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

Pronounced on: 10th December, 2021

\+ **CS(OS) 93/2021**

MADALSA SOOD **..... Plaintiff**

Through: Mr. Rajat Aneja & Ms. Chandrika Gupta, Advocates.

Versus

MAUNICKA MAKKAR & ANR. **..... Defendants**

Through: Mr. D.K. Goswami, Sr. Advocate with Mr. Saharsh Jauhar & Mr. Kuldeep Singh, Advocates for D-1 & D-2.

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

O R D E R

I.A. 12356/2021 (of plaintiff u/O XII R-6 CPC for judgment on admissions)

1. This order shall dispose of the application filed by the plaintiff under Order XII Rule 6 of the Code of Civil Procedure, 1908 ('**CPC**' for short) seeking judgment on admissions qua the relief of possession.

2. The suit has been filed for possession, damages and permanent injunction in respect of property bearing No.A-44, Third Floor, Friends Colony (East), New Delhi-110065 ('**suit property**' for short). The plaintiff claims to be the exclusive and absolute owner of the suit property. The suit property forms part of a larger structure comprising of other floors. The suit has been filed against the daughter-in-law of the

plaintiff who is the defendant No.1 and her mother who is the defendant No.2. The son of the plaintiff and the husband of the defendant No.1 Sh. Vikas Sood expired on 29th September, 2020.

3. Mr. Rajat Aneja, learned counsel for the plaintiff has submitted that the case as set up in the plaint by the plaintiff and as per the documents also placed on record by her, shows that the suit property belongs to her. The complete property at A-44, Friends Colony (East), New Delhi was originally owned by the husband of the plaintiff being Mr. B.B. Sood. A Perpetual Lease Deed dated 26th June, 1973 had been executed in his favour. He expired intestate on 13th April, 1999 leaving behind the plaintiff, her son Sh. Vikas Sood (now deceased) and Ms. Babita Malhotra (married daughter). A Relinquishment Deed was executed by Sh. Vikas Sood and Ms. Babita Malhotra in favour of the plaintiff on 15th December, 1999 which was a registered document. The learned counsel for the plaintiff submitted that on the basis of these documents a Conveyance Deed was also executed in the name of the plaintiff on 12th December, 2000. None of these documents have been challenged by the plaintiff's son and daughter or even by defendant No.1 in any proceedings. The defendants have also not questioned the execution of the documents in this case, though the defence raised is that the defendant No.1 had share in the suit property through her late husband who had a share in the suit property. Learned counsel for the plaintiff further submitted that the defendant No.1 had no tenable defence and therefore the plaintiff was entitled to a decree of possession qua her.

4. As regards defendant No.2, the learned counsel submitted that she had absolutely no right to remain in the suit property and no such right has been claimed or asserted in the written statement. The learned counsel submitted that the judgment on admissions was being sought only with regard to possession as prayed for in prayer (A) of the plaint which is reproduced below:

> *"A. It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to pass a Decree of* ***POSSESSION*** *in favour of the Plaintiff and against the Defendant Nos.1 and 2, thereby directing the said Defendants, their agents, servants, heirs, assignees or anyone acting on their behalf to hand over the vacant physical possession of the Suit Property, bearing No.A-44, Third Floor, Friends Colony (East), New Delhi-110065, as shown in Red colour in the Site Plan annexed to the Plaint;"*

As to the question of *mesne* profits / damages, the learned counsel for the plaintiff has submitted that the same could still be settled on trial. The learned counsel for the plaintiff also argued that the defendant No.1 was making life miserable for the plaintiff by filing cases against her and raising quarrels as she was claiming rights in the suit property and other properties belonging to the plaintiff and also raising disputes with the grandson of the plaintiff (born to her late son and his first wife). It was submitted that the defendant No.1 was being aided by her mother, defendant No.2 who had come from Pune after the demise of the son of the plaintiff on 29th September, 2020 and despite having no rights to remain in the suit premises had continued to remain there. The learned counsel stated that subsequent to the order dated 11th February, 2021 of

this court directing the parties to maintain *status-quo*, the defendant no. 1 had also inducted her sister into the premises, on account of which an application under Order XXXIX Rule 2A of the CPC had also been filed. The constant harassment of a 78 years old lady by the defendants fully justified her seeking their eviction from the suit premises.

