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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 4th December, 2020

+ **C.R.P. 79/2020 & CM APPL. 31451/2020**

SITA RAM SUREKA (HUF) Petitioner
Through: Mr. Kunal Kalra, Advocate. (M:
9871028645)

versus

BASANT KUMAR SATISH KUMAR
BIYANI (HUF) & ANR. Respondents
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The present petition challenges the order dated 12th February, 2020 by which the application under Order XII Rule 6 CPC filed by the Plaintiff/Petitioner herein (*hereinafter, "Plaintiff"*) was dismissed by the Trial Court.
3. The Plaintiff filed a suit for possession, permanent and mandatory injunction along with *mesne* profits. The prayer in the suit is as under:

"a) Pass a decree of possession in favour of the plaintiff against the defendant No. 1 of property measuring 320 Square feets adjacent to the portion sold to the defendant of property at third floor of property No.2423-2427, Fasil Road, GB Road, Delhi as shown red in the site plan attached with the plaint.

b) Pass a decrees of recovery of mesne profits @ Rs 5000/ per month from 22.07.2018 till the vacant peaceful possession is not handed over to the plaintiff in favour of the plaintiff and against the defendant No.1.

d) Pass Decree of permanent injunction in favour

of plaintiff against the defendant No.1 restraining the defendant, No.1, its employee, agent, representative from alienating, transferring, selling, let out, assigning, part with possession or create any third party interest with the respect to property measuring 320 Square feet adjacent to the portion sold to the defendant of property at third floor of property No 2423-2427, Fasil Road, GB Road, Delhi as shown red in site plan attached with the plaint.

e) Pass Decree of mandatory injunction in favour of plaintiff against the defendants directing defendants, their employee, agent, representative to remove the iron jaal installed at entrance of the third floor of property at third floor of property No 2423-2427, Fasil Road. GB Road, Delhi.

f) Pass a decree thereby awarding the cost of the present proceeding in favour of plaintiff and against the defendant.

i) Pass any other orders as this Honble court may deem fit and proper in the fact and circumstances of the case as above mentioned.”

4. The case of the Plaintiff is that the Plaintiff and the Defendants/Respondents (*hereinafter, “Defendants”*) had entered into a sale transaction in respect of a portion of the property bearing no.2423-29, (New) Ward No.7, Fasil Road, Katra Raji, GB Road, Delhi (*hereinafter, “suit property”*). Further, the case of the Plaintiff is that vide registered sale deed dated 4th April, 2001, only 990 Sq. Feet of the third floor of the said property was sold to Defendant No.1. The Plaintiff is not in good health. On 22nd July, 2018, when the Plaintiff visited the suit property, it was realised that the Defendants had encroached into 320 Sq. Feet further area. Hence, the suit seeking possession and *mesne* profits.

5. On 24th November, 2018, the Id. Trial Court after hearing the parties

observed that the short question involved was as to the measurement of the third floor of the suit property in the possession of the Defendants. The said order reads:

“Both the defendants were served on 20.11.2018. WS be filed within the stipulated time with an advance copy thereof to the plaintiff. Plaintiff may then file its replication with a copy thereof to the opposite side.

Plaintiff claims to be owner of entire third floor except an area measuring 990 sq. feet on third floor of property bearing No.2423-2429 (New) Ward – VII, Fasil Road, GB Road, Delhi. The defendant no.1 owns the remaining 990 sq. feet on the third floor of this property in terms of a registered sale deed of 04.04.2001.

Ld. Counsel for plaintiffs submits without prejudice to his rights and contentions that a Local Commissioner be appointed to donthe measurements on the third floor and specify whether the red color portion in the site plan falls in the 990 sq. feet purchased by the defendants. Ld. Counsel for the defendants states that she has not received any instructions from her clients in this regard.

Submissions heard. Record perused. Having heard the submissions and perused the record, this court is of the view that the dispute in the present case is a short one and it is all about the measurements on the third floor of the property. Accordingly, Sh. Gurudev Singh Yadav, Advocate, Chamber No.198A, Western Wing, Tis Hazard Court, Delhi-54, Mobile No.-8178094357 is appointed as the Local Commissioner to do the measurement as aforesaid. He may take assistance from an architect.

The Local Commissioner shall visit the premises on 29.11.2018 at 02:00 PM. The fees of

the Local Commissioner is quantified as Rs.21,000/- which shall borne by the plaintiff. Both the sides shall render all possible assistance to the Ld. Local Commissioner. Dasti order. List on 15.12.2018 for further proceedings as per law.”

6. The Id. Trial Court appointed a Local Commissioner to conduct the measurement of the third floor of the suit property and to file a report. The Local Commissioner filed his report. The site plan annexed with the Local Commissioner's report, according to the Plaintiff, showed that the Defendants are in possession of the area marked 'F' in the site plan. Objections were filed by the Defendant. According to the Plaintiff, the Defendant admitted in its objections that it had extended its portion to include Portion F which constituted an admission. The Plaintiff then sought a decree in terms of the Local Commissioner's report and the objections filed thereto where the Defendants did not dispute.

7. Vide the impugned order dated 12th February, 2020, the Trial Court holds that there is no admission in the present case and the objections filed to the report. Hence, the application under Order XII Rule 6 CPC was dismissed.

8. The argument of Mr. Kalra, Id. counsel for the Plaintiff is that admission under Order XII Rule 6 CPC means any statement made by a party in the pleadings or any other documents as well. To this proposition, there could be no doubt. But the admission has to be categorical for a decree under Order XII Rule 6 CPC. Since there is no categorical admission the trial court's approach cannot be faulted.

9. However, the question is whether any trial itself would be required in

this matter, inasmuch as all that needs to be seen is the registered sale deed between the parties and the Local Commissioner report, which has now measured the property in possession of the Defendants. It is the settled position in law that under Order XXVI Rule 10(2) CPC, the report of the Local Commissioner would form part of evidence and be a part of the suit record.

10. The dismissal of the application however ought not to result in delay in the adjudication of the suit as the dispute appears to be in a very narrow compass. Though this Court is of the opinion that the application under Order XII Rule 6 CPC may have been rightly dismissed for the reasons stated in the impugned order, the Id. Trial Court could consider as to whether any issues arise for adjudication in the present case which require oral evidence. The Id. Trial Court may accordingly hear the parties on the pleadings and the Local Commissioner report and consider whether the adjudication of the matter would be possible without oral evidence being led.

11. The matter is stated to be listed before the Id. Trial Court on 16th January, 2021. Accordingly, the Id. Trial Court is directed to proceed further in the suit in terms of the above orders. Considering that the Plaintiff is a senior citizen, who is also seriously ill, the Id. Trial Court would endeavour to adjudicate the suit within a period of six months.

12. The present petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

DECEMBER 4, 2020/dk/T