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

% ***Date of Decision: 17.09.2026***

\# **CNR No. DLHC010605452009**

\+ **CS(OS) 807/2009, CCP(O) 45/2013**

LATE AMAR SINGH THROUGH L.RS. .....Plaintiff

Through: Ms. Amita Gupta, Mr. Sunil Kr. Verma and Mr. Sandeep Bhardwaj, Advs. for LRs of plaintiff.

versus

GURDIAL SINGH AND ANOTHER .....Defendants

Through: Dr. R. S. Sadan and Mr. Navjot Singh, Advs. along with defendants in person.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*Oral*)

CS(OS) 807/2009 and **IA No.14545/2023 (**u/O 20 Rule 12, filed on behalf of legal representatives of plaintiff)

1. By way of the present application, the applicant seeks that the defendant no.1 be directed to deposit the rent realized from the portion of the suit property let out by the said defendant, into this Court, and that the rent amount be defrayed to the legal representatives of the deceased plaintiff, in view of their dire financial condition.

2. By preliminary decree dated 30.05.2024, this Court has declared that the plaintiff, defendant no.1 and defendant no.2 hold one-third share each in the suit property. No partition by metes and bounds has yet taken place.

3. It is not in dispute that the defendant no.1 has let-out a portion of the

suit property and has been receiving rent therefrom. By order dated 16.08.2018, defendant no.1 was specifically permitted to lease out the portion of the suit property in his possession. The said order reads as under:

I.A.6440/2018

1. Defendant No.1 is seeking permission to let out 1/3rd portion of the suit property in his possession.

2. Learned counsel for the plaintiff submits that the defendant No.1 is in possession of 1/3rd of the suit property prior to the institution of the suit and this portion was let out to a tenant who vacated the same in 2017. Defendant No.1 is seeking permission to let out the same for a period of 11 months. The draft lease deed is handed over and taken on record.

3. Learned counsel for the plaintiff and defendant No.2 dispute the right of defendant No.1 to occupy the front portion of the suit property. It is submitted that the defendant No.1 be directed to share the rent with them and in the alternative, defendant No.1 be directed to deposit the rent in Court.

4. Subject to the outcome of the suit, the defendant No.1 is permitted to let out the portion of the suit property in his possession in terms of draft lease deed and interim orders dated 4th May, 2009 and 14th August, 2012 are modified to this extent.. The final lease deed, after execution, be placed on record within 15 days of the execution of the lease deed. Defendant No.1 is further directed to file the statement of the rent on affidavit every six months from the date of execution of the deed. Needless to say that in the event of the plaintiff and/or defendant No.2 succeeding in their claim for rent, defendant No.1 shall be liable to comply with the adjudication of the claim in respect of the rent.

5. The application is disposed of.

6. Copy of this order be given *dasti* to counsels for the parties under signature of Court Master.

4. The petitioner submits that the portion let-out by the defendant no.1 is the front portion of the property, and that the remaining back portion does not have an independent entry except through the front. Consequently, the plaintiff cannot feasibly use the back portion without access from the front.

5. The defendant no.2, who is present in the Court, also submits that he is neither in a position to use or let-out the portion in his possession.

6. Accordingly, it is sought by both the plaintiff and the defendant no.2 that the entire property be let-out and the rental amount realized be divided among the parties in accordance with the shares declared in the preliminary decree.

7. Defendant no.1 resists the said prayer on the ground that he is entitled to one-third of the property and the portion let-out by him does not exceed his share, and that the plaintiff and defendant no.2 are equally free to let-out the remaining portion.

8. This contention cannot be accepted.

9. The preliminary decree declares the parties' shares but does not allot any specific portion of the property to any party. Until a final decree is passed partitioning the property by metes and bounds, every part of the suit property remains jointly owned by all three co-sharers in their declared proportion.

10. Defendant no.1 cannot, by the unilateral act of letting out a portion, treat that portion as his separate share.

11. The rent yielded by the portion so let out, constitutes income of the joint property, in which the plaintiff and defendant no.2 have the same interest / share (one-third each) as they have in the suit property itself.

