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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 442/2017**

SH. KARAM CHAND & ORS

..... Plaintiffs

Through: Mr. S.S.Tripathy, Ms. Bharti Pawar
Tripathy and Mr. Gagandeep Singh
Bagga, Advocates.

versus

SH. GANGA RAM & ORS

..... Defendants

Through: Mr. N.K.Ahmad and Mr. A.A. Khan,
Advocates for D-1 to 4.
Mr. Rajinder Singh and Mr. Abhishek
Mishra, Advocates for D-5 to 7.
Mr. Praveen Kumar Aggarwal, Adv.
for D-8 and 9.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **28.11.2017**

1. There are 10 defendants in the suit. Defendant no.10 is the SHO of the Police Station Mehrauli, New Delhi. Defendant no.10 is neither a necessary nor proper party inasmuch as no relief is claimed against defendant no.10. In cases where there is an issue of unauthorized construction, the concerned police will only give assistance with respect to any implementation of any order and therefore there is no need to make the SHO as a defendant/party to the suit. Defendant no.10 is accordingly

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deleted from the array of the defendants.

2. Defendant nos. 1 to 9 appear through counsel. Defendant nos. 8 and 9 have already filed their written statement. Replication to this written statement be filed by the plaintiffs within four weeks.

3. Written statement be filed by the defendant nos. 1 to 7 within four weeks. Replication be filed within four weeks thereafter.

4. Parties will file documents in their power and possession and admission/denial thereof be done after two weeks of completion of the pleadings by filing an affidavit of admission/denial annexing thereto a list of documents of the other side with an additional column of the endorsement of admission/denial.

5. List before the Joint Registrar for marking of exhibits to the documents and for completion of pleadings on 26th February, 2018.

I.A.No. 10722/2017 U/o 39 Rules 1 and 2 CPC)

6. When this suit came up for hearing on the first date i.e 15.9.2017 alongwith the application seeking prayer for interim order, the said interim relief was declined to the plaintiff. There are no changes of circumstances today to again consider grant of interim order without pleadings being first

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completed. Accordingly, though no interim order is granted today, it is however clarified that plaintiffs will always be entitled to benefit of doctrine of lis pendens vide Section 52 of the Transfer of Property Act and any transfer of the suit property, in whole or in part, by the defendants will be subject to the rights of the plaintiffs under Section 52 of the Transfer of Property Act.

8. Counsel for defendant nos. 8 and 9 states that in the suit property there was illegal construction with respect to which action has been taken and the illegal construction has been sealed. It is stated that defendant nos. 8 and 9 will ensure that there is no violation of law and the property would remain sealed.

9. Pleadings in this application will be completed in terms of the schedule given in the suit and this application will be listed in Court at the stage of framing of issues.

I.A.No. 10725/2017 (U/o 26 Rule 9 CPC for appointment of Local Commissioner)

10. Local Commissioner, if appointed, will only have the result of giving a report as to the present status of construction on the suit property and which can be otherwise shown by the plaintiffs by taking photos and filing

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these photos in this Court. Local Commissioner cannot decide disputed questions of fact as to who is in possession and who has title to the suit property. I have already directed the local municipal corporation, represented by defendant nos. 8 and 9, to ensure that the property remains sealed as regards the illegal and unauthorized construction made. Therefore, no useful purpose will be served by appointing a Local Commissioner at this stage.

This application is therefore dismissed.

VALMIKI J. MEHTA, J

NOVEMBER 28, 2017

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