5. Mr. D.K. Goswami, learned senior counsel for the defendants, on the other hand, has submitted that the application was liable to be dismissed as the defendants had specifically disputed the title of the plaintiff to the suit property and the matter required determination by way of trial on the basis of evidence. The learned counsel relied on the judgment of the Supreme Court in ***Satish Chander Ahuja Vs. Sneha Ahuja*** (2021) 1 SCC 414 to submit that since the suit property formed the shared household of the defendant No.1, she could not be evicted from the suit premises. Moreover, her rights to residence in the suit premises have been protected by the interim order passed by the learned Metropolitan Magistrate on 14th January, 2021 in proceedings under the Protection of Women from Domestic Violence Act 2005 ('**DV Act**' for short), which protection could not be defeated by seeking an eviction through an application under Order XII Rule 6 of the CPC. The learned counsel also submitted that the defendant No.2 was herself a widowed and aged lady and she had no other place to go and therefore, she too could not be evicted. It is submitted that the allegations of the plaintiff that the defendants had an alternative place of residence in Pune, Maharashtra are vague and cannot be believed. The learned counsel for the defendants submitted that the sister of the defendant No.1 had briefly

come to console the death of the husband of the defendant No.1 and had returned to her place of residence and the defendant No.1 had not committed any act of contempt or disobedience. Thus, the learned counsel for the defendants has prayed that the application be dismissed.

6. There are certain facts that seem to be not in dispute. The defendant No.1 is the daughter-in-law of the plaintiff. She had come into the suit premises after her marriage to the son of the plaintiff on 27th August, 2014. The plaintiff's son being the husband of the defendant No.1 expired on 29th September, 2020. Even if it was accepted that the defendant No.2 had come to reside with her daughter then, to be of comfort to her daughter, clearly, she has no right to continue to stay in the suit premises, once the plaintiff has expressed her desire that the defendant No.2 should leave. Nothing has been stated in the written statement that discloses the right of the defendant No.2 to remain in the suit premises. In fact, she has not claimed any such right. No doubt the learned senior counsel for the defendants argued that it was a joint written statement filed and that the title of the plaintiff has been questioned by the defendants. However the defendant No.2 has no right to either question the title of the plaintiff, or assert the right to residence in the suit premises as legally, she has no such rights to remain in the suit premises.

7. In respect of the defendant No.1, averments in her written statement need to be considered: (i) that the suit has been filed as a counterblast to the DV Act proceedings initiated by the defendant no.1 against the plaintiff in which on 14th January, 2021, a restraint order had been passed against the plaintiff and her grandson from dispossessing the

defendants from the suit property, which according to her, forecloses the right of the plaintiff to file the instant suit; (ii) that the suit property was a shared household/matrimonial home, therefore, the suit was not maintainable and no decree of eviction can be passed against her qua the shared household, particularly in view of the right of residence granted to her by the learned Metropolitan Magistrate; (iii) that the plaintiff herself had executed a registered Will dated 16th December, 2019 acknowledging that the defendant No.1 had been residing in the shared household along with her husband and had been looking after the plaintiff and further bequeathing the property in equal shares to her daughter and her son (now deceased) and thus, to the defendant No.1; (iv) that the suit property was the self-acquired property of the late father-in-law i.e. the husband of the plaintiff who vide his Will dated 22nd December, 1991 had bequeathed the shared household equally between his son, the late husband of the defendant No.1 and his daughter namely Ms. Babita Malhotra, vesting only a limited estate to the plaintiff to live and reside in the suit property for her lifetime with no right to mortgage or sale or otherwise encumber the suit property; (v) that the defendant No.1 was entitled to a half share of the entire property not just on the third floor but on the first and second floors as well, and to a half share in the rent of Rs.3,30,000/- which the plaintiff was receiving and out of which she used to give Rs.69,500/- every month to the late husband of the defendant No.1; and, (vi) that she was being subjected to domestic violence by the plaintiff and her grandson, through constant abuses and economic deprivation, which was why she had sought relief and was granted such relief in the DV proceedings.

