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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 525/2023

RAM NARAIN SODHI & ORS.

..... Plaintiffs

Through: Mr. Dushyant Manocha, Ms. Doel Bose, Ms. Mrinalini Mishra, Ms. Darika Sikka and Ms. Kashish Chhabra, Advocates.

versus

PRANESH SODHI

..... Defendant

Through: Mr. Manoj Godara, Advocate *via* video-conferencing.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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16.01.2024

I.A. No. 16465/2023

By way of the present application filed under Order XXXIX Rules 1 & 2 read with section 151 of the Code of Civil Procedure 1908, the plaintiffs seek a direction to the defendant to remove a lock placed by him, thereby preventing their access to the second floor of property bearing No. A-2/150 Janakpuri, New Delhi ('suit property'), through what is stated to be a common staircase constructed within the building.

2. Pleadings in this application are complete.
3. Mr. Dushyant Manocha, learned counsel appearing for the plaintiffs submits that as to the use and occupation of the various floors, petitioner No. 1, the husband of the deceased/testatrix (his wife) and petitioner No. 2/his older son are in use and occupation of the front portion of the ground floor of the suit property.



4. Counsel submits that the second floor of the suit property belongs to petitioner No. 3, the daughter/sister of the plaintiffs, who resides abroad; and as of now, the children of plaintiff No. 2/the older son are occupying the second floor as a matter of license/courtesy from plaintiff No. 3.
5. It is submitted that the defendant, who is the younger son of the testatrix, is in use and occupation of the back portion of the ground floor and of the first floor of the suit property.
6. Mr. Manocha submits, that sometime back the defendant has placed a lock on a door leading up-to the staircase, which goes all the way from the ground floor to the second floor, thereby preventing other members of the family residing in the suit property from accessing the second floor. It is clarified that, as of now, plaintiff No. 2's children who reside on the second floor, are managing to access the second floor by using a spiral staircase at the back of the building, which is essentially meant for accessing the staff quarters.
7. Mr. Manoj Godara, learned counsel appearing for the defendant submits, that there has been an oral partition between the members of the family, as part whereof, it was agreed that the staircase inside the building would be for the exclusive use of the defendant, who is in occupation of the back portion of the ground floor and the first floor. Counsel submits that permitting access to the plaintiffs through the staircase inside the building would compromise the safety and security of the first floor, since access to the entire first floor would in-effect be left open; and that this would be inconvenient as the defendant travels frequently.



8. Mr. Manocha disputes the submissions made on behalf of the defendant.
9. In view of the above submissions, and in order to ascertain the on-ground position, as also requested by learned counsel for the parties, the court deems it appropriate to appoint a Local Commissioner to inspect the suit property and to render a report.
10. In view thereof, Ms. Garima Sehgal, Advocate (Cellphone No. +91 9953201386) is appointed as the Local Commissioner to visit the suit property bearing No. A-2/150, Janakpuri, New Delhi and to render a report on the following aspects :
 - 10.1 Whether permitting access to the plaintiffs to the second floor through the *staircase within the building* would pose any perceptible risk to the safety and security of the first floor;
 - 10.2 Whether there is a separate door leading into the apartment on the first floor, which can be locked for the safety and security of the first floor apartment;
 - 10.3 Whether the *spiral staircase at the back of the property* is so constructed as to afford *safe* access to the second floor in the building; or whether it is meant essentially for access to the staff quarters; and
 - 10.4 Whether the spiral staircase constructed at the back of the property has a proper landing leading to the second floor apartment.
11. The learned Local Commissioner is also directed to take photographs and/or video-graph the suit property to illustrate the position as regards the above queries.



12. Let the learned Local Commissioner inspect the premises within the next week, with prior intimation to the learned counsel for the parties. Let the inspection be conducted in the presence of the parties as well as their counsel. Parties are directed to cooperate with the learned Local Commissioner.
13. Let a report be rendered within 02 weeks after the inspection; with copies to the learned counsel for the parties.
14. For carrying-out the inspection, the learned Local Commissioner shall be entitled to a consolidated fee of Rs.30,000/-, half to be paid by each side, simultaneously at the time when the inspection is conducted, in addition to any out-of-pocket expenses that she may incur.
15. For consideration of the Local Commissioner's report, and further submissions on this application, re-notify on 22nd February 2024.

ANUP JAIRAM BHAMBHANI, J

JANUARY 16, 2024/uj