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

+ EX.F.A. 12/2023 & CM APPL. 21910-11/2023

SUSHIL KUMARI

.....Appellant

Through: Mr. Dharam Dev, Adv.

versus

KAMLESH DIXIT & ANR.

.....Respondents

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. Aman Sareen, Mr. Nishant Pathak, Mr. Gurpratap Singh & Mr. Vignesh, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

31.01.2026

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1. This hearing has been done through hybrid mode.
2. The present execution appeal under Order XXI Rule 58 and Order XLI Rule 1 of the CPC, seeks the following prayers:-

“a) allow the present appeal with costs and the impugned Order dated 17.02.2023 passed by Shri Sunil Chaudhary, Ld. Additional District Judge-04, North West District, Rohini Courts, Delhi in Execution Petition No. 219/2020 titled Kamlesh Dixit Vs Devender Sharma may kindly be set aside;

b) Grant stay against the proceedings in the above execution petition till the pendency of the appeal.

c) pass such other order(s) or direction (s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also passed in favour of the Appellant and against the Respondent.”

BACKGROUND



3. The respondent no.1 herein, *i.e.*, Ms. Kamlesh Dixit (original plaintiff) had filed a suit, **Civil Case No. 777/2018**, seeking possession, permanent injunction, *mesne* profits and damages against respondent no. 2, *i.e.*, Mr. Devender Sharma (original defendant). The said suit was filed claiming that respondent no. 1 was the owner of one shop being, shop no. 2 in Block C-1, situated at Shopping Center, Lawrance Road, Delhi, and that respondent no. 2, who was the owner of an adjoining shop being, shop no. 1, had sold the aforesaid shop to her late husband *vide* a registered sale deed dated 22.01.2013. It was further averred that both the shops were merged into one shop by removing the common wall parting them. As per respondent no. 1, respondent no. 2 (original defendant) was allowed to use both the shops by her late husband, being a close friend. After filing of the written statement by respondent no. 2 (original defendant), respondent no. 1 herein had filed an application under Order XII Rule 6 CPC, which was allowed by the learned Trial Court *vide* order dated 13.11.2019, and a decree of possession in respect of the two shops being, shops no. 1 and 2, Block-C-I, situated at Shopping Center, Lawrance Road, Delhi, was passed in favour of respondent no. 1 (original plaintiff) and against respondent no. 2 (original defendant).

4. An execution petition, **Execution Civil No. 219/2020**, had been filed with respect to aforesaid order dated 13.11.2019, by respondent no. 1. In the said execution proceedings, the present appellant, Ms. Sushil Sharma @ Sushil Kumari, had filed an application under Order I Rule 10 of the CPC, to get herself impleaded in the suit as necessary party, and she had also filed objections under Order XXI Rule 58 of the CPC, in the said execution proceedings, claiming to be the legally wedded wife of late Shri Anil Sharma.



It was further claimed that she was made aware of the pendency of the suit from one Mr. Sanjeev Kaushal, who had asked her to refund an amount of Rs. 20,25,000/-, which was taken by her late husband for purchase of shop no. 2, for which possession of shop no. 1 was given by late Shri Anil Sharma and the same was to remain with him till the aforesaid amount is returned. It was further claimed that both the shops were in possession of Mr. Devender Sharma (original defendant/respondent no. 2) on behalf of Mr. Sanjeev Kaushal and Smt. Kamlesh Kaushal, as security of the loan amount. The aforesaid objections and the application under Order I Rule 10 of the CPC, was dismissed by learned Execution Court *vide* order dated 17.02.2023 by making the following observations:-

“The applicant/objector has not filed any document to show that marriage was solemnized with her by deceased Anil Sharma and even during the course of submissions on the application/objections she was provided opportunities to place on file any document of Sh. Anil Sharma, showing the name of applicant as his wife but she failed to place on file even a single document. The documents filed by the applicant claiming her as the wife of the Anil Sharma are the documents in which the name of the husband is disclosed by her but the said documents are not the documents got prepared by Anil Sharma showing his name as husband of applicant or the applicant as his wife. Considering the facts and circumstances of the case and the material available on record, I found no merits in the claim of the applicant/objector. The applicant is not a necessary party whose presence is required to decide the present suit as such the application as well the objections are dismissed.”

(emphasis supplied)

CONTENTIONS ON BEHALF OF THE APPELLANT.

