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

***Date of Decision: 02.03.2021***

**+ CM(M) 629/2020 & CM 32912/2020**

JASWANT KAUR SOOR ..... Petitioner  
Through Ms. Manmeet Arora, Ms.Chand  
Chopra, Ms.Pavitra Kaur,  
Ms.Bhavya Shukla, Advs.

versus

KRISHAN LAL GULATI ..... Respondent  
Through Mr.Sunil Goyal, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (Oral)**

1. This petition has been filed by the petitioner challenging the order dated 13.10.2020 passed by the learned Additional District Judge-02, (South), Saket District Courts, dismissing the application of the petitioner filed under Order XV-A of the Code of Civil Procedure, 1908 (hereinafter referred to be as 'CPC') in suit being CS No. 7391/2016, titled ***Jaswant Kaur Soor vs. Krishan Lal Gulati***.
2. The above suit has been filed by the petitioner herein praying for the following relief:-

*“[i] Pass a decree of possession in favour of the Plaintiff and against the Defendant in respect of the property bearing No.14-A First Floor, Arjun Nagar, New Delhi –*

*110029 more specifically shown in Red and Green colour in the site plan;*

*[ii] Pass a decree for recovery of Rs.2,76,000/- [Rupees Two Lakhs Seventy Six Thousand Only] being the arrears of rent from October 2013 to 01.08.2015 [23 months @ Rs.12,000/- per month] in favour of the Plaintiff and against the Defendant;*

*[iii] Award pendent lite and future mesne profits/damages @ Rs.1,000/- per day from 06.04.2014 till date of actual handing over of vacant and peaceful possession of the suit property by the Defendant;*

*[iv] Award interest @ 12% p.a. from the date the amounts become due and payable by the Defendant;*

*[v] Award costs of the suit in favour of the Plaintiff;”*

3. The suit has been filed by the petitioner claiming that her husband, Late Sh. Amrik Singh Soor, had purchased the subject property being 14A, First Floor, Arjun Nagar, New Delhi-110029 vide a registered Sale Deed dated 21.11.2000. At this stage itself I may note that it is the case of the petitioner that the date of 21.11.2000 was in fact, mentioned due to a typographical error in the plaint and the actual date of the Sale Deed is 21.11.2002. She submits that the Sale Deed dated 21.11.2002 was filed by the petitioner before the learned Trial Court along with the plaint.

4. It is the case of the petitioner that the respondent is the erstwhile lessee in the suit property under an unregistered Lease Deed dated 15.11.2011. The petitioner claims that the rent of the tenanted premises was Rs. 12,000/- per month.

5. The plaint further asserts that the husband of the petitioner herein passed away in January, 2013, whereafter the suit property was mutated in favour of the petitioner. The petitioner has also been paying the house tax on the said property.

6. It is claimed that the petitioner served a legal notice dated 28.04.2014 on the respondent inter-alia calling upon the respondent to handover vacant physical possession of the premises, however, on refusal of the respondent to do so, filed the suit in which the order impugned herein has been passed.

7. The learned counsel for the respondent at the outset submits that the petitioner has made averments in the petition beyond the pleadings before the learned Trial Court. He submits that in the petition, the date of the Sale Deed in favour of late Shri Amrik Singh Soor has been mentioned as 21.11.2002, whereas, admittedly in the plaint, it was mentioned as 21.11.2000. Further, there was no averment made with respect to the Will dated 18.06.2002 in the plaint.

8. I have considered the said submissions, however, find no merit in the same.

9. As far the discrepancy in the date of the Sale Deed is concerned, it is indeed correct that the plaint mentions the date of the Sale Deed as 21.11.2000. The respondent herein, in his written statement, has denied the Sale Deed dated 21.11.2000. The learned counsel for the petitioner submits that there was clearly a typographical error in the plaint inasmuch as the Sale Deed is dated 21.11.2002 and in fact, the

original of the Sale Deed dated 21.11.2002 was filed by the petitioner alongwith the plaint. Once this discrepancy was noticed and pointed out by the respondent, by the order dated 09.03.2006, the petitioner submitted that there was no need to amend the plaint inasmuch as it is only a minor typographical error as the original registered Sale Deed on which the plaintiff relies is already placed on record.

10. It is worth noting that the respondent does not deny the Sale Deed dated 21.11.2002 in favour of Late late Shri Amrik Singh Soor. The respondent, while admitting the said document, contends that the property was bought for his benefit. Therefore, for such minor typographical error in the plaint, the claim of the petitioner could not be denied and it would have no effect on the present petition.

