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

Date of decision: 10<sup>th</sup> MARCH, 2025

IN THE MATTER OF:

+ **CS(OS) 3286/2015 & CRL.M.A. 26319/2024, I.A. 23047/2015, I.A. 5386/2016, I.A. 8040/2017, I.A. 10006/2019, I.A. 31922/2024, I.A. 38027/2024 & I.A. 43052/2024**  
**SHEIKH IQBAL AHMED & ORS** .....Plaintiffs

Through: Mr. Anuj Saxena, Mr. Anuj Ruhela,  
Mr. Prakash Sharma and Mr. Manan  
Malik, Advocates.  
Mr. Bahar U. Barqi, Advocate.

versus

**ASHWANI KUMAR GUPTA & ORS** .....Defendants

Through: Mr. Kuljeet Rawal with Mr. Aditya  
Joshi, Advocates for Defendant Nos.  
1-3,5,7,22-27

**CORAM:**  
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT (ORAL)**

**I.A. 32152/2024**

1. The Applicants/Defendants No. 1 to 3, 5, 7 and 22 to 27 have filed the present application under Order XXXIX Rule 1 & 2 CPC seeking the following prayers:

*"(a) that this Hon'ble Court be pleased to issue such directions or orders, which enables /permits the applicants to make effective use of passage out of property No. 10237, Ward No. XII, Library Road, Pul Bangash, Delhi, for ingress, egress, use etc; while also directing Plaintiffs, their representatives, assignees etc to keep both entry doors / gates open as described earlier on all working days with immediate*



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*effect at least from 10 AM to 8-30 PM, for which purpose applicants volunteer & are even willing to bear Chaukidari Charges for enabling and managing the opening and closure of the both the gates & which appointment of Choukidar be also made from a reputed good security agency, by the Hon'ble Court, to enable & manage the entry gates out of property bearing no. 10237 as earlier described.*

*(b) Relief (a) be granted ex parte till the disposal of the suit*

*(c) Any other orders and directions be issued as this Hon. Court deem fit and proper in view of the facts and circumstances of the present case."*

2. Shorn of unnecessary details, the facts leading to the present application are as follows -

- a) It is stated that Properties bearing Municipal No. 10235, 10236, 10237 (property in dispute), 10238 and 10239 belonged to the father of the Plaintiffs.
- b) In the year 1981, a suit bearing No. 1066 of 1981 for partition of the abovementioned properties along with one other property bearing No. 2227, Gali Hinga Beig, Phatak Habashkhan (Tilak Bazaar), Delhi, was filed before this Court.
- c) During the trial of that suit vide order dated 17.12.1999, this court directed for public auction of the aforementioned properties. Aggrieved by the said order, the present Plaintiffs along with their mother (Plaintiff No. 1 in Suit bearing no. 1066 of 1981) filed FAO(OS) No. 22/2000.
- d) During the pendency of FAO(OS) 22/2000, a compromise was arrived at between the parties. Thereafter a joint application bearing CM No.



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788/2000 under Order XXIII Rule 3 CPC was filed, recording the compromise between the Parties. Vide order dated 19.04.2000 passed in CM No. 788/2000 in FAO (OS) No. 22/2000 the compromise between the parties was recorded. It is stated that on 20.04.2000, the Plaintiffs No. 8 to 14 in Suit bearing no. 1066 of 1981 sold and transferred their rights in favour of the Applicants. It is stated that in the Sale Deeds whereby the shares were transferred to the Applicants, the Property bearing No.10237 was to be used as a common passage by the Applicants and the Plaintiffs.

- e) In the year 2015, the present Partition Suit came to be filed whereby the Plaintiffs demanded declaration to the effect that the abovementioned Sale Deeds be declared as null and void and if such a prayer is not granted, a decree of partition, partitioning property bearing No.10237 in equal shares between the Plaintiffs and the Applicants with its metes and bounds.
  - f) It is stated that the Applicants occupy the Property bearing No.10238 and 10239 marked in green colour in EXHIBIT-B whereas the Plaintiffs occupy the Property bearing no. 10235 and 10236 marked in yellow. Exhibit-B is a document filed by the Plaintiffs. It is stated that Property bearing No.10237 is a common passage which is eleven feet wide and also consists of a hall/godown admeasuring 1611 square meters, the entrance of which falls in between Property No.10236 and 10238.
3. Learned Counsel for the Applicants states that the present application under Order XXXIX Rules 1 and 2 of CPC has been filed as the Plaintiffs are locking the gates of the common passage (Property No.10237) in early



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evening hours, as early as 05:00 PM and the Applicants being shop owners, running the business of selling crockery, cartons, miscellaneous items have been suffering losses due to non-availability of access and usage of passage and the godown, which is being used by the Applicant, in the Property bearing No.10237.

