



2025:DHC:4880



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 16.05.2025
+ **C.R.P. 104/2025 & CM APPL. 21244/2025**

VARSHA AGGARWAL

.....Petitioner

Through: Mr. Ankit Kumar Vats, Mr. Rajeev
Basista, Advs.

versus

MAYA DEVI

.....Respondent

Thrsough: Mr. Umang Jain, Adv. with
Respondent in-person

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed by the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'Impugned Order'] seeking to challenge an order dated 12.02.2025 passed by the Ld. Civil Judge-05, Central District, Tis Hazari Courts, Delhi [hereinafter referred to as 'Impugned Order']. By the Impugned Order, an Application under Order VII Rule 11 of the CPC filed by the Petitioner (Defendant before the learned Trial Court) has been dismissed.

2. A perusal of the Impugned Order shows that the dispute, in essence, between the parties is *inter se* the mother-in-law and daughter-in-law dispute. The Impugned Order reflects that there are several proceedings filed by the Petitioner/Defendant under the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as "DV Act"] and police complaints have also been filed by the Petitioner/Defendant against the Respondent (Plaintiff before the learned Trial Court). Thereafter, the



Respondent/Plaintiff filed a suit for permanent and mandatory injunction against the Petitioner/Defendant, who is the daughter-in-law of the Respondent/Plaintiff.

3. It is the undisputed case of the parties that the Petitioner/Defendant along with her husband and the Respondent/Plaintiff were residing together at the property bearing no. No.1760, 1st and 2nd Floor, Sohanganj, Subzi Mandi, Ghanta Ghar, Delhi-110007 [hereinafter referred to as 'subject premises']. Subsequently, the husband of the Petitioner/Defendant passed away and the dispute arose *inter se* the parties, which has led to the filing of the present suit by the Respondent/Plaintiff.

4. The Petitioner/Defendant thereafter filed an Application under Order VII Rule 11 read with Order VII Rule 10 of the CPC before the learned Trial Court. The learned Trial Court examined this Application and found that the objections raised by the Petitioner/Defendant in her Application under Order VII Rule 11 of the CPC are without any merit, in view of the settled law.

5. The only challenge raised by the Petitioner in the present Petition is that the learned Trial Court has erred in interpretation of the judgment in the case of ***Anathula Sudhakar vs. P. Buchi Reddy (Dead) by LRs and Others***¹ passed by the Supreme Court.

6. Learned Counsel for the Petitioner/Defendant submits that since the Respondent/Plaintiff is seeking the possession of the subject premises, the Respondent/Plaintiff should have sought the consequential relief of recovery of possession. Reliance is placed on the ***Anathula Sudhakar*** case in this behalf.

¹ (2008) 4 SCC 594



7. Learned Counsel for the Respondent/Plaintiff, on the other hand, has contended that the Respondent/Plaintiff is the sole and absolute owner of the subject premises and is in possession of the subject premises. Learned Counsel further submits that the Petitioner/Defendant is the daughter-in-law of the Respondent/Plaintiff and has no title to the subject premises. Reliance is placed on the Statement made by the Petitioner/Defendant under Order X of the CPC in a proceeding between the parties before the learned Metropolitan Magistrate, Mahila Court, Central, Tis Hazari Court, Delhi wherein the Petitioner/Defendant has also confirmed that the Respondent/Plaintiff is the sole and exclusive owner of the subject premises and that the subject premises is not an ancestral property.

7.1 Learned Counsel for the Respondent further submits that out of love and affection, the Respondent/Plaintiff had permitted the Petitioner/Defendant to reside in the subject premises as a mere licensee and since there was a threat of creation of third-party rights by the Petitioner/Defendant, the suit for permanent and mandatory injunction has been filed by the Respondent/Plaintiff.

8. By the Impugned Order, the learned Trial Court has held that that suit for mandatory and permanent injunction filed by the Respondent/Plaintiff is maintainable and the Respondent/Plaintiff is not required to file a suit for possession since in a plethora of judgments, it has been held that a suit for mandatory injunction can be filed by a licensor. Learned Trial Court has also relied upon the judgment passed in the case of *Virender Kumar & Anr v. Jaswant Rai & Anr*², in this regard.

² 2011 SCC OnLine Del 1258



8.1 It has further been held that there is no discrepancy in the valuation of the suit and the court fees affixed thereupon. The learned Trial Court has further held that the present suit stands on a distinct footing and has no bearing on the proceedings initiated by the Petitioner/Defendant under the DV Act

9. As stated above, the learned Counsel for the Petitioner/Defendant has restricted his challenge in the present case to a wrongful interpretation of the ***Anathula Sudhakar*** case. The Supreme Court in the ***Anathula Sudhakar*** case has held that where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. It has been further clarified that where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter if the title of the plaintiff is not disputed or under a cloud.

