



2026:DHC:5085



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% ***Reserved on: 12<sup>th</sup> March, 2026***  
***Pronounced on: 05<sup>th</sup> June, 2026***  
+ **RSA 22/2022, CM APPL. 9470-9471/2022 & 40208/2024**

.....Appellant  
Through: Mr. Mohammad Sajid and Mr.  
Abdullah Bin Masood, Advocates  
with Appellant in person.  
versus

1.

2.

.....Respondents  
Through: Mr. Tushar Sannu, Ms. Pulak Gupta  
Joshi and Ms. Payal Rajput, Advs.

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. *Regular Second Appeal* under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') has been filed on behalf of the Appellant/Defendant No.2, against the Judgment dated 22.11.2021, whereby the learned ADJ has upheld the Judgment of learned Civil Judge dated 18.11.2020 decreeing the Suit for Permanent Injunction in favour of



*the Plaintiff*, thereby directing the Defendants to handover the vacant and peaceful possession of the Suit property to the Plaintiff and also restrained the Defendants for creating third party interest, in the Suit property.

2. The Plaintiff/Respondent, filed a *Suit No.609518/2016* for *Mandatory Injunction* against the Defendants/Appellants directing them to remove their belongings from the Suit property and to hand over the Possession and for *Permanent Injunction* for restraining them from creating third party interest.

3. The *facts in brief* are that the Plaintiff/Respondent No.1, Smt is the owner of Property bearing No.2-A/44, Ground Floor and Second floor along with roof rights, Ramesh Nagar, New Delhi. The property originally belonged to her mother Smt. Maya Devi and devolved upon her by virtue of Will dated 06.02.2012, after her demise on 20.05.2012.

4. The Defendant No.1/Respondent No.2 is the brother of the Plaintiff, who after the demise of the mother, requested the Plaintiff to be permitted to reside in the Ground Floor portion, (*hereinafter referred to as 'Suit Property'*). The Plaintiff keeping in view the relationship with the Defendant No.1, permitted him to occupy the Ground Floor as a licensee.

5. In October, 2012 Defendant No.1 got married to Defendant No.2/Appellant Smt. and they both started residing together in the Suit property. However, both Defendant No.1 and 2 started harassing the Plaintiff and other family members and threatening them to transfer the property in the name of the Defendants.

6. Since the Suit property in terms of the Will and was also for the benefit of the daughter of Defendant No.1 from his first marriage, the



Defendant No.2 started harassing, humiliating and threatening the daughter to such an extent that she is now in the custody of the Plaintiff.

7. In the aforesaid circumstances, the Plaintiff was not interest in keeping the Defendants as a licensee and issued a Legal Notice dated 02.07.2015, asking them to vacate the Suit premises. It was further stated that in case they failed to vacate, they would also be liable to play damages, mesne profits for illegal use and occupation.

8. The Notice was duly served upon the Defendants, despite which they failed to hand over the Possession to the Plaintiff. Instead Defendants called Property Dealers on 15.07.2015 and tried to create third party interest in the Suit property, though they did not succeed because of the timely intervention of the Plaintiff and other respectable persons.

9. Hence, the *Plaintiff file the Suit for Mandatory Injunction for seeking possession of the Suit property and Permanent Injunction for restraining the Defendants from creating third party interest in the Suit property.*

10. The ***Defendant No.1 Munish Kumar Lakhina, in his Written Statement*** claimed that the Plaintiff did not disclose any cause of action, since the Defendant No.1 has already left the Suit premises along with his daughter, though few of his articles and also of the daughter, were still lying in the Suit premises, which he was not being permitted to take, by Defendant No.2.

11. **On merits**, the Defendant No.1 stated that he was residing in the Suit premises along with his mother and minor daughter, as he was already divorced from his first wife by mutual consent and the child was being looked after by the mother. In order to safeguard the interest of the minor daughter as well as of the Plaintiff, the mother of Plaintiff and Defendant



No.1 had executed a Will dated 06.02.2012 whereby the Plaintiff was given the *Ground Floor and Second Floor of the Suit property*, as First Floor had already been sold by her during her lifetime.

