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

+ **CS(OS) 1518/2013**

% ***Judgment dated 1st October, 2014***

RAMESH GUPTA Plaintiff

Through: Mr.Anil Sapra, Sr. Advocate with
Mr.Rajesh Baweja, Ms.Rupali Kapoor, Mr.Akshay
Sapra and Mr. Mridul Yadav, Advs.

versus

RAKESH GUPTA Defendant

Through: Mr.M.G. Vachar, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

I.A.14073/2014

1. Plaintiff has filed the present application under Order 12 Rule 6 and Order 15A of Code of Civil Procedure seeking a decree of possession with respect to the premises i.e. remaining portion of the second floor of property bearing No.R-34, South Extension (NDSE II) behind the existing Kitchen and staircase comprising of two rooms (one bed room and one drawing room), one toilet cum bath, one store room, dressing room, as shown in the site plan filed along with the suit. Plaintiff also prays for mesne profit at the rate of Rs.20,000/- per month for unauthorized and illegal occupation.
2. As per the applicant, late Sh.Deena Nath, father of the parties, executed a registered Will dated 12.09.1984, a certified copy whereof has been filed and the same has been admitted by the defendant. It is

pleaded that out of four immovable properties late Sh.Deena Nath bequeathed shop No.3559, Chawri Bazar, Delhi to the defendant. Similarly late Sh.Deena Nath bequeathed second property bearing No.2741, Gali Arya Samaj, Delhi to wife of defendant namely Ms.Anuradha. Half share of another property bearing No.R-20, South Extension (NDSE), Part-II, New Delhi was bequeathed by the father in favour of his eldest son; and another half portion of the said property belonged to mother of the parties. As far as present property bearing No.R-34, South Extension (NDSE), Part-II, New Delhi was concerned, this was exclusively bequeathed in favour of the plaintiff; and considering the value of the properties already bequeathed in favour of defendant, defendant was given nothing out of the House No.34, N.D.S.E.-II. The value of the shop No.3559, Chawri Bazar, Delhi given to defendant was always much higher than any of the other property. However, the defendant started demanding further share and created disharmony in the family and was regularly harassing and torturing his old and ailing father, which forced the father into executing the second Registered Will dated 18.3.1986, as per which the defendant was also given the front portion of the second floor / original barsati floor, consisting of drawing-cum-dining room (divided into two rooms), one bedroom with bath, one kitchen, front terrace and the store room in the stairs from the share of the plaintiff. Accordingly, pursuant to last registered Will dated 18.3.1986 (filed along with plaint) of late Sh.Deena Nath, after his death, the plaintiff became the owner of the entire property bearing No.R-34, South Extension (NDSE), Part-II, New Delhi, except the front portion of the second floor / original barsati floor, consisting of drawing-cum-dining room (divided into two rooms), one bedroom with bath, one kitchen,

front terrace and the store room in the stairs, since the said portion was bequeathed to the defendant in the said Will.

3. It is also pleaded that to curtail the greed of defendant in the aforesaid registered Will it was further specifically stated by the testator late Sh.Deena Nath that the defendant will have no right or title to raise any construction on the second floor / back terrace thereof, which shall be absolutely in possession and ownership of plaintiff, who alone can raise construction thereon. It is the case of the plaintiff that the aforesaid registered Will was admitted and acted by all the beneficiaries including defendant, without any objection at any point of time. As such any construction by defendant at any place in the property bearing No.R-34, South Extension (NDSE), Part-II, New Delhi would be illegal and unauthorized and against the wishes of the testator.
4. It is further submitted that as per the last Will of late Sh.Deena Nath, a house was bequeathed to the wife of the defendant, who sold the same, in terms of a sale deed dated 27.06.1988.
5. Counsel for the plaintiff submits that the last Will of the deceased, father has been accepted and acted upon by the defendant which is evident upon reading of the preamble of the Sale deed, where reference has been made to the Will of the father and the wife of the defendant in fact derived title over the property which was sold by her on the basis of Will dated 12.12.1986 of late Shri Dina Nath. The said sale deed has been witnessed by the defendant.
6. Mr.Sapra, learned senior counsel further submits that the Will has been admitted in the written statement as well. It is further stated that even in the written statement only a vague denial of the Will has been made as the defendant has stated that upon the death of their father an

oral family settlement was arrived at in the presence of the parties and other close relations. It is also the case of the defendant in the written statement that a family settlement was arrived at keeping in view the paucity of accommodation with the defendant and the defendant was permitted to construct over the open area, however, except for the bald statement nothing has been filed to substantiate the same. While counsel for the plaintiff has argued that the admissions are clear, and unequivocal, counsel for the defendant submits that the decree on admissions can only be passed in case the admissions are clear, unequivocal and absolute. It is further submitted by the counsel for the defendant that even otherwise there is no direct admission on the part of the defendant.

