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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 14.11.2025***+ **FAO 53/2019 & CM APPL 6739/2019****DEEPIKA TALWAR & ANR**AppellantsThrough: Mr. Bharat Gupta, Ms. Shagun Gupta
and Mr. Ishan Srivastava, Advocates.

versus

SHALINI CHODHARY SHARMARespondentThrough: Mr. Rajat Aneja, Mr. Anant C. Dutta
and Ms. Chandrika Gupta, Advocates.**CORAM:**
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA**JUDGMENT (ORAL)****CHANDRASEKHARAN SUDHA, J.**

1. The present appeal under Section 104 read with Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (the CPC), has been filed against the Order dated 16.01.2019 in CS No 8167/16, whereby the application under Order XXXIX Rule 4 of the CPC filed by the appellants/defendants seeking modification of the



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Order dated 27.03.2018, was dismissed.

2. Brief facts germane to the adjudication of this appeal are as follows:- The respondent/plaintiff and appellant/defendant no.1 are daughters of late Sh. Vinod Chaudhary, and appellant no. 2/defendant no. 2 is the husband of appellant no. 1/defendant No.1. The dispute relates to the property bearing No. A-1/82, Safdarjung Enclave, New Delhi (the suit property), which was initially owned by their father. It is alleged that late Sh. Vinod Chaudhary executed a Gift Deed dated 03.01.2001 by which he gifted the first floor of the suit property to the appellants/defendants without roof rights. The ground floor of the suit property was, subsequently, gifted to another daughter by way of a Gift Deed dated 08.08.2013, whereas the terrace above the first floor was gifted to the respondent/plaintiff through a Gift Deed dated 13.08.2013, thereby vesting terrace ownership exclusively in the respondent/plaintiff.

2.1. It is further submitted that, despite this, the appellants have installed a huge generator set and AC ducts/outdoor units on



the respondent's/plaintiff's terrace, causing vibrations, noise, and nuisance. Therefore, the respondent/plaintiff has filed suit for permanent injunction, mandatory injunction and damages against the appellants/defendants.

2.2. During the pendency of the suit, an application under Order XXXIX, Rule 1 and 2 of the CPC was filed by the respondent/plaintiff seeking interim relief, stating that the terrace door and the lock on the connecting roof door had been removed at the behest of the appellants/defendants, leaving the terrace exposed and unsafe. The trial court, on 27.03.2018, after examining the condition of the terrace and perusing the photographs, noted that both the lock and the terrace door had indeed been removed. To protect the property and ensure safety, the Court granted liberty to the respondent/plaintiff to install a door on the terrace, retain its keys, and provide the keys to the appellants/defendants upon their request at all reasonable hours.

2.3. The appellants/defendants, therefore, filed an application



under Order XXXIX Rule 4 seeking modification of the order dated 27.03.2018 and, further praying for a direction to the respondent/plaintiff to provide them with a copy of the terrace keys during the pendency of the suit. *Vide* Order dated 16.01.2019, the trial court held that no justification existed to modify the earlier order dated 27.03.2018. However, liberty was given to the tenants of the appellants/defendants, residing on the first floor, to move an application supported by an affidavit and personal appearance in case the respondent/plaintiff refused to provide the keys upon request. The application under Order XXXIX Rule 4 CPC was dismissed. Aggrieved by the said Order, the appellants/defendants have come up in appeal.

3. It is submitted by learned counsel for the appellants/defendants that, despite the Gift Deed dated 13.08.2013, giving them an undivided right in the first floor, the trial court has granted the respondent/plaintiff liberty to put a lock on the terrace and retain exclusive possession of the keys. He submitted that in



the event the appellants/defendants require access to the terrace, they would be compelled to approach the respondent/plaintiff for the keys. However, the keys are never provided, resulting in their inability to exercise their rights over the disputed area.

4. *Per contra*, it is submitted by the learned counsel for the respondent/plaintiff that if at all the appellants have any right, it is only over the terrace of the second floor, which has not yet been constructed. Therefore, the trial court was justified in passing the impugned order.

5. Heard both sides.

6. At the outset, the attention of this Court was drawn to paragraph nos. 8 and 11 in the Gift deed dated 13.8.2013, as per which the father had gifted the second floor of the suit property in favour of the respondent/plaintiff.

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8. *That the Donee has full authority and power to construct the entire Second Floor of the said property as may be permissible under law without any let or*



hindrance from the other co-owners of the property and such construction shall always remain the absolute property of the Donee and for the said purpose the Donor shall provide all co-operations including signing any Building Plan, revised building plan, modification plan and all such documents as may be required from time to time for getting the Building Plan approved from the relevant authority and all the facilities and amenities now existing on the terrace above the First Floor will be shifted to the terrace above the Second Floor.

.....

11. That the Donor is desirous of constructing the Second Floor on the terrace of the First Floor. The Donee do hereby declare that the Donor shall have full authority and power to construct the Second Floor and in that event the overhead water tank and the facilities shall be shifted to the terrace above the Second Floor. That the Owner of the Ground Floor, First Floor and Second Floor each will have 1/3r undivided share in the said terrace over the Second Floor and in the event any further construction is permissible on the said Terrace all such construction will be equally shared by the Owners of Ground Floor, First Floor and Second Floor. Each of them can put one Gen set in the said Terrace above the Second Floor with right to have servant quarter of equal size.



.....”

(Emphasis Supplied)

7. In light of the aforesaid averments, and since the rival claims have to be adjudicated based on the evidence adduced before the trial court, the impugned order is modified and an interim arrangement is made thus:-

a. One of the keys of the lock installed by the respondent/plaintiff shall be handed over to the appellants/defendants.

b. It is made clear that if the lock presently installed does not have two keys, the respondent/plaintiff may install a new lock having two keys, one of which she shall retain, while the other can be given to the appellants/defendants.

c. It is further clarified that this arrangement is purely interim in nature. As rival claims have been made over the disputed area, the same is required to be adjudicated by the trial court based on the oral and documentary evidence adduced by both sides in support of their respective contentions.



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d. Needless to state, the appellants/defendants, while exercising their right to access the terrace, shall not in any way disturb the peaceful residence of the mother of the parties staying on the ground floor of the building.

8. With the foregoing directions, the appeal is disposed of. Application(s), if any pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

NOVEMBER 14, 2025
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