**12.** The Defendant No.1 further stated that after the demise of the mother, he had requested the Plaintiff to retain the accommodation as a licensee. Defendant No.1 got married to Defendant No.2, after the demise of the mother, but she made his life a miserable hell. He further stated that soon after the marriage, Defendant No.2 started threatening Defendant No.1 and he was called to the local Police Station, not less than 35-40 times and had been made to sit in the Police Station. He was regularly harassed and tortured. The Defendant No.1 along with the child, thus, vacated the premises.

**13.** He admitted receiving the Notice, but since he had already vacated the premises, no Reply was filed. It was submitted that since he had already vacated the premises, no relief was maintainable against him.

**14.** The *Defendant No.2/Appellant Smt. Shalu in her Written Statement* claimed that the Suit was based on suppression of material facts. Admittedly, the Suit property was her matrimonial home. Because of the matrimonial discord between her and the husband, the Plaintiff in collusion with Defendant No.1 has filed the present Suit, which is not maintainable and has no cause of action.

**15.** It was further claimed that Smt. Maya Devi was not competent to execute the Will, as she was not the absolute owner of the property. It is only to deprive Defendant No.2 of her right to reside in the matrimonial house, that Plaintiff in connivance with Defendant No.1, had filed the present Suit.



16. The Defendant No.1 in furtherance of this design, has shown himself to be residing in separate accommodation. In case there was any dispute between Plaintiff and Defendant No.1 in regard to the inheritance of the property, then Defendant No.1 would not have so easily shifted leaving behind the daughter. In fact, Plaintiff and Defendant No.1 are on good family terms and Defendant No.1 has also inherited the Suit property. For this reason she has every right to use and occupy the Suit premises.

17. It was further alleged that the Will of the mother, was a forged and fabricated document.

18. *On merits*, the defence as set up in preliminary objections was reaffirmed and it was stated that the Suit was liable to be dismissed.

19. The *Plaintiff in the Replication* reaffirmed the assertions made in the Plaint and denied the allegations made in the Written Statement.

20. *Issues* on the pleadings were framed on 26.09.2015, as under:

“(i) *Whether there is no cause of action in favour of the plaintiff to file the present suit? OPP*

(ii) *Whether the plaintiff is entitled for the decree of mandatory injunction as prayed for? OPP*

(iii) *Whether the plaintiff is entitled for the decree of permanent injunction as prayed for? OPP*

(iv) *Relief.*”

21. The *Plaintiff examined herself as PW1* and tendered her evidence by way of her Affidavit. The photocopy of the Sale deed dated 09.06.1982 in favour of Smt. Maya Devi is Ex.PW1/1. The copy of the Will dated 06.02.2012 of Smt. Maya Devi is Ex.PW1/2. The other documents including Legal Notice dated 02.07.2015 are Ex.PW1/3 to Ex.PW1/11. The



Plaintiff, however, was not cross-examined by Defendant No.2, though was extensively cross-examined by Defendant No.2.

**22.** *PW2 Smt. Suman Lata* and *PW3 Shri Prashant Kumar* deposed that Smt. Maya Devi was known to them, for the last 4-5 years prior to her demise. They had signed the Will dated 06.02.2012, as the attesting witnesses.

**23.** The *Defendant No.1* did not adduce any evidence.

**24.** The *Defendant No.2* examined herself as *D2W1* and deposed on similar lines as the defence set up by her in the Written Statement.

**25.** **Learned Civil Judge** on appreciation of the evidence, held that the Suit property was originally owned by Smt. Maya Devi, mother of the Plaintiff and Defendant No.1, who had executed the Will dated 06.02.2012 Ex.PW1/2 in favour of the Plaintiff to the exclusion of all other legal heirs. The mother died on 20.05.2012 after which the Plaintiff acquired the absolute ownership in the property.

**26.** Subsequently, Defendant No.2 got married and started living in the property. Defendant No.2 justified her right to continue to reside in the property by claiming that it was her shared household in terms of Protection of Women against Domestic Violence Act.

