



2024 : DHC : 3827-DB



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

+ **FAO(OS) 66/2024 & C.M.Nos.27726-27729/2024**

K JEEVAN RITA MURTHY Appellant

Through: **Mr.Rajat Aneja with Mr.Upendra
Pratap Singh, Advocates.**

versus

SARABJIT SINGH (SINCE DECEASED)

THROUGH LRS. AND ANR.

..... Respondents

Through: **Mr.Dayan Krishnan, Sr.Advocate
with Mr.Nishant Datta, Mr.Pradeep
Bhardwaj and Mr.Chirag Rathi,
Advocates for R-1.
Mr.Udit Arora, Advocate for R-2.**

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Date of Decision: 09th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the impugned judgement dated 22nd April, 2024 passed by the learned Single Judge in I.A. 6612/2024 in CS(OS) 1418/2010, whereby the application filed by respondent no.1 seeking a direction to the Receiver to take over physical possession of the suit property No. C-9, Gulmohar Park, New Delhi and evict the appellant from the suit property was allowed.

2. Learned counsel for the appellant states that the impugned order was passed in violation of the principle of natural justice and in ignorance of the fact that a review petition bearing RP No.235/2023 in CS(OS)

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No.1418/2010 filed by the appellant challenging the order dated 09th August, 2023 appointing the Receiver and directing him to take over the possession of the suit property was pending.

3. He states that the appellant is the owner and in possession of the suit property by virtue of the Will dated 08th November, 2021. He further states that the appellant has preferred a petition for issuance of letters of administration of the said Will vide Test Case No.33/2023, which is pending adjudication before this Court.

4. He also states that the appellant in compliance with the Receiver's direction has put a board in the suit property stating that the '*suit property is in possession of the Receiver*'.

5. It is a matter of record that the appellant is not a party to the subject suit. The application bearing I.A.19418/2022 filed by the appellant for substitution as legal representative of the deceased defendant (respondent no.2) was dismissed vide order dated 15th January, 2024. Further, the review petition bearing RP No.193/2024 in CS (OS) No. 1418/2010 filed by the appellant challenging the order dated 15th January, 2024 was also dismissed vide order dated 30th April, 2024.

6. Though learned counsel for the appellant states that an appeal has been filed challenging the order dated 30th April, 2024, yet this Court finds that the learned Single Judge has rightly held that since the appellant (herein) was not a legal representative of the deceased-defendant, there was no requirement to issue notice to her. The appellant's right as a legatee is yet to be established and proved.

7. It is pertinent to mention that vide order dated 06th September, 2023 passed in CS(OS) No.1418/2010, the appellant who was purportedly a



domestic help of the deceased owner and occupier was permitted to continue to reside in the suit property on humanitarian grounds till the next date of hearing, i.e. 06th October, 2023, in view of the 'no objection' by the respondent no.1 and subject to Appellant giving an undertaking that she would not claim any right/title in the suit property on the basis of the said order passed. The undertaking given by the appellant is reproduced hereinbelow:-

“Undertaking

I, K. Jeevan Rita Murthy D/ Tara Dutt Sharma was evicted from property bearing No. C-9 Gulmohar Park, New Delhi on 4th September 2023 by the receiver appointed by the Honourable High Court of Delhi in terms of order dated 9 August 2023 pursuant to which the receiver appointed by the high court had had taken possession and custody of the said property that is C-9 Gulmohar Park C-9 New to Delhi.

In terms of order passed today that is 6-9-2023 by the honourable high court, I have been put into permissive possession of the said property that is C-9 Gulmohar Park New Delhi. I would occupy the said property along with my daughter Ms. K Sowmya (age 22 years) and my son K V Raghav Murthy (age 20 years)

I hereby undertake that I shall not create any third-party interest in the suit property C-9 Gulmohar Park New Delhi. I shall not induct any other person in the property. I shall not carry out any addition, alteration or construction in the said property. I understand that the possession handed over to me today is permissive possession and the actual possession of the property remains with the receiver appointed by the honourable High Court. I shall vacate the suit property that is C-9 Gulmohar Park as and when directed by the honourable high court without any protest. I fully understand that in the event of violation of the present undertaking the receiver shall be entitled take back the possession of the property from me.

WITNESS

K. Sowmya Sd/-

K V Raghav Murthy Sd/-

Upender Pratap Singh, Adv. Sd/-

(Counsel for the advocate of Ms. K. Jeevan Rita Murthy)”

Sd/-

K. Jeevan Rita Murthy

Dated 6-09-2023

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(emphasis supplied)



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8. This Court finds that the impugned judgement was passed by the learned Single Judge considering the fact that the appellant had overstayed in the suit property, despite the stringent conditions imposed in the order dated 06th September, 2023 as well as the undertaking given by the appellant, which is witnessed by her two children and her advocate.

9. This Court is further of the view that the pendency of the review petition bearing RP No.235/2023 in CS (OS) No. 1418/2010 filed by the appellant has no bearing on the impugned order considering the aforesaid undertaking and limited permission granted to the appellant vide order dated 06th September, 2023.

10. Consequently, the present appeal being bereft of merits is dismissed along with the applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

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