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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1155/2018 & CM APPL. 39004-39006/2018
SHAMBHU DAYAL Petitioner
Through Mr. Vijay Khanna, Adv.

versus

GAIN CHAND Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **24.09.2018**

CM APPL. 39004/2018 & CM APPL. 39005/2018

Exemptions are allowed subject to all just exceptions.

The applications are disposed of.

CM(M) 1155/2018

Vide the present petition, the petitioner assails the impugned order dated 28.08.2018 of the learned District and Sessions Judge (NW), Rohini, Delhi in CS no. 577135/16 appointing an advocate as a Local Commissioner to visit the suit property i.e. H-3/126, Sultanpuri, Delhi -110086 ad-measuring around 32 sq. yards, under the jurisdiction of PS Sultanpuri, on 08.09.2018 at 12 noon and to report as to how the said property could be partitioned by metes and bounds and with further directions to the Local Commissioner to take suitable photographs from different angles of the said property with the facility of the photographer being provided by the Decree

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Holder and with further directions to give notice of the inspection to the persons / occupants found at the spot and in case of any obstructions from the opposite party, Local Commissioner can take assistance of the local police.

A submission is made on behalf of the petitioner that in view of the dimensions of the property ad-measuring around 32 sq. yards, the local commissioner cannot be effected. It has however been submitted through the petition as indicated vide ground (b) in the present case, it has not been established and proved that the respondent is entitled for getting the share of his mother at all.

It is essential to observe that placed on record with the present petition is a judgment dated 25.04.2018 of the learned District and Sessions Judge (NW), Rohini, Delhi in CS no. 577135/16 whereby a preliminary decree has already been passed and the said decree is on record which decree is to the effect : -

“The suit of the plaintiff is decreed and a preliminary decree is passed thereby giving 1/4th share to each of the parties to the present suit in the suit property viz. H-3/126, Sultanpuri, Delhi - 110086, ad-measuring around 32 sq. yards;

A decree for permanent injunction is also passed in favour of the plaintiff and against the defendant nos. 1 & 2 thereby restraining them, their legal heirs etc. from usurping the entire share of the plaintiff and defendant no. 3 in the suit property by creating any third party right, title and interest The defendant no. 2 is further restrained from dealing in any manner, transferring or to parting with the possession of any portion of the suit property and from dispossessing defendant no. 1 from her respective portion, except, of course, subject to

the orders of the Court for implementation of the preliminary and final decree in the suit. Parties are left to bear their own costs.”

whereby the suit of the plaintiff i.e. the respondent to the present petition has been decreed and a preliminary decree has been passed giving 1/4th share to each of the parties to the said suit arrayed as the ***plaintiff i.e. Sh. Gyan Chand s/o Late Sh. Prahlad Rai and the defendants no. 1, 2 & 3 i.e. Smt. Patasi Devi w/o Late Sh. Prahlad Rai, Sh. Shambhu Dayal s/o Late Sh. Prahalad Rai and Sh. Puranmal s/o Late Sh. Prahlad Rai*** respectively in the suit property i.e. H-3/126, Sultanpuri, Delhi -110086 ad-measuring around 32 sq. yards.

In view thereof, the contention that is sought to be raised through the present petition is devoid of merits and the petition and its accompanying applications are declined.

ANU MALHOTRA, J

SEPTEMBER 24, 2018/MK