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

Reserved on : 3rd October, 2018

Date of decision : 15th January, 2019

+ **CS (OS) 364/2014 & I.As.2436/2014, 2437/2014, 5854/2014, 2406/2015, 4475/2015 & 3321/2017**

KUMARI SUSHILA YADAV Plaintiff

Through: Mr. N.S. Vashisht, Advocate.
(M:9891105323)

versus

LT. COL. (RETD) ATUL CHAUDHARY Defendant

Through: Ms. Pritha Srikumar Iyer, Advocate
for D-1 to 3 (M:9971116183).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present suit for recovery of possession, damages and mesne profits has been filed by the Plaintiff – Kumari Sushila Yadav against Lt. Col. Atul Chaudhary, his wife Mrs. Punam Chaudhary and son Mr. Pranav Chaudhary.

2. The Plaintiff is the daughter of Late Chaudhary Surat Singh. She had two brothers. Her elder brother was Shri Surender Yadav and her younger brother was Shri Satish Chandra Yadav. Defendant No.1 – Lt. Col. Atul Chaudhary is the son of Shri Surender Yadav, her elder brother. Defendant No.2 is the wife of Defendant No.1 and Defendant No.3 is the son of Defendant No.1.

3. The case in the plaint is that the Plaintiff is the sole and absolute owner of property bearing No. E-39A, East of Kailash, New Delhi-110065

(hereinafter '*the suit property*'). The said property is divided into two halves i.e. East Wing and West Wing. The Plaintiff resides in the West Wing admeasuring 230 Sq. Yards along with the sons and daughters of Late Shri Satish Chandra Yadav. The East Wing admeasuring 230 Sq. Yards is in the occupation of the Defendants. Both the Wings of the property are connected by a common staircase, with access to the basement and upper floors. Both the Wings also have independent entrances.

4. The further case of the Plaintiff is that Defendant No.1 used to reside in Canada and in the year 2008, when he came back to India, he requested the Plaintiff to permit him to reside in a portion of the suit property as he had no suitable accommodation. At his request, the Plaintiff permitted Defendant No.1 and his family to reside in the East Wing, on the front portion of the ground floor and lower ground floor. Thereafter, Defendant No.1 brought his wife and son, and all of them started living together in the East Wing of the property as permissive users of the Plaintiff. It is then alleged that the Defendants broke open the locks and took possession of the front portion of the first and second floor, and also started making alterations therein. It is further alleged that Defendant No.1 had also started construction on the third floor, contrary to the sanctioned plan. This was objected to by the Plaintiff. There were disputes between the parties and a complaint was filed with the Municipal Corporation of Delhi, pursuant to which the third floor was demolished. It is then alleged that the Defendants started misbehaving with the Plaintiff. A legal notice was then issued by the Plaintiff on 31st March, 2012. The Plaintiff also claims to have executed a Will disentitling the Defendants and their relatives from any shares in her estate. The Defendants then started using some portion of the property as

guest house and earning a huge income. By issuing the legal notice, the Plaintiff withdrew her consent and permission given to the Defendants to reside in the property. Thereafter, the present suit was filed seeking the following reliefs.

“(a) a decree of possession in favour of the Plaintiff and against the Defendants in respect of the portion of the suit property bearing No,E-39A, East of Kailash, New Delhi - 110 065 which is in possession of the defendants and specifically shown in Red colour in the site plan; and

(b) a decree of Rs.42,00,000/- in favour of the Plaintiff and against the Defendants as Damages on account of the said portion of the property which was trespassed and forcible possession taken by the Defendant and further the said portion is being used by the Defendants for running of the guest house, without the prior permission of the Plaintiff. The said amount could have been earned by the Plaintiff in case, the said portion of the property, if would have been in the possession of the Plaintiff could have been let out by the Plaintiff, which is being specifically shown in Red Colour in the Site Plan; and

(c) a decree of Rs.31,50,000/- as Mesne Profit in favour of the Plaintiff and against the Defendants, which is @ Rs.1,50,000/- per month w.e.f. April, 2012 till its realization;

(d) pass such other and further order(s) or directions as may be deemed just and proper in the facts and circumstances of the case; and

(e) Award costs of the present suit in favour of the Plaintiff and against the defendants No.1 to 3.”