4. It is stated that at the entrance of the Property bearing No. 10237, there are two gates, one inner iron/steel gate and an outer wooden gate. As per practice, four locks are put on these two gates i.e., two of the plaintiff and two of the Applicants. It is further stated that the business activities of the Applicants continue till about 08:30 PM and after the said time it takes 30 minutes more to wrap up the shops and put back the stocks in the godown for storage and safety. It is also contended that this locking of gates unilaterally in the early evening hours by the Plaintiffs is causing severe handicap and inconvenience to the Applicants, hampering their businesses as the Applicants have the shops on the front side of the property.

5. It is further stated by the learned Counsel for the Applicants that the only reason given by the Plaintiffs for locking the premises early is on account of their old age. The learned Counsel for the Applicants submits that they are ready to volunteer to have a security agency/Chowkidar who would lock the gates of Property at 08:30 PM and the Applicants are also willing to bear the charges to enable them to use the Property No.10237.

6. *Per contra*, the learned Counsel for the Plaintiffs submits that by moving the said application the Applicants are only trying to create some kind of easement rights in Property bearing No.10237 and the present application is nothing but false and fictitious. It is further states that the Applicants have illegally constructed a few shops after having purchased the



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premises being Property Nos.10238 and 10239 and have violated the provisions contained in the Municipal Corporation of Delhi. It is also stated that the Applicants have failed to make out a requisite case under Order XXXIX Rules 1 and 2 of CPC as there lies no balance of convenience in their favour nor any irreparable loss is going to be caused to them.

7. Heard learned Counsel appearing for the Parties and perused the material on record.

8. Material on record indicates that a partition suit was filed bearing No.1066/1981 for partition of the properties bearing Nos.10235 to 10239 and one other property being No.2227 Gali Hinga Baig Phatak Habashkhan, Delhi. It is stated that FAO(OS) 22/2000 was filed by the Plaintiffs against an Order of this Court in Suit bearing No.1066/1981. During the pendency of FAO(OS) 22/2000, a compromise was entered into between the parties which was then recorded in Order dated 19.04.2000 passed in CM No.788/2000 in the abovementioned case.

9. The terms of the Compromise entered into between the parties as recorded by the Division Bench of this court vide Order dated 19.04.2000 are as under:

*"(i) That the Plaintiffs No.1 to 7 get the portion shown in yellow colour while the Plaintiffs No.8 to 14 and Defendant No.1 to 6 will get the portion in green colour in the site plan annexed to this application. It is marked as Annexure A-1.*

*(ii) That the FIRST FLOOR of the said properties excepting one room which is occupied by S. P. Nijhawan is in joint occupation and possession of the parties to the suit. The said First Floor has been partitioned. The portion shown in yellow colour on the First Floor has fallen to the share of the Plaintiff No.1*



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*to 7 AND the portion shown in green colour on the first floor has fallen to the share of Plaintiff No.8 to 14 and Defendants No.1 to 6. This partition is shown in Annexure A-1.*

*(iii) (a) That the Plaintiffs No.8 to 14 and Defendants No.1 to 6 will erect at their own expense a partition wall at points A, B, C, D, E and F on the first floor of the said property, more clearly shown in Annexure A-1. This partition will effect the First Floor portion of the properties.*

*(b) That the Plaintiffs No.8 to 14 and the Defendants No.1 to 6 will as soon as they get possession of the portion shown in Green Colour at the first floor now in occupation of S.P. Nijhawan, they will refrain from using the passage to their portion given through the premises No.10236. They will use only the passage to their portion from premises No.10239.*

*(c) That Plaintiffs No.8 to 14 and the Defendants No.1 to 6 will bear the costs of expenses of partition-wall at the first floor.*

*(iv) (a) That it has also been agreed between the parties to the suit that the execution of the eviction order in respect of premises No.10235, 10237 and 10238, Ward No.XII, Library Road, Pul Bangash, Delhi which has been passed by Shri T.S. Kashyap, the Additional Rent Controller, Delhi, shall be jointly executed against the Judgment Debtors in the suit for eviction.*

