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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 13th February, 2024***+ **CS(OS) 340/2020 and I.A. 272/2023****MR. RISHU GUPTA**

..... Plaintiff

Through: Mr. Lalit Gupta and Mr. Prashant Mehra, Advocates with Plaintiff and his father in person.

versus

MRS. RACHNA GUPTA

..... Defendant

Through: Mr. Sanjeev Mahajan, Mrs. Sarika V. Mahajan, Mr. Pranjal Tandon, Advs. (M: 8840351243) with Defendant, her husband and son in person.

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This is a dispute between the family members. The suit seeks partition of the property bearing No.577-78, Katra Asharfi, Chandni Chowk, Delhi, built up on a land measuring 32 Sq. Yards, comprising of ground floor, mezzanine floor, first floor, second floor and terrace floor (*hereinafter referred as the 'suit property'*).
3. The Defendant in the present case is the paternal aunt (*chachi ji*) of the Plaintiff. Defendant being the wife of Mr. Ravindra Nath Gupta who is the real brother of the father of the Plaintiff namely Mr. Raghvendra Nath Gupta. It is not in dispute that the Plaintiff and the Defendant are the joint owners of the property *i.e.* 50% share each in the above mentioned suit property.



4. This Court, vide order dated 25th April, 2022, had passed a preliminary decree in the following terms.

“3. Learned counsel appearing for the defendant under instructions submits that he does not dispute that the parties are joint owners of the properties. He, however, submits that there are two shops which were purchased by two different sale deeds; one bearing No. 577 and the other bearing No. 578.

4. Since there is no dispute between the parties with regard to the ownership and the respective shares of the parties, a preliminary decree of partition is passed in respect of property bearing No. 575, Katra Asharfi, Chandni Chowk, Delhi and the property bearing no.577-578, Katra Asharfi, Chandni Chowk, Delhi declaring that both the plaintiff and defendant have undivided 50% share each in the suit properties.”

5. The said order was modified vide order dated 24th August, 2022 as inadvertently the common staircase/passage had been included incorrectly. The said modification reads as under:

“4. Accordingly, paragraphs 1, 2 and 4 of the order dated 25th April, 2022 are corrected and would read as under:

"1. Plaintiff seeks a decree of partition of the built-up immovable property bearing No. 577-578, Katra Asharfi, Chandni Chowk, Delhi built up on a plot of land admeasuring 32 sq. yards (approximately) comprising of ground floor, mezzanine floor, first floor, second floor and terrace floor. "

"2. As per the plaintiff, plaintiff and defendant are joint owners of the suit property having 50% share each.

"4. Since there is no dispute between the parties with regard to the ownership, and the respective shares of the parties, a preliminary decree of partition is passed in respect of property bearing No. 577-578, Katra Asharfi, Chandni Chowk, Delhi declaring that both the



plaintiff and defendant have undivided 50% share each in the suit property. "

6. The Court had, then, vide order dated 12th October, 2022, appointed a Local Commissioner to submit a report. The mandate of the Local Commissioner was to determine whether or not the suit property can be divided by metes and bounds in the following terms:

"4. At the request of the counsels for the parties, Mr. Atul Gupta, Architect (Mobile No.9811623694), who is empanelled with the Delhi International Arbitration Centre as an architect, is appointed a Local Commissioner to visit the suit property. The following directions are passed in this regard:

I. The fees of the Local Commissioner is fixed at Rs.50,000/- plus out of pocket expenses to be borne equally by both the parties.

II. The Local Commissioner shall visit the suit property to determine whether or not the suit property can be divided by metes and bounds and if so, in what manner, taking into account the applicable Municipal by-laws and Building by-laws.