8. It may be considered as to whether the defendant No.1 has raised a triable issue with regard to the title of the plaintiff. In this regard it has to be noticed that the defendant No.1 has admitted that the property originally belonged to her late father-in-law and a Perpetual Lease Deed had been executed in his favour. On the one hand she contends that the plaintiff has executed a Will dated 16th December, 2019 bequeathing her property equally between her son (now deceased) and her daughter and at the same time claims that the plaintiff had only a life interest in the suit property as per the Will dated 22nd December, 1991 of late Sh. B.B. Sood, the plaintiff's husband. Clearly, as rightly pointed out by the learned counsel for the plaintiff, the two pleas cannot stand together. But at the same time, she has glossed over the registered Relinquishment Deed dated 15th December, 1999. It reflects a desperate attempt to question the plaintiff's exclusive title to the suit property, which attempt has failed absolutely. Accepting the fact that the plaintiff's husband had bequeathed the property to the children, it is also a fact that the children relinquished their shares and rights in favour of their mother. The Relinquishment Deed is of the year 1999. The son of the plaintiff married three times, and the defendant No.1, being the third wife, entered his life on 27th August, 2014. Between 1999 till 2014, neither the deceased son of the plaintiff nor her daughter questioned the Relinquishment Deed executed in favour of their mother or the execution of the Conveyance Deed in 2000 solely in the name of the plaintiff. Even after the marriage of the deceased son of the plaintiff to the defendant No.1, the son never questioned the validity of the Relinquishment Deed, by instituting any legal proceedings. Therefore, the challenge to the title

of the plaintiff, as sought to be raised by the defendant No.1, is a completely untenable one. It is clear from the pleadings that the plaintiff is the exclusive owner of the suit property.

9. It is no doubt true that admissions have to be unequivocal and clear to seek a judgment on admissions. However, a Division Bench of this Court has held in ***P.P.A. Impex Pvt. Ltd. Vs. Mangal Sain Metal*** 2009 SCC OnLine Del 3866 that, if pleadings which are in the nature of total moonshine are taken note of, the provision of Order XII Rule 6 would be virtually annihilated. In that case, reference was made to the view taken by the Supreme Court in ***Mechalac Engineers & Manufactures Vs. Basic Equipment Corporation*** (1976) 4 SCC 687, which related to a suit under Order XXXVII CPC, to hold that if a defence amounting to moonshine has been presented, it should be summarily dismissed and the suit decreed forthwith and such moonshine defences should not needlessly go to trial. It held that the standard set by the Supreme Court in ***T. Arivandandam Vs. T.V. Satyapal*** (1977) 4 SCC 467, though for plaints, were "equally applicable when the Court is confronted with a defence which is implausible".

10. Here, the defendants have admitted to the existence of the Relinquishment Deed and the Conveyance Deed executed in favour of the plaintiff. Merely raising the bogey of a life interest does not detract from the admissions made, thus acknowledging the exclusive title of the plaintiff to the suit property. The documents as noticed have never been challenged and the raising of pleas that are untenable leading to a fruitless enquiry in trial should be avoided.

11. A Coordinate Bench of this court in ***Promila Gulati Vs. Anil Gulati*** 2015 SCC OnLine Del 7406 while considering the application under Order XII Rule 6 CPC made the following observations-

> *"17. The following judgments are relevant for the purpose of considering the prayer made in the present application under Order 12 Rule 6 CPC:*
>
> *(a)…*
>
> *(b) …*
>
> *(c) …*
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> *(d) This Court in the case of Zulfiquar Ali Khan (dead) through LRs Vs. Straw Products Limited 2000 (56) DRJ 590 in para 10 observed as under:*
>
> > *"10. This is a notorious fact that to drag the case, a person so interested often takes all sorts of false or legally untenable pleas. Legal process should not be allowed to be misused by such persons. Only such defense as give rise to clear and bona fide dispute or triable issues should be put to trial and not illusory or unnecessary or mala fide based on false or un-tenable pleas to delay the suit……"*
>
> ***(emphasis added)***

