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

+ RSA 157/2018 & CM APPL. 45664-45667/2018

SUDHA MIGLANI

..... Appellant

Through: Appellant in person with Mr. Anuj
Kumar Pandey, Advocate.

versus

SAVITRI DEVI

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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31.10.2018

Submissions have been made on behalf of the appellant assailing the impugned order dated 19.03.2018 of the Court of the learned ADJ-03, South-West, Dwarka Courts, New Delhi in Regular Civil Appeal no.8/18 whereby the appeal against the judgment and decree dated 15.03.2017 in Civil Suit No.75/15 was declined. The appellant seeks to contend that she has been harassed by the respondent and is being turned out from the matrimonial shared household.

The record indicates that vide order dated 14.03.2017 in Suit no.9424/16, the application under Section 26 & 19 of the Protection of Women from Domestic Violence Act, 2005 filed by the applicant herein were declined, and it has been expressly observed vide order dated 14.03.2017 of the Civil Judge, West-III, Tis Hazari Courts to the effect:-

“In the present application, defendant No.1 has taken the plea that suit property is a joint family property and is a shared household of defendant and she is staying in the same for last 18 years since after the date of her marriage with defendant No.2. Prayer has been made to pass residence order in favour of defendant No.1 and thereby plaintiff be restrained from disturbing the possession of defendant No.1 in the shared household. It is further prayed that plaintiff and her relatives be restrained from entering in any portion of shared household, in which, defendant No.1 is residing. It is further prayed that plaintiff be restrained from creating third party interest in the shared household.

This Court is of the considered view that in the present matter there is no WS on record on behalf of both defendants and vide order dt. 13.08.2015, the opportunity to file WS was closed for both the defendants and now by taking the plea of joint family property, defendant No.1 wants to file her WS on record which is not permissible in view of order dt. 13.08.2015. Even, otherwise as per plea of plaintiff and documents i.e. Conveyance Deed & Will, the ground, first and roof rights of third floor of suit property exclusively belongs to plaintiff and as per Law laid down by Hon’ble Supreme Court of India in case titled as “S.R. Batra & Anr. Vs. Taruna Batra (AIR 2007) SC 1118”..... a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member...”

In view of this Court that in present matter, the suit property neither belongs to the husband nor is a joint family property and same earlier was a self acquired property of husband of plaintiff and after death of husband, same has been devolved upon plaintiff by way of Will dt. 13.10.2011 and exclusively belongs to plaintiff and

is not a shared household. In view of the above, application filed by defendant No.1 is devoid of merit, so, same is disposed off as not allowed.”

On behalf of the applicant, it has been submitted that the said order is based on a Will of the father-in-law of the appellant i.e. the late spouse of the respondent to Regular Civil Appeal no.8/18 arrayed also as the respondent to the present appeal.

It has been submitted on behalf of the appellant that at the time of the execution of the Will dated 13.10.2011 copy of which is on the record as indicated to be exhibited as Ex.PW1/3 in the course of the Civil Suit before the Civil Judge, THC as exhibited thereon on 30.08.2016 when the original thereof is indicated to have been produced, it has been categorically averred therein to the effect that:-

“I hereby declare that presently I am the owner of property bearing No.89, in Block D-2, area msg. 126 sq. Mtrs., situated at Janak Puri, New Delhi, with the freehold rights of land under the said property by virtue of a Conveyance Deed which is duly registered as document No. 12132, in Additional Book No.I, Volume No. 11074 on pages 157-159 dated 25/08/03 in the office of Sub Registrar, Delhi.

That presently I have entered into a collaboration agreement with a builder who has agreed to raise new construction on the said property after demolishing the existing structure. The builder has agreed to raise ground floor, first floor, second floor and third floor on the plot of the said property.

That as per said agreement I have agreed to transfer my ownership rights in respect of second floor without roof

rights in favour of the builder or his authorized representative against the building expenses incurred by the builder.

That after the transfer of second floor without roof rights to the builder or his authorized representative, I will have the ownership rights of ground floor, first floor and third floor with roof rights of the said property.

I, hereby declare that so long I am alive and I shall remain the owner of ground floor, first floor without roof rights, third floor with roof rights of the said property and after my death the said ground floor, first floor without roof rights and roof rights of third floor should go and devolve first my wife Smt. Savitri Devi (hereinafter referred to as beneficiary), who will become the sole and absolute owner of ground floor, first floor without roof rights and roof rights of third floor, to the exclusion of my other heirs or successors.

That after the death of my wife Smt. Savitri Devi the above said ground floor, first floor without roof rights and roof rights of third floor should go and devolve solely on my son Sh. Amit Miglani, who will become the sole and absolute owner of ground floor, first floor without roof rights and roof rights of third floor (hereinafter referred to as beneficiary), to the exclusion of my other heirs or successors.”

Significantly, the portion of the said Will which reads to the effect that:-

I, hereby declare that so long I am alive and I shall remain the owner of ground floor, first floor without roof rights, third floor with roof rights of the said property and after my death the said ground floor, first floor without roof rights and roof rights of third floor should go and devolve first my

wife Smt. Savitri Devi (hereinafter referred to as beneficiary), who will become the sole and absolute owner of ground floor, first floor without roof rights and roof rights of third floor, to the exclusion of my other heirs or successors.”,

as depicted hereinabove categorically stated to the effect that the testator thereto of the Will dated 13.10.2011 who admittedly has since expired, had stated that so long he was alive and remained the owner of the ground floor, first floor without roof rights, third floor with roof rights of the said property and after his death the said ground floor, first floor without roof rights, third floor with roof rights would go and devolve first to his wife Smt. Savitri Devi referred to as the beneficiary (i.e. the respondent to the present appeal) who would become the sole and absolute owner of the ground floor, first floor without roof rights and roof rights of third floor to the exclusion of any of his heirs or successors. It is apparent on a perusal of the said Will and on a perusal of the impugned order of the Appellate Court as well as the order dated 14.03.2017 of the Court of the Civil Judge, West-III qua the application under Section 26 & 19 of the Protection of Women from Domestic Violence Act, 2005 read with Section 151 of the CPC filed by the appellant herein in relation to which apparently no redressal was also sought by the appellant herein, it is apparent that in terms of the verdict of the Hon’ble Supreme Court in **“S.R. Batra & Anr. Vs. Taruna Batra (AIR 2007) SC 1118”**, as the property in question in which the appellant seeks to claim her rights does not fall within the domain of the shared household and is that

which has been bequeathed by the testator i.e. the father-in-law of the appellant to the mother-in-law i.e. the respondent herein, the appeal is devoid of all merits.

The present appeal is thus declined.

ANU MALHOTRA, J

OCTOBER 31, 2018/NC