11. As far as the contention of the learned counsel for the respondent that the Will dated 18.06.2002 left behind by the late Sh. Amrik Singh Soor in favour of the petitioner herein was not mentioned in the plaint, it is not denied that the said Will came to be produced by the petitioner on record as an additional document at the time of filing of the affidavit of evidence. The Will was taken on record by the learned Trial Court vide its order dated 26.10.2018, observing as under:-

*"I am unable to concur with the arguments addressed by the Ld. Counsel for the defendant. In the plaint, plaintiff has claimed to be the owner of the property in question, possession of which has been sought from the defendant. In the written statement, ownership claim of the plaintiff has been denied on the ground that though the property was purchased by the husband of the plaintiff late Sh. Amrik Singh Soor, but the same*

*was purchased for the benefit of the defendant. In replication thereafter, Plaintiff has specifically mentioned in para 3 of reply to the preliminary objection that she has become the owner of the suit property after the death of her husband and even mutation of the property has been carried out in her favour.*

*In the understanding of the Court the Will dated 18.6.2002 which is now sought to be placed on record only buttresses the assertion of that the plaintiff to the effect that she is the owner of the property in question. Allowing the present application will not change the nature of the suit in any manner since plaintiff has to prove her ownership before she is held entitled to recover possession of the suit property. Since defendant has denied the ownership of the plaintiff, he will have ample opportunity to cross examine the witness in regard to her assertion of being the owner as also to assail the documentary evidence. Consequently, the application is allowed."*

12. The said order has not been challenged by the respondent and has, therefore, attained finality. The Will in question bequeaths the remainder property in favour of the petitioner and that would include the subject property in question.

13. It is important here to take note of the fact that the said Will is also stated to be attested by the respondent and his son. The learned counsel for the petitioner has placed reliance on the cross-examination of the respondent recorded in suit, being CS No.8603/2016 titled ***Kishan Lal Gulati vs. Jaswant Singh Soor***, to submit that the respondent has admitted that he is one of the attesting witnesses to the Will dated 18.06.2002.

14. In view of the above, no merit is found in the preliminary objections of the learned counsel for the respondent.

15. On merits, the learned counsel for the petitioner submits that the defence set up by the respondent in the said suit is that the suit property was purchased by late Sh. Amrik Singh Soor for the benefit of the respondent and that late Sh. Amrik Singh Soor had represented and held out that though the property was purchased in his name, that is late Sh. Amrik Singh Soor's, the same was for the benefit and enjoyment of the respondent. She submits that the respondent has further contended that late Sh. Amrik Singh Soor had executed a Will bequeathing the property to the respondent, however, no such Will has been filed by the respondent on record. She submits that on the basis of such bald statements, the claim of the petitioner under Order XV-A of the CPC could not have been denied by the learned Trial Court.

16. On the other hand, the learned counsel for the respondent submits that the respondent has been in occupation of the suit premises right since 2002, that is, from the date of its purchase by late Sh. Amrik Singh Soor. Apart from the unregistered Lease Deed dated 15.11.2011, which according to the respondent was executed only for taxation purposes, the petitioner has not placed on record any other lease document. The claim of the respondent that the respondent has never paid any rent for the suit premises has also not been denied by the petitioner and it is only now at a belated stage that the petitioner has sought to place on record certain bank statements which are yet to be proved before the learned Trial Court. He reiterates that the property was purchased by late Sh. Amrik Singh Soor for the benefit of the respondent and that late Sh. Amrik Singh Soor left behind a

Will bequeathing the said property in favour of the respondent. He submits that merely because the petitioner has not produced the said Will before the Court, the claim of the respondent cannot be denied. He submits that the Will is in the possession of the petitioner and is being intentionally withheld from the court.

17. The learned counsel for the respondent further submits that looking into the pleadings of the parties, the learned Trial Court was pleased to frame issues in the suit vide its order dated 29.11.2017. Issue nos.5 to 8 in this regard place an onus on the respondent to prove the entitlement to the suit property. This being a matter of trial, the application of the petitioner under Order XV-A of the CPC has been rightly rejected by the learned Trial Court. He submits that realizing this, at a belated stage, it is only now as an afterthought that the petitioner has filed an application seeking deletion of the said issues.

18. The learned counsel for the respondent further submits that as far as the Will dated 18.06.2002 set up by the petitioner is concerned, the learned Trial Court while taking the said Will on record vide its order dated 26.10.2018, has clearly recorded that the petitioner would have to prove the ownership of the suit property for which the respondent would have an opportunity to cross examine her.

