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

+ CM(M) 711/2016

JATINDER KAUR

..... Petitioner

Through

Mr.Samrat K.Nigam, Mr.Pradeep Kr.
Mr.Rohit Singh and Ms. Kiran, Advs.

versus

GURUKAMAL SINGH & ANR

..... Respondent

Through

Mr.B.S.Chauhan, Adv. for
representatives of R-1.
Mr.Siddhartha Nagpal and Mr.Sumeet
Pushkarna, Advs. for R-2/DJB

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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04.08.2016

CM Nos.26404-26405/2016 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 711/2016 & CM No.26403/2016

1. Matter has come up for hearing on the first date today. Representative of respondent No.1 and learned counsel for respondent No. 2 have appeared on service of advance copy.
2. By the present petition the petitioner seeks to impugn the order dated 4.6.2016 passed by the appellate court dismissing the application of the petitioner under Order 39 Rule 1 and 2 CPC and reversing the order of the trial court which had allowed the application.
3. The background facts of the case are that the petitioner filed a suit for

restoration of water connection/supply and a new separate water connection meter. It is the contention of the petitioner in the plaint that she is residing on the first floor of House No.C-62 A, Shivaji Park, West Punjabi Bagh, New Delhi for the last 20 years.

4. The suit property originally belonged to late Shri Kripal Singh and the plaintiff/petitioner and defendants No.1 to 5 are LR's of late Shri Kirpal Singh. The respondent No.1 has, however, denied the title of the petitioner stating that he is the absolute owner of the entire property by virtue of sale deed dated 28.1.1998. Both the parties had earlier filed suits. Respondent No.1 had filed a suit for possession against the petitioner based on the sale deed and the suit was dismissed by the ADJ vide order dated 29.9.2012. In the said suit the petitioner had filed a counter-claim for declaration of her ownership rights in the property. The counter-claim was also dismissed vide said judgment dated 29.9.2012. Respondent No.1 has thereafter filed an appeal against the judgment dated 29.9.2012. This court vide order dated 18.3.2013 has admitted the appeal and in the meantime directed that during the pendency of the appeal parties will maintain status quo with regard to title and possession of the suit property. Along with the suit a stay application was filed.

5. Based on these facts, the trial court further noted that the petitioner is in settled possession of the first floor of the property and water supply is a basic necessity for dignified living. There is no order against the petitioner to vacate the suit property as the suit of respondent No.1 had been dismissed. In view thereof, the trial court concluded that petitioner is entitled to water in her portion till the rights of the parties in the property are finally adjudicated. As there is only one connection at the site which is with

respondent No.1. Hence the trial court while allowing the stay application allowed water supply in the portion occupied by the petitioner as a temporary measure and permitted the petitioner to apply for a temporary water connection to Delhi Jal Board and directed Delhi Jal Board to consider the said application without any NOC from the stated owner.

6. The appellate court vide impugned order, however, noted that an earlier suit had been filed by the petitioner seeking the same relief and hence the suit is barred under Order 23 Rule 1(4) CPC. The appellate court also noted that the suit property is ancestral property and that the petitioner has not sought any partition of the suit property. Hence, a suit for simplicitor injunction was not maintainable and was barred under Section 41(h) of the Specific Relief Act. The order of the trial court dated 22.12.2015 was reversed and injunction application was dismissed.

7. I have heard learned counsel for the parties and representative of respondent No.1. Essentially, the contention of the respondent is that the suit is barred under Order 23 Rule 1(4) of CPC and that the petitioner has been claiming title to the suit property based on a forged and fabricated document. He has relied upon various paragraphs of the plaint to contend that all these are false averments. He has also pointed out that on account of the forgery committed by the petitioner an FIR has been filed against her.

8. As far as the issue of the petitioner having filed an earlier suit with the same relief is concerned, the order dated 16.9.2015 in the said suit shows that the suit was withdrawn simplicitor. Subsequently, on 31.10.2015 on an application moved by the petitioner it was pointed out to the court that it had noted that the suit is withdrawn simplicitor without giving liberty to institute a fresh suit. The trial court noted that the applicant would have all

the liberty available in law as the court did not have jurisdiction to try and entertain the suit which was withdrawn being beyond pecuniary jurisdiction. In view of the order dated 31.10.2015, it is clear that the provisions of order 23 Rule 1 (4) CPC would not be attracted in the present circumstances.

9. The two main parties are siblings. Admittedly, the respondent stays abroad. Petitioner is in settled possession from the last 20 years and as per the suit filed by respondent No.1, this court has already passed a status quo order regarding possession of the property. The petitioner who is living in the property in terms of the said status quo order passed by this Court on 18.3.2013 will be entitled to basic amenities to enable her to continue to be in possession of the said first floor of the property. She cannot be deprived of access to water which is a basic necessity of life till she is in possession of the said area. The appellate order is hence erroneous.

10. Accordingly, I set aside the impugned order passed by the appellate court dated 4.6.2016. The order of the trial court dated 22.12.2015 is restored. Petition stands disposed of.

JAYANT NATH, J

AUGUST 04, 2016

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