**27.** The learned Civil Judge referred to *Satish Chand Ahuja vs. Sneha Ahuja* 2020 SCC OnLine SC 841 and observed that the Defendant No.2 had come to reside in the Suit property, after her marriage. It was not ever her case that she and the Plaintiff ever resided together under the same roof and shared common kitchen at any point of time. *No domestic relationship was proved between Defendant No.2 and the Plaintiff.* It was the specific case of the Plaintiff that she had been permitted the appellant, to reside gratuitously



as mere licensee.

**28.** *It was thus, held that there was no domestic relationship established between the parties and, therefore, it was held that the Plaintiff/Respondent was entitled to decree of Mandatory Injunction and directed the Defendant No.2 to hand over the physical possession of the Suit property to the Plaintiff and also restraint her from creating third party rights in the Suit property.*

**29.** *The Defendant No.2 Smt. Shalu filed the first Appeal bearing RCA No.71/2020.* The learned ADJ re-appreciated the evidence of both the parties and concurred with the findings of the learned Civil Judge. It was held that Smt. Maya Devi was proved to be the owner of the Suit property which devolved upon the Plaintiff Smt. Meera Batra, by virtue of the Will Ex.PW1/2. The Plaintiff was thus, the owner of the Suit property. Furthermore, the findings that the Appellant was not in domestic relationship and had no right to continue in the property, was upheld. The Appeal was consequently, dismissed.

**30.** *Aggrieved, the Appellant Smt. Shalu has filed the present Regular Second Appeal.*

**31.** The *grounds of challenge* are that the learned Civil Judge had wrongly assumed the jurisdiction under the Domestic Violence Act, by applying Section 26 to decide the residence right of the Appellant, even though nothing was pleaded, either expressly or impliedly in the entire pleadings. The Judgment of the Supreme Court in Satish Chand Ahuja (supra) had observed that DV Act would be relevant and has to be given due weight as one of the evidence in Civil Suit, but the evidentiary value of such evidence, is limited.



**32.** The findings of the Magistrate although not binding on the Civil Court, but any Order passed under D.V Act, should be given its due weight. Both the Courts have failed to discuss the interim *Residence Order dated 21.02.2019* passed by learned M.M under the D.V Act or its evidentiary value. Instead of referring to his Order dated 21.02.2019, the learned Trial Court has given its own findings on fact which are disputed under D.V. Act.

**33.** The learned Civil Judge in clear violation of the basic principles of law has failed to maintain basic judicial Order. The expressions '*shared household*', '*respondent*', '*aggrieved person*' etc. were not even in issue before the learned Trial Court.

**34.** It has also not been considered that the Suit was collusive between the Respondent and defendant No.1, as is evident from the assertions that right from the first day of marriage from October, 2012, the Appellant and her husband started harassing the Respondent No.1. The complaints, however, have been made only in 2014 and 2015.

**35.** The Will of Smt. Maya Devi, is a forged and fabricated document created only to defeat the right of residence of the Appellant. The learned Civil Judge has erroneously relied upon the testimony of *PW2 Smt. Suman Lata* to uphold the genuineness of the Will. *PW2* the attesting witness was not a credible witness as she had admittedly never met Smt. Maya Devi and she also did not remember when she had met her. She wrongly stated the age of Smt. Maya Devi as 85 years when in the Will it was stated to be 71 years. The *PW2* had contradicted *PW1* when she had deposed that her statues was in healthy condition at the time of her death. Smt. Suman Lata was not a reliable witness and her testimony was liable to be discarded.

**36.** The Suit was a *counter-blast to the Complaints lodged against them,*



only to oust the Appellant from her matrimonial home. Just after one month of filing of the Suit, the Respondents got transferred the electricity and water connection in the name of the Plaintiff, which was originally in the name of Smt. Maya Devi.

