



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

% *Reserved on: 20th November, 2024*

Pronounced on: 17th January, 2025

+ **C.R.P. 265/2023, CM APPL. 49425/2023 (stay),**
CM APPL. 63080/2023 (stay)

VIJAY KUMAR GUPTA ALIAS BABLU

S/o Sh. Roshan Lal Gupta

R/o WA-12, Shakarpur

Delhi-110091

Also at:

R/o. H-96A, Ground Floor,

Block-H, Shakarpur East,

New Delhi-110092

.....Petitioner

Through: Mr. Abhishek Kumar and Mr. Sumit
Kashyap, Advocates.

versus

PURNIMA GARG

W/o Sh. Arun Kumar Garg

R/o H-96A, Block-H, Shakarpur,

East, New Delhi-110092

.....Respondent

Through: Mr. Rakesh Kumar, Mr. Ankit Kumar and
Mr. Sachin Gupta, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CM APPL. 63081/2023 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.



C.R.P. 265/2023

3. The Civil Revision Petition under *Section 115* of the *Code of Civil Procedure, 1908* (hereinafter referred to as 'CPC') has been filed on behalf of the Revisionist/Defendant, Mr. Vijay Kumar Gupta @ Bablu, to challenge the Judgment and Decree dated 05.08.2023 *vide* which Suit under *Section 6* of the *Specific Relief Act, 1963*, has been decreed against him and he has been directed to hand over the possession of the suit property, to the Respondent/Plaintiff, Ms. Purnima Garg.

4. ***Briefly stated***, the Respondent/Plaintiff filed a Suit under *Section 6* of the *Relief Act, 1963* against the Revisionist/Defendant, to seek the possession. The Respondent/Plaintiff had stated that Late Smt. Shanti Rani Gupta and her husband, Mr. Hukum Chand Gupta had died without child. House No. 96A, Block-H, Shakarpur, Delhi (hereinafter referred to as the '*Suit Property*'), comprised of a Ground Floor and First Floor. There were two bed rooms, one drawing room, kitchen, bathroom and toilet on the Ground Floor while there existed three rooms, kitchen and bathroom on the First Floor. She explained that the building was an old structure and was so constructed that it could be used by a single family. It was open from two sides i.e. front and back side.

5. Ms. Purnima Garg, plaintiff who was the daughter of Mr. Sumer Chand, real brother of Mr. Hukum Chand Gupta, asserted she was residing at H-20, First Floor, Shakarpur, Delhi, which was a few houses away from the Suit Property. She was invited by Smt. Shanti Rani Gupta, after the demise of her husband, Mr. Hukum Chand Gupta on 09.01.2017, to stay and take care of her at the suit property. She along with her family members, shifted to the suit premises with Smt. Shanti Rani Gupta for her proper care



and assistance in her old age. She along with Smt. Shanti Rani Gupta was exclusively and jointly residing in a peaceful manner in the Suit Property.

6. The aunt being of old age and suffering from various ailments, lived on the Ground Floor since she was unable to climb the stairs. The daughter of the plaintiff who is a major, used to stay with the aunt on the Ground Floor so as to take care and help her in her day to day chores.

7. Because of the complete faith and trust in them, she made Mr. Arun Kumar Garg, husband of the Respondent/Plaintiff, as nominee in her Bank Account and had also opened joint FDRs with him.

8. The petitioner had asserted that before her untimely death, Smt. Shanti Rani Gupta suddenly fell ill and was got admitted in ICU in Shanti Mukund Hospital by the Respondent/Plaintiff and her family members. However, despite the diligent care of the Doctors and the Respondent/Plaintiff, she died on 09.01.2017.

9. The Respondent/Plaintiff claimed that deceased Smt. Shanti Rani Gupta was the absolute owner of the immovable and the suit property. During her lifetime, she had executed a Will dated 19.08.2011 which was duly registered in the office of Sub-Registrar on 15.09.2011. By virtue of this Will, she bequeathed her movable and immovable properties in 1/3rd equal share to Smt. Rekha D/o Satish Chand Gupta, Smt. Rita D/o Satish Chand Gupta and to the plaintiff D/o Late Sumer Chand Gupta. She, therefore, by virtue of the Will, became 1/3rd owner of the suit property. The defendant and his family however, were excluded from the Will and do not have any right, title or interest to stay in the suit property.



10. Smt. Shanti Rani Gupta died on 09.01.2017. Her nephew/Defendant, Mr. Vijay Kumar Gupta, who was residing at WA-12, Shakarpur, Delhi-110091, came with a few relatives to join the last rites. Thereafter, he locked the *two room on the ground floor* (hereinafter referred as *suit property*) where the Plaintiff used to reside with her family. When she objected, the Defendant claimed a share in the Suit Property and refused to unlock the room by contending that he would reside therein. The Defendant, therefore, illegally occupied two rooms on the ground floor.

11. The plaintiff approached the ACP and DCP and made various complaints to get the possession of the two rooms on the Ground Floor from the defendant, but did not succeed. It is asserted that defendant not only occupied the Ground Floor portion but also created hindrance in the peaceful enjoyment, access and use of the First Floor of the property by the plaintiff and her family members.

12. She, therefore, filed the Suit under Section 6 of the Specific Relief Act, seeking possession of the two rooms on the Ground Floor i.e. the Suit Property.

13. The Defendant/Revisionist contested the Suit by filing a **Written Statement** wherein he asserted that he and the Plaintiff had equal right in the Suit Property. The Defendant claimed to be residing on the ground floor while the Plaintiff was occupying the first floor. He denied that the Plaintiff had started residing with Late Smt. Shanti Rani Gupta, to take care of her or that she had been residing in the Suit Property for last many years. He claimed that the Plaintiff never resided in the Suit Property and used to only occasionally visit Smt. Shanti Rani Gupta. It was further denied that the



daughter of the Plaintiff ever came to reside with Smt. Shanti Rani Gupta, in the Suit Property.

14. It was Defendant and his wife, who had been looking after her in her old age. It was further stated that Smt. Shanti Rani Gupta died intestate and the Defendant having a share in the Suit Property, has taken possession at the instance of other legal heirs having equal share in right, in order to protect from being occupying by the strangers.

15. The Police came but found the possession to be not unlawful and advised the Plaintiff, to settle the matter with the Defendant and to permit him to stay at the ground floor as he had a lawful right to reside therein. The Defendant claimed that the Plaintiff is continuing to be in possession of the first floor and that she has not been dispossessed from the ground floor as claimed by her. Therefore, the Suit filed by the Plaintiff, was claimed to be not maintainable and liable to be dismissed.

16. The *Plaintiff in the Replication* reiterated her assertions while denying the submissions made by the Defendant.

17. On the basis of the pleadings, **following issues** were framed on 30.10.2019 by the Trial Court, which are as under:-

- (i) *Whether the plaintiff proves that on 18.01.2017 the Defendant dispossessed her from the ground floor portion of the property no. H-96A, Block-H, Shakarpur, Delhi? OPP*
- (ii) *Whether the plaintiff proves that she was dispossessed from the ground floor portion of property no. H-96A, Block-H, Shakarpur, Delhi within six months prior to institution of the present suit? OPP*



(iii) *Whether the relief of possession U/Sec 6 of Specific Relief Act of the ground floor portion of property number, H-96A, Block-H, Shakarpur, Delhi ought to be granted to the Plaintiff? OPP*

(iv) *Relief.*

18. The Plaintiff in support of her case appeared as **PW-1** and proved various documents in regard to the I-Cards of the daughter, Passport and the medical documents of the deceased Smt. Shanti Rani Gupta. She also proved the Police Complaint dated 21.01.2017, Ex.PW-1/7 and Ex.PW-1/8 made by her to the Police.