5. Learned counsel for the appellant has submitted that the latter was



married to late Shri Anil Sharma on 27.02.1985, and till his demise on 11.05.2018, she was residing with him. It is further submitted, in terms of the averments made before the learned Executing Court, that the subject shops were being occupied by her brother respondent no. 2, Mr. Devender Shama, which were owned by her late husband. Learned counsel for the appellant submits that respondent no. 1 had filed a suit claiming to be the wife of late Shri Anil Sharma, wherein she had stated that they have three children out of the wedlock, however, the fact remains that even if she got married to late Shri Anil Sharma, the same would have been an invalid marriage, as late Shri Anil Sharma was already married to the appellant.

6. Learned counsel for the appellant placed reliance on the Aadhar card, Driving License, Voter ID Card of the appellant, to demonstrate that she was the wife of late Shri Anil Sharma. Attention of this Court was also drawn to the Voter ID Card of late Shri Anil Sharma, to show that the residence of the appellant is the same as that of late Shri Anil Sharma. Attention of this Court was also drawn to an insurance policy, where the appellant had shown her husband, late Shri Anil Sharma, as her nominee. Learned counsel for the appellant further submits that the learned Execution Court did not examine the said documents and summarily dismissed both the applications moved on behalf of the appellant.

CONTENTIONS ON BEHALF OF THE RESPONDENTS

7. Learned Senior Counsel appearing on behalf of the respondents draws attention of this Court to the written statement on behalf of respondent no. 2, original defendant in the suit proceedings, wherein he had admitted respondent no. 1 to be the legally wedded wife of late Shri Anil Sharma. The



relevant portion of the written statement reads as under:-

“1. That the suit is liable to be as the Plaintiff has not approached this Hon'ble Court, with clean hands and has suppressed the material facts. The Plaintiff has suppressed that her deceased husband Sh. Anil Sharma had taken a loan of Rs.6,00,000/- on 17.12 2009 from the brother-in-law namely Sanjiv Kaushal of the Defendant and the said loan was given to Anil Sharma at the instance of the Defendant and had further taken a loan of Rs.14,25,000/- through an account payee cheque bearing No.15121 dated 18.05.2011, drawn on Axis Bank and the deceased husband, when failed to repay the said amount asked the Defendant to occupy the suit property as a security till the repayment of the said amount of Rs.20,25,000/-.”

8. It is also submitted on behalf of learned Senior Counsel that admittedly, the appellant and respondent no. 2 are real brother and sister, and during the entire pendency of the suit and before the order dated 13.11.2019 was passed, respondent no.2 as brother of present appellant, did not make a single averment to the effect that respondent no.1/plaintiff in the said suit was second wife of late Shri Anil Sharma, and therefore, she would not be entitled to the properties as claimed by her.

FINDINGS AND ANALYSIS

9. Heard learned counsels for the parties and perused the record.

10. Admittedly, the appellant and respondent no. 2 are real brother and sister. The subject suit was filed by respondent no. 1 for recovery of possession, permanent injunction, *mesne* profits/damages against respondent no. 2, Mr. Devender Sharma, on 26.07.2018, *i.e.*, immediately after the demise of late Shri Anil Sharma.

11. Written statement by respondent no. 2 to the aforesaid suit was filed by



him on 31.08.2018, which is conspicuously silent with respect to the appellant being the legally wedded wife of late Shri Anil Sharma.

12. In fact, as pointed out by learned Senior Counsel for the respondents, respondent no. 2 in his written statement, had clearly admitted that respondent no. 1/plaintiff is the wife of late Shri Anil Sharma.

13. As already noted above, on the basis of the written statement filed on behalf of respondent no. 2, an order under Order XXI Rule 6 of the CPC was passed on 13.11.2019, wherein it was observed as under: -

“From the pleadings of the parties, it is clear that the defendant has not disputed that at present the plaintiff is owner of both the suit shops. It is also not disputed that the defendant is occupying both the shops without paying any rent etc. The defendant has tried to dispute the claim of the plaintiff on two grounds, firstly that he is occupying the shops as security for loan of Rs. 20,25,000/- taken by husband of the plaintiff from the brother in law of the defendant and secondly that he has not received the sale consideration amount of the sale deed dated 22.01.2013. Both the grounds taken by the defendant are found to be sham and baseless on the face of it. There is no corroboration of the fact that the suit property was occupied by the defendant as security against the loan taken by plaintiff from the brother in law of the defendant. Such an arrangement does not seem to be logical otherwise. How does the defendant come in the picture in the transaction between husband of the plaintiff and brother in law of the defendant. If there was any such loan transaction, the brother in law of the defendant could have availed remedies available under law but the defendant can not claim by way of bare statement that he is occupying the suit property as security to such loan. The whole story regarding holding of shops as security qua loan is found to be a concocted version and clever drafting just to frustrate the case of the plaintiff and to drag the proceedings.

