



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

% Judgment delivered on: 04.07.2022

+ **FAO 68/2021 & CM APPL. 5981/2021**

KAVITA DEVI Appellant

versus

ROSHINI DEVIRespondent

Advocates who appeared in this case:

For the Appellant: Mr. M. D. Jangra and Mr. Gagan Mathur, Advocates.

For the Respondent: Mr. Vijay Dalal, Advocate.

AND

+ **CONT.CAS(C) 222/2021**

KAVITA DEVI Petitioner

versus

ROSHINI DEVI & ANR.Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. M. D. Jangra and Mr. Gagan Mathur, Advocates.

For the Respondent: Mr. Vijay Dalal, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Appellant impugns order dated 22.01.2021 whereby the application filed by the respondent under Order 39 Rule 1 & 2 Code of Civil Procedure has been allowed and it has been directed that



defendant/appellant shall not obstruct the respondent from entering the suit property i.e. 159 Pochanpur Village, Sector 23 Dwarka, New Delhi.

2. Appellant is the daughter-in-law and respondent is the mother-in-law.

3. Respondent had filed the subject suit *inter-alia* for possession, permanent and mandatory injunction seeking vacant peaceful physical possession of two rooms, one at the ground floor and one at the first floor of the suit property. Further restraint was sought on the appellant/defendant from creating any third party interest in the suit property i.e. the two rooms.

4. It is contended in the plaint that the husband of the respondent/plaintiff had purchased a plot of land on 28.11.1988 and thereafter built the house on the subject plot of land. Husband of the plaintiff expired on 13.10.1993 leaving behind plaintiff/respondent, her daughters and one son. The daughters and the son of the respondent relinquished their rights in the subject property in favour of the respondent by a registered Relinquishment Deed dated 12.04.2017. Consequently, the respondent became the absolute owner of the suit property.

5. As per the plaint, the son of the respondent married the



appellant on 08.02.2011 and thereafter resided with the respondent as a family member. It is contended that there were certain matrimonial issues between the appellant and the son of the respondent and thereafter they started living separately.

6. It is contended in the plaint that appellant started living at her parents' house after the disputes arose. It is further contended that in August, 2015, appellant illegally occupied two rooms on the first floor of the suit property by forcibly entering the same. It is contended that the respondent did not object to the same hoping that good sense would prevail and the disputes would get resolved.

7. It is further contended that false and frivolous allegations were levelled against the respondent/plaintiff based on which FIR has been got registered on false and baseless facts.

8. It is contended that the appellant/defendant had attempted to prevent the ingress of the respondent by putting her locks on the main gate of the ground floor pursuant to which a complaint was filed with the Police Station, Sector 23, Dwarka. Subsequently, on 15.02.2018, respondent got to know that the locks of the respondent on the rooms at the ground floor which were in possession of the respondent had been broken and certain articles removed.

9. It is contended in the plaint that the respondent/plaintiff



regularly visits the suit property and is maintaining the ground floor and the entire property is in possession of the respondent/plaintiff except two rooms i.e. one on the first floor and one on the ground floor which are in possession of the appellant.

10. In the written statement, appellant has denied that she forcibly entered the suit property in August, 2015 and illegally occupied two rooms on the first floor of the suit property. It is contended in the written statement that appellant lives in one single room that is located on the ground floor.

11. In paragraph 11 of the written statement, appellant has denied that she has deprived the respondent/plaintiff from entering into the suit property or that she has put her locks on the main gate. On the other hand it is contended that it was the respondent who had deprived the appellant access to the matrimonial home by putting her locks on the suit property.

12. In paragraph 12 of the written statement, appellant/defendant has denied that she did not allow the plaintiff/respondent from entering the suit property.

13. In the impugned order dated 22.01.2021, Trial Court has noticed that appellant had filed a matrimonial dispute before the *Mahila* Court, wherein by order dated 22.05.2018, it had been directed



that the appellant/defendant would not be dispossessed from the suit property without due process of law.

14. Trial Court has further noticed that appellant had not claimed in the written statement that the respondent had been dispossessed from the subject property or that appellant was in exclusive possession of the property after ouster of the respondent from the same.

15. Trial Court has noticed that the admitted position is that parties are in joint possession of the property and consequently, appellant could not prevent the respondent from enjoying the property and likewise respondent cannot deprive the appellant of the enjoyment of the property. Consequently, Trial Court has held that there is no legal impediment which could prevent the plaintiff/respondent from entering/enjoying the property in question which is meant for joint living of the family.

