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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 338/2024, CM APPL. 62140/2024 & CM APPL. 62142/2024**

SMT. LATA GOELAppellant
Through: **Mr. Sameer Nandwani, Adv.**

versus

SH. DEEPAK KUMAR GOEL & ORS.Respondents
Through: **Mr. Punit Jain, Adv. for R-1.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

% **ORDER**
27.02.2025

1. Notice of the present appeal has been served upon the respondents No. 1, 3 and 5. However, respondent No.2 is not served and respondents Nos. 4 and 5 appear to be proforma parties as they happen to be the biological daughters of the appellant while the respondents No. 2 and 3 are her step daughters.

2. Having heard the learned counsels for the parties, a trivial issue of law arises in the present appeal.

3. The appellant, being the step mother, is aggrieved of the impugned order dated 29.05.2023 passed by the learned ADJ-04 (North-West), Rohini Courts, Delhi, whereby upon the suit filed by the respondent No.1/plaintiff i.e. Mr. Deepak Kumar Goel, the following directions have been passed on an application under Order XXXIX Rules 1&2 of the Code of Civil Procedure, 1908 [“CPC”]:-

“11. It is not disputed by the defendants that plaintiff is not having possession of upper ground floor of property no. 'A' and entire property no. 'C'. The settled possession cannot be disturbed without following due process of



law. The defendant no. 1 and defendant no. 2 are having undivided share in the suit properties as per averments of the plaintiff and they are entitled to deal with their undivided share as per their wishes.

12. Thus, in the facts and circumstances of the case, the plaintiff is in possession of upper ground floor of suit property no. 'A' and of suit property no. 'C', his possession cannot be disturbed without following due process of law, as such, defendants are directed not to dispossess the plaintiff from upper ground floor of suit property no. 'A' and from suit property no. 'C' without due process of law till the completion of the trial of the present suit. The prayer for restraining the defendants from alienating or selling the suit property no. 'A', 'C' and 'D' qua their undivided share is declined. The application is disposed off accordingly.”

4. Although, as espoused by the learned counsel for the respondent No.1, who only puts appearance, that there is a delay of about 415 days in filing the present appeal, but on a bare perusal of the aforesaid order, only legal issue to be addressed is that the direction to the effect of restraining dispossession of the respondent No.1/plaintiff except according to due process of law *till the completion of the trial*, cannot be sustained in law. The aforesaid direction shall only mean and imply that the respondent No.1/plaintiff shall not be dispossessed from the property in question except according to the due process of law.

5. It is also pointed out by the learned counsel for the appellant that they have already instituted a suit for recovery of possession against respondents No. 1 to 3.

6. In view of the foregoing discussion, the present appeal is disposed of with the direction that the appellant shall not dispossess the respondent No.1 from the subject premises except according to due process of law.



7. This order is passed without prejudice to the rights and contentions of the parties.

8. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

FEBRUARY 27, 2025/sadiq