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

+ CS(OS) 441/2017 & I.A. Nos. 10721/2017 & 10722/2017
SH. KARAM CHAND & ORS Plaintiffs

Through: Mr. Ashok Gurnani with
Mr. S.S. Triphati, Advocates.
(M): 9810109039

versus

SH. GANGA RAM & ORS Defendants

Through: Mr. Nazim Uddin Ahmed with
Ms. Rukshar, Advocates for
defendant no. 1 to 4.
(M): 97181556319

Email: nazim.sk1@gmail.com

Mr. Rajinder Singh with
Ms. Diksha Tiwari, Advocates,
for defendant no. 5, 6 and 7.

+ CS(OS) 442/2017 & I.A. Nos. 10723/2017 & 10724/2017
SH. KARAMCHAND & ORS Plaintiffs

Through: Mr. Ashok Gurnani with
Mr. S.S. Triphati, Advocates.
(M): 9810109039

versus

SH. GANGA RAM & ORS Defendants

Through: Mr. Nazim Uddin Ahmed with
Ms. Rukshar, Advocates for
defendant no. 1 to 4.
(M): 97181556319

Email: nazim.sk1@gmail.com

Mr. Rajinder Singh with
Ms. Diksha Tiwari, Advocates,
for defendant no. 5, 6 and 7.
Ms. Sakshi, ASC for



defendant/SDMC.
(M): 9899323077
Email:advsakshishairwal@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER
20.07.2022

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1. With the consent of the parties, issues are being framed jointly in CS(OS) 441/2017 and CS(OS) 442/2017, as it is the joint case of the parties that the trial of both the cases has to be held jointly and that common issues be framed with respect to both the suits.

2. Counsels further submit that defendant no. 5 and 6 are the only contesting defendants.

3. With the consent of the parties, following issues are being framed:

(i) *Whether the plaintiffs are entitled for a decree of partition of the property measuring 3 Bighas 3 Biswas (around 3180 sq. yards) in Khasra No. 79, min, in Khata Khatoni No. 350/158 situated at Revenue Estate of Village Neb Sarai, New Delhi-110068 presently known as A-Block, Freedom Fighter Colony, New Delhi against the defendants No. 1 to 4 or any of them to the extent of 1/5th share therein ? OPP*

(ii) *Whether the plaintiffs are entitled for a decree of Mandatory Injunction in their favour and against the defendants No. 5 to 7 jointly and severally for removal and*



demolition of an unauthorized and illegal construction raised over the suit property bearing A-37 and A-38 having 800 sq yards approximately in Khasra No. 79, min, in Khata Khatoni No. 350/158 having the total area measuring 3 Bighas 3 Biswas situated at Revenue Estate of Village Neb Sarai, New Delhi-110068 presenly known as A-Block, Freedom Fighter Colony, New Delhi? OPP

(iii) Whether the plaintiffs are entitled for a decree of permanent injunction in their favour and against the defendants 1 to 4 jointly and severally restraining the defendants No. 1-4 along with their assignee, servants, executors, administrators and all the persons acting or purporting to act on their behalf or entitled to act on their behalf, restraining these defendants and persons from alienating or parting with possession or creating any third party interest in the suit property or any part thereof, further restraining them from raising any further construction over the same? OPP

(iv) Whether the present suit is barred under Order XXIII Rule 1 of The Code of Civil Procedure, 1908? OPD 5&6

(v) Whether the suit has been filed by the plaintiffs in collusion with defendants No. 1 to 4; if yes, what is the effect thereof? OPD 5&6

(vi) Whether the suits are barred by limitation? OPD 5&6

(vii) Whether defendants 5 to 6 or any of these defendants are the owners of the suit property situated in Khasra no.



79, min, in Khata Khatoni No. 350/158 having total area measuring 3 Bighas 3 Biswas situated at Revenue Estate of Village Neb Sarai, New Delhi-110068 presently known as A-Block, Freedom Fighter Colony, New Delhi? If yes, what is the effect thereof and if no, what is the effect thereof? OPP 5 & 6

(viii) Whether there is concealment of any fact by the plaintiffs? If yes, what is the effect thereof? OPD 5&6

(ix) Whether the present Suit is liable to be dismissed as it does not disclose the extent of land in possession or location of the land alleged to have been owned and possessed by the Plaintiffs and the Defendants No. 1 to 4 or their Predecessor in interest? OPD 5&6

(x) Whether the present Suit is bad for misjoinder of parties as the Defendant No. 6 has no right, interest or title with respect to the plot bearing no. A-37, Freedom Fighter Colony, Neb Sarai, New Delhi- 110068? OPD 5&6

(xi) Whether the present Suit is barred under Order II Rule 2 of Code of Civil Procedure, 1908? OPD 5&6

(xii) Whether the present Suit is barred under Order IX Rule 9 of Code of Civil Procedure, 1908? OPD 5&6

(xiii) Whether the plaintiffs are required to submit court fees on 800 sq yards of plot no. A-37 and A-38, Freedom Fighter Colony, Neb Sarai, New Delhi 110068 since it is the case of the plaintiffs that the said area comprising of 3 Bighas 3 Biswas has been grabbed and occupied by



defendants 5 and 6. OPD 5 & 6

(xiv) Relief

4. Both the parties will file their list of witnesses within four weeks from today.
5. Both the parties are *ad idem* that the plaintiffs will begin the evidence. In view thereof, with the consent of the parties, it is directed that the plaintiffs will file evidence by way of affidavit of their witnesses within eight weeks.
6. It has been pointed out that a written statement was filed on behalf of South Delhi Municipal Corporation, wherein it had been stated that the unauthorized construction in the property had been booked, sealed and action for demolition has taken place. Let South Delhi Municipal Corporation file status report with respect to the latest action that may have been taken by the South Delhi Municipal Corporation with respect to the property in question within four weeks.
7. List before the Joint Registrar for fixing the dates of trial 27.09.2022.

MINI PUSHKARNA, J

JULY 20, 2022

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