12. This Court finds no merit in the contention of the defendant no.1 that he is exclusively entitled to appropriate the rental income being realized from letting out the front portion of the property.

13. In this regard, it is pertinent to note that the Supreme Court in ***Raijnder Kaur vs. Gurbhajan Kaur*** (2024 INSC 552) has held that a co-sharer in possession of the joint property is liable to account to the other co-sharers. The relevant observations made by the Supreme Court are as under:

> *"21. Since it is the admitted case of the defendant No.3(a) himself that he had rented out a portion of the property and collected rent therefrom, there was no good reason for the High Court to have absolved him from rendition of accounts. However, this is with a rider as the plea sought to be raised by the defendant No.3(a) regarding rent notes produced by him were prima facie found to be sham transactions, as the market rate of the rent of the portion in control of the defendant No.3(a) was much more at that time. Even plaintiff offered ₹1,50,000/- per month. Hence, Trial Court will have to hold an inquiry on this aspect and fix appropriate rent to which the defendant No.3(a) would be liable to contribute to the common kitty for appropriation amongst all the co-sharers.*
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> *21.1 As far as the argument raised by the learned counsel for the defendant No.3(a)-S.C. Bhalla regarding application filed in the High Court offering to hand over possession of the property in his possession is concerned, as annexed in the present paper book at page No.343, the application was traced out from the record and the same bears No.CM-12168-C-2017 in RSA-2761-2016. It is evident from the order passed by the High Court dated 30.01.2018 that the aforesaid application was directed to be heard with the main case. Meaning thereby that the defendant No.3(a) may not be serious about the prayer made in the application. It is further evident from the fact that at the time of the final argument of the appeal again the prayer made in the application was not pressed as there is no discussion on the same and the issue was not raised by defendant No.3(a) thereafter.*
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> *21.2 <u>The High Court misdirected itself in recording the finding</u>*

<u>that the defendant No.3(a)-S.C. Bhalla, being in self- occupation of the part of the property, being a co-sharer, will not be liable to render any accounts to arrive at such a conclusion</u>. Reference was made to the fact that his vendor (defendant No.3-Bhupinder Singh) has contested litigation with the tenant (defendant No.10-M/s. H.M. Traders) and spent huge amount thereon. But the fact remains that the defendant No.3(a)-S.C. Bhalla has purchased the property from defendant no.3-Bhupinder Singh after it had already been vacated by the tenant and he was handed over vacant physical possession thereof.

22. As far as defendant Nos.15 to 19 are concerned, there is no dispute that the portion in their possession has not been rented out to any third party. But it is also a fact admitted by them that they are carrying their own business in the portion in their possession. They have been absolved from rendering account on the ground that the portion in their possession is to the extent of their share in the property. However, this issue has not been determined by any authority. The fact remains that the defendant Nos.15 to 19 are carrying on their own business in the property in question in their possession and earning therefrom. Had their business been carried on in a rented premises, they would have certainly paid some rent. In case, during the course of proceedings for passing of final decree, the Court determines that the defendant Nos.15 to 19 were in actual physical possession of the property in question to the extent of their share, they may not be liable to contribute any amount in the kitty and subsequently will not be entitled to any share from the total amount in the kitty coming out of the amount collected from other portion of the property i.e. 85%. However, in case it was found that they are in possession of portion more than their share, there can be two options; either they contribute to the common kitty for the entire portion of the property in their possession and then get share therefrom or they may be held liable to contribute to the common kitty for the property in their possession beyond their share and subsequently they will not be entitled to any share from the common kitty. However, such an option will have to be exercised by the defendant Nos.15 to 19 before assessment of the rent, to be paid by the aforesaid defendants and not after the rent has been assessed by the Trial Court."

