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

+ **CS(OS) 521/2022**

LAXMI JAIN

..... Plaintiff

Through: Mr. Sanyam Khetarpal, Mr. Pawan
Aneja, Ms. Prakriti Anand,
Ms. Kanupriya Tyagi, Advocates
(Ph. 9873674225, e-mail:
sanyam@khetarpal.co.in)

versus

KANWAL CHAND JAIN & ORS. Defendants

Through: Mr. Nitesh Goyal, Advocate for D-1,
3 to 8 (Ph. 9718343950, e-mail:
nitesh@niteshgoyal.in).

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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02.09.2022

I.A. 14140/2022

1. This is an application filed under Order 2 Rule 2 CPC read with Section 151 CPC for leave to sue on certain reliefs.
2. By way of this application, the plaintiff seeks leave to sue for relief of damages, compensation and all other and further reliefs in respect of the same cause of action of the present suit.
3. This Court shall consider any application that will be filed by the plaintiff in this regard on its merit and as per law.
4. With the aforesaid observations, the present application is disposed of.



I.A. 14141/2022

5. This is an application under Order Rule 7 Rule 14 read with Section 151 CPC. By way of instant application, the plaintiff seeks exemption from filing the originals of the documents, typed copies and dim annexures.

6. Recording the plaintiff's undertaking that the inspection of original documents shall be given, if demanded, or that the original documents shall be filed prior to the stage of admission/denial, the exemption is allowed.

7. As prayed, the plaintiff is allowed to file originals of the documents, typed copies and dim annexures within four weeks.

8. Application is disposed of.

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9. Let the plaint be registered as a suit.

10. Issue summons to the defendants through all modes upon filing of process fee.

11. The summons to the defendants shall indicate that a written statement to the plaint shall be positively filed within 30 days from the date of receipt of summons. Along with the written statement, the defendants shall also file an affidavit of admission/denial of the documents of the plaintiff, without which the written statement shall not be taken on record.

12. Liberty is given to the plaintiff to file a replication within 15 days of receipt of the written statement. Along with the replication, if any, filed by the plaintiff, an affidavit of admission/denial of the documents of the defendants, be filed by the plaintiff, without which



the replication shall not be taken on record.

13. List before the Joint Registrar for marking of exhibits on 06.10.2022.

14. List before this Court on 13.12.2022.

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15. This is an application on behalf of the plaintiff under Order 39 Rules 1 and 2 CPC r/w Section 151 CPC.

16. The present suit has been filed with the following prayers:

“a) Pass a preliminary decree of partition partitioning the estate of Late Shri Rulia Ram Jain between the Plaintiff and the Defendants for the property No. 4663, Ansari Road No. 21, Daryaganj, New Delhi-110002 measuring 124 sq. mts. and thereafter pass a Final Decree of Partition by metes and bounds thereby allocating the specific share and putting the Plaintiff in possession of her respective allocated area; however, in the event of the partition by metes and bounds not found possible and/ or feasible, the aforesaid properties be sold by way of public auction or by any other mode permissible in law;

b) Pass a Decree of rendition of accounts in favour of the Plaintiff thereby directing the Defendants, particularly Defendant No.2, to render true and proper accounts in respect of the bank accounts/ fixed deposits, PPF accounts, Shares, debentures, insurance policies or any other movable assets of Late Shri Rulia Ram Jain and to thereafter direct the Defendants to disburse the same to the Plaintiff as per their share ascertained by this Court;

c) To pass a Decree of permanent injunction in favour of the Plaintiff and against the Defendants, more particularly Defendant No.2, their nominees, assignees, executors, attorneys, authorized representatives or anybody acting on his behalf, thereby restraining him from dispossessing the Plaintiff from the portion assigned to her by this Court;



- d) To allow the costs of the suit in favour of the Plaintiff.*
- e) Pass any such other and further orders to meet the ends of justice.”*

17. By way of present suit, partition of property bearing No. 4663, Ansari Road No. 21, Daryaganj, New Delhi-110002 measuring 124 sq. mts. has been sought. The plaintiff is the daughter of the original owner of the suit property, while defendant Nos. 1 and 2 are the brothers, defendant No. 3 is the sister of the plaintiff; defendant Nos. 4 and 5 are the children of the deceased sister; defendant No. 6 is the husband of the deceased daughter of deceased sister; defendant No. 7 are the legal heirs of the deceased sister's daughter.

18. It is the case of the plaintiff that the defendant No. 2, who is the brother of the plaintiff is trying to usurp the share of the plaintiff, which is to fall in the share of the plaintiff by virtue of intestate succession. It is stated on behalf of the plaintiff that defendant No.2 has put up a case that there is a Will. Probate proceedings were filed before the learned Additional District Judge-02 (North), Tis Hazari Courts, which were dismissed vide order dated 26.07.2012 in case being Probate Petition No. 1001/2011. Learned counsel for the plaintiff further submits that against the aforesaid order of dismissal of the Probate Petition, the defendant No. 2 had filed an appeal before this Court being FAO No. 447/2012. As per him, the said appeal is still pending and it is listed in the category of regular matters. However, there is no stay in the said appeal.

19. It is the case of the plaintiff that the defendant No. 2, being the brother, along with his wife is attempting to negotiate through certain



estate agents to sell, transfer or alienate the immovable property is suit and hand over the possession thereof to the third parties to the detriment of the plaintiff.

20. Thus, it is submitted that an ex parte injunction may be granted.

21. Considering the submissions made before this Court and contents of the application, it is deemed expedient to direct the defendant No. 2 to maintain status quo with respect to title and possession of the suit property i.e. property bearing No. 4663, Ansari Road No. 21, Daryaganj, New Delhi-110002.

22. Compliance affidavit under Order 39 Rule 3 CPC be filed within a week.

23. Issue notice to the defendants through all modes.

24. Notice is accepted by learned counsel for the defendant Nos. 1, 3 to 8, who seeks time to file reply.

25. Notice be issued to the remaining defendants through all modes.

26. Reply to the application be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

27. List before this Court on 13.12.2022.

MINI PUSHKARNA, J

SEPTEMBER 2, 2022

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