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

+ **CS(OS) 296/2016**

ASHOK BAURY

..... Plaintiff

Through: Mr. Gaurav Sarin, Advocate with
Mr. Ajay Baury, Adv.

versus

MR RAJ BAURY & ORS

..... Defendants

Through: Mr. Anurag Andley, Advocate for
Mr. Pramod Kumar Dubey, Adv. for
D-1 to D-6.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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09.02.2017

IA No.7268/2016 and IA No.13321/2016 (both under Order 26 Rule 9 CPC)
former filed by the plaintiff and the latter filed by the defendant

By these applications both the plaintiff and the defendants (collectively) have come up with their respective applications seeking appointment of an architect for inspection of the suit property to bring on record a clear picture as to its dimensions, the status of construction, measurement, *etc.* which, in the submissions of the learned counsel on both sides, would eventually aid and assist in devising ways to divide the property in accordance with the shares on which there seems to be no controversy. In the reply by the plaintiff to the application (IA No.13321/2016) of the defendants, a suggestion is also given to the effect that the entire plot can be divided and fresh construction can be constructed thereupon, apparently for such portions to be made available as their respective shares to the parties in terms of the eventual disposition.

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The defendants, at the same time, insist on appointment of an Advocate as a local commissioner “to supervise” the proceedings of the architect who would carry out the inspections and in preparation of the main report. The counsel for the defendants submitted that defendants are ready and willing to bear the additional costs towards appointment of an Advocate as the local commissioner for purposes of such supervision.

With the consent of the learned counsel on both sides, in fact on their common choice, Mr. Alok Ranjan, Architect (mobile #9212402999) is appointed as court commissioner for the above-mentioned purposes. His fee is fixed at Rs.50,000/- to be borne equally in accordance with the respective shares of the parties. The architect shall take care to state in his report, *inter alia*, the following:-

- (i) The measurements of the plot bequeath the suit property;
- (ii) The roads abutting the property indicating access thereto;
- (iii) The existing state of construction and the persons in respective occupation thereof;
- (iv) Possibility of dividing the existing structure by metes and bounds amongst three shares;
- (v) If in the assessment of the architect, division of the subject property by metes and bounds is not possible, the possibilities of its re-development, and in that event, his tentative suggestions for such purposes, also bringing out clearly the views of the respective parties on such suggestions as well.

In addition, Mr. Roshan Santhalia, Advocate (mobile #09560622223) is appointed as the local commissioner to remain present with the architect at the time of his inspection of the subject property and, if necessary, supervise or aid and assist the architect in carrying out his task.



The fee of the local commissioner, also fixed at Rs.50,000/- shall be borne by the defendants dividing the burden between themselves according to their respective shares.

Needless to add, the architect and the local commissioner shall coordinate with each other for visit to the subject property after fixing a schedule as per their mutual convenience and convenience of the parties. It is hoped and expected that the architect and the local commissioner shall give their joint or respective reports at an early date.

Applications stand disposed of with these directions.

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The case is already fixed before the Joint Registrar on 11.04.2017. Therefore, no specific date for the case to be taken up in the court is presently fixed. The Joint Registrar after securing compliance with the above directions for local inspection and completion of pleadings, as indeed admission/denial of documents, shall place the case before the court for an appropriate date.

R.K.GAUBA, J.

FEBRUARY 09, 2017

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