12. However, the mere fact that the title of the plaintiff has not been shaken by the defence of the defendants will not suffice to grant her a decree, as the defendant No.1 has raised the plea that the suit premises constituted her shared household which needs to be looked into. There is no dispute that the defendant No.1 had come into the suit premises after her marriage on 27th August, 2014 with the son of the plaintiff, as repeatedly noticed hereinabove. In fact the plaintiff herself does not dispute the fact that the suit premises formed the shared household. Of

course, this is not a case, unlike ***Satish Chander Ahuja*** (supra), where the son of the plaintiff and his wife were having a marital discord. Unfortunately, in the present case the defendant No.1 has lost her husband. Nevertheless, the plaintiff has admitted that the premises formed the shared household of the defendant No.1. Thus, no further evidence or proof may be required to establish this fact.

13. The learned senior counsel for the defendants, relying on the judgment of the Supreme Court in ***Satish Chander Ahuja*** (supra) has argued that as the suit property was the shared household of the defendant No.1, this suit itself could not be instituted. However, the learned counsel for the plaintiff has pointed out that quite to the contrary, the Supreme Court has found a civil suit for possession to be in consonance with the provisions of Section 17 of the DV Act. This Court is also of the view that in the light of the decision of the Supreme Court in ***Satish Chander Ahuja*** (supra), the mere fact that premises take on the nature of shared household would not *per se* be a complete defence to a suit for possession filed by the owner of the property, being the in-laws of the defendant/aggrieved person, nor is such a suit barred. The protection under the DV Act assuring the residence of the aggrieved person in the shared household does not vest any proprietary or indefeasible right on the aggrieved person. It is also subject to eviction being initiated in accordance with law. Section 17 of the DV Act reads as under:

> *"**17. Right to reside in a shared household.**—(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in*

the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law."

(emphasis added)

14. It would be apposite to reproduce the view taken by the Supreme Court in ***Satish Chander Ahuja*** (supra) on what would satisfy the need to adopt procedure established by law, to seek the eviction of an "aggrieved person".

> *"124. Drawing the analogy from the above case, we are of the opinion that the expression "save in accordance with the procedure established by law", in Section 17(2) of the 2005 Act contemplates the proceedings in the court of competent jurisdiction. Thus, suit for mandatory and permanent injunction/eviction or possession by the owner of the property is maintainable before a competent court. We may further notice that in sub-section (2) the injunction is "shall not be evicted or excluded from the shared household ... save in accordance with procedure established by law". Thus, the provision itself contemplates adopting of any procedure established by law by the respondent for eviction or exclusion of the aggrieved person from the shared household. Thus, in appropriate case, the competent court can decide the claim in a properly instituted suit by the owner as to whether the women need to be excluded or evicted from the shared household. One most common example for eviction and exclusion may be when the aggrieved person is provided same level of alternate accommodation or payment of rent as contemplated by Section 19 sub-section (f) itself. There may be cases where the plaintiff can successfully prove before the competent court that the claim of the plaintiff for eviction of the respondent is accepted. We need not ponder for cases and circumstances where the eviction or exclusion can be allowed or refused. It depends on facts of each case for which no*

further discussion is necessary in the facts of the present case. The High Court in the impugned judgment has also expressed opinion that suit filed by the plaintiff cannot be held to be non-maintainable with which conclusion we are in agreement."

(emphasis added)

15. Nor does the right of residence allowed to aggrieved person extend to her insisting on the right of residence in a particular premises. Section 19 of the DV Act provides for an alternate accommodation being given to the aggrieved person of the same level in certain circumstances. In fact even in ***Satish Chander Ahuja*** (supra) relied upon by the learned counsel for the defendants, the judgment of a Division Bench of this Court in ***Eveneet Singh Vs. Prashant Chaudhari*** 2011 SCC OnLine Del 4651 in para 14 was quoted with approval as under:

"14. It is apparent that clause (f) of sub-section (1) of Section 19 of the Act is intended to strike a balance between the rights of a daughter-in-law and her in-laws, if a claim to a shared residence by the daughter-in-law pertains to a building in which the matrimonial home was set up belongs to her mother-in-law or father-in-law."