9.1 The Supreme Court has further clarified that it is only when a dispute is raised over the title of the Plaintiff and the Plaintiff does not have possession, is a suit for declaration and possession required to be filed. Similarly, in the case where a Plaintiff's title is not in dispute but he is out of possession, he has to file for possession and consequential release. It was clarified by the Supreme Court that a suit for injunction simplicitor would be decided in reference to the finding of possession. The relevant extract of the ***Anathula Sudhakar*** case is below:

“13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a



property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

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21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue



regarding title (either specific, or implied as noticed in *Annaimuthu Thevar* [*Annaimuthu Thevar v. Alagammal*, (2005) 6 SCC 202]). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

[Emphasis Supplied]

10. It is the case of the Respondent that the Petitioner has admitted that the Respondent/Plaintiff is the sole and exclusive owner of the subject premises and that the subject premises is not ancestral property. In this regard reliance has been placed on the statement made by the Petitioner under Order X CPC, recorded on 06.09.2016 by learned Mahila Court-02, Central District, Tis Hazari Court, Delhi in CC No. 538210/16 captioned as ***Varsha Aggarwal v. Maya Devi***. The relevant extract of this statement is reproduced below:

“ IN THE COURT OF METROPOLITAN MAGISTRATE
(MAHILA COURT) -02 CENTRAL DISTRICT, TIS HAZARI
COURT, DELHI

Presided by : Ms Manika

VARSHA AGGARWAL V.S MAYA DEVI



CC NO.
P.S SUBZI MANDI
U/S DV ACT
NEW NO. 538210/16
06.09.2016

Statement of Ms. Varsha Aggarwal, w/o late Sh. Pradeep Aggarwal, r/o House no. C-101, New Saket Nagar, Tansen Road, Gwalior, Madhya Pradesh, recorded under Order X CPC.

On S.A

I am the complainant in the present case. I am high school pass

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After my marriage on 01.07.2009, I started residing at 1760, Sohan Ganj, Subzi Mandi, Ghanta Ghar, Delhi 110007 alongwith my husband, mother in law, brothers in law namely Pankaj Aggarwal, Sanjay Jain and Deepak Aggarwal, my sisters in law (Jethanis) namely Hema Aggarwal and Karuna Jain. At that time, my sister in law (nand) Vandana Gupta was already married and did not reside in the aforesaid house. We all resided together for about two years and thereafter we started residing separately. I along with my husband started residing on the first floor of house no. 1760, Sohan Ganj, Subzi Mandi with a separate kitchen. Simultaneously, Sh. Sanjay Aggarwal and Karuna Jain left the aforesaid house and started residing at House rno. 1425, Ravidas Gali, Sorakothi, Subzi Mandi, Ghanta Ghar, Delhi 110007.

The property bearing no.1760, Sohan Ganj, Subzi Mardi, Ghanta Ghar, Delhi 110007 is owned by my mother-in-law namely Smt Maya Devi. I do not know as to how the said property was acquired by her. The said property is not ancestral property."

[Emphasis Supplied]

10.1 Given the fact that it is not disputed by the parties that the Respondent/Plaintiff is the sole and exclusive owner of the subject premises in light of the statement of the Petitioner/Defendant recorded under Order X of the CPC, there is clearly no cloud over the title of the subject premises as is explained by the Supreme Court in the *Anathula Sudhakar* case.

11. Learned Counsel for the Petitioner/Defendant has contended that the Respondent/Plaintiff is not in possession of the subject premises. These



averments, would be subject matter of trial, and cannot be decided under Order VII Rule 11 of the CPC. A reading of the plaint shows that the plaint sets out that the Respondent/Plaintiff was the absolute owner of the subject property being her-self acquired property. It is further stated in the plaint that the Petitioner/Defendant left the suit property in November, 2014 only to return some time thereafter. The plaint further states that the license of the Petitioner/Defendant has been terminated by the Respondent/Plaintiff in May, 2019 but despite the same, the Petitioner/Defendant has refused to vacate the subject premises and has further stated that the Petitioner/Defendant has extended threats of creation of third-party interests. Thus, the possession of the Petitioner/Defendant is that of an unauthorised occupant. Hence, a suit has been filed by the Respondent/Plaintiff for mandatory and permanent injunction.

11.1 In the Written Statement filed by the Petitioner/Defendant, several pleas have been taken including that the Respondent/Plaintiff has concealed the pendency of the matrimonial disputes between the parties and the pendency of petitions under the DV Act. The Petitioner/Defendant has also contended in her Written Statement that the suit is not maintainable as the matter with respect to residence and rights of the Petitioner/Defendant are subjudice before the learned Metropolitan Court.

12. It is settled law that in order to examine an Application under Order VII Rule 11, CPC, the Court is only required to examine the plaint and the documents that are annexed along with the plaint. The contentions as raised by the Petitioner/Defendant in her Written Statement cannot be examined by the Court at this stage and these averments of the Petitioner/Defendant would be the subject matter of trial and cannot be decided in an Application



under Order VII Rule 11, CPC.

13. The revisionary jurisdiction of this Court is limited. The Court is not required to examine the factual aspect of the matter. The Court only has power to see if the learned Trial Court has failed to exercise jurisdiction vested in it or has exercised jurisdiction which is not vested or has acted with illegal or material irregularity.

13.1 The Supreme Court in the case of *Ambadas Khanduji Shinde & Ors. v. Ashok Sadashiv Mamurkar & Ors.*³; clarified that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. It has been held as follows:

“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.”

[Emphasis Supplied]

14. As is stated above, the examination by this Court shows that the Impugned Order does not suffer from any infirmity which would merit interference by this Court.

15. The present Petition is accordingly dismissed. The pending

³ (2017) 14 SCC 132



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Application also stands closed.

16. It is, however, made clear that the order passed today will not preclude the Petitioner from raising all contentions before the learned Trial Court. The rights and contentions of both the parties are left open in this behalf.

17. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 16, 2025/g.joshi/ha

Click here to check corrigendum, if any