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

+ **CM(M) 657/2018 and CM APPL. 7658/2019**

AMAR SINGH SHARMA Petitioner
Through: Mr. Rakesh Kumar and Mr. Prabhat
Kaushik, Advocates (M:
9958560041).

versus

MOHAN DEVI & ORS Respondents
Through: Mr. R.S. Mahendra and Mr. Manish
Sharma, Advocates for R-1 to 3 along
with R-1 and 2 (M: 8376802283).
Mr. Kunal Vajani, Standing Counsel
for SDMC a/w Ms. Bavya Baweja,
Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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17.01.2020

1. The present petition challenges the impugned order of the Trial Court dated 30th January, 2018, by which an application moved by the Petitioner/Plaintiff (*hereinafter*, "*Plaintiff*") for carrying out repairs in property bearing No. 156/2, Sarai Julena, New Delhi - 110025 has been rejected by the Trial Court.
2. The brief background is that the Plaintiff had filed a suit for partition in respect of the whole property bearing No. 156, Sarai Julena, Okhla Road New Delhi-25 against various relatives. The said suit is stated to be pending consideration before the Id. Additional District Judge (*hereinafter*, "*ADJ*"). In the written statement, the stand of Defendant No. 1, i.e., Mr. Ganga Ram Sharma, is that the property has already been divided and partitioned

between the parties. An interim order was passed by the Trial Court on 22nd September, 2014, restraining the Plaintiff, his representatives etc. from raising any illegal construction in the property without the permission of MCD, till final disposal of the suit. The Plaintiff, was, however, permitted to move an application for repair of the property.

3. On 15th October, 2014, an application was moved by the Plaintiff before the South Delhi Municipal Corporation, Central Zone, Lajpat Nagar (*hereinafter*, “SDMC”) for carrying out repairs in the property. The SDMC, on 14th November, 2014, replied to the Plaintiff and informed the Plaintiff about the kind of repair and renovation work that may be carried out without any specific permission. On the strength of this reply, the Plaintiff moved an application seeking permission to repair and carry out construction in the property.

4. In view of the interim order operating in the matter, the Plaintiff moved the Court for seeking permission to carry out repairs, which was rejected by the Trial Court.

5. Ld. counsel appearing for the Plaintiff submits that the interim order dated 22nd September, 2014 ought not to come in the way of the Plaintiff carrying out repairs/renovation work in a portion of the property i.e., 156/2, which is in his possession, so long as the same is done in accordance with law. He submits that any construction would only be done after obtaining the necessary permission under the applicable bye-laws, and the Respondent would not be put to any difficulty inasmuch as the *status quo*, in terms of title and possession, shall continue to be maintained by the Plaintiff.

6. Ld. counsel for the contesting private Respondent submits that the property was only Plot No. 156 and there was no sub-division in the said

property. He submits that property No.156/1 is in possession of his client and since the suit is pending, the Plaintiff ought not to be permitted to carry out any renovation/repair. In fact, he submits that one of the issues framed in the suit is in respect of whether there is a separate numbering of the two portions of the property.

7. It is submitted on behalf of the SDMC that the SDMC has not given any sanction for carrying out any repairs, however, what is permissible is as stated in the letter dated 14th November, 2014 as per the then existing bye-laws.

8. The short question is whether the Plaintiff can carry out any repairs/renovation in the portion of the property which is in his possession. The Plaintiff has approached the Court seeking partition of the entire property. The suit is taking time for adjudication. The Plaintiff is admittedly in possession of the portion bearing No. 156/2. The photographs of the property have been shown to the Court. It is clear that the property is not in a very good condition and is, in fact, in need of renovation and repairs. In order to enable the Plaintiff to enjoy the property during the pendency of the suit, this Court is of the opinion that the Plaintiff ought to be permitted to carry out any renovation/repair, however, only in accordance with law. If any approval is required for the purposes of raising the roof for *lanter* etc., the appropriate permission from the SDMC shall be obtained.

9. It is clarified that the renovation/repair work which may be carried out by the Plaintiff, including any construction in 156/2, shall not vest any special equities in favour of the Plaintiff. The Plaintiff shall be finally bound by the order which would be passed in the suit at the final stage. For the purposes of the determination of the shares, the permission given herein to

renovate/repair/construct, would not come in the way of this determination. The parties shall maintain *status quo* in respect of title and possession. If the status of possession is to be changed, the same shall be done with the permission of the Trial Court.

10. With these observations, the petition and all pending applications are disposed of.

PRATHIBA M. SINGH, J.

JANUARY 17, 2020
MR