19. ***The Defendant failed to adduce any evidence despite opportunity.***

20. The learned ADJ considered the evidence and concluded that the documents as proved by the Plaintiff, established that she was in possession of the Suit Property and had been ousted by the Defendant, after the demise of Smt. Shanti Rani Gupta and that he has illegally occupied the ground floor of the Suit Property, on 18.01.2017. **Consequently, a decree of possession in regard to the Suit Property has been passed against the Defendant/Revisionist.**

21. Aggrieved by the Judgment, the present Revision Petition has been filed by the Revisionist/Defendant. The **main grounds of challenge** are that the impugned Judgment and decree is based *on conjectures and surmises* without appreciating the pleadings, documents and the evidence in the true spirit. The averments made by the Plaintiff/Respondent, were taken as gospel truth and no due weightage was given to the submissions made by the Defendant.



22. Section 6 of the Specific Relief Act requires a proven settled possession of the Plaintiff with the Suit Property, which she has miserably failed to prove. The Plaintiff herself admitted during her cross-examination that she had no document to prove that she had ever remained in the possession of the Suit Property. It has not been appreciated that the house of the Plaintiff was at the backside of the Suit Property at a distance of less than 5 meters and the Suit Property is opened from two sides. It cannot, therefore, be ruled out that the Plaintiff procured the Voter I-Card of her daughter, Ms. Aparna Garg by mentioning the address of the deceased. More particularly, none of the other family members including the Plaintiff has a Voter I-Card at the address of the Suit Property. Even otherwise, the other documents have been manipulated by her. The Letter addressed by the Sub-Registrar to the Plaintiff, in connection with the complaint lodged in respect of the Suit Property of the brother of the Plaintiff, which is Ex.PW-1/2, has been sent to the Plaintiff at the address of the Suit Property when admittedly this address was not recorded as the address of the Plaintiff, in the Department. Apparently, the Plaintiff had been solely and gradually preparing fabricating and manipulating documents fraudulently in order to set-up a false claim to the Suit Property being fully aware that Smt. Shanti Rani Gupta was childless.

23. It is further submitted that it has not been appreciated that the Revisionist had never entered into the Suit Property forcibly or had dispossessed the Plaintiff from the same. In fact, the Plaintiff herself has asserted that after the demise of Smt. Shanti Rani Gupta on 09.01.2017, the relatives of the deceased including the Revisionist/Defendant came to the Suit Property for performing the last rites. It is not a case of forcible



dispossession of the Plaintiff without her consent, otherwise than in due course of law, which is the necessary ingredient of Section 6 of the Specific Relief Act.

24. The Revisionist has further claimed that the Plaintiff had admittedly made a Complaint on 21.01.2017 for the first time claiming that the Revisionist has allegedly refused to leave the Suit Property. There is no specific date mentioned by the Plaintiff/Respondent on which she was allegedly dispossessed by the Defendant. The Trial Court has wrongly drawn adverse inference against the Revisionist merely because he failed to adduce any evidence. It has not been appreciated that the onus of proving all the issues, was on the Plaintiff and not on the Defendant. Once, the Plaintiff failed to discharge her onus, it never got shifted to the Defendant/Revisionist.

25. The observations in the Judgment that had the Revisionist stepped into the witness box and had he been cross-examined by the Plaintiff, he would have deposed in what capacity he is in possession of the Suit Property. It is being ignored that the Revisionist in his Written Statement, had asserted that he had occupied the ground floor in the capacity of being a legal heir of Late Smt. Shanti Rani Gupta. Merely because the Revisionist did not enter the witness box, cannot be read against him.

26. Section 114 of the Indian Evidence Act, 1872 which provides for presumption of existence of certain facts after consideration of the common course of natural events, human conduct and public and private business in relation to the facts of the personal case. However, Section 114 of the Indian Evidence Act, 1872 had no application to the present Case. The learned Trial Court has presumed the settled possession as well as the



dispossession of the Plaintiff without appreciating that the settled possession cannot be presumed as a common course of events, but had to be proved by cogent evidence.

27. The Revisionist has further asserted that the learned Trial Court has wrongly referred to the pleadings in the Written Statement, to conclude that the Defendant himself had stated that he has occupied the ground floor of the Suit Property only after the demise of Late Smt. Shanti Rani Gupta. However, this conclusion of the learned Trial Court is contrary on the face of the Judgment dated 10.07.2022, passed by this Court in CRP No. 247/2019 wherein the Revision filed against the Application under Order XII Rule 6 CPC by the Respondent, was dismissed by observing that there was no unequivocal and categorical admission either with respect to the settled possession or the alleged dispossession from a portion of the Suit Property. It was further observed that in fact, these assertions of the Defendant were qualified by the explanation and elaboration of the events which occurred post demise of Smt. Shanti Rani Gupta.