7. I have heard counsel for the parties and given my thoughtful consideration to the matter. Law with regard to dealing with an application under Order 12 Rule 6 is well settled. In the case of **Uttam Singh Duggal & Co. Ltd. vs. Union Bank of India** reported in AIR 2000 SC 2740 it has been held that the powers under Order 12 Rule 6 are wide and the admissions can be relied upon not only in the pleadings but the documents as well. Paragraph 12 of the judgment reads as under:

“12. As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled”. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the

other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.”

8. In the same judgment the Supreme Court has also referred to a decision in the case of **Shikharchand vs. Mst. Bari Bai**, reported at AIR 1974 Madh. Pra. 75, wherein it was held that “the effect that the Rule is wide enough to afford relief not only in cases of admissions in pleadings but also in the case of admission *de hors* pleadings.”
9. Copy of the sale deed executed by the wife of the defendant with respect to sale of a property bequeathed to her by late Sh.Dina Nath, has been placed on record. The sale deed would show that the wife of the defendant sold the property which was bequeathed to her by her father-in-law late Shri Dina Nath on the basis of a Will dated 12.12.1986. It is the same very Will which has declared that the suit property will fall exclusively to the share of the plaintiff herein. Para 9 and 11 of the Will dated 12.12.1986 reads as under:

“9. The existing structure in the front portion of the Barsati Floor of House No.R-34, NDSE II, consisting of drawing-cum-dining room (at present divided into two rooms), one bed with bath, one kitchen, front terrace and the store room in the stairs, will be the absolute property of my second son, Shri Rakesh Kumar who is living there at present. He will, however, no right or title to raise any construction on the back terrace which shall be absolutely in possession and ownership of my son, Ramesh Kumar who alone can raise construction thereon if he so desires. The ground and first floors and the garage block including two servant quarters of House No.R-34, NDSE II, New Delhi, shall be the absolute property of my youngest son, Ramesh Kumar subject to the condition that till such time as my wife, Smt. Ramo Devi is alive, she will have the big room, bath store room and the small room constructed at the backyard. Similarly my eldest son, Rajeshwar Kumar, shall have the right to live in the front portion of the ground floor comprising of

one room, drawing room, bath, kitchen and dining room with front verandah and lawn for a period of five years from the date of my death if till then he is not able to construct his own house. Further my wife, Smt. Ramo Deiv will also be entitled to 75% of the rental income from the house during her lifetime and the balance 25% of the rental income shall be the absolute share of my youngest son, Ramesh Kumar who will be liable to pay the house tax for the ground and first floor and the garage block and other charges including charges for minor repair carried out from time to time. The house tax and repair charges for the barsati floor bequeathed to Rakesh Kumar shall be his liability. My wife shall be free to spend 75% of the rental income from this house as she likes without any restriction or hindrances from anybody.

11. My two daughters are happily married and well fixed up. My son, Rakesh Kumar, has already, purchased a flat from the D.D.A. out of his own resources. Consequently I am not leaving anything from my property in favour of my daughters or any other immovable property except the barsati floor (existing structure) or the shop to my son Rakesh Kumar.”

10. Property bearing No.2741, Gali Arya Samaj, Delhi was bequeathed to Ms.Anuradha wife of defendant, which was sold by her in terms of sale deed dated 27.06.1988. Para 8 of the Will which reads as under:

“8. My daughter-in-law, Anuradha wife of my second son, Rakesh Kumar will be the absolute owner of house No.2741, Gali Arya Samaj, Delhi which is at present wholly on rent at Rs.200/- p.m. with Shri Sanwal Dass. Smt. Anuradha will be entitled to recover the rent and to utilize it in any manner she likes and nobody else will have any right, title or interest in the said rental income.”

11. It is based on para 8 of the Will in the preamble of the sale deed reference has been made to the Will which reads as under:

“Whereas the Vendor is the absolute owner and in proprietary possession of Three Storeyed Freehold Property bearing Municipal No.2741 measuring underneath approximately 88 ½

Sq. Yard, Ward No.VIII, situated at Gali Krishna, Gali Arya Samaj, Bazar Sita Ram, Delhi which is shown Red Color in the Plan attached and bounded as under:-

East: Other's property	West: Other's property of Hari Shankar and Gali.
South: Other's property of Shankar Lal	North: Other's property of Shri Subhash.

