Malik, Mr.
Ishan Sehgal, Mr. Rahul Kumar
& Ms. Varnika Bajaj, Advs.

versus

SUNIL OHRI & ORS.

.....Defendant

Through: Mr. Kapil Gupta & Mr. Abhijeet
Advs. with D-2 in person.

CORAM:

**JOINT REGISTRAR (JUDICIAL) SH. MANISH
SHARMA, (DHJS)**

ORDER

03.12.2024

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**This is a fresh suit. Registry is directed to check and
register as per rules.**

**I.A.No.44632/2024 (under Section 151 CPC filed on
behalf of the plaintiff for exemption from filing the
certified, true typed English translations, legible copies
of the Dim Annexures, proper left margin of documents
and Font size of Annexures)**

1. Heard
2. Subject to all just exceptions, the captioned IA is
allowed. The plaintiff is directed to file certified, true
typed English translations, legible copies with proper
margin of documents be filed within four weeks.
3. IA stands disposed of.

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4. The plaintiff has filed the present suit through his son,
who the plaintiff has authorised vide Special Power of



Attorney dated 29/06/24. The present suit is for declaration and permanent injunction. It is averred by the plaintiff in the plaint that the defendant no.1 is the younger brother of the plaintiff and defendant nos.2 is the wife of defendant no.1 and the defendant no.3 is the son of defendant nos.1 & 2. It is further averred that the defendants trying to usurp the suit property entirely and wanted to oust the plaintiff by depriving him of his rightful share in the suit property. It is also averred that the defendant nos.1 & 2 started construction on the second floor of the suit property without taking consent of the other stake holders of the suit property. It is averred that the defendant nos.1 & 2 are trying to take advantage of mental and physical condition of the plaintiff by constructing second floor of the property.

5. It is averred that Col. H.D. Ohri (father of plaintiff and defendant no.1) along with his wife late Mrs. Raj Ohri and both sons being plaintiff and defendant no.1, collectively as a Hindu Undivided Family (HUF) effectuated a partition deed and partitioned the aforesaid HUF among themselves and to divide and partition the immovable property and other moveable assets mutually and irrevocably. It is further averred that in view of the said partition deed, the suit property i.e. C-34, Greater Kailash-I, New Delhi -110048 was partitioned among the four members of the family. The plaintiff has prayed that plaintiff and defendant no.1 be declared as 50% proportionate owner of the suit property; to declare that the defendant no.1 or any other person acting on his behalf has no right to construct on



the Terrace/Roof Second floor of the suit property and also permanently restrain the defendant no.1 or any other person acting on their to make any construction on the Terrace/Roof of the Second floor of the suit property.

6. Learned counsel for defendants has appeared on advance notice and submits that summons of the suit may not be issued in this case on the following grounds;

- (i) The plaintiff has not paid the adequate court fees;
- (ii) The plaintiff has not sought cancellation of the documents, which he has disputed in the plaint;
- (iii) The plaintiff has not sought any consequential relief
- (iv) The plaintiff is not in possession of 50% of the suit property.

7. Learned counsel for defendants also submits that defendant nos.2 & 3 are not proper party to the suit and their names may be deleted from the array of parties.

8. Arguments heard. Record perused.

9. In my opinion, the objections raised by learned counsel for the defendants cannot be considered/allowed at this stage. As per the plaint, the plaintiff has paid the adequate court fees for the reliefs sought. The plaintiff stated to be in part possession of the property and there is a dispute regarding ownership of the shares in the property.

10. As per the plaintiff, he is 50% owner of the suit property and as per the defendants, the plaintiff is



merely 25% owned by the suit property. In my considered view, all these issues cannot be dealt with at the stage of issuance of summons of the suit.

11. The present dispute is between two brothers i.e. plaintiff and defendant no.1 and I find no case against the defendant nos.2 & 3, therefore, no direction for issuance of summons against the defendant nos.2 & 3 is issued.
12. Issue summons of the suit.
13. Learned counsel for defendant no.1 accepts summons of the suit and submits that the written statement along with affidavit of admission/denial of documents shall be filed within the stipulated period.
14. Plaintiff is directed to file replication and affidavit of admission/denial of documents within four weeks after receipt of copy of written statement and affidavit of admission/denial of documents.
15. During the course of arguments, learned counsels for the parties submit that there is a possibility of settlement between the parties.
16. Plaintiff through SPA and defendant no.1 are directed to appear in person on the next date of hearing for the purpose of settlement, if any, between the parties.
17. Re-notify the matter for completion of pleadings and admission/denial of documents on **12th February, 2025.**

MANISH SHARMA, (DHJS)
JOINT REGISTRAR (JUDICIAL)
DECEMBER 3, 2024/nk
Click here to check corrigendum, if any