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

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Judgment delivered on: 14.11.2019

+ C.R.P. 175/2019 & CM APPL. 35781/2019

GEETA @GEETA DEVI

..... Petitioner

versus

MOHD RAZA & ANR

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner: Mr.Harsh Kumar, Mr.Aditya Awasthi and  
Mr.Aditya Raj, Advocates.

For the Respondents: Mr.Vivek Kumar Tandon, Advocate.

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

1. Learned counsel for the petitioner has handed over a copy of the written statement filed by the respondents in the subject suit.

2. Petitioner impugns order dated 27.07.2019 whereby the application of the petitioner under Order XII Rule 6 CPC has been dismissed.

3. Petitioner had filed the subject suit for possession contending that petitioner is the owner of the property bearing No.246/4, Ground

floor, East School Block, Mandawali, Opposite Government School, Delhi-110092, more particularly as shown in red colour in the site plan annexed with the plaint and the same was let out to respondent No.1 who has further illegally sub-let the property to respondent No.2.

4. It is contended that the property was let out on a monthly rental of Rs.4,000/- per month. Petitioner did not want to continue the defendant No.1 as a tenant and a legal notice under Section 106 of the Transfer of Property Act was served. Accordingly, the subject suit for possession was filed.

5. Written statement was filed by the respondents contending that respondent No.2 is not a sub-lettee but the wife of respondent No.1. Further it is contended that there was an oral Agreement to Sell whereby the respondent has agreed to purchase two portions measuring 30 sq.yards and 50 sq.yards and consequently since the possession was with the respondents, respondents held the property under the Agreement to Sell.

6. It is further contended that a suit for specific performance has been filed and the same is pending consideration before the concerned Court.

7. Trial Court by the impugned order has dismissed the application under Order XII Rule 6 CPC solely on the ground that in the written statement, defendant No.2 did not make any admission regarding the ownership of the plaintiff and of their tenancy in the suit

property.

8. Clearly the Trial Court has erred in not even examining the written statement. In paragraph 2 of the "*Reply parawise on merits*", there is a clear cut admission made by respondent Nos. 1 & 2 that they were tenants under the petitioner. Further since respondent No.2 has filed a Suit for Specific Performance qua the property, as stated in the written statement, it amounts to an admission that the petitioner is the owner of the property.

9. In the Written Statement, it is admitted that the respondents were inducted as tenants in the property by the petitioner. However, it is contended that during the tenancy period, respondent No.2 purchased the suit property in question.

10. There is an unequivocal admission made by the respondents in the written statement that petitioner is the owner of the property. It is stated that the respondents came into the possession of the property as tenants thereof. Filing of a Suit for Specific Performance against the petitioner seeking transfer of the property in their favour establishes that respondents admit that petitioner is the owner and landlord of the subject property.

11. Respondents have also not denied that the initial letting was at the rate of Rs.4,000/- per month. In paragraph 12 of the *Reply parawise on merits*, respondents have also admitted receipt of the legal notice issued by the petitioner under Section 106 of the Transfer

of Property Act and have contended that they have duly replied to the same.

12. The only defence raised by the respondents is that there is an Agreement to Sell and respondents have purchased portions of the property from the petitioner by virtue of an Agreement to Sell.

13. In a suit for ejectment, a plaintiff has to establish the following:-

- (i) Relationship of landlord and tenant
- (ii) Tenancy is not a protected tenancy under the Delhi Rent Control Act, 1958.
- (iii) There is no registered subsisting lease agreement.
- (iv) Tenancy has been terminated and the respondent tenant has failed to hand over possession.

14. As noticed above, there is an admission on the part of the respondents that petitioner is the landlord of the property and there is no denial to the averment of the petitioner that the letting was at the rate of Rs.4,000/- per month. Even the receipt of legal notice is admitted. It is not the case of the respondents that respondents continue to be a contractual tenant under any registered lease deed.

15. Clearly the ingredients that the plaintiff landlord has to establish to seek ejectment of his tenant have been duly admitted by

the respondents in their written statement.

16. The plea of the respondents that they cannot be evicted as there is an Agreement to Sell does not merit any consideration in view of the judgment of a Coordinate Bench of this Court in *Jagdambey Builders Pvt. Ltd Versus J S Vohra* 228(2016) DLT 49.

17. Clearly in the present case, the respondents have not been put in possession of the tenanted premises consequent to the agreement to sell and there is no decree of specific performance in their favour and accordingly they cannot resist the claim of the petitioner for possession.

18. Accordingly, I am of the view that there is an unequivocal admission of the ingredients that the plaintiff has to establish for seeking an ejectment of its tenant.

19. In view of the above, impugned order dated 27.07.2019 is set aside. The application of the petitioner under Order 12 rule 6 is allowed.

20. A decree of eviction is passed in favour of the petitioner and against the respondents directing the respondents to deliver peaceful, vacant possession of the property bearing No.246/4, Ground floor, East School Block, Mandawali, Opposite Government School, Delhi-110092, more particularly as shown in red colour in the site plan annexed with the plaint. Further a decree of damages for use and

occupation is passed at the contractual rate of Rs. 4,000/- per month from the date of filing of the suit till the date of delivery of possession in favour of the petitioner and against the respondents.

21. The petition is accordingly allowed in the above terms.

22. Order *dasti* under the signatures of the Court Master.

**SANJEEV SACHDEVA, J**

**NOVEMBER 14, 2019/rk**

