

**In the Court of Sh. Ashwani Kumar Sarpal, Principal District &
Sessions Judge, East District, Karkardooma Court, Delhi.**

Smt. Seema Jain

vs.

Smt. Anju Jain & Anr.

(Crl. Appeal no. 34/25)

Date of institution--19-2-2025

Date of judgment---13-3-2026

**(Appeal u/s 29 of Domestic Violence Act against the
judgment dated 18-1-2025)**

JUDGMENT:-

- 1) Both the respondents of present appeal namely Smt. Anju Jain and her minor son Master Yug (who are hereinafter referred as petitioner no. 1 and 2 respectively) filed a petition under Section 12 of D.V. Act against Sh. Sachin Jain (husband of petitioner no. 1) as respondent no. 1, Smt. Sushila Jain (mother in law of

petitioner no. 1) as respondent no. 2, Smt. Mamta Jain and Smt. Seema Jain (both sisters in law of petitioner no. 1) as respondents no. 3 and 4 respectively as well as husbands of respondents no. 3 and 4. Ld. Trial Court did not choose to issue summons to husbands of respondent no. 3 and 4. Trial Court record shows that respondent no. 2 Smt. Sushila Jain expired during pendency of the case, so the matter was closed against her vide order dated 4-7-2022. Respondent no. 1 Sh. Sachin Jain initially was appearing but lateron stopped attending the court and became ex-parte vide order dated 7-2-2024. Only the respondent no. 3 Smt. Mamta Jain and respondent no. 4 Smt. Seema Jain (present appellant) contested the case jointly till the end.

- 2) On the basis of the evidence led by petitioner no. 1 as PW-1 as well as respondent no. 4 (present appellant) as DW-1, the case was finally disposed of on 18-1-2025 by ld. Trial Court and respondent no. 1 was directed to pay monthly maintenance of total Rs. 12,000/- to both the petitioners besides compensation amount of Rs. 10,000/- and Rs. 25,000/- towards litigation charges. Protection order was also passed against respondent no.

1 only.

- 3) Ld. Trial Court vide judgment dated 18-1-2025 also granted residence right to both the petitioners in house no. 12, Gali no. 4, Kundan Nagar, Laxmi Nagar, Delhi which was owned by deceased respondent no. 2 Smt. Sushila Jain and was lying vacant after her death. It was held that petitioner no. 1 after marriage initially started residing at her matrimonial home situated at Kailash Nagar but that house was sold by respondent no. 2 Smt. Sushila Jain and above mentioned house in Kundan Nagar was purchased, wherein petitioners also shifted with respondent no. 1. At last, due to matrimonial disputes, petitioners were thrown out of the said house on 6-8-2014. Respondent no. 2 Smt. Sushila Jain, mother in law of petitioner no. 1 by way of public notice dated 29-8-2014 in the newspaper disowned her son respondent no. 1 as well as present petitioners. Respondent no. 1 also left this house of Kundan Nagar thereafter.
- 4) Ld. Trial Court in judgment found that the petitioners come within the definition of 'aggrieved persons' and were subjected to

‘domestic violence’. It was also held that there was no ‘domestic relationship’ between the petitioners and the respondent no. 4 Smt. Seema Jain (present appellant) as she was residing in her own matrimonial house with her husband situated in Tri Nagar. However, the existence of shared household between the petitioners and respondent no. 1 Sh. Sachin Jain and respondent no. 3 Smt. Mamta Jain was proved though it was also held that Smt. Mamta Jain had not subjected the petitioners to domestic violence.

- 5) While granting residence rights to the petitioners against respondent no. 1 Sh. Sachin Jain, ld. Trial Court in para no. 27 of the judgment directed the present appellant/respondent no. 4 to handover the keys of house no. 12, Gali no. 4, Kundan Nagar, Laxmi Nagar, Delhi to the petitioners within one month as respondent no. 4 had admitted in her evidence that she frequently used to visit the above mentioned property.
- 6) Respondent no. 1 Sh. Sachin Jain or respondent no. 3 Smt. Mamta Jain did not file any appeal against the impugned

judgment and appears to have accepted the verdict. However, respondent no. 4 filed the present appeal challenging the directions given to her to handover the keys of the Kundan Nagar property to the petitioner no. 1 as well as she should not be dispossessed from the said property except with due course of law. If para no. 1 of the appeal is taken into consideration, then it clearly shows that the appellant/respondent no. 4 is aggrieved only of that part of the judgment in which she has been directed to handover the keys of the property to the petitioner. According to the averments made in this appeal, appellant/respondent no. 4 is not having the keys of this Kundan Nagar house.

- 7) On one hand, appellant/respondent no. 4 is challenging only a particular part of the judgment as per directions given to her in para no. 27 but the other paragraphs of the appeal including grounds of appeal shows that she is disputing other facts and circumstances also besides directions given by the Id. Trial court to other respondents who themselves have not come forward to dispute the same. The respondent no. 4/appellant is not sure herself whether to challenge the entire judgment even if findings

are not against her or a particular portion of the judgment related to her as per para no. 27. Keeping in view the specific averments made in first paragraph of the appeal, it has to be held that the appellant/respondent no. 4 is not to be heard on other part of the impugned judgment which is going against respondent no. 1 who was ex-parte or any other findings given against respondent no. 3 as both have not filed any appeal separately nor signed the present appeal nor the present appeal is filed on their behalf. Hence, the present appeal has to be treated as only filed by appellant/respondent no. 4 relating to the directions given to her in respect of handing over the keys of the property to petitioner and not to dispossess her except with due course of law as per para no. 27 of the impugned judgment. Accordingly, there is no need to discuss other grounds taken in the present appeal, findings of which are neither against the present appellant/respondent no. 4 nor are related to her.

- 8) In case appellant/respondent no. 4 is not having any keys of the Kundan Nagar house, then the Id. Trial court can order for break open of the locks of the property and to allow the petitioners to

live in the same as per residence right already given to them. The Kundan Nagar property in question at one time belonged to respondent no. 2 Smt. Sushila Jain who expired during pendency of the case and no Will came on Trial Court record allegedly executed by her, so as per normal rule of succession that property devolves upon all the children in equal proportions including respondent no. 1 who is husband of petitioner no. 1 and father of minor petitioner no. 2. This property is lying vacant as per the evidence of appellant/respondent no. 4 as came on record who used to visit there from time to time. