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

\+ CS(OS) 144/2018

GIAN CHAND MENDIRATTA

..... Plaintiff

Through Mr.S.K.Dubey and Mr.Rajmangal Kumar, Advs.

versus

SMT. ANITA KHANNA AND ANR

..... Defendant

Through None

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% 01.05.2018

IA No.4570/2018

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CS(OS) 144/2018, IA No.4569/2018

The plaintiff earlier was an owner of entire property bearing No.16-A/12, W.E.A, Karol Bagh, New Delhi. On 14.08.2008 he had sold the second floor to one Ms.Supriya Gupta. The sale deed dated 14.08.2008 contained following clauses:

> *Clause 10*
> *10. That the stair and other convenience and amenities alongwith right to egress and ingress has been conveyed jointly to the Vendee herein use in common along with other occupants to the building of the said plot of land.*

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Clause 11
That the Vendee shall be entitled to maintain the water tank on the roof of the said building for this purpose, she or her agents shall be fully competent to repair, clean etc., the same at her own costs and expenses, with prior consent of the owner/s of terrace.

Clause 12
That all rights of sewerage, common stair case, essential service and all such other rights as available and permissible under any Act shall be enjoyed by the Vendee uninterrupted together with other owner/s/occupant/s of the buildings.

Clause 18
That in case the appropriate authority permit the construction of the third floor in the said property, over and above the second floor, then the Vendee or its representative, transferees shall not object or dispute in any way for such construction of the third floor. However the vendors or their agent or assignee shall provide the same facilities on the terrace of third floor which are provided at the terrace of second floor, at their own cost and expenses and shall also make good all damages/cracks which may be caused to second floor, if any.

It is submitted vide sale deed dated 15.10.2010 the second floor was sold by Ms.Supriya Gupta to defendants No.1 and 2 by including additional rights in the Sale Deed which were never granted by the erstwhile owner to Ms.Supriya Gupta. Later vide Sale Deed dated 13.12.2016 defendants No.1 and 2 further sold the second floor to defendants No.3 and 4 containing such further rights as were created by the Sale Deed dated 15.10.2016 and hence the plaintiff is aggrieved of by creation of such additional rights concerning second

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floor as are shown in the Sale Deeds dated 15.10.2010 and dated 13.12.2016, hence this suit for declaration and mandatory injunction.

Issue notice to the defendants by all modes returnable before the Joint Registrar for **27th August, 2018** and in the meanwhile in case defendants No.3 and 4 intend to dispose of the second floor of the subject property, they are restrained from transferring, alienating, selling or creating any interest in the property based upon the impugned statements, referred, (**a**)one-third rights underneath (as its is contrary to the words "proportionate land rights underneath"); (**b**) area sold of second floor 544.44 sq. yards (is contrary to the actual constructed area is only 223.53 sq. mtrs.) (2406.09 sq.ft.); (**c**) mentioning of underground water tank (as no underground water tank exists in the building); (**d**) non mentioning of no objection in raising the construction of third floor if allowed by the Municipal Authorities; (**e**) entry through all passages on the basis of impugned sale deed dated 13.12.2016 (registered on 14.12.2016) till the next date.

Compliance of Order 39 Rule 3 of the CPC be made within 10 days. Order *dasti*.

YOGESH KHANNA, J

MAY 01, 2018
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