28. The Plaintiff/Respondent was required to prove a settled possession and dispossession from the Suit Property, without following due process of law. These facts cannot be ascertained on the basis of preponderance of probability especially in the absence of any evidence led by the Plaintiff, to prove these facts.

29. Furthermore, an Application under Order VII Rule 14 CPC was filed by the Plaintiff/Respondent, to place on record the copy of the Will, but the same was withdrawn on 12.08.2022 implying thereby that the Plaintiff has abandoned her claim based on this Will. Moreover, she has already filed a comprehensive Suit for possession on the basis of title by virtue of this Will,



which is pending disposal. It is asserted that the impugned Judgment suffers from patent illegality and material irregularity and deserves to be set-aside.

30. *Learned counsel on behalf of the Respondent/Plaintiff* had argued that the learned Trial Court has rightly appreciated that the plaintiff has been in possession of the suit property along with the deceased Smt. Shanti Rani Gupta for the last many years, which has been corroborated by the documentary evidence. It is asserted that she along with her family members had been taking care of the deceased since last many years. The learned Trial Court has rightly allowed the Suit under Section 6 of the Specific Relief Act.

31. **Submissions heard and record perused.**

32. It is an admitted case that Late Smt. Shanti Rani Gupta was married to Sh. Hukam Chand Gupta who died on 13.02.2011. Since the couple had no children of their own, she lived alone in the property of which she is the exclusive owner. According to the plaintiff, she had bequeathed her movable and immovable properties in equal 1/3rd share to the plaintiff and to Smt. Rekha and Rita Gupta the two daughters of Shri Sumer Chand Gupta, the brother of Shri Hukam Chand Gupta.

33. The Defendant/Revisionist in his Written Statement while admitting that deceased Smt. Shanti Rani Gupta was the absolute owner of the property and had died childless, had asserted that her husband Late Shri Hukam Chand had three other brothers namely Sh. Lal Chand Gupta, Sh. Sumer Chand Gupta and Sh. Roshan Lal Gupta. The defendant is the son of Sh. Roshan Lal Gupta. It was asserted that there was no Will executed by the deceased, but had died intestate whereby all the Class II legal heirs who were 16 in numbers have become entitled to a share in the suit property.



34. Though the plaintiff had made a reference to the Will dated 19.08.2011 and had claimed that she has become 1/3rd owner of the suit property in question by virtue of bequest, but her claim in the present suit was limited to her being in possession of the property and being illegally dispossessed by the defendant.

35. The Plaintiff/Respondent in her testimony as PW1 had explained that she is working in the University of Delhi and residing with her family in H. No. H-19, First Floor, Shakarpur, Delhi. She has further explained that the property in question had access from two sides i.e. Front side and Back side and her house was on the back side and she would have an access to the property in question from the back gate.

36. The plaintiff had further deposed that after the demise of Shri Hukam Chand Gupta on 13.02.2011, Smt. Shanti Rani Gupta was left alone and she along with her family shifted with Smt. Shanti Rani Gupta in the property in question. She has further explained that the deceased was occupying the Ground floor because of her old age and inability to climb the stairs. Her daughter who was a major used to come to sleep with the deceased, on the Ground Floor.

37. It is pertinent to observe that the Suit was filed in March, 2017 i.e. soon after the demise of Smt. Shanti Rani Gupta. In the plaint and in her testimony as PW1, she had specifically stated that she along with her family had shifted to the property in question in the year 2012.

38. It is not in dispute that the First Floor and one room on the Ground Floor are in possession of the plaintiff. No plea whatsoever has been set up by the defendant that she has forcibly occupied the First Floor after the demise of Smt. Shanti Rani Gupta. The possession of the plaintiff in respect



of First Floor and one room on the Ground Floor is neither been disputed nor claimed by the defendant. The plaintiff has been in possession of the said portion.