**37.** Though a Written Statement had been filed by Defendant No.1 her husband, but he practically admitted the entire case of the Plaintiff. The Defendant No.1/husband has failed to cross-examine Plaintiff or her witnesses and has even failed to step into the witness box. This aspect of collusion between the two Respondents, has not been considered in the right perspective.

**38.** Furthermore, this Court in *Navneet Arora vs. Surinder Kaur & Ors.*, had held that in terms of Section 19(1)(f) DV Act, the Court may direct the Respondent/husband to secure same level of accommodation for the aggrieved person, as she enjoyed in the shared household or to pay the rent for the same, if the circumstances so desired. However, no directions have been given for arranging the alternate accommodation of the Appellant.

**39.** The Appellant claimed that she has been residing in the Suit property since the date of her marriage along with her husband, uninterruptedly and peacefully and has got a valuable right, title and interest to continue in possession of the Suit property.

**40.** The Plaintiff had claimed that the Appellant had been inducted as a licensee, but she admitted in her cross-examination that there was no written document to this effect. The impugned Judgment dated 22.11.2021 of learned ADJ as well as the Judgment dated 18.11.2020 of learned Civil Judge, are therefore, liable to be set aside.

**41.** The Appellant has filed her *written submissions* on the same lines as



the grounds of Appeal. She *stated* that she was subjected to constant domestic violence and harassment by the Appellant, for which she had made a Complaint dated 20.06.2014 to National Commission for Women as well as Police Commissioner. The Appellant thereafter, filed a Complaint under Section 12 D.V. Act before the learned M.M., which was a counter-blast to the Complaints made by the Respondent.

**42.** The *learned Counsel on behalf of the Respondent vehemently contended* that there was no domestic relationship between the Plaintiff and the Appellant and that the learned Civil Judge as well as learned ADJ, have comprehensively considered this aspect, to hold that the Plaintiff and the Appellant, were not in domestic relationship. The Suit of the Plaintiff has been rightly, decreed and the Appeal is liable to be dismissed.

**Submissions heard and record perused.**

**43.** The Plaintiff had filed the *Suit for Mandatory Injunction* for directing the Defendant No.2/Appellant Shalu wife of her brother to vacate and to hand over the possession of the Suit premises.

**44.** The Plaintiff had explained that the Suit property was originally owned by Smt. Maya Devi vide Sale Deed 09.06.1982 Ex.PW1/1. She during her lifetime had executed a Will dated 06.02.2012 Ex.PW1/2 by virtue of which the property in question, which comprised of the Ground Floor and the Second Floor with Terrace rights, was bequeathed to the Plaintiff Smt. Meera Batra. *Smt. Maya Devi*, the mother died on 20.05.2012 and since then, the Plaintiff became the exclusive owner of the Suit property. The Plaintiff had also examined *PW2 Smt. Suman Lata and PW3 Shri Prashant Kumar* who were the witnesses to the Will, who proved that the Will had been executed by Smt. Maya Devi and they had signed the



same as the attesting witnesses. It was thus, proved that plaintiff was the exclusive owner of the suit property. *Learned Civil Judge* thus, held that the Will of Smt. Maya Devi in favour of the Plaintiff was duly proved, a finding which has been upheld by the learned District Judge.

**45.** The Plaintiff had further deposed that she had allowed her brother Munish Kumar Lakhina, to reside on the Ground Floor of the Suit property, a fact which again was not challenged by Defendant No.1 Munish Kumar Lakhina, the brother of the Plaintiff. Shri Munish Kumar Lakhina got married to Defendant No.2/Appellant in October, 2012, which again is not in dispute. The Defendant No.1 requested the Plaintiff to allow them both to stay on the Ground Floor. These facts have essentially not been disputed by the Appellant as well, that after her marriage, she came to live with her husband Munish Kumar Lakhina/Defendant No.1 on the Ground Floor i.e the Suit property. *There is, therefore, no challenge that the Appellant after her marriage joined her husband in the Suit property where he had been residing as a licensee/permissive user.*

**46.** It is further deposed by the Plaintiff that because the Appellant had started misbehaving, torturing and harassing her endlessly in respect of which she had made various Complaints, she requested her brother as well as the Appellant to vacate the property. She also served a Legal Notice dated 02.07.2015 Ex.PW1/9 upon both the Defendants, asking them to vacate the Suit property.