III. The Local Commissioner shall file his report within six weeks.

IV. Report of the Local Commissioner be provided to the counsels for the plaintiff and the defendant.

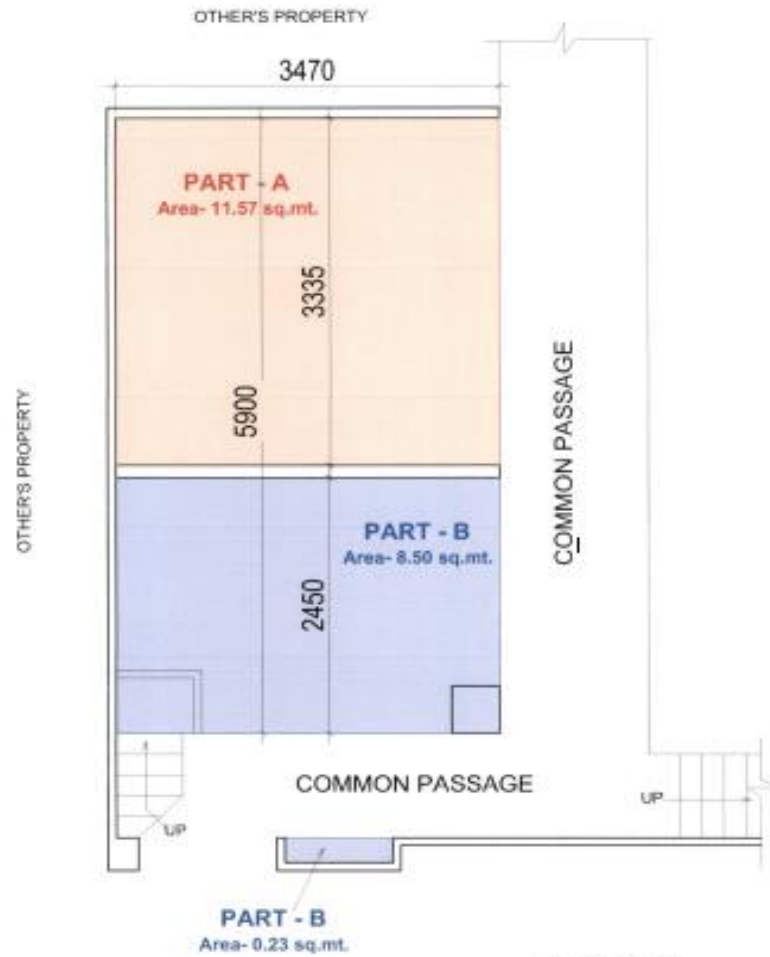
5. After the inspection of the suit property by the Local Commissioner, the plaintiff shall deposit the keys of the suit property with the Court."

7. The keys of the suit property are currently lying with the Court. Local Commissioner has submitted his report as per the above stated order. As per the report of the Local Commissioner, the property is divisible by metes and bounds. Suggested partition by the Local Commissioner is set out herein below:



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PROPOSED DIVISION -



**PROPOSED
GROUND FLOOR PLAN**

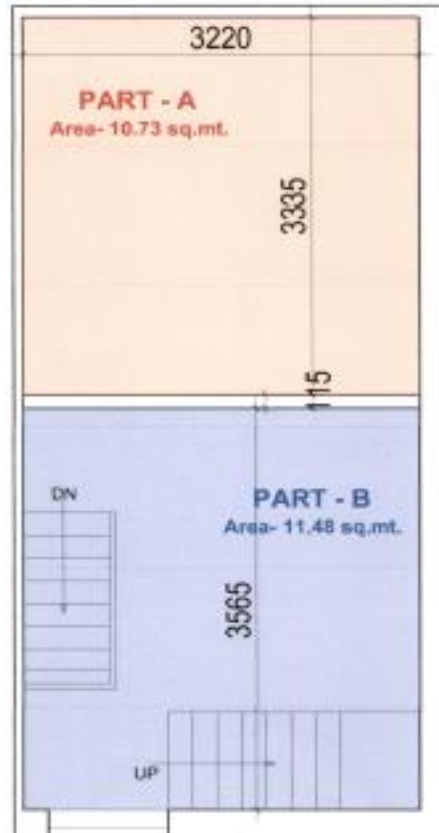
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PROPOSED DIVISION -



PROPOSED MEZZANINE FLOOR PLAN

CS(OS) 340/2020

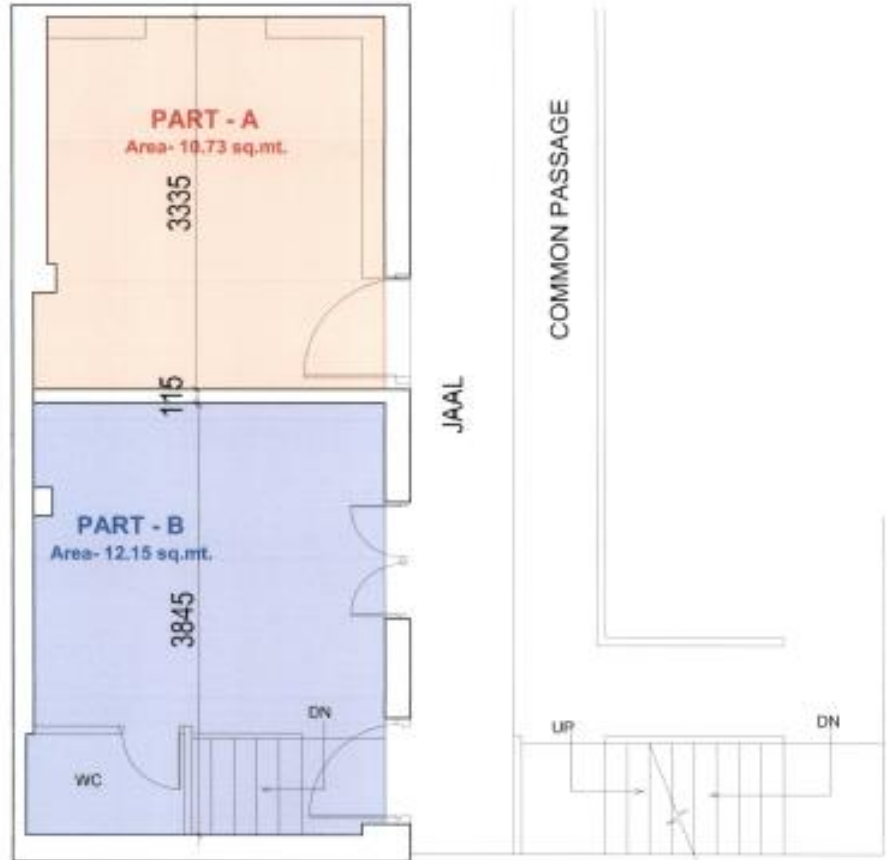
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PROPOSED DIVISION -



