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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 145/2022 & CM APPL. 41216/2022**
NAVIN KUMAR AGGARWALA AND ORSPetitioners
Through: Mr. Abhimanue Shrestha and Mr.
Nishant Kumar, Advocates.
versus

MADHU DEWANRespondent
Through: Mr. Siddharth Aggarwal, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

% **ORDER**
20.11.2024

1. Revision Petition under Section 115 CPC has been filed against the order dated 04.06.2022 vide which the Application under Order XXXIX Rule 1 & 2 CPC was allowed by the learned Civil Judge vide Order dated 20.02.2019, which has been upheld by the learned Additional Senior Civil Judge *vide* order dated 04.06.2022.
2. The learned counsel on behalf of the Respondent has taken a Preliminary Objection that the Revision Petition is not maintainable against the impugned Order and it should have been a Civil Miscellaneous under Article 227 of the Constitution of India.
3. Learned counsel for the Petitioner has relied on a judgment of this Court in Nav Shakti Educational Society vs. Laxman Public School Society and Ors, 2019 SCC Online Del 9781 to argue that the technicalities of law cannot be allowed to stand in the way of substantive justice.



4. In view of the objections taken, the present Petition is considered as under Article 227 of the Constitution of India.
5. The facts in the present case are essentially not in dispute. The Suit property i.e. No. B-26, Geetanjali Enclave, New Delhi-110017 was owned by Smt. Vimla Agarwal, mother of respondent, Dr. Madhu Dewan and Petitioner No.1, Sh. Navin Kumar Aggarwala (Defendant No.1) and mother-in-law of Smt. Anjusha Aggarwala (Defendant No.2).
6. The Plaintiff had filed a suit for Injunction for restraining the Petitioners (Defendants) from disturbing her possession in the Suit property and from creating any third party rights. The learned Civil Judge *vide* impugned Order allowed the Application under Order XXXIX Rule 1 & 2 CPC filed on behalf of the Respondents and restrained the Defendants/Petitioners from dispossessing the Plaintiff from basement, ground floor and Barsati floor of the Suit property and also from creating third party rights in the Suit property.
7. The first basic grievance of the Petitioners is that admittedly they are in possession of the first floor while the basement, ground floor and the Barsati floor is lying locked. It is claimed that after the demise of the mother, said portions are in joint possession. The Plaintiff/Respondent has asserted an absolute ownership in the property in question on the basis of a Will dated 15.12.2001 of the mother in her favour. However, it is a matter of evidence as the Will is required to be proved in order to establish the absolute title, ownership of the Respondent in the Suit property.
8. So far as the relief of injunction is concerned, it is not in dispute



that both the parties are claiming to be in joint possession of the property in question. Therefore, they have been rightly restrained from creating third party interest in the Suit property.

9. The main grievance of the Petitioner is that while they are not contesting or seeking access to the basement, ground floor and the terrace for the present, but their access to the common areas i.e. the backyard and the terrace where the common facilities of water meters and water tanks are installed, is being denied to them.

10. Learned counsel on behalf of the Respondent submits that these rights have already been protected by the learned Civil Judge *vide* Order dated 11.09.2019. However, the perusal of the record shows that on the Application of the Petitioner, only a limited access was permitted qua the meters and thereafter, the premises were locked and the keys were taken by the representatives of the Plaintiff.

11. Considering that it is still in dispute as to who is entitled to the exclusive ownership and the Petitioner is in possession of first floor and is also claiming to be in joint possession of the entire property, he cannot be prevented from access to the common areas i.e. the backyard and the terrace for the purpose of accessing the common utilities. It is hereby clarified that the Respondent shall not interfere or obstruct the access of the Petitioners to the common areas i.e. the backyard and the terrace with a condition that they shall not be making an access to the common areas through the portion on the Ground Floor which is claimed by the Respondent to be in their possession.

12. With these observations the Petition is hereby disposed of.



13. It is hereby clarified that the observations made herein are without prejudice to the rival contentions of the parties raised in the pleadings. Furthermore, the validity of the Will is to be proved by the Respondent and any observations made by the Trial Court in respect of the Will and possession in the impugned Order under Order 39 Rule 1 and 2 CPC shall not be without prejudice to the rights and contentions of the parties.

NEENA BANSAL KRISHNA, J

NOVEMBER 20, 2024

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