5. In the written statement, the case of the Defendants is that the Defendants enjoyed good relations with the Plaintiff. Since inception, the suit property was divided into two roughly equal halves and two separate

houses were built in two separate halves. The purpose was to accommodate the families of both the brothers of the Plaintiff. It is claimed that separate *poojas* were also conducted at the time of construction of each house. Each wing of the property constitutes a separate and distinct house, having separate municipal supplies and access from the road. According to the Defendants, the present suit was instigated and filed at the instance of the wife and children of Late Shri Satish Chandra Yadav, who reside in the West Wing with the Plaintiff. They had exercised undue influence on the Plaintiff, who is an old lady, with an intention to usurp the entire property to themselves. The Plaintiff, being unmarried, and having no family or children of her own, had a sister by the name Ms. Saroj Nalini, who was also unmarried. The entire family used to live together in the ancestral house in Fatehpuri. The Plaintiff treated Defendant No.1, her brother's son as her own son and took care of his upbringing and education. The father of Defendant no.1, Shri Surender Kumar Yadav passed away on 16th November, 1967, when Defendant No. 1 was still a minor, and the Plaintiff had looked after Defendant No.1. They have undertaken pilgrimages together and the Defendant Nos.1 & 2 had taken care of the Plaintiff's medical needs. The property in East of Kailash was allotted to the Plaintiff in lieu of an earlier allotment made to the family in Okhla. The Plaintiff had no source of income and the property was acquired from the funds that were provided to her by her father Late Chaudhary Surat Singh, who is the grandfather of Defendant No.1. The Plaintiff wished for equal distribution of the suit property between her two nephews. It is further averred that though the plot was in the name of the Plaintiff, construction was carried out by Defendant No.1 from his own funds by expending huge sums of money.

Initially, the structure comprised part of what is now the West Wing, which is now in the possession of the Plaintiff and children of Late Shri Satish Chandra Yadav. Defendant No.1 was working in the army and was posted in various locations. A portion of the property forming part of the East Wing was tenanted out in order to meet some dues payable to the LIC. The Defendant No.1 had, thereafter, taken voluntary retirement and took a job in Canada. Even while they were living in Canada, the East Wing of the property was in possession of the Defendants. Municipal services, such as the connections for telephone, electricity, etc. continued to remain in control of the Defendants, even while they lived in Canada. The uncle of Defendant no.1, i.e., Shri Satish Chandra Yadav passed away in 2002. It was at the request of the Plaintiff that he moved back to India, being the oldest male member of the family, as his cousins i.e. the children of Shri Satish Chandra Yadav were going through various marital problems, which were to be handled. The Plaintiff's sister Ms. Saroj Nalini also fell ill and he had to take care of her. In fact, the purpose all along was to equally divide the property between the children of the Plaintiff's brothers. A draft settlement deed dividing the property into two equal halves was drawn up, which was to be executed by the family members to avoid litigation. However, at the instance of Shri Ashutosh Chaudhary and his sisters, who were the children of Shri Satish Chandra Yadav, the settlement was not signed. The tenants, thereafter, vacated the property and the Defendants took possession. The Defendants state that the Plaintiff has repeatedly issued no objection certificates and letters to enable the Defendants to obtain separate municipal connections to the East Wing of the property. The Defendants have been taking care of all the municipal taxes, charges and payments towards the

East Wing. However, on the other hand, the children of Shri Satish Chandra Yadav have made no contribution towards the West Wing of the property, though they are residing with the Plaintiff in the said property. It is, thus, pleaded that license given by the Plaintiff to the Defendants to reside in the property is irrevocable under Section 60 (b) of the Indian Easements Acts, 1882. The pleas in the written statement are denied by the Plaintiff in the replication.

Proceedings in the Suit

6. On 7th February, 2014, an ad interim injunction order was granted restraining the Defendants from creating any third party interest in the front portion of the ground, first and second floor of the property, as shown in the red colour in the suit property and were also directed to stop using the same for commercial purposes. An application being I.A. No.5574/2014 was then filed to withdraw the suit. The said application was filed on 13th March, 2014 and was duly signed by the Plaintiff, accompanied, by her affidavit. However, on 25th March, 2014, the said application was disposed of as not pressed. The court recorded as under:

“I.A. No. 5574/2014 (u/Sec. 151 CPC)

This application has been filed by the plaintiff seeking withdrawal of suit. ' However, plaintiff, who is aged about 88 years old, is present today. She submits that she has filed the present suit against the defendants for possession of property bearing no. E-39A, East of Kailash, New Delhi -110065 and she wants to continue with the case. She further submits that she does not wish to withdraw the suit. Accordingly, present application is disposed of as not pressed.”