**PROPOSED
FIRST FLOOR PLAN**

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PROPOSED DIVISION -



**PROPOSED
SECOND FLOOR PLAN
(Temporary Shed)**

8. The calculation of the area as per report of the Local Commissioner post the division of the property as Part A and Part B, is also set out herein below:

**AREA CALCULATION- CARPET AREA**

Carpet Area	Part -A (sq.mt.)	Part -B (sq.mt.)
Ground Floor Plan	11.57	8.50
Mezzanine Floor Plan	10.73	11.48
First Floor Plan	10.73	12.15
Second Floor Plan(Temporary shed)	10.73	12.15
Total Area	43.76	44.28
	49.7% Total Carpet area	50.3% Total Carpet area
Note:- All areas mention above are approx by 1%-2%, as the building is old and it overlaps / have common passages the actual area may vary a bit.		

9. The matter has now been heard. Mr. Lalit Gupta, Id. Counsel for the Plaintiff submits that Plaintiff is willing to either sell his portion of the property or purchase Defendant's portion of the property. Defendant, however, is not keen to sell it as the same is claimed to be a 100 year old building belonging to the family and has certain sentimental value for the Defendant.

10. Yesterday, the matter was adjourned for the parties to seek instructions. Today, Plaintiff along with his father and Defendant along with her husband and son are present in the Court. Their appearance is recorded below.

- ***Plaintiff in person with his father Mr. R.N. Gupta.***
- ***Defendant in person with her husband Mr. Ravindra Nath Gupta and son Mr. Rohan Gupta.***

11. After considering the stand of the parties, it is clear to the Court that the Defendant does not intend to sell the property or purchase the property. Accordingly, the only mode of partition that is possible is dividing the property in question. Plaintiff has been given an option to choose, which



portion of the property he would prefer. He has chosen Part B of the property shown in blue colour of the LC report. Accordingly, with consent of parties, a final decree of partition is passed in the present suit in the following terms:

- (i) Part B of the property from ground floor till roof would now vest with the Plaintiff. Part A of the property from ground floor till roof would now vest with the Defendant. They shall enjoy ownership, title and all rights in their respective shares of the property.
- (ii) Parties are permitted to raise a wall to physically divide the property from ground floor till roof by erecting a wall. Parties are permitted to make their own renovations to make the property habitable and neither of the parties shall cause any impediment and obstructions against the other's enjoyment of the portion. The said partition shall be effected by 30th April, 2024.
- (iii) In order to oversee the partition, **Mr. Subhrangshu Gupta, Architect (M:9810021237)** is appointed as a Local Commissioner. The fee of the Local Commissioner is fixed at Rs.1 lakh to be borne by both the parties equally. Local Commissioner is permitted to engage the services of some contractor for effecting the partition by metes and bounds including the erection of a wall.
- (iv) Best effort be made by the Local Commissioner and the parties to ensure that minimum space is consumed in raising the partition wall. Both parties will equally contribute space



towards the common partition wall. This partition wall shall remain common for both parties.

- (v) Entire cost of affecting partition from ground floor till the top floor (up-to sky) by metes and bounds including entire incidental costs of raising partition wall *etc.* shall be shared equally by both parties.
- (vi) Both parties will be entitled to carry out repairs in their allocated portions including development of staircase, toilet/WC *etc.* and such costs shall be borne individually by each party.
- (vii) Post the partition by metes and bounds, both parties should be free to howsoever deal with their respective portions in any manner as they may deem appropriate.
- (viii) All costs of drawing final decree of partition including stamp duty, registration charges, *etc.* shall be equally borne by both the parties.
- (ix) Until 30th April, 2024, both parties shall bear all the dues of the authorities such as property tax, electricity bill, water bill as 50:50 and post 30th April, 2024, parties shall be bearing the charges of their respective portions of the property.
- (x) Defendant has chosen to have two electricity meters of 1 KW each and the Plaintiff shall, therefore, use the electricity meter of 2 KW.
- (xi) Once the division is effected by the Local Commissioner, new locks and shutters shall be installed by the parties respectively for their respective portions.



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12. Neither of the parties have any objection if the parties or their children or grand-children meet Mrs. Rajrani Gupta *i.e.*, grandmother of Plaintiff and mother in law of the Defendant, who is stated to be over 90 years old. Considering the age of the mother, parties and their family members shall have free access to meet her.

13. Suit is decreed in the above terms. Decree sheet be drawn accordingly. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 13, 2024/dk/ks
(corrected & released on 17th February, 2024)