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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 3083/2014**

SHAKTI NATH

..... Plaintiff

Through: Mr. A. K. Singla, Senior Advocate
with Mr. Vijay, Mr. Sheshank
Mishra, Advocates.

versus

SHASHI MOHAN CHATURVEDI AND ORS Defendants

Through: Mr. G. D. Chopra, Advocate with
Mr. Karan Nagrath, Ms. Udit
Khatter, Advocates

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **12.09.2019**

I.A. 8656/2019 (Application under Order XVI Rule 6 of the CPC seeking to summon official witnesses, lead secondary evidence and file supplementary evidence)

1. This is an application for summoning witnesses for bringing on record and filing copies of certain documents referred to therein.
2. The following documents are mentioned in paragraph 2 of the application:-

“a. Building Occupation Certificate dated May 29, 1971 bearing File No. 214/A/HQ/69, also bearing File No. 120/CC/71, issued to Late M.M. Dayal Chaturvedi for occupation of property bearing no. 103, Friends Colony (East), New Delhi - 110065;

b. Sanction Form No. 4 dated April 22, 1971 bearing File No. 120/CC/71, issued to Late M.M. Dayal Chaturvedi in respect of property bearing no. 103, Friends Colony (East), New Delhi - 110065;

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c. Letter dated May 15, 1959 from S.G. Pradhan, Architect, Municipal Corporation of Delhi to Air Commodore M.S. Chaturvedi, approving sub-division of plot.”

3. These documents were the subject matter of an earlier application being I.A. No. 795/2017 which was allowed by order dated 19.01.2017. Pursuant to the order dated 19.01.2017, several documents were produced by official witnesses. However, the documents mentioned at (a) and (b) above were not available in the department from which the witnesses had been summoned. As far as the document mentioned at (c) above is concerned, it is recorded in the order dated 31.08.2017 that the summoned record was not available with the Assistant Town Planner, Town Planning Department, SDMC.

4. The defendants also seek summoning of a Sale Deed dated 26.07.2014 from the Office of the Sub-Registrar, Mehrauli. It appears that a copy of the said Sale Deed had been placed on record but the plaintiff had raised the objection that a certified copy was required.

5. In these circumstances, it is directed that summons be issued to the witnesses mentioned in paragraph 9 of the application for production of the documents stated therein [paragraph 2(a) and (b) above and the Sale Deed dated 26.07.2014.]

6. As far as the letter dated 15.05.1959 is concerned (referred in paragraph 2 (c) of the application), the defendants seek leave to lead secondary evidence as the document was not traceable in the office of the official witness who was summoned. The defendants may file a supplementary affidavit of evidence in this regard within two weeks from today.



7. It is stated by counsel for the defendants that recording of the evidence of defendant no.3 has already commenced. The same defendant will file the supplementary affidavit of evidence and will be produced for recording of further evidence after the summoned witnesses have produced the records as sought.

8. The application is disposed of with these directions.

I.A. 2460/2019 (Application under Order XVI Rule 1 (2) for summoning of official witness),

I.A. 3556/2019 (Application under Order XVI Rule 1(2) and 5 for summoning official witness),

I.A. 4803/2019 (Application under Order XVI Rule 1(1) and 3 for taking on record list of witnesses),

I.A. 7245/2019 (Application under Section 65 of Evidence Act for leading secondary evidence),

I.A. 7246/2019 (Application under Order VIII Rule 1A (3) for taking documents on record) &

I.A. 7247/2019 (Application under Order XVI Rule 6 for summoning documents from official witnesses)

Learned counsel for the defendants/applicants states that in view of the above order passed in I.A. 8656/2019, the aforesaid applications have become infructuous. They are disposed of as such.

I.A.7699/2017 (Application under Order XVI Rule 1(2) for taking on record documents already summoned)

This application has been allowed by an order dated 08.08.2017. The Registry is directed not to list it further.

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I.A.14772/2015 (Application under Section 151 of the CPC for directions to the plaintiff)

1. At the request of learned counsel for the plaintiff, to which there is no objection from the learned counsel for the defendants, it is directed that further evidence will be recorded before a Local Commissioner to expedite the disposal of the suit.



2. Ms. Bimla Makin, former District and Sessions Judge (Phone No.:- 9910384624) is appointed as the Local Commissioner to record evidence in the suit. The expenses for the commission shall be borne by the plaintiff at the first instance, subject to final orders in the suit.
3. The fees of the Local Commissioner is fixed at ₹1,00,000/- in addition to out of pocket expenses. A sum of ₹50,000/- is to be paid forthwith and ₹50,000/- is to be paid after the evidence of the summoned witness has been recorded, prior to further recording of the evidence of defendant no.3.
4. Learned counsel for the parties will coordinate with the Local Commissioner for fixing a date for commencing of the evidence. The Commissioner is requested to record evidence within the premises of this Court. The Registry is directed to make the suit record available at the place and time fixed by the Commissioner for recording of evidence. The summons will be issued to the official witnesses for appearance on the date fixed before the Local Commissioner, upon filing of process fees.
5. It is expected that the evidence will be recorded within a period of 6 months. The Commissioner will be at liberty to have the matter placed before the Court if the parties do not cooperate in the recording of evidence, or if any other directions are required. Counsel for both the parties state that they will cooperate with the Local Commissioner for the expeditious recording of evidence.
6. List on 03.02.2020 for monitoring of the proceedings.

PRATEEK JALAN, J

SEPTEMBER 12, 2019/ 'j'/s

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