7. The suit, thereafter, continued. Various applications were filed. An application was filed by the Plaintiff under Order XII Rule 6 CPC being I.A.

No.12579/2014. The said application was decided on 29th April, 2015. The observations of the Court, while dismissing the said application, are that there was no admission by the Defendants, which would permit the passing of a judgment on admissions. This order was appealed and was decided by the Division Bench vide order dated 14th January, 2016. The Division Bench dismissed the appeal, however, observed that a fresh application under Order XII Rule 6 CPC could be filed by the Plaintiff after the admission/denial of the documents is concluded. The SLP against the said order of the Division Bench was dismissed on 12th May, 2016. Thereafter, mediation was explored between the parties.

8. An application for amendment was filed by the Plaintiff seeking enhancement of the pecuniary jurisdiction as the suit was transferred to the District Court. Admission/denial of the documents was, thereafter, conducted. On 26th July, 2018, some arguments were addressed by both the parties. Considering the nature of the matter, it was directed that the Plaintiff would appear in person on 28th July, 2018 for recordal of her statement. The Plaintiff is 93 years of age and was immobile. She was brought to the Court on a stretcher. The Plaintiff's statement was then recorded on 28th July, 2018. She stated as under:

“Statement of Kumari Sushila Yadav, D/o late Chaudhary Surat Singh, aged about 90 years, R/o E-39A, East of Kailash, New Delhi-110065.”

On SA

My father had four children; two sons and two daughters. The eldest was Shri Surender Yadav, I was the second child, third Shri Satish Chandra Yadav, fourth Smt. Saroj Nalini. Myself and my sister, both lived with our father. My father was the Punjab Civil

Services (PCS) Officer. My father was the Chief Officer of Lahore Corporation (Undivided India). My father had a transferable job and after Partition when we came to India, he was posted in various locations. I used to study English in Indraprastha College and I have completed two years of graduation. My sister and myself were both unmarried and we always lived with our parents. My father expired and thereafter my mother passed away. This property was purchased in my name and I got the construction carried out in the property. It was a big plot and, therefore, two portions were constructed. In one portion, our family used to live and the other portion was tenanted.

The Defendant, Shri Atul Chaudhary is the son of Shri Surender Yadav. Shri Atul Chaudhary was in the Army and thereafter moved to Canada. I do not remember when they came from Canada. The Defendants, upon their return from Canada, had requested that they may be permitted to live in the house for some time. Thereafter the son of Atul Choudhary started saying that he will sell the property, that is when I filed the present suit.

I have no objection, if Shri Atul Chaudhary and his family live in the property but I do not want them to sell the property or rent out the property. The families of the two brothers i.e. Shri Surender Yadav and Shri Satish Chandra Yadav can live in the property. Both the families of my brothers do not get along with each other. They are living in separate portions. If Shri Atul Chaudhary or his family wishes to leave the property, he should handover the possession to the family of my younger brother, Shri Satish Chandra Yadav. So long as the family of Atul Choudhary wants to live in the property, they may live but they should not either rent out the property or sell it.

It is my wish that this property should remain within our family and Shri Satish Chandra Yadav's family also should not sell this property. The property

can be used for both the families to live peacefully and not for selling the same.”

9. The Plaintiff is 93 years of age and was immobile. She was brought to the Court on a stretcher. A copy of the statement given by her was supplied to both the parties and thereafter, arguments were heard on all the I.As. The details of the applications are as under:

- (i) I.A. No. 2436/2014 under Order XXXIX Rule (1) and (2) praying that the Defendants be restrained from creating any third-party interest in the suit property, and to stop the commercial use of the same.
- (ii) I.A. No. 2437/2014 praying that the Defendants be directed to pay the use and occupational charges @ Rs. 2,00,000/- per month for unauthorised occupation of the suit property during the pendency of the suit.
- (iii) I.A. No. 5854/2014 wherein the Plaintiff prays for certain facts to be taken on record.
- (iv) I.A. No. 2406/2015 under Order VII Rule 11 (a) and (b) seeking rejection of the plaint.
- (v) I.A. No. 4475/2015 seeking modification of the Order dated 7th February, 2014, which imposed a restriction on the Defendants regarding the manner of use of the property pending disposal of the suit.
- (vi) I.A. No. 3321/2017 under Order I Rule 10 (2) seeking to implead Mrs. Shail Yadav, Mrs. Smita Chaudhry, Ms. Poonam Chaudhary, Ms. Nandita Chaudhry, Mrs. Sonal Chaudhry and Mr. Ashutosh Chaudhry as additional Defendants to the suit.