16. The Supreme Court in para 90 of its judgment in ***Satish Chander Ahuja*** (supra) further observed as under:

"90. Before we close out discussion on Section 2(s), we need to observe that the right to residence under Section 19 is not an indefeasible right of residence in shared household especially when the daughter-in-law is pitted against aged father-in-law and mother-in-law. The senior citizens in the evening of their life are also entitled to live peacefully not haunted by marital discord between their son and daughter-in-law. While granting relief both in application under

Section 12 of the 2005 Act or in any civil proceedings, the Court has to balance the rights of both the parties. The directions issued by the High Court in para 56 adequately balance the rights of both the parties."

(emphasis added)

These directions issued by the learned Single Judge of this court in para 56 of its judgment in ***Ambika Jain Vs. Ram Prakash Sharma*** 2019 SCC OnLine Del 11886 are reproduced for ready reference as below:

"56. In these circumstances, the impugned judgments cannot be sustained and are accordingly set aside. The matters are remanded back to the trial Court for fresh adjudication in accordance with the directions given hereinbelow:

(i) At the first instance, in all cases where the respondent's son/the appellant' husband has not been impleaded, the trial Court shall direct his impleadment by invoking its suo motu powers under Order I Rule 10 CPC.

(ii) The trial Court will then consider whether the appellant had made any unambiguous admission about the respondent's ownership rights in respect of the suit premises; if she has and her only defence to being dispossessed therefrom is her right of residence under the DV Act, then the trial Court shall, before passing a decree of possession on the sole premise of ownership rights, ensure that in view of the subsisting rights of the appellant under the DV Act, she is provided with an alternate accommodation as per Section 19(1)(f) of the DV Act, which will continue to be provided to her till the subsistence of her matrimonial relationship.

(iii) In cases where the appellant specifically disputes the exclusive ownership rights of the respondents over the suit premises notwithstanding the title documents in their favour, the trial Court, while granting her an opportunity to lead evidence in support of her claim, will be entitled to pass interim orders on applications moved by the respondents,

directing the appellant to vacate the suit premises subject to the provision of a suitable alternate accommodation to her under Section 19(1)(f) of the DV Act, which direction would also be subject to the final outcome of the suit.

(iv) While determining as to whether the appellant's husband or the in-laws bears the responsibility of providing such alternate accommodation to the appellant, if any, the trial Court may be guided by paragraph 46 of the decision in ***Vinay Verma*** *(supra).*

(v) The trial Court shall ensure that adequate safeguards are put in place to ensure that the direction for alternate accommodation is not rendered meaningless and that a shelter is duly secured for the appellant, during the subsistence of her matrimonial relationship.

(vi) This exercise of directing the appellant to vacate the suit premises by granting her alternate accommodation will be completed expeditiously and not later than 6 months from today."

17. Thus, it is clear that even where a residence is clearly a shared household, it does not bar the owner, the plaintiff herein, from claiming eviction against her daughter-in-law, if the circumstances call for it.

18. The next question then is, do these circumstances exist in the present case? The learned senior counsel for the defendants stressed on the fact that the learned Metropolitan Magistrate had vide order dated 14th January, 2021 granted a residence order pending the disposal of her application under Section 12 of the DV Act. Therefore, no order of eviction can be passed by the civil court. The Supreme Court had considered in ***Satish Chander Ahuja*** (supra) the effect of the residence orders passed by the Magistrate under Section 19 of the DV Act in the civil suit. After extensive discussion, the Supreme Court concluded that

the decision by a criminal court does not bind the civil court but would be relevant while dealing with the suit for possession or eviction that may be filed against the daughter-in-law. Therefore the contention of the learned senior counsel for the defendants cannot be accepted.

19. It now has to be seen whether the plaintiff must be put to the rigours of a trial to determine whether she has made out a case for re-claiming possession of the suit premises or whether the facts as set out in the written statement and the plaint would be sufficient to come to a conclusion. Reference is once again made to the pleadings. A strained or frictional relationship between the parties, would be relevant to decide whether grounds for eviction exist.