14. This Court, in the judgment/order dated 19.03.2010, passed in

CS(OS) 420/1982 titled "***Dhruv Goel v. Anand Parkash Goyal and Ors***." held as under:

> *"26. It is held that the above reasoning is dispositive of the defendants' submission that the application for enhancement does not lie, and is not maintainable. As far as the submission that the court lacks in power to make an order on interim mesne profits, since a provision exists, for that purpose, under Order 20 Rule 18, and invocation of Section 151 under such circumstances is not justified, it is held that there cannot be any such inflexible rule. After all, procedural rules are the handmaidens of justice. If they are allowed to prevail, they would subvert, not sub-serve ends of justice. This court, in Ravinder Pal Singh v. Surender Pal Singh, ILR (2008) 1 Del 187 held that:*
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>> *"This court has been called upon to examine the prayer for grant of mesne profit at an interim stage. Certainly, the parties would have an opportunity to lead evidence on this issue in the light of the settled provisions of law. But interest of justice and equity mandate that a person though admittedly an owner, cannot be deprived of benefits of a property as in the instant case, more so, in facts of the present case noticed above. The plaintiff has indicated the value of the property and prayed that this court make an order of mesne profits equivalent to percentage thereof. The defendant has stated that fifty percent of the rental which was being paid by him be given to the plaintiff.*
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>> **22.** *Mesne profits are the award in favour of a person who is wrongfully deprived of use and occupation of his property. Mesne profits have normally been equated to the market rate of rental which such property would fetch in the open market on the date of consideration of the issue. In the absence of information of the prevalent market rate of rent, the formula and basis for fair assessment of rental may be drawn from the methodology for fixation of standard rent under the provisions of the Delhi Rent Control Act, 1958. As per this statute, in*

respect of the properties to which this Act applies, the standard rent of the property to which this statute applies is equivalent to 10% per annum of the aggregate amount of the actual cost of construction and the market price of the land comprised in the premises on the date of commencement of the construction."

There are other decisions, also which support the view that ad-hoc or interim amounts can be granted before final adjudication of a suit, if the justice of the case so demands."

15. The power of this Court to issue directions for appropriate utilization of the property after a preliminary decree is passed, is beyond doubt. Order XX Rule 18(2) of the Code of Civil Procedure, 1908, expressly contemplates that a preliminary decree in a partition suit may declare the rights of the parties and give such further directions as may be required. The suit remains pending until the final decree, and the Court retains full control of the property and its income in the interregnum.

16. In the circumstances, the following directions are issued:

(i) The remaining / unutilized portion of the property shall be let out. For this purpose, any articles belonging to the plaintiff or defendant no.2 shall be removed from the portion of the property which is not yet rented out.

(ii) The parties, including Defendant no.1 shall be at liberty to find an appropriate tenant to let-out the said portion/s of the property, an endeavour shall be made to let out the entire property with a view to maximize the rentals; the parties shall be entitled to seek appropriate further directions, as may be warranted, upon prospective tenant/s being identified,

(iii) Copies of the lease deed that may be executed in respect of the said portion shall be shared with the plaintiff and the defendant no.2 and also placed before this Court.

(iv) The rent realized by letting out the property, including the portion already let-out as well as any additional portion be let-out pursuant to this order, shall be shared equally between the plaintiff, defendant no.1 and defendant no.2.

(v) The defendant no.1 (who has been realising rent and appropriating the same to the exclusion of the other co-sharers) shall render accounts of the rent collected by him and shall deposit two-thirds share thereof in this Court on a month-to-month basis, before the seventh day of every successive month, effective 1st September, 2026.

17. The plaintiff and the defendant no.1 shall be entitled to move appropriate application for release of the rent so deposited in their favour.

18. For the previous period for which the rent has been exclusively appropriated by the defendant no.1, let the details / quantum thereof be placed on record by the said defendant, by way of an affidavit to be filed within a period of four weeks from today.

19. List for further consideration on 09.12.2026.

SACHIN DATTA, J

SEPTEMBER 17, 2026/cl