

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

FAO 189/2022 & CM. APPL. 30501/2022

Date of Decision: 10.03.2023

IN THE MATTER OF:

SMT. KAILASHO

..... Appellant

Through: Ms.Sudershani Ray, Advocate

versus

SMT. PARMESHWARI DEVI

..... Respondent

Through: Mr.Rakesh Tanwar, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.(ORAL)

1. By way of present appeal filed under Order 43 Rule 3 read with Section 151 CPC, the appellant/plaintiff seeks to assail order dated 02.06.2022 passed by the Trial Court in CS DJ No.303/2021 *titled as Smt. Kailasho v. Smt. Parmeshwari Devi* whereby the appellant's application filed under Order 39 Rules 1 and 2 CPC was dismissed.

2. The facts, in nutshell, are that the appellant preferred the underlying suit seeking a decree of possession, recovery and permanent injunction against the respondent with respect to one room set at ground floor of the property bearing *House No.24, Khasra No.63, Village Holambi Khurd, New Delhi (measuring 66 sq.yds.)* (hereinafter, referred to as the '*suit property*').

3. In the suit, the appellant claimed that she was in possession of the portion shown in yellow colour in the site plan filed alongwith the plaint, whereas the

respondent, who is her *Nanand* (real sister-in-law), was in possession of the portion shown in red colour. It was further claimed that the appellant's husband *Late Sh.Darshan Singh* had purchased the suit property on the basis of a notarized sale deed dated 22.12.1979. The appellant's mother-in-law and father-in-law had already expired and the respondent, being a widow, was given shelter in the suit property by the appellant's husband during his lifetime.

Statedly, the appellant's husband expired on 14.10.2016 leaving behind the appellant and their children as his legal heirs, who became equal shareholders in the suit property. In June, 2021 the appellant's daughter and two sons jointly executed a relinquishment deed which was registered on 18.06.2021 before Sub-Registrar, thereby relinquishing their respective shares in favour of the appellant.

It was also claimed that after death of the appellant's husband, the respondent's intentions turned bad and on 11.06.2021 when the appellant went to the house for installation of AC, the respondent called PCR.

4. Apprehending that the respondent would create third party rights in the suit property, the appellant filed an application under Order 39 Rules 1 and 2 CPC praying for an *ad-interim* injunction. The plaint as well as application filed on behalf of the appellant were contested. The Trial Court, vide impugned order, dismissed the appellant's application.

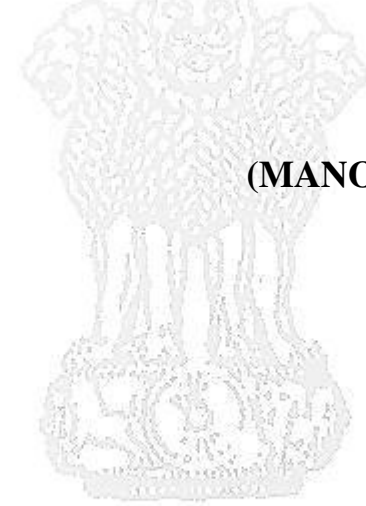
5. In the written statement/reply, it was claimed that the respondent's father had handed over title and ownership of the suit property to the respondent as she had been taking care of him. While denying the alleged notarized sale deed in favour of the appellant, the respondent submitted that the same is false and fabricated/forged. It was also claimed that the respondent had spent considerable amount in building the infrastructure of the suit property.

6. The appellant has claimed ownership on the basis of a notarized sale deed and registered relinquishment deed. It is noteworthy that the respondent has stated in her reply to the application under Order 39 Rules 1 and 2 CPC that she has never tried to create any third party interests in the suit property. Keeping in view the above stand of the respondent as well as the nature of competing claims of both parties qua ownership of the suit property, in the opinion of this Court, interest of justice would be served if both the parties are restrained from creating any third party rights in the one room set at ground floor of suit property till the pendency of the suit. It is ordered accordingly.

7. The present appeal is disposed of in the above terms, alongwith pending application.

(MANOJ KUMAR OHRI)
JUDGE

MARCH 10, 2023/v



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