*(b) The ground floor of the said property stands divided in the manner as detailed here-in above.*

*(v) (a) That the Plaintiffs No.1 to 7 will become the exclusive owners of the property shown in yellow colour in Annexure A-1 to the exclusion of Plaintiffs*



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*No.8 to 14 and Defendants No.1 to 6. In the same way, the Plaintiffs No.8 to 14 AND the Defendants No.1 to 6 will be the exclusive owners of the portion shown in Green Colour. This portion applies to all the floors.*

*(b) Plaintiffs No.1 to 7 will not claim any right, title to or interest in the portions shown in Green colour in Annexure A-1 while Plaintiffs No.8 to 14, Defendants No.1 to 6 will not claim any right, title to or interest shown in yellow colour in Annexure A-1*

*(c) The Plaintiffs No.1 to 7 AND Plaintiffs No.8 to 14 and Defendants No.1 to 6 shall be entitled to deal with their respective portions in any manners they like without any objection and interference from either parties.*

*(d) (i) That the Plaintiffs No.1 to 7, Plaintiffs No.8 to 14 and Defendants No.1 to 6 will pursue jointly all the proceedings for eviction of Birla Cotton Spinning and Weaving Mills Ltd.*

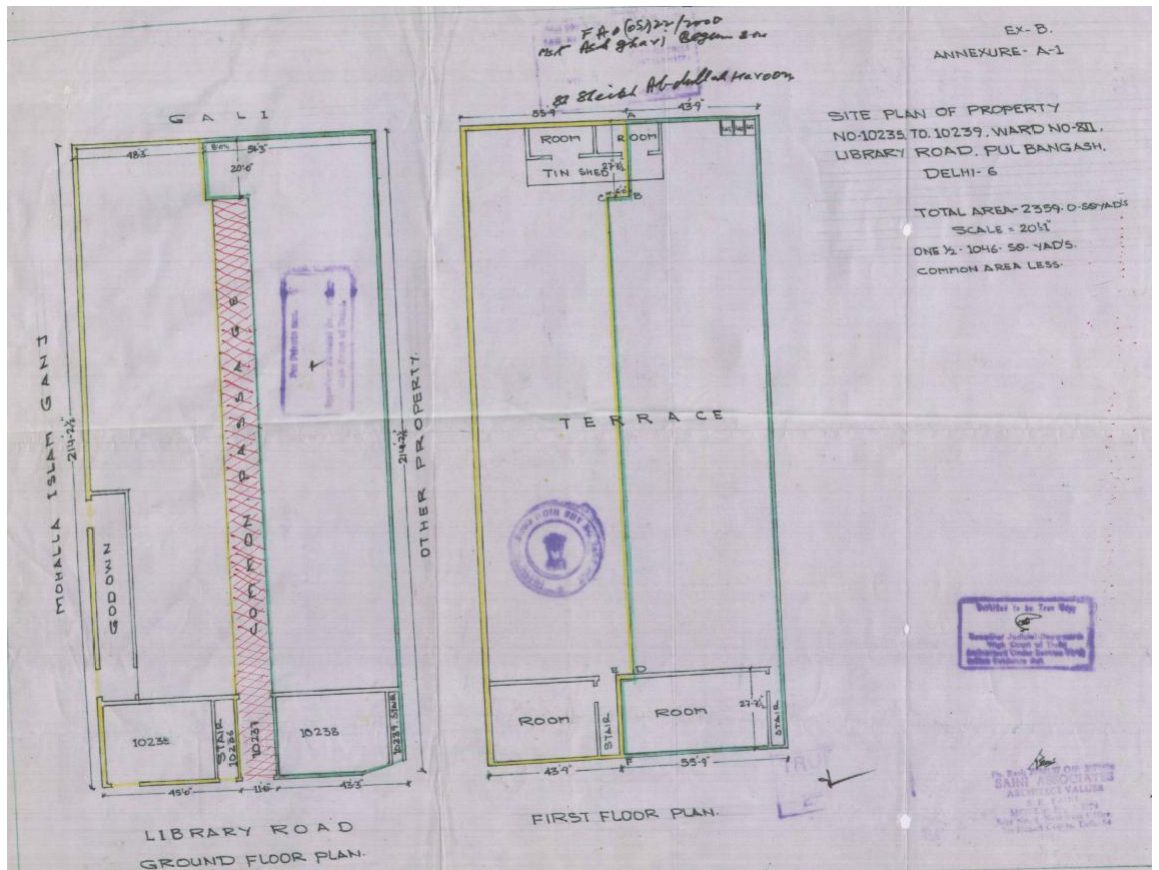
*(ii) That the Plaintiffs No.8 to 14 and the Defendants No. 1 to 6 will bear all costs and expenses of proceedings for eviction of Birla Cotton Spinning and Weaving Mills Ltd. in pursuance of the order of Eviction granted by the said Shri T.S. Kashyap Additional Rent Controller.*