Submissions of parties

10. Submission of Mr. N. S. Vashisht, learned counsel for Plaintiff is that the statement of the Plaintiff recorded under Order X CPC, is not meant for recordal of evidence or to secure any admission. It is only to adjudicate the matter in controversy. Since she is an old lady and the Court was of the opinion that her statement should be recorded, the same was duly recorded and the suit now ought to be sent to trial. He has relied upon the judgments in *Kapil Corepacks Pvt. Ltd. v. Harbans Lal*, (2010) 8 SCC 452 and *Smt. Kaniz Fatima & Ors. v. Shah Naim Ashraf*, AIR 1983 Allahabad 450.

11. It is further stated by Ld. Counsel that the Plaintiff wishes to withdraw her statement made to the Court and he has brought an affidavit to that effect. It is further submitted that the Defendants admit ownership rights of the Plaintiff and hence cannot claim any independent rights in the suit property. Ld. Counsel further contends that the Plaintiff has executed a Will bequeathing the entire property to the children of Shri Satish Chandra Yadav and disentitling the Defendants from any share in her assets.

12. On the other hand, Ms. Pritha Srikumar Iyer, learned counsel for the Defendants submits that the Plaintiff's statement proves the case of the Defendants beyond any doubt. It has also been the case of the Defendants that they enjoyed very good relations with the Plaintiff. She submits that the entire suit is a proxy litigation by the children of Shri Satish Chandra Yadav, one of whom is Mr. Ashutosh Chaudhary, the lawyer who appears on every hearing. She submits that the Plaintiff herself is not keen to evict the Defendants and that she gave a statement to this effect even before the police. She never had any ill will towards the Defendants and had no objection with the Defendants continuing to reside in the property. She

relies on the judgments in *Kapil Corepacks Pvt. Ltd. v. Harbans Lal*, (2010) 8 SCC 452, *Rajiv Srivastava v. Sanjiv Tuli & Anr.*, AIR 2005Del 319 & *Amrita Devi & Ors. v. Sripat Rai & Ors.*, AIR 1962 All 111.

13. One of the allegations of the Defendants in the present case is that the Plaintiff is being prompted and influenced by her nephew and nieces to seek eviction of the defendants from the suit property – against her own wishes. This is asserted by arguing that repeatedly counsels are changed at the instance of the Plaintiff's nephew.

14. Insofar as the counsels engaged by the Plaintiff are concerned, it is noticed from the record that vide vakalatnama dated 25th January, 2014, the Plaintiff authorized Shri Prag Chawla, Advocate as her lawyer. Thereafter, a second vakalatnama dated 13th March, 2014 in favour of Shri C. K. Sharma, Advocate, Delhi High Court, Chamber No.158, Patiala House, New Delhi was filed. Vide vakalatnama dated 11th April, 2017, Mr. Prakash Gautam and Mr. Vivek Ojha, Advocates were engaged as counsel by Plaintiff. Thereafter, Mr. Aman Bhalla, Advocate was engaged by Plaintiff vide vakalatnama dated 13th April, 2017. Finally, vide vakalatnama dated 2nd August, 2018, Mr. N. S. Vashisht, Mr. Vishal Singh, Ms. Jyoti Kataria and Mr. M. P. Bhargava, Advocates were engaged by Plaintiff as her lawyers. From the order sheets it is also seen that Mr. Rajat Aneja, Advocate was also engaged by the Plaintiff for some period, though his vakalatnama does not appear to be on record. Thus, there are multiple vakalatnamas filed on behalf of the Plaintiff.

