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

+ CM(M) 254/2016

KAUSHALYA DEVI Petitioner
Through Mr. Diwakar Singh, Adv. with
petitioner in person

versus

JAGDISH PABREJA & ANR Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **17.08.2016**

1. Despite pass-over none is present for the respondent.
2. By the present petition the petitioner seeks to impugn the order dated 26.5.2015 passed by the trial court transferring the matter to the Family Court at Tis Hazari Courts. The order does not give any reasons for transferring the matter to Family Court, Tis Hazari Courts. It only states that the dispute in the suit arises out of marital relationship.
3. Learned counsel appearing for the petitioner relies upon the judgment of the Single Judge of this Court in *Manita Khurana vs. Indra Khurana, 167 (2010) DLT 58* to contend that this Court has already held that disputes of the present nature would be triable by the Civil court and not by the Family Court.
4. The present suit is filed by the plaintiff/petitioner for mandatory and permanent injunction and damages against her son and daughter in law

seeking mandatory injunction against the said respondents directing them to hand over and deliver the physical vacant possession of the suit property No.D-36, First Floor, Saraswati Garden, New Delhi-110015.

5. The facts in the case of *Manita Khurana vs. Indra Khurana (supra)* were that a suit of similar nature had been filed seeking relief of ejectment against the respondent/defendant who was the daughter in law. It was contended by the defendant/daughter in law in that case also that the suit arises out of a marital relationship and jurisdiction to try the same was with the Family Court in view of Section 7 of the Family Court Act. The said contention was rejected by this Court. This court held as follows:-

“17. I respectfully agree with the Division Bench of the Kerala High Court and the view aforesaid of the Bombay High Court. The claim of a third party to a marriage even if she be the mother of one of the spouses cannot be adjudicated before the Family Court and to the prejudice, on the aspects noted herein above, as to procedure, appeal, limitation, of such third party. It may be noted that the respondent/plaintiff in the present case is claiming absolute title to the property not as the representative or trustee of the husband of the petitioner/defendant and/or through the husband of the petitioner/defendant but in her own capacity as the widow and nominee of her deceased husband. It is also significant that though the petitioner/defendant is admitted to have been inducted into the suit premises owing to the marriage with the son of the respondent/plaintiff but that is not the cause of action for the suit. The cause of action for the suit is the refusal of the petitioner/defendant to vacate the house of which the respondent/plaintiff claims to be the exclusive owner. Merely because certain facts leading to the cause of action referred to the marital relationship of the petitioner/defendant would not make the suit as one in

circumstances arising out of a marital relationship. The language of Clause (d) of Section 7 is peculiar. The words 'circumstances arising out of marital relationship' do not qualify the words 'suit or proceeding' but qualify words 'order or injunction'. Thus, the order of injunction sought from the court has to be in circumstances arising out of marital relationship. The order sought in the present case of eviction of the petitioner/defendant and of recovery of mesne profits from the petitioner/defendant does not arise out of a marital relationship but arises out of exclusive ownership claimed by the respondent/plaintiff of the property and the occupation thereof by the petitioner/defendant without authority and/or after the authority has ceased.”

6. In light of the above, the impugned order dated 26.5.2015 is set aside. The matter is remanded back to the concerned trial court for proper adjudication as per law. The matter be listed before the District Judge, Tis Hazari Courts on 7.9.2016.
7. Petition stands disposed of.

JAYANT NATH, J

AUGUST 17, 2016

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