**47.** The Defendant No.1 Munish Kumar Lakhina/ brother of the Plaintiff in his Written Statement and as per his Statement admitted that he was only a permissive user and that he has already left the property and has no claim to it while it is only his wife/Appellant who is residing in the Suit property.



**48.** The *sole question which arises is* what is the right of the Appellant to continue in occupation of the Suit property. *First and foremost*, it is her husband Munish Kumar who had been permitted to occupy the Suit premises and after marriage she had merely joined him to reside in the Suit property, as his family member. Once, the right of the Munish Kumar himself was terminated and he also vacated the premises, the status of the Appellant becomes no better than that of a trespasser and she is liable to vacate the property.

**49.** The *learned Civil Judge*, thereafter examined the legal basis, if any, on which the Appellant could assert a right to continue occupying the suit premises. Considering that the Appellant has commenced residing in the property along with her Husband subsequent to their marriage, the principle issue that arose for determination was whether she possessed any legally enforceable right to remain in use and occupation of the suit property on the ground that it constituted her *matrimonial home or shared household*.

**50.** The learned Civil Judge in detail considered that she and the Plaintiff never occupied the property together and they never resided jointly and therefore, *this house could not have been termed as a shared household*. It was held that the Appellant and the Plaintiff were not in a domestic relationship. It was thus, held that she could not defend her possession by claiming any right, by virtue of being a family member in the Suit property.

**51.** These findings had also been upheld by the *learned District Judge* while deciding the Appeal, vide Order dated 22.11.2021.

**52.** The Appellant has claimed that she had not sought protection of her possession under the D.V. Act which was exclusively the domain of the learned Magistrate and this aspect could not have been considered by the



two Courts. However, Section 26 of the D.V Act itself proves that the relief under D.V Act can be granted in any proceedings and is not limited to the proceedings preferred before the learned Metropolitan Magistrate, under the Domestic Violence Act.

**53.** The learned Civil Judge as well as learned District Judge had merely considered the law to consider if any kind of protection can be granted to the Petitioner, but on the facts of the case, none was found to be available to her. The reference to Domestic Violence Act by the two Courts, therefore, cannot be considered erroneous.

**54.** The *main contention* raised by the Appellant is that there is an evident collusion between the brother and sister, which is evident from the fact that the Defendant No.1 husband had admitted all the facts as stated by the Plaintiff. However, it could have been a case of collusion, had there been any disputed facts. The ownership of the Plaintiff or Defendant having been permitted to reside in the property has also not been disputed by the Appellant. While she may claim that there is collusion, but in the facts and circumstances of the case, no collusion is evident.

**55.** The Defendant No.1 admittedly after his marriage had brought the Appellant to reside with him in the Suit property, but because of the matrimonial discord, the brother separated and left the property. It has been rightly held by both the Courts that the Appellant had come to reside with her husband in the Suit property, as a permissive user and once, the permission was withdrawn, she had no right, title and interest to continue to reside in the property.

**56.** The Appellant had also contended that she was entitled to the right of residence, as has been held in the case of Satish Chand Ahuja (supra) and



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the Defendant/husband should have been directed to make an arrangement for her residence. However, she herself had stated that a Petition under Domestic Violence Act has already been filed by her, against the husband. Therefore, once, she has already resorted to the requisite relief, her remedy lies against her husband and not against the Plaintiff who happens to be the sister of her husband. The discord inter-se the husband and the wife cannot become a penalty for a sister-in-law, who in good faith, had permitted them to occupy her Suit property.

**57.** There is *no Substantial Question of Law* raised in the present Second Appeal. The findings and the challenge was only to the merits of the case, which have been rightly adjudicated by the two Courts.

**58.** *There is no merit in the Appeal, which is hereby, dismissed.* The pending Application(s) are disposed of accordingly.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JUNE 05, 2026**

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