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

+ **FAO 84/2017**

SWARAN KATYAL

..... Appellant

Through: Mr. S.C. Rajpal, Ms. Deepika Rajpal
and Mr. Varun Rajpal, Advs. with
appellant in person.

versus

SURINDER PAL KAPOOR & ORS

..... Respondents

Through: Ms. Garim Gupta, Adv. for
respondent No.1 with respondent
No.1 in person.
Respondent No.3, 4, 5(a) and 6 are
present in person.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **15.03.2017**

1. Respondent No.1 present in Court along with his counsel submits that he has filed the affidavit in terms of the order dated 17th February, 2017 in which he has given the present status of property bearing No.A-5, C.C. Colony, Rana Pratap Bagh, Delhi-110007.
2. Paras 4 to 7 of the affidavit of respondent No.1 are reproduced hereunder:-

“4. That the suit property is built up property consisting of basement, ground floor, first floor, second floor and third floor. The possession of the property is stated below:-

*a) **Basement** : It is divided in two parts one small shop measuring 15X 10 sq. ft is occupied tenant Sh. J.K. Advani under the tenancy of deponent. In the remaining portion of basement the younger son of deponent namely Sh. Neeraj Kapoor is running a business under the name of Soul Spa.*

*b) **Ground Floor:** Front portion is under possession of the deponent who is running a small shop of grocery and using rest of the portion as their residence there alongwith his family. In the rear portion of ground floor is occupied by tenant Sh. Ashok Pandey under the tenancy of deponent.*

*c) **First Floor:** Front portion is under possession of the Appellant who is residing there alongwith daughter family. In the rear portion of first floor is occupied by elder son of deponent Sh. Vikas Kapoor.*

*d) **Second Floor:** Front portion is occupied by tenant Sh. Shakuntala Devi under the tenancy of deponent. In the rear portion of ground floor is occupied by tenant Sh. Ashok Pandey under the tenancy of deponent.*

*e) **Third Floor:** Third floor is built up as Barsati floor which is under the occupation of Sh. Inderjeet Mehra in the capacity as tenant under the tenancy of deponent. Half portion is open terrace where water tanks are installed.*

5. That it is stated by the deponent that no new construction or structural changes has been done or carried in the suit property since 1998. Only repairing work has been carried away by the deponent at present on the mezzanine floor at ground floor and on Barsati floor due to act of nature as the wall of the Barsati floor had fell down due to storm and causing serious inconvenience to the occupants The photographs are annexed herewith showing the repairing work carried away by the deponent.

6. That the deponent undertake not to claim any equity on the basis of the construction if any being carried out.

7. That it is stated by the deponent that no new construction has been carried out in the suit property.”

3. Respondent No.1 has also attached the photographs of the suit property along with the affidavit which are at pages 113 and 114.

4. The appellant's grievance is that the parties should maintain status quo with respect to the title, possession and construction of the suit property during the pendency of the proceedings before the Trial Court since the preliminary decree of partitioned has already been passed and the issue with respect to the final decree of the partition is pending before the Trial Court.

5. The appeal is allowed and all the parties are directed to maintain to status quo in respect of the title, possession and construction of the suit property during the pendency of the proceedings before the Trial Court.

6. Learned counsel for the respondent No.1 submits that some portion of the suit property are in possession of the tenants and respondent No.1 would

be filing the eviction proceedings against the said tenants. Respondent No.1 is liberty to initiate the eviction proceedings. However, the respondent No.1 shall not receive the physical possession from the respective tenants without the permission of the learned Trial Court. Respondent No.1 shall intimate the respective tenants to deposit the keys in respect of the portions to be vacated with the Trial Court whereupon the Trial Court shall pass appropriate orders with respect to the portion to be vacated by the tenants.

7. Respondent No.4, who is plaintiff before the Trial Court, submits that he has come from Canada to attend these proceedings. He further submits that the suit property cannot be partitioned by meets and bounds and, therefore, the suit property may be sold and the sale proceeds be shared by the parties. Respondent No.4 further submits that he would be returning back Canada on 24th April, 2017 and, therefore, the matter be listed before the learned Trial Court on 21st March, 2017 to which other parties have no objection.

8. List the matter before the learned Trial Court on 21st March, 2017 at 02:30 pm. Learned counsels for the parties have taken note of the 21st March, 2017 and they waive of requirement of any separate notice for appearance.

9. Since the appeal has already been disposed of, the Trial Court record is not required and the same be returned back, if received in terms of the order dated 17th February, 2017.

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

J.R. MIDHA, J.

MARCH 15, 2017/ak