39. The only question which now remains is in respect of two rooms on the Ground Floor on which admittedly the deceased Smt. Shanti Rani Gupta was residing. It is the case of the plaintiff herself that her daughter used to go to sleep with her on the Ground Floor. From her own testimony, it is evident that the two rooms on the Ground Floor portion i.e. the suit property was in exclusive possession of deceased Smt. Shanti Rani Gupta.

40. Moreover, it is not disputed that the defendant along with other 16-17 persons, had come to attend the last rites of the deceased and had locked the two rooms in which Smt. Shanti Rani Gupta had been residing. The pleadings and the testimony of the plaintiff itself shows that these two rooms were in exclusive possession of Smt. Shanti Rani Gupta. The plaintiff, her husband and children may have been going to the suit property in order to take care of the deceased, but it cannot be held that she was in joint possession with Smt. Shanti Rani Gupta. Her right in the property in question by virtue of a Will is a moot point which needs to be established, for which she has already filed a separate suit.

41. The plaintiff had deposed that her husband who had been taking care of Smt. Shanti Rani Gupta had been made a nominee in the Term FDR and had also been made a Joint Account Holder by Smt. Shanti Rani Gupta in her account in Vaish Cooperative Bank. It is pertinent to observe that the plaintiff herself has deposed that her husband was working in Vaish Cooperative Bank. He may have got a joint account opened with Smt. Shanti Rani Gupta or a Term deposit in the same bank, but that in itself is



not sufficient to conclude that they were in joint possession with the plaintiff. The plaintiff along with her family members may have been taking care of the deceased during her lifetime, but that in itself is not a parameter to hold a joint possession with the deceased, in the suit property.

42. It is also pertinent to observe that a pointing question was put to her if she had any documentary proof of her possession in the suit property to which she replied in negative. There is one Voter's Identity Card Ex.PW1/1 dated 20.01.2014 of the daughter Aparna Garg. There is also one correspondence of the letter dated 19.05.2016 Ex.PW1/2 which was received by her at the address of the property in question. As already noted above, her possession in respect of the First Floor has not been challenged or denied and without giving any finding, receipt of a correspondence or a Voter's Identity Card of the daughter in itself is not in any manner indicative of her possession of the two rooms on the Ground Floor.

43. The defendant in paragraph 8 of his Written Statement claimed that the plaintiff was never admitted to have a permanent stay in the house of deceased and *"even if it is taken to be true that does not affect the provision of law and the rights and share of the plaintiff with defendant and other surviving heirs, which cannot be defeated and denied..."* Herein also, the defendant while denying that plaintiff was permanently staying in the property in question, asserted that he and the other legal heirs also have a right of occupation of the suit property.

44. As already discussed above, the plaintiff may have been in possession of the First Floor and a room on the Ground Floor, but admittedly the suit property i.e. the two rooms on the Ground Floor was in the exclusive possession of the deceased Smt. Shanti Rani Gupta which has been occupied



by the defendant after her demise. It cannot, therefore, be said that plaintiff has been physically dispossessed from the suit property. Whatever be her rights being a Class-II legal heir or under the Will of deceased, needs to be established in appropriate proceedings. She has admittedly already filed a Suit on the basis of the Will.

45. To conclude, there is no evidence on behalf of the plaintiff that she was in joint physical possession with Smt. Shanti Rani Gupta in the two rooms, which is the suit property. Once her joint possession with the deceased has not been established, there is no question of her being physically dispossessed. The defendant may have put her locks in the suit property after the demise of Smt. Shanti Rani Gupta, but he is also a Class-II legal heir.

46. The plaintiff, in not having been able to prove a physical possession of the suit property, could not have been held entitled to restoration of the possession under *Section 6* of the *Specific Relief Act*.

Relief:

47. In view of the aforesaid discussion, the impugned Judgment dated 05.08.2023 is set aside and the Suit of the Respondent/Plaintiff under *Section 6* of the *Specific Relief Act* is hereby dismissed. The Revision Petition is allowed.

48. The Revision Petition stands disposed of along with the pending Application(s), if any. Decree Sheet be prepared accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

**JANUARY 17, 2025
RS/VA**