AND WHEREAS Shri Dina Nath S/o Shri Banarsi Dass had purchased the said property from Smt. Kanvar Kishori Razdan vide a SALE DEED dated 4.6.1993, Document No.6152, Additional Book No.I, Volume No.952 on pages 90 to 95 registered on 7.6.1963 with the office of Sub-Registrar, Delhi.

AND WHEREAS Shri Dina Nath executed a WILL in favour of the Vendor dated 18.3.1986, Document No.1076 in Additional Book No.III, Volume No.346 on pages 83 to 85 registered on 18.3.1986 with the Office of Sub-Registrar, Delhi.

AND WHEREAS Shri Dina Nath expired on 12.12.1986 and after his death, the Vendor became the full and absolute owner of the said property by the virtue of WILL.

AND WHEREAS the above mentioned property is at present free from all sorts of encumbrances, charges, liens etc. and the Vendor has full power, good title and absolute authority to dispose off the same.”

12. Reading of the Sale Deed would leave no room for doubt that the wife of the defendant and the defendant (being a witness to the sale deed), accepted the Will and the Will was acted upon.
13. Learned counsel submits that there is no admission in the written statement and in fact the defendant has disputed the Will. The relevant paragraphs of the written statement reads as under:

“e. That the father of plaintiff and defendant was expired on 13.12.1986 and after his death Will was received by the

plaintiff and defendant and the shares in the Will were not equal. At that time, the defendant had only one son and wife. In June 1988 the defendant's wife conceived a child and the defendant feeling paucity of accommodation and Mr.Girdhari Lal, Mr.T.C. Gupta who were elders in the family had allowed the defendant to raise construction on the back portion and this was done with the consent of other family members including his elder brother and the plaintiff. It is further submitted that at the time of arriving the family settlement, following members were present:-

- (i) Shri T.C. Gupta, Samadhi of Shri Dina Nath Gupta;
- (ii) Shri Girdhari Lal Gupta, brother of Shri Dina Nath Gupta' and Shri Girdhari Lal Gupta is also a witness of the sale deed of bazaar Sita Ram property;
- (iii) Smt. Ramo Devi W/o Sh. Dina Nath Gupta;
- (iv) Shri Rajesh Kumar;
- (v) Shri Ramesh Kumar;
- (vi) Shri Rakesh Kkumar, sons of Shri Dina Nath Gupta.

f. That Shri T.C. Gupta is none else but also a witness in the said Will and therefore the said Will was more or less declared null and void.

i. It is submitted that Shri Dina Nath Gupta was unwell for about three years before making the Will and therefore the said Will is not a genuine Will and there is cloud on the Will as the Will has not been executed with sound disposing mind of Shri Dina Nath.”

14. Upon reading the aforesaid paragraphs of written statement would

show that the stand of the defendant is that the family arrangement was entered into after the demise of the father and the defendant carried out construction over the open area in pursuance of the settlement. Para (f) extracted hereinabove would show that only a vague denial to the Will has been made wherein it has been stated “the said Will more or less declared null and void”. There is no explanation that in case according to the defendant the Will was null and void or the same was not genuine why reliance was placed on the Will extensively in the sale deed to which the defendant was a witness. The Court can also not lose sight of the fact that the execution of the sale deed would show that the Will has been acted upon by the defendant and his family. The defendant cannot be permitted to selectively rely on the Will and cannot take advantage of the Will by selling the property bequeathed by the testator to the wife and dispute the Will with respect to the portion bequeathed to the plaintiff herein. Even otherwise the Will was in the knowledge of the defendant since the time of the death of the father of the parties. At no stage till the filing of the present suit did the defendant challenged the Will in any proceedings or in any court of law.

15. In the case of **T. Arivandandam v. T.V. Satyapal and Anr.** reported at (1977) 4 SCC 467 the Apex Court has very strongly condemned entertaining vexatious and meritless complaints and observed that “An activist Judge is the answer to irresponsible law suits” and also observed that such litigation should be nipped in the bud at the earliest. Paragraph 5 of the judgment reads as under:

“We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of

the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good."

16. Having regard to the admissions made in the sale deed to which the defendant is the witness and having regard to the fact there is no specific denial to the Will in the written statement; and the defence which has been set up is sham accordingly the application is allowed. Consequently, the present suit [CS(OS) 1518/2013] is decreed in favour of the plaintiff against the defendant in terms of prayer 'A'. The plaintiff gives up the relief of the mesne profit in case the defendant hands over possession to the plaintiff within six months from the receipt of the order. Decree sheet be drawn up accordingly.
17. Application stands disposed of.

G.S.SISTANI, J

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