19. I have considered the submissions made by the learned counsels for the parties.

20. At the stage of consideration of an application under Order XV-A of the CPC, this Court cannot conduct a mini trial of the suit. The

claims and counter claims of the parties have to be considered on the basis of the material on record and on preponderance of probabilities. Reference in this regard is made to the judgment of this Court in ***Raghubir Rai vs. Prem Lata & Anr.***, 2014 SCC OnLine Del 3045.

21. Applying the above principles to the facts of the case, it is not denied by the respondent that the suit property has been purchased by late Sh. Amrik Singh Soor, the husband of the petitioner. The petitioner has placed the alleged Will dated 18.06.2002 on record. The Will dated 18.06.2002 of the late Sh. Amrik Singh Soor leaves his residual properties in favour of the petitioner. The respondent is admittedly, an attesting witness to the said Will. The execution of the Lease Deed dated 15.11.2011 is also admitted by the respondent. The assertion of the respondent that the property was purchased for his benefit cannot be accepted at this *prima facie* stage. Similarly, the assertion of the respondent that late Sh. Amrik Singh Soor has left behind a Will in his favour, is merely a bald statement without any support, atleast at this stage. In fact, it may be interesting to note that the respondent has pleaded his right to possession of the suit property also on the basis of adverse possession. This plea also cannot be accepted the moment he accepts the title of late Sh. Amrik Singh Soor and as his own case is that late Sh. Amrik Singh Soor has left behind a Will on the basis of which he claims title. The plea is self contradicting in nature.

22. The learned Trial Court has dismissed the application of the petitioner by observing that the title of the petitioner to the suit

property is being disputed and in light of issue nos.5, 6 and 7 having been framed, the claim of the petitioner cannot be decided at the present stage. Issue nos. 5, 6 and 7 as framed by the learned Trial Court, are as under:

*"5. Whether there is a validly executed Will in respect of the suit property and whether the same was executed by the original owner late Sh. Amrik Singh Soor in favour of the defendant? OPD.*

*6. Whether the suit property had been purchased by late Sh. Amrik Singh Soor for the benefit of the defendant and his family? OPD*

*7. Whether the defendant has become owner of the suit property by way of adverse possession? OPD"*

23. The onus of proof in the above issues is on the respondent and not on the petitioner. The said issues therefore, could not have been used to deny the claim of the petitioner under Order XV-A of the CPC.

24. As far as the title of the petitioner is concerned, *prima facie*, the petitioner has been able to make out the case in her favour. The lease deed, though unregistered, is also an admitted document and therefore, shall be admissible in nature for proving the status in which the respondent is occupying the suit property. I therefore, find no reason for rejecting the claim of the petitioner in the application under Order XV-A of the CPC and the learned Trial Court has clearly erred in law and on facts in dismissing the same.

25. The petitioner in its application under Order XV-A of the CPC has claimed Rs.30,000/- per month on the basis of the prevailing market rent of the suit property and the Lease Deed. The petitioner has also placed on record a Notification dated 22.09.2014 issued by the Government of National Capital Territory of Delhi in support of the market rent.

26. The learned counsel for the respondent has submitted that the Notification dated 22.09.2014 was not on record before the learned Trial Court. The learned counsel for the petitioner, on the other hand, submits that the same was pleaded in the application under Order XV-A of the CPC and was produced before the learned Trial Court at the time of hearing of the said application.

27. I need not enter this controversy as this Court is not placing any reliance on the said Notification.

28. In the Lease Deed dated 15.11.2011, the rent mentioned is Rs.12,000/- per month. Though, the petitioner has claimed an amount of Rs.30,000/- per month in her application, as the Lease Deed is dated 15.11.2011 and the suit was filed in September, 2015, I deem Rs.18,000/- per month as a reasonable amount to be directed to be deposited by the respondent at the present stage.

29. As the suit is yet to be tried, instead of making this payment to the petitioner, the respondent shall deposit the same before the learned Trial Court and such deposit shall abide by further orders to be passed by the learned Trial Court.

30. The amount shall be deposited with effect from the date of filing of the suit till date and thereafter, on a monthly basis, on or before 15<sup>th</sup> day of every calendar month. The arrears of the amount to be deposited pursuant to the present order shall be deposited by the respondent within eight weeks from today in two equal monthly installments.

31. The learned Trial Court shall make an endeavour to expedite the adjudication of the suit. There shall be no order as to costs.

32. It is made clear that any observations made in the present order shall not be binding on the learned Trial Court while adjudicating the suit on merit.

33. The petition is allowed in the above terms. There shall be no order as to costs.

**MARCH 2, 2021**  
**RN**

**NAVIN CHAWLA, J**