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

+ **CS(OS) 355/2018**

ANURADHA SEN MOOKERJEE Plaintiff

Through: Ms. Kashvi Dutta and Mr. Rudra
Dutta, Advocates. (M-8447357866)

versus

K.S. SAXENA & ANR. Defendants

Through:

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% **25.07.2018**

I.A. 9662/2018 (exemption)

1. Exemption is allowed subject to all just exceptions. The original documents/certified copies shall be filed at the time of admission/denial of the documents. I.A. is disposed of

CS(OS) 355/2018

2. Let the plaint be registered as a suit.

3. Issue summons to the Defendant through all modes upon filing of Process Fee.

4. The summons to the Defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days from date of receipt of summons. Along with the written statement, the Defendants shall also file an affidavit of admission/denial of the documents of the Plaintiff, without which the written statement shall not be taken on record.



5. Liberty is given to the Plaintiff to file a replication within 30 days of the receipt of the written statement. Along with the replication, if any, filed by the Plaintiff, an affidavit of admission/denial of documents of the Defendant, shall be filed by the Plaintiff, without which the replication shall not be taken on record.

6. List before the Joint Registrar for marking of exhibits on 22nd October, 2018. It is made clear that any party unjustifiably denying documents would be liable to be burdened with costs.

7. List before Court on 28th November, 2018 for case management hearing.

I.A. 9661/2018 (u/O XXXIX Rule 1 & 2)

8. The Plaintiff seeks a declaration that she is the owner of not less than 45% of the property bearing No. Plot No. B- 1/7, Hauz Khas Enclave, New Delhi-110016. It is claimed that the Plaintiff has purchased the suit property vide registered sale deed dated 28th April, 2005 from the co-owners. According to the Plaintiff, she had bought the ground floor as also was given not less than 45% of the share in the land itself. Learned counsel for the Plaintiff relies upon the judgment of the learned civil Judge dated 24th March, 1995 in Suit No.587/1987.

9. Learned counsel for the Plaintiff submits that the Defendants have raised the first, second and third floor in the property and are also planning to sell the same.

10. The Plaintiff has established a prima facie case. Balance of convenience lies in favour of the Plaintiff. Non-grant of an interim order may result in creating further complexities and third parties may get



affected. Accordingly it is directed that the parties shall maintain status quo in respect of the suit property qua title and possession till the next date.

In the facts and circumstances of this case, it is deemed appropriate that a Local Commissioner is appointed to visit the suit property to -

- (a) Ascertain the extent of construction.
- (b) Ascertain as to who is in possession of the various portions of the suit property and in what capacity.
- (c) Also to obtain copies of rent deed/any other document from the said occupants.

11. **Ms. Runul Rastogi, Advocate (M-9899104670)** is appointed as a Local Commissioner to visit the suit property. The fee of the Local Commissioner is fixed at Rs.50,000/- to be paid by the Plaintiff. Report of the Local Commissioner be filed within two weeks.

12. The Local Commission shall be executed within a week. Copy of the order and complete paper book shall be served by the Local Commissioner upon the Defendants at the time of execution of commission. Photographs may also be taken by the Local Commissioner.

13. In the execution of such commission, the Local Commissioner is empowered to seek the assistance of the SHO of the area concerned, if required. The SHO of the concerned police station shall render all assistance if a request in that regard is made by the Local Commissioner. The Defendants are directed to cooperate with the Local Commissioner.

14. Compliance of Order XXXIX Rule 3 CPC be made within 10 days. Reply to the application be filed within 2 weeks from service of the present order along with the paper book. Rejoinder before the next date.



15. List the application before Court 4th September, 2018.
16. Order *dasti*.

PRATHIBA M. SINGH, J.

JULY 25, 2018

Rekha