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

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Date of decision: 15.11.2022

+ **FAO(OS) 180/2019**

MS. MONA SHARMA

..... Appellant

Through: Mr S.C. Singhal with Ms Poonam
Taneja and Mr Pradeep Verma, Advocates.

versus

SHRI VISHAL GAUTAM

..... Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal is directed against order dated 21.08.2019 passed by the learned Single Judge. The impugned order *inter alia*, contains two directions.

1.1. First, the appellant would deposit the keys concerning property described as C-15/3, First Floor, SFS Flats (Category-III), Malviya Nagar Extension, Saket, Delhi-110017 [hereafter referred to as “Malviya Nagar property”] with the registry of this court. Furthermore, a direction has been issued that the Station House Officer (SHO) of the concerned area would ensure that Malviya Nagar property is not trespassed.

1.2. Second, both parties would stand restrained from alienating, handing over or creating any third party interests in the suit properties which includes

the Malviya Nagar property during the pendency of the suits filed by the parties against each other.

2. To be noted, Mr S.C. Singhal, who appears on behalf of the appellant, says that the appellant has no objection to the second direction that has been issued by the learned Single Judge *via* the impugned order.

2.1. Mr Singhal says that the appellant's grievance is with regard to the first direction which requires the appellant to deposit the keys of the Malviya Nagar property with the registry of this court.

3. To be noted, the appellant has filed the suit i.e., CS(OS) 142/2019 for declaration, permanent injunction and partition. The subject matter of this suit is not only the Malviya Nagar property but also a parcel of land described as Plot No.451, Sector-15A, Noida, U.P., admeasuring 200 sq. mtrs. [hereafter referred to as "Noida property"].

4. As noticed above, the respondent has also filed a suit for declaration and permanent injunction *albeit*, only *vis-a-vis* the Malviya Nagar property.

4.1. We are told by Mr Singhal that the respondent, in the first instance, had filed the suit in the District Court at Saket, which stands transferred to this court and is numbered as CS(OS) 413/2019.

5. The record shows that both the appellant and the respondent are siblings and are residents of USA. As a matter of fact, the respondent in his suit has averred that the appellant is a permanent resident of USA. The appellant has, likewise, made a similar assertion in her suit qua the respondent. The appellant's case in the suit is that she has acquired half share in the Malviya Nagar property by virtue of a Gift Deed dated 24.08.2016 and, insofar as the other half is concerned, it has, as averred, fallen to the appellant's share by virtue of a registered will dated 31.08.2016

executed by late mother. Based on this, the appellant's stand is that the respondent has no right, title or interest in the Malviya Nagar property.

5.1. Insofar as the Noida property is concerned, the appellant seeks partition of the same and thus claims 50% share in the said property. However, the grievance of the appellant is that although in IA No. 3506/2019, in which the impugned order was passed, the appellant had sought an injunction against the respondent from selling, alienating or creating any third party interest in the Noida property, the same was not adverted to in the impugned order.

6. As noticed above, both suits are pending trial on the original side of this court.

6.1. The record shows that both sides claim that they are in possession of the Malviya Nagar property. However, what emerges is that even the impugned order recognises the fact that the key to the Malviya Nagar property was in possession of the appellant. It is in that context that the learned Single Judge has granted leave to the respondent to move an appropriate application in CS(OS) 142/2019, to enable him to remove his valuable movable articles, if any, lying in the Malviya Nagar property.

7. Notice in this appeal was issued on 18.09.2019. The respondent has also filed a reply which is on record.

8. However, the respondent, after having entered appearance *via* his advocate one Mr Saurabh Yadav, has chosen to keep away from the proceedings in court.

9. The record shows that there was no appearance on behalf of the respondent on 27.04.2022 when the matter was listed before the Joint Registrar and on 10.10.2022 i.e., when the matter was listed before this court. On 10.10.2022, after noticing the fact that there was no

representation on behalf of the respondent, a direction was issued for listing the matter today.

10. We are told by Mr Singhal that the suit actions are not proceeding further because of the pendency of the appeal. In this regard, Mr Singhal has placed before us the proceeding sheet of 18.08.2022 concerning CS(OS) 142/2019.

10.1. A perusal of the same shows that on the relevant date, Mr. Singhal made a request that the matter be stood over beyond the date fixed in the instant appeal.

11. Having examined the record and heard Mr Singhal, we are of the view that since, at this juncture, it appears to us that rightly or wrongly the appellant was in possession of the Malviya Nagar property, the learned Single Judge ought to have maintained *status quo* and not directed that the keys be deposited by the appellant with this court.

11.1. Therefore, to the extent that the impugned order dated 21.08.2019 directs the appellant to deposit the key concerning Malviya Nagar property with this court, the same is set aside.

11.2. That said, this observation made by us should not be taken as creating any right in the Malviya Nagar property in favour of the appellant. Aspects concerning that issue will obviously be adjudicated in the suit actions filed by respective parties.

12. It is also made clear that the appellant would act as a *custodia legis* with regard to the Malviya Nagar property. The appellant will also ensure the upkeep of the Malviya Nagar property.

12.1. Mr Singhal assures us that the property will be maintained and that the appellant will abide by the decision in the suit actions which are pending

adjudication on the original side of this court.

13. Furthermore, as directed by this court on 18.09.2019 both parties are restrained from alienating, selling or creating any third party interest in the Malviya Nagar property, as well as the Noida property.

14. The appeal is disposed of in the aforesaid terms.

15. Parties will act based on the digitally signed copy of the order.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

NOVEMBER 15, 2022 / tr