16. As noticed hereinabove, the categorical stand of the respondent is that the respondent is the owner of the subject property by virtue of a registered Relinquishment Deed executed in her favour by her daughters and her son who is the husband of the appellant.

17. The contention in the plaint is that only two rooms are in possession of the appellant/defendant, one on the ground floor and the other on the first floor of the subject property. In the written statement



there is no denial to the said allegation.

18. Further, it is specifically averred in the written statement that appellant/defendant has never prevented the respondent from entering into the subject property.

19. The averments in the written statement categorically show that there is no ouster claimed by the appellant of the respondent from the subject property. Since respondent is admittedly the owner of the entire property and there is no ouster claimed by the appellant, there can be no impediment in the respondent entering into the subject property and using the same.

20. It may however be also noted that the respondent has been directed by the *Mahila* Court by its order dated 22.05.2018, that she cannot prevent the appellant from using the two rooms admittedly in appellant's possession and that she cannot be dispossessed without due process of law.

21. Consequently, there is no infirmity in the impugned order dated 22.01.2021 to the extent that it holds that there is no legal impediment which can prevent the respondent from entering and enjoying the property which is in her possession.

22. The apprehension expressed by the appellant, that respondent wants to let out the remaining portion of the property to anti national



elements to prevent the appellant from using the same, can be appropriately addressed by directing that the respondent shall be entitled to use the subject property by her personally but she shall not sell, alienate or create third party rights in the subject property or let out or transfer the possession of the portion of the property in her possession to any third party so long as the Appellant continues to enjoy the protection of an order of a court of law with regard to the portion in her possession.

23. Consequently, there is no merit in the appeal. The appeal is however disposed of with a direction that the appellant shall not cause any impediment or obstruct the respondent from entering the subject property except the two rooms admittedly in possession of the appellant. Further the respondent shall be entitled to personally use the remaining portion of the property and she shall not be entitled to sell, alienate or create third party rights in the subject property or let out or transfer the possession of the portion of the property in her possession to any third party so long as the Appellant continues to enjoy the protection of an order of a court of law with regard to the portion in her possession.

24. It is clarified that this order is only based on prima facie finding and shall not come in the way of the Trial Court at the time of final adjudication of the Suit based on the evidence led by the parties.

**CONT.CAS(C) 222/2021**

1. By this petition, petitioner seeks initiation of proceedings against the respondent for alleged wilful and deliberate disobedience of order dated 17.02.2021, whereby this Court had directed stay of the operation of order dated 22.01.2021.

2. It is contended that the order dated 17.02.2021 staying the operation of order dated 22.01.2021 was communicated to the respondent No. 1 through her counsel. It is contended that the son of respondent No.1 had even responded to the email sent by the counsel communicating the order and it is alleged that on 19.02.2021, respondent No. 1 visited the subject property and threatened the petitioner and forcibly attempted to enter the suit property.

3. In reply to the petition, it is contended that respondent No. 2 was not a party to the suit and as such is not liable to be punished for contempt for alleged breach of any order.

4. With regard to respondent No.1, it is contended that there is no wilful default or breach on her part for the reason that she was never communicated the subject order.

5. It is submitted that the order was never communicated to respondent No.1 as the counsel does not have the contact details of respondent No.1 and the contention is that order was communicated to



the son of respondent No.1 and the son of respondent No.1 never communicated the order to the respondent No.1. On the other hand he had even sent an email for amicable resolution of all disputes.

6. As it is already been held in the appeal above that the stand of the petitioner is not that there is any ouster of respondent No.1 from the subject property and as per the written statement it is clear that she claimed possession of only two rooms in the subject property, there is no impediment on the respondent in entering upon or using the remaining portion of the property.

7. Furthermore it has not been established that either respondent No. 1 was served with the order or communicated the subject order.

8. In view of the above, I am of the view that no ground is made out for initiating any proceedings under the Contempt of Courts Act against the respondents or that there is any wilful breach of the subject order.

9. Consequently, I find no merit in the petition or any ground to proceed against the respondents under the Contempt of Courts Act.

10. The petition is accordingly dismissed.

JULY 04, 2022/rk

SANJEEV SACHDEVA, J