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

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Date of decision:01.03.2017

+ CM(M) 478/2012

SIMRAN SINGH

....Petitioner

Through

Mr.P.K.Mishra, Adv.

versus

RAJINDER SINGH & ORS.

....Respondents

Through

Mr.Amit P.Deshpandey, Adv. for R-1
and R-2

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition filed under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 2.4.2012 passed by the trial court on the application filed by the plaintiff/respondent Nos.1 and 2 under section 151 CPC for directions to the petitioner/defendant No.1 to deposit user charges at the rate of Rs.60,000/- per month for the period 1.3.2009 to 31.3.2012 and to continue to deposit the same month by month for the suit property.

2. Respondents No.1 and 2/plaintiffs filed a suit for recovery of possession, arrears of rent and mesne profits regarding property Ground Floor C-91, Defence Colony, New Delhi. The property was admittedly owned by the father of respondents No.1, 3 and 4 Late Major Prem Singh and grandfather of respondent No.2. The petitioner Simran Singh, who is since deceased, was the husband of respondent No.4. Late Major Prem

Singh bequeathed the ground floor of the said property to respondent No.3 to the extent of 40%, to respondent No.1 to the extent of 40% and to respondent No.2 to the extent of 20%. To his wife Smt.Amrit Kaur he granted right to use and benefits thereof. However, after her death the property was to devolve upon the three respondents as above, namely, respondent Nos.1 to 3.

3. Major Prem Singh died on 15.11.1979. The respondents filed a petition for probate of his said will dated 1.9.1978. It is stated that late Major Prem Singh had three daughters including respondent No.4 who gave an NOC and accordingly a probate for the will was granted.

4. It is further urged that the wife of late Major Prem Singh, Smt. Amrit Kaur who had a life interest inducted Punjab and Sind Bank as her tenant for the residence of the petitioner who was an employee of the said bank. Thereafter the lease expired. On 2.3.2001 another lease was executed now with the petitioner who had retired from Punjab and Sind Bank. Thereafter another lease was executed on 12.2.2004 which was for the period from 1.3.2004 upto 28.2.2009 with agreed rent of Rs.7,000/- per month.

5. In the meantime, Smt.Amrit Kaur died on 4.8.2007. It is averred by the petitioner herein that prior to her death Smt.Amrit Kaur on 25.8.2006 had executed her last Will on account of which the property in question was bequeathed to respondent No.4 his wife subject to certain terms and conditions which have been fulfilled.

6. As the petitioner failed to vacate the property, the suit was filed for eviction of the petitioner and his wife respondent No.4, arrears of rent and mesne profits. During pendency of the suit, the respondent No.1 filed the application under section 151 CPC seeking a direction that the petitioner be

directed to pay damages and user charges @ Rs.60,000/- per month w.e.f. 1.3.2009 as mesne profits.

7. The petitioner filed a detailed reply to the said application filed by respondents No.1 and 2. It was stated that after the death of late Major Prem Singh the property devolved upon his wife Smt.Amrit Kaur. It was further stated that late Major Prem Singh has bequeathed to his wife Smt.Amrit Kaur the said property for her use and benefit. Smt. Amrit Kaur being the wife of Major Prem Singh had pre-existing rights of maintenance out of her husband's property as recognized under The Hindu Woman's Right to Property Act, 1937, and Hindu Adoption and Maintenance Act, 1956. Therefore it was urged that in view of section 14 of Hindu Succession Act, 1956, the limited rights bequeathed of late Smt.Amrit Kaur by her husband Major Prem Singh got enlarged and bloomed into an absolute right over the property. The mother Smt.Amrit Kaur has by a Will dated 25.8.2006 bequeathed the said property in favour of respondent No.4.

8. It is stated that under the Will of Smt.Amrit Kaur, respondent No.4 was to pay a sum of Rs.5 lacs to both her sisters. As the sisters were not co-operating it is stated that a suit was filed in the court of Civil Judge, Saket by respondent No.4. There the matter was compromised. The two sisters accepted Rs.5 lacs each and gave the 'No Objection'. An application under Order 23 Rule 3 CPC was filed and in terms of the compromise the suit was decreed on 18.12.2010. Hence, it is urged that the respondent No.4 has become absolute owner of the property. It is further stated that the petitioner has handed over the premises to the landlady/owner of the tenanted premises respondent No.4 and cannot be held liable to pay any rent or dues regarding the property.

9. The petitioner also pointed out that respondent No.1 & 2 have filed a suit before the Additional District Judge seeking a decree declaring the judgment and decree dated 18.12.2010 as null and void being obtained by fraud. A decree is also sought for cancelling the alleged Will dated 25.8.2006 of Smt.Amrit Kaur. The suit is said to be pending.