*(iii) That the Plaintiffs and the Defendants will jointly be liable to bear all expenses of property taxes, electricity and water charges etc."*

10. The site plan marked as Exhibit-B, which is a document filed by the Plaintiffs is reproduced as under:



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11. On perusal of the compromise decree and the site plan it is clear that property bearing 10238 and 10239 vests with the Applicants herein i.e., marked in green colour and the Property bearing Nos.10235 and 10236 vests with the Plaintiffs i.e., marked in yellow colour. It is further adduced that Property bearing No.10237 is a common passage between the Properties of the Applicants and the Plaintiffs and also consists of a godown which is currently being used by the Applicants.

12. The fact that the Applicants run a business/shops for selling crockery and other miscellaneous items, footfall is necessary for them to earn and run their business. A common man goes to the market when he returns from work or gets free from their household chores, which is usually in the evening and that is when these shops earn the most during the day. For that reason, locking of the gates at 05:00 PM would not only limit the footfall at



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the Applicants' shops but will also cause irreparable loss to them.

13. During the course of hearing, the Applicants themselves submitted that they are willing to bear the costs of hiring a Chowkidar who would lock the gates at 08:30 PM, a time which is not too late for anyone living in the Capital. This would ensure the safety of the Plaintiffs which is their only issue and would also allow the Applicants to run their business.

14. While granting relief under Order XXXIX Rules 1 and 2 of CPC, this Court has to see whether there is a *prima facie* case in favour of the Applicants, the balance of convenience lies in favour of the Applicants and whether irreparable loss is going to be caused to them if such a relief is not granted.

15. Admittedly, the Plaintiffs have themselves shown the disputed area as a common passage, meaning thereby, every inch of the common passage belongs to the Plaintiffs and the Defendants. The Plaintiffs therefore cannot claim any right to restrict the ingress and egress of the Defendants on the common passage. The Defendants have therefore made out a *prima facie* case in their favour. The Defendants are carrying on business. The fact that at the time when the compromise decree was entered into, there was no shop, is no ground to deny access to the Defendants who have purchased the property after the compromise decree and are now running shops. There is nothing on record to show that shops which are being run by the Defendants are contrary to the MCD guidelines. The Defendants are therefore entitled to the usage of common passage to access their godown to continue their shops. Viewed in this light, the balance of convenience lies in permitting the Defendants to use the passage at least till 8:30 PM.

16. Since the Defendants' ingress and egress to the common passage is



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restricted, which according to the Defendants is hampering their business and if this Court does not grant the injunction as sought for, irreparable loss will be caused to the Defendants. All the tests under Order XXXIX Rule 1 & 2 CPC are therefore satisfied.

17. In view of the above, this Court is inclined to allow the present application by directing the Applicants/Defendants to appoint a Chowkidar from reputed Security Agency who will lock the gates at 08:30 PM from Monday to Saturday and 05:00 PM on Sunday. The costs of the Chowkidar will be borne by the Applicants/Defendants themselves.

18. The Defendants are directed to ensure that the Plaintiffs' ingress and egress to the common passage is not hampered.

19. It is made clear that this arrangement is only an interim and the same shall only be applicable till the disposal of the present suit. It is also made clear that this court has not made any observations on the merits of the suit.

20. The application is disposed of.

**CS(OS) 3286/2015 & CRL.M.A. 26319/2024, I.A. 23047/2015, I.A. 5386/2016, I.A. 8040/2017, I.A. 10006/2019, I.A. 31922/2024, I.A. 38027/2024 & I.A. 43052/2024**

List on 24.07.2025.

**SUBRAMONIUM PRASAD, J**

**MARCH 10, 2025**

*y.chugh/S. Zakir*