Similarly, the contention regarding non payment of sale consideration amount of the sale deed dated 22.01.2013 is also highly devoid of merits. The concerned sale deed is admittedly a registered sale deed and it does not lie in the mouth of the defendant at the stage to say that the said sale deed was without consideration. The amount



of sale consideration is very much mentioned in the sale deed dated 22.01.2013 itself (copy of the same is available on record). It is also mentioned in the sale deed that the entire consideration amount has been received and nothing is due out of the sale price. Moreover, it is not the case of the defendant that he is holding the suit property due to non payment of said sale consideration nor any counter claim has been filed by the defendant in this regard. So, the story regarding non payment of sale consideration is also of no avail for the defendant.

The defendant has also contended that he has not been served with the legal notice dated 02.07.2018. Though the plaintiff has placed on record postal documents to show delivery of the notice but service of notice is not a big issue. As per settled law, the service of summons of suit for recovery of possession claiming termination of license in itself is service of such notice. Reference' can be laid upon one judgment titled as **Nopani Investment Vs. Sanokh Singh (HUF) cited in AIR 2008 SC 673**, wherein it has been held that, “in a case of seeking eviction from the tenant, mere filing of the suit amounts to the notice and is sufficient for seeking possession from the tenant, I am of the considered opinion that Ld. Trial Court has rightly come to the conclusion and rightly decreed the suit in favour of the plaintiff”. In another judgment, titled as **SCJ Plastics Ltd. 1/s. Creative Wares Ltd. 192 (2012) Delhi Law Times 237**, the Hon'ble High Court of Delhi has observed that, “even if, the notice of termination of tenancy is defective and strictly not in accordance to section 106 of Transfer of Property Act, then filing of the suit itself amounts to a notice of termination of tenancy to the other party. Therefore, the plaintiff is presumed to have expressed his desire not to continue with the defendant any further who is tenant in the suit property in question. Hence, he/she is liable to be evicted and vacate the premises within reasonable time.”

Considering the facts and circumstances of the case, it is clear that the plaintiff is owner of the suit shops which the defendant was occupying as a licensee/ permissive user and that the plaintiff is no more interested to continue with the permissive user of the defendant. There are clear, specific, unambiguous and unequivocal admissions in this regard on part of the defendant. The additional averments regarding loan transaction and non payment of sale consideration have no bearing on the basic controversy involved in this case. The plaintiff is clearly entitled to a decree of possession against the defendant.



Hence, with these observations, the application under Order 12 Rule 6 CPC is allowed and a decree of possession is passed in favour of plaintiff and against the defendant in respect of suit property i.e. two shops bearing shop no. 1 & 2, Block C-1, situated at Shopping Center, Lawrence Road, Delhi as shown in red in the site plan Annexure A filed alongwith plaint.”

(emphasis supplied)

14. A perusal of the aforesaid observations further re-enforces the fact that at no point of time the issue of the appellant being the legally wedded wife of late Shri Anil Sharma was raised before the learned Court. During the course of hearing, learned counsel for the appellant, on a pointed query, submitted that the latter had filed a suit, **CS DJ No. 797/2021**, seeking declaration, possession and injunction, and the same is pending adjudication. The said suit was filed with the following prayers:-

“In view of the above made submissions, it is, therefore ,most respectfully prayed that this Hon'ble Court may kindly be pleased to:

(i) Pass a decree of declaration in favour of the plaintiff and against the defendants to the effect. that the decree dated 13.11.2019 is null and void and is liable to be set aside as the same has been secured by misleading the Hon'ble Court that the property. bearing no. Shop bearing no. 1; Block C-1, Shopping Centre, Keshav Puram, Delhi-110035 has devolved on the Defendants 1-4 on the death of Late Shri Anil Sharma, late husband of the Plaintiff.