10. In these facts the trial court concluded that the petitioner was inducted into the premises by Smt.Amrit Kaur and that respondent No.4 is the wife of the petitioner. On a plain reading of the Will of late Major Prem Singh dated 1.9.1978 it is clear that he had excluded his daughters from rights in the property and that Smt.Amrit Kaur had been given right to use and live in the property. Hence, it concluded that the petitioner could not have surrendered the premises to respondent No.4 and cannot escape from his liability. Hence, the trial court directed the petitioner to deposit the arrears of rent @ Rs.7,000/- per month for the period 1.3.2009 to 31.3.2012 and further directed to deposit the amount month by month @ Rs.7,000/- per month. In case he fails to deposit, his defence may be struck off under Order 15A CPC. The prayer of respondent No.1 to direct payment of Rs.60,000/- per month was rejected.

11. I have heard learned counsel for the parties. Learned counsel for the petitioner has stressed that in terms of section 14 of the Hindu Succession Act, the respondent No.4 has become the owner of the suit property and the petitioner has rightly handed over possession to respondent No.4. Hence, there can be no liability on him.

12. The undisputed facts are that the petitioner was inducted as a tenant in the suit property @ Rs.7,000/- per month. The lease deed expired on 28.2.2009. On the expiry of the lease, the petitioner claims that he has

handed over vacant physical possession to the owner of the property i.e. his wife respondent No.4. Hence, he claims that he is not liable to pay the mesne profit/damages.

13. The trial court has come to a prima facie conclusion that as per Will of Major Prem Singh the daughters were excluded. It also prima facie took the view that Mrs. Amrit Kaur did not have full rights in the property.

14. In my opinion, the act of the petitioner in claiming to hand over possession to respondent No.4 his wife is a mischievous attempt to try and scuttle the rights of respondents No.1 to 3. The petitioner entered into possession as a tenant. By this mechanism the petitioner and respondent No.4 seek to continue to occupy the suit premises claiming title to the property. Admittedly, as per the Will of late Major Prem Singh respondent No.4 gets no title to the suit property. I have in an earlier case dealt with a similar claim under Section 14 of the Hindu Succession Act in the case of ***Ranvir Dewan vs. Rashmi Khanna, 2013 (204) DLT 192*** where I held as follows:-

“39. The legal position that flows from the above judgments is that where a property is acquired by a Hindu female on partition or in lieu of her pre-existing right of maintenance, it is by virtue of a pre-existing right and such an acquisition would fall within the scope of Sub-Section (1) of Section 14 of the Hindu Succession Act even if the instrument, decree, order or award allotting property to the Hindu female prescribes a restricted estate. Such a limited estate would ripen into the absolute property of the widow. However, where the property is acquired by a female Hindu for the first time as a grant without any pre-existing right under a gift, Will, instrument, decree, order or award the terms which prescribe a restricted estate in a property, then Sub-Section (2) would apply and the estate would not become an absolute

estate of the Hindu female.”

15. Against the said judgment, an appeal was filed before the Division Bench of this court. The said appeal No. RFA(OS) 147/2013 was dismissed on 13.07.2016 (2016 SCC Online Del 3854). The Division Bench held as follows:

“16. It has been well established in a number of cases as cited above that every Hindu woman has an inherent pre-existing right of maintenance, as recognized by the Shastric laws and the 1956 Act. To assess the application of sub section (1) or (2) of Section 14 of the Act, it is important to see whether in a particular case the transfer of interest in the property was made in lieu of this pre-existing right or a new interest was created for the first time, without any reference to the maintenance right.

16. Against the said Judgment of the Division Bench an SLP was filed before the Supreme Court being SLP (Civil) No. 32044/2016 which is pending.

17. The facts in the case of *Ranvir Dewan vs. Rashmi Khanna (supra)* were somewhat similar to this case. The property also pertained to the same vicinity. As per Will in that case, limited rights were given to the widow whereby she could reside in the property and enjoy the income from the tenants. The dispute again centered around as to whether the deceased husband had given a life interest in the suit property in lieu of her maintenance rights. This court had held that the widow had no pre-existing right to the suit property and her limited rights as given to her do not get enlarged under section 14 of the Hindu Succession Act.

18. I may also note that respondent No.4 has taken no steps to seek declaration of her title. The claim of the respondent No.4 does not inspire

confidence. Prima facie the stand taken by the petitioner is mischievous. In my opinion there are no grounds to interfere in the impugned order passed by the trial court.

19. In the light of the above, there is no merit in the present petition. The petition is dismissed. All pending applications, if any, also stand dismissed.

(JAYANT NATH)
JUDGE

MARCH 01, 2017/n