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

Date of Decision: 27th March, 2023

+ **W.P.(C) 2152/2023 and CM APPL. 8122/2023**

MS. ANU BANKA & ANR.

..... Ptitioners

**Through: Mr. Ajay Kumar and Mr. Ram Kumar,
Advocates (M: 9891135775).**

versus

SUMAN LATA GUPTA

..... Respondent

**Through: Dr. Amit George, Adv. with Mr. Amol
Acharya, Mr. Rayadurgam Bharat and
Mr. Arkaneil Bhaumik Advs. along
with Respondent No. 1 and Mr. Raju
Banka (M: 8860875882).**

**Mr. Avishkar Singhvi, Adv with Mr.
Naved Ahmed and Mr. Vivek
Kumar, Advocates with Mr. Mohan
Kumar, SDM, Seemapuri for R-2 (M:
8882766553).**

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The parties are present in Court. The dispute between Petitioner No. 1- Ms. Anu Banka and the Respondent No.1- Ms. Suman Lata Gupta is in respect of the property bearing House no. F-184-185, Block-F, Old Seemapuri, Delhi-110095 (*'said premises'*) which was earlier belonging to late Ms. Hemlata and her husband (*'the deceased'*).

3. The contesting parties in this matter are, daughter of the deceased- Ms. Anu Banka on the one hand, and on the other hand, Ms.Suman Lata Gupta, who is the sister of the deceased and is the *Massi* of the Petitioner no.1.

4. The grievance of the Petitioners i.e., Ms. Anu Banka and her husband Md. Younis arise from the order dated 30th January 2023 passed by the Divisional Commissioner, Department of Revenue, GNCTD, declining the grant of stay on the Eviction Order dated 23rd September 2022. Vide order dated 23rd September 2022, District Magistrate (Shahdara) had directed the Petitioners to vacate the said premises.

5. A petition bearing *Eviction No. 55/2019* titled '***Suman Lata Gupta v. Smt. Annu Bank & Anr.***' filed under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('*2007 Act*') was preferred by the Respondent No. 1 under which the eviction order dated 23rd September 2022 has been passed. Further, vide order dated 30th January 2023, the stay on eviction was declined by the Divisional Commissioner, with the following observations:

"2. Appellant No. 1 claims a will from her father. On the other hand the respondent claims the property on the basis of registered GPA and unregistered sale agreement executed by Smt. Hemlata, mother of appellant no. 1. Clearly it is a property dispute unless the court of competent jurisdiction settles the title. At present the appellants are residing in the suit property and are allegedly not allowing the respondent to enter into the property. The property has 3 floors. It is unjust that appellants should monopolise the property in question and completely bar the respondent from the property. In view of the above, the stay is declined. The matter shall be heard on the merits on 1st February 2023"

6. As per the Petitioners, they were in possession of the entire said premises and during the proceedings one room was given to the Respondent

No. 1 for her to live there. The Respondent No. 2-SDM-Seemapuri, who is present in Court submits that till 8th February, 2023, the Petitioner was in the possession of the said premises. However, on the said date, the eviction has been effected pursuant to the order dated 30th January 2023 and now the possession of the said premises is deemed to be with Respondent No. 1-Mrs. Suman Lata Gupta. However, the belongings and the moveables of the Petitioners continue to lie in the said premises.

7. As on today, therefore, the Petitioners are not living in the said premises. As per the SDM-Seemapuri, the entire property is with Respondent No. 1-Ms. Suman Lata Gupta and with Mr. Raju Banka, the son of the deceased, late Mrs. Hem Lata and the brother of the Petitioner no.1, who has now entered the picture.

8. In the present petition, Respondent No. 1-Ms. Suman Lata Gupta relies upon two registered GPAs dated 10th June, 2005, by which Respondent No.1 has been appointed as the attorney of late Ms. Hemlata. On the other hand, the Petitioner No. 1 relies upon a will dated 15th January, 1994 with respect to property bearing no. F-185, which is not a registered will and bears only one witness. The Petitioner also claims rights in the said premises also through succession from the owner of the said premises, i.e. the deceased mother.

9. Clearly, in respect of the property, the disputes are between the Respondent No.1 -sister of the deceased on the one hand and the Petitioner No. 1-daughter of the deceased on the other hand. The Respondent no.1 has a registered GPA in her favour and the Petitioner claims an unregistered will as also rights through succession.

10. The question thus arises is, whether proceedings under the 2007 Act can be used to decide title disputes. Recently, vide judgement dated 14th

October, 2022 in ***Pawan Kumar and Anr. v. Divisional Commissioner Department of Revenue, Govt of Delhi and Others*** in LPA 525/2022, the 1d. Division Bench held as under:

“9. As rightly pointed out by the authorities below and by the learned Single Judge of this Court the exercise under the Senior Citizens Act is not to ascertain the title of the property in question. The enquiry is limited to see as to whether the senior citizen is being harassed by his children or not and if the senior citizen is harassed then for his/her welfare it is necessary that the children/legal heirs are asked to evict the property. The proceedings which are summary in nature are not to decide the title of the property. In view of the above, the principle contention of the Appellants herein that the Respondent No.2 is not the owner of the property in question is insignificant. Any right which the Appellants want to establish has to be established under the Civil Code by filing a suit before the Civil Court.

10. This Court, at this moment, is not going into the question as to whether the Senior Citizens Act provides for over-riding a decree or a finding of the Civil Court regarding the title of the property. The Appellants have not been able to show any semblance of right, title or interest superior to that of Respondent No.2 over the property in question and in absence of any such assertion, the Orders of the authorities below and the learned Single Judge of this Court cannot be found fault with.

12. In view of the above, this Court is not inclined to interfere with the findings of the learned Single Judge that for peaceful existence of the Respondent No.2, who is fearing for his life, it is necessary for the Appellants herein, who have not been able to prove any right superior to the right of the Respondent No.2 on the property in question, to evict the premises. The findings arrived at by the learned Single Judge are in consonance with the Senior Citizens Act which has been

brought for the welfare of the senior citizens. Going into the nature of right/title/interest of the parties in the property in question, at this juncture, would be counterproductive for the objectives of the Senior Citizens Act. Any right/title/interest in the property in question can be established by the Appellants herein only through proper proceedings and by adducing evidence in a Suit before the Civil Court.”

11. In view of the above background, the present petition is disposed of with the following terms:-

- i) The Respondent No. 1- Ms. Suman Lata Gupta shall retain possession of the said premises subject to further orders of the Ld. Divisional Commissioner or a competent Court, which would decide the dispute of title between the parties.
- ii) The findings given by SDM or by the Divisional Commissioner vide orders dated 23rd September 2022 and 30th January 2023, shall not be construed as a decision or finding on merits in respect of title of the said premises.
- iii) The Court has perused the FIR dated 30th September, 2018 which has been placed on record. Keeping in mind the said allegations mentioned in the FIR, it is directed that the Petitioners shall not cause any disturbance in the peaceful enjoyment of the property by the Respondents.
- iv) The Respondent No. 1- Suman Lata Gupta and Mr. Raju Banka shall maintain *status quo* as to the title and possession of the said premises and no third party interest shall be created on the said premises.

12. The Petitioners are permitted to avail of their remedies in accordance with law before the Civil Court, if so advised.

13. The present petition with all pending applications, is disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

MARCH 27, 2023

mr/dn