Analysis & Findings

15. The first and foremost fact that needs to be highlighted in the present case is that the Plaintiff – Kumari Sushila Yadav is more than 90 years of

age. She is physically immobile due to a hip fracture. The children of Shri Satish Chandra Yadav reside with her in the West Wing of the property. On all dates of hearing in Court, her nephew, who is one of the sons of Shri Satish Chandra Yadav, has appeared along with the counsel for Plaintiff. The record of the Court shows that the Plaintiff has changed six counsels since inception. On one occasion, she filed an application to withdraw the suit but thereafter, the said application was disposed of as not pressed. Considering her age and her physical condition as also the circumstances in entirety, this Court was of the opinion that her real wishes need to be ascertained, inasmuch as, the repeated change of counsel instilled a doubt in the Court's mind as to who was giving instructions to the counsels appearing on her behalf. Accordingly, the statement of the Plaintiff was recorded on 28th July, 2018 to elucidate as to whether there was really any dispute between the parties. There may be disputes between the families of two brothers, however, that is not the issue in the present case. The issue is as to whether the Plaintiff who is the owner, wishes to seek eviction of her nephew and his family i.e. the Defendants from the suit property.

16. The statement recorded on 28th July, 2018 shows that the Plaintiff is fully conscious and is mentally agile. She has given the history of her family in a succinct manner. She recalled the employment of her father, education of herself and her sister, and the purchase of the suit property. She stated clearly that Defendant No.1, her nephew was in the army and had thereafter, moved to Canada. She stated that it was only when the Defendant No.1's son threatened to sell the property that the suit was filed by her. She further stated in her statement to the Court as under:

“I have no objection, if Shri Atul Chaudhary and his family live in the property but I do not want them to sell the property or rent out the property. The families of the two brothers i.e. Shri Surender Yadav and Shri Satish Chandra Yadav can live in the property. Both the families of my brothers do not get along with each other. They are living in separate portions. If Shri Atul Chaudhary or his family wishes to leave the property, he should handover the possession to the family of my younger brother, Shri Satish Chandra Yadav. So long as the family of Atul Choudhary wants to live in the property, they may live but they should not either rent out the property or sell it.”

It is my wish that this property should remain within our family and Shri Satish Chandra Yadav’s family also should not sell this property. The property can be used for both the families to live peacefully and not for selling the same.”

17. From the above extracted portion, it is clear that the Plaintiff has no objection if Defendant No.1 and his family reside in the suit property. However, her only wish is that the suit property should remain within the family and neither branch of the family should be allowed to sell or rent out the suit property. It is her wish that in case Defendant No.1 wishes to leave the suit property, the possession of the same ought to be handed over to the children of Shri Satish Chandra Yadav, who reside in the West Wing. She also stated that she had no objection if the children of Shri Satish Chandra Yadav live in the property but they should not sell the property.

18. The crux of her statement makes it clear to the Court that the Plaintiff, for whatsoever reasons, had sought a decree for possession against the Defendants, however, in fact, she has no objection if the Defendants reside in the said property. The statement of the Plaintiff recorded under Order X

CPC clearly constitutes an admission that she does not press for the relief of possession. Clearly, the Plaintiff had permitted them to reside in the suit property. The plea in the plaint that the Defendants had taken forcible possession is not made out, however, the fact that the Plaintiff does not wish the property to either be rented out or used for commercial purpose, is clear from her statement. The law on the effect of a statement made under Order X CPC is settled. In ***Kapil Corepacks (supra)***, the Supreme Court clearly observed as under:

“22. The object of the examination under Order 10 Rule 2 of the Code is to identify the matters in controversy and not to prove or disprove the matters in controversy, nor to seek admissions, nor to decide the rights or obligations of parties.”

19. The Supreme Court, in fact, in the above judgement, upheld the decision of the Division Bench of the Delhi High Court in ***Gautam Adani v Container Corporation of India [150 (2008) DLT 281]*** and observed as under:

“Gautam Adani supports the contention of the appellants that the scope of Order 10 Rule 2 of Code is limited to identifying the matters in controversy and not to adjudicate upon the matters in controversy.”

20. In ***Vikas Aggarwal v. Anubha, (2002) 4 SCC 468***, the Supreme Court has observed as under:

“12. We would like to observe that Order 10 CPC is an enabling provision providing that the court at the first hearing of the suit shall ascertain from each party about its pleadings. It does not in any manner place any bar on the powers of the court to seek clarification from any party in an appropriate case, at any date earlier than the one fixed for framing of issues so as to

advance the interest of justice.....”

21. In **Suraj Mal v. Mt. Chhote, 1926 AIR (All) 411** cited by the Plaintiff, the Allahabad High Court has observed that any statement made under Order X CPC is binding on the said party. The relevant portion of the said judgment is extracted herein below:

“As observed in Janku Prasad v. Arku Lal [1905] 2 ALJ 777 the aforesaid provision is intended to enable a Court to ascertain what were questions in controversy between the parties and is not intended to be in substitution for a regular examination on oath. Any statement made by a party, while being examined under that provision, is binding only on the person who made the statement to the same extent as the statement made by a pleader engaged by him may be binding on him but a statement made by a parson who merely appears to prosecute a case or to look after it on behalf of a party.”