(ii) Pass a decree of declaration in favour of the plaintiff and against the defendants to the effect that the relinquishment: Deed dated 30.10.2019 vide Relinquishment Deed dated 30.05.2018, registered as Document no. 7768, Book. Book.no.1 Volume 7785, Pages 126-129 is void ab initio as the plaintiff is the owner of the property bearing Shop bearing no. 1, Block C-1, Shopping Centre, Keshav Puram; Delhi-110035 after the death of her husband Shri Anil Kumar Sharma.

(iii) Pass a decree of declaration in favour of the plaintiff and against the defendants to the effect that the plaintiff is the owner of bearing no. Shop



bearing no. 1, Block C-1, Shopping Centre, Keshav Puram, Delhi-110035 and other properties, i.e.

I Flat no. C-1 /70 B, LIG Flats, Keshav Puram, Delhi

II Flat no: A-1 /64 B, LIG Flats, Keshav Puram, Delhi

III Flat no. A-1 /42 , LIG Flats, Keshav Puram, Delhi

(iv) Pass a decree of permanent and mandatory injunction in favour of the plaintiff and against the defendants restraining the defendants to create any third party interest in respect of property bearing no. Shop bearing no. 1, Block C-1, Shopping. Centre, Keshav Puram, Delhi-110035 and other properties; - i.e.

I Flat no.C-1.170 B, LIG Flats, Keshav Puram., Delhi

II Flat no. A-1/64B, LIG Flats, Keshav Puram, Delhi

III Flat no. A-1 /42, LIG Flats, Keshay Puram, Delhi.

(v) pass such other order(s) or direction(s) as may be deemed fit and proper in the facts and circumstances of the case.”

(emphasis supplied)

15. As per the record, apart from claiming herself to be the legally wedded wife of late Shri Anil Sharma, the present appellant otherwise could not place on record any document(s) of conclusive nature to show that she was his legally wedded wife. In fact, the plea with regard to her date of marriage with late Shri Anil Sharma, *i.e.*, on 27.02.1985, is being taken for the first time in the present appeal. This fact was neither pleaded nor mentioned in her applications. On the contrary, respondent no. 1 has placed on record the following documents:

“(a): The true copy of Marriage card & Marriage Photos which were filed before the Ld. Trial Court;

(b): The true copies of School Certificates of above named three daughters namely Akanksha Dixit, Neha Dixit & Pooja Dixit respectively inter-alia stating names the names of Res. No.1 and her deceased husband as mother & father in the school records of their



children which were filed before the Ld. Trial Court;

(c): The Old Pass Ports Late Anil Kumar s/o late Ganesh Shanker Dixit (Date of issue: 21st Jan. 1993) and (Date of Issue 28th July 2003 which were filed before the Ld. Trial Court;

(e): Old Ration Cards of late Anil Kumar Dixit s/o late Ganesh Shanker Dixit dated 12/9/2005 and 23/12/2010 which were filed before the Ld. Trial Court;

(f): LIC Policy as obtained by deceased husband of Respondent No.1 in the year 1991 which was filed before the Ld. Trial Court;

(g): HDFC Life Insurance Policy issued on 29-12- 2012 which was filed before the Ld. Trial Court;”

16. In any case, respondent no. 1, on the basis of documents placed on record as well as the pleadings, has been held to be the owner of the subject premises, and therefore, the appellant would not have any *locus standi* sofaras the said suit for recovery of possession, permanent injunction, *mesne* profit/damages is concerned. This appears to be a desperate attempt at behest of the brother of the appellant, *i.e.*, respondent no. 2, to frustrate the decree passed in favour of respondent no. 1. Admittedly, the possession of the said shops is with respondent no. 2 and not the appellant.

17. In these circumstances, this Court finds no reasons to interfere with the impugned order dated 17.02.2023 passed in Execution Petition no. 219/2020.

18. Therefore, as a *sequitur*, the appellant’s appeal is dismissed.

19. The interim order dated 01.05.2023 passed by the learned Predecessor Bench stands vacated.

20. The Execution Court shall proceed for further proceedings in accordance with law.

21. Copy of this order be sent to the concerned learned District Judge,



North West District, Rohini Courts, for necessary information and compliance.

22. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

JANUARY 31, 2026/nk/db