20. A perusal of the written statement would reveal that the relationship between the parties is far from cordial. It is the case of the defendant No.1 that the plaintiff and her grandson have subjected her to abuse but it is also her case in the written statement that she was entitled to half share in the entire property bearing No.A-44, Friends Colony (East), New Delhi and thus entitled to half of the rental income as per the Will of the late father-in-law. She has alleged that her stepson, being the grandson of the plaintiff was wasting away the assets of her late husband and was operating various bank accounts and mutual fund accounts of her late husband on the basis of being the nominee, without accounting for her share. It is therefore more than amply clear that the defendant No.1 has staked claim to the assets. In fact, in para No.5 of the written statement she has specifically claimed that she was entitled to a sum of Rs.10 crores as compensation for the loss, injuries and mental trauma

suffered by her at the hands of her stepson and the plaintiff though no counterclaim has been filed and nor is the stepson before this Court.

21. In this situation, the presence of the defendant No.2 seems to be adding fuel to the fire. The plaintiff has stated that the defendant No.2 had come when the defendant No.1 had lost her husband but she continued to stay on. In the entire written statement, there is not a whisper as to when the defendant No.2 had come into the premises and what was her right to continue to stay there. The only claim made is that she is a widowed lady of 79 years of age but the plaintiff is also a widow of 78 years of age, the only difference being that the plaintiff is the owner of the property, whereas the defendant No.2 has no right to claim residence and is in the status of a trespasser. The plaintiff had filed an application being I.A. 11424/2021 under Order XXXIX Rule 2A CPC pleading that the sister of the defendant No.1 had also come to the premises and thus the defendant No.1 was attempting to pressurise the plaintiff in all ways. The sister has since left the suit premises as informed by the learned senior counsel for the defendants.

22. But is it clear that the defendant No.1 in order to wrest a settlement from the plaintiff, has made efforts to pressurise her while staying in her premises. The defendants have admitted in their written statement that the plaintiff has one bedroom in her possession whereas the defendants had two bedrooms in their possession with kitchen, drawing and dinning being common portions. By inducting her mother and for a short time her sister, the defendant No.1 seems to have made an attempt to assert rights in respect of the suit property, clearly causing distress to the plaintiff.

The averments in the written statement are sufficient to establish a justification for the plaintiff to seek the eviction of the defendants. There is no need to put the plaintiff to proof of the admitted stand of the defendants as expressed in their joint written statement. The Supreme Court in ***S. Vanitha Vs. Deputy Commissioner, Bengaluru urban District and Others*** 2020 SCC OnLine SC 1023 held that when faced with competing claims of the parties, one constituting a shared household and the other the right of the senior citizen to live peacefully in the twilight of their life, appropriate reliefs must be given. In view of the clear facts and circumstances, the plaintiff is clearly entitled to seek possession of the suit premises from the two defendants without the rigours of an unnecessary and prolonged trial at her age.

23. There is of course one aspect that needs to be considered. The learned counsel for the plaintiff submitted that the defendants had a place of residence at Pune, though the learned senior counsel for the defendants argued that this was a vague plea. It is to be noticed that in the written statement the allegation is that the plaintiff and the grandson were trying to force the defendants "to return to Pune". Interestingly, the affidavit of the defendant No.2 also states her residential address to be the suit premises but it cannot be her permanent residence. The defendant No.2 had arrived from somewhere upon the death of her son-in-law. Clearly, therefore, there has been suppression of facts by the defendants.

24. Be that as it may, this application under Order XII Rule 6 CPC is allowed. The suit is partly decreed in respect of prayer (A) of the plaint.

25. A decree for possession in favour of the plaintiff and against the

defendants No.1&2 is granted. The defendants are granted three months time to vacate the premises, subject to Covid-19 conditions, in which event, they can move the court for further time to vacate.

26. Decree sheet be drawn up accordingly.

CS(OS) 93/2021 & I.A. 11424/2021 (of plaintiff u/O XXXIX R-2A CPC for initiating appropriate proceedings for wilful and contumacious disobedience of the order dated 11.02.2021)

27. For the reliefs claimed in prayers (B) to (E) of the plaint, list for framing of issues on 10th February, 2022.

28. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

DECEMBER 10, 2021
'bs'