22. In **Rajiv Srivastava v. Sanjiv Tuli & Anr., AIR 2005 Del 319**, the scope of a statement made under Order X CPC was considered and the Court held as under:

“.....If one of the parties’ statements is recorded under O. 10, Rr. 1 and 2 of the Code of Civil Procedure, the same is also a statement which elucidates matters in controversy. Any admission in such statement is relevant not only for the purpose of finding out the real dispute between the parties but also to ascertain as to whether or not any dispute or controversy exists between the parties. Admission if any is made by a party in the statement recorded, would be conclusive against him and the Court can proceed to pass judgment on the basis of the admission made therein.....”

23. Thus, from the above judgment of the Division Bench of the Delhi

High Court, it is clear that a statement under Order X CPC can be used to ascertain as to whether or not any dispute or controversy, in fact, exists between the parties. The Court also held that the statement so recorded would be conclusive against the person making the statement and the Court can pass a judgment on the basis of the admission made in the said statement.

24. The fact that the Plaintiff did not have any grievance against Defendant No.1 is also evident from the statement she made to the SHO PS Amar Colony recorded on 13th March, 2014 to the following effect.

*“To SHO Sahib,
PS Amar Colony
I respectfully submit that I Kumari Sushila live at house no. E-39A East of Kailash. Suddenly without informing I went to my other house building Shib Sahai no. 737 Church Mission Road. I have two houses without informing I went to the other house and my family called 100 number. I have now safely reached my home. I have my two brother's families and I go to both the places without any restrictions. Right now I am with Colonel Atul Chaudhary to his house. I have no complaint against Atul Chaudhary and his family. Atul Chaudhary and his wife Punam Chaudhary take care of me very well and love me very much.*

*Sd/-
Kumari Sushila Yadava
Hosue no. E-39A East of Kailash”*

25. The suit is one for possession and mesne profits. From the statement of the Plaintiff, it is clear that she does not have any objection to the Defendants continuing to live in the suit property. Moreover, relief of mesne profits is to be considered and granted only if the Defendants are in illegal possession and not otherwise. The Plaintiff, having no objection in the Defendants residing in the suit property, the reliefs prayed for by the

Plaintiff, in fact, do not survive. The Plaintiff's statement clearly binds the Plaintiff and constitutes an admission, which can be the basis for the Court to pass the judgment.

26. Considering the nature of the disputes and the age of the Plaintiff as also her wishes, as recorded in the statement dated 28th July, 2018, it is held that the decree for possession/damages/mesne profits is not liable to be granted.

27. It is the settled position in law that the Court is empowered to grant a smaller or a lesser relief than the relief sought. The Supreme Court in ***B.R. Ramabhadriah v Secretary, Food and Agriculture Department, Andhra Pradesh and Ors. AIR 1981 SC 1653*** held:

“Besides ignoring this crucial aspect, the Division Bench of the High Court has also lost sight of the well established principle that in an action where a party has prayed for a larger relief it is always open to the court to grant him any smaller relief that he may be found to be entitled in law and thereby render substantial justice. The Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice in the case.”

Keeping in view the statement and the wishes of the Plaintiff, on a query from the Court, the Ld. Counsel for the Defendants, during the course of arguments, had taken instructions and has submitted to the Court that the Defendants are willing to abide by the Plaintiff's statement and wishes expressed by her i.e. that the Defendants would not sell or rent out the property during the lifetime of the Plaintiff. The Defendant No.1 was present in the Court when this statement was made by the counsel. The Defendant no.1 shall be bound by this statement. This Court has not gone

into the question as to whether any Will has been executed by the Plaintiff and if so, to what effect. The Will is not the subject matter of the present suit. All the remedies of the parties in respect of the Will are left open.

28. A decree for permanent injunction is granted restraining the Defendants from selling, alienating, parting with possession or leasing/renting out the property bearing No. E-39A, East of Kailash, New Delhi-110065, without the consent of the Plaintiff. Decree sheet be drawn up. No other reliefs are liable to be granted. All pending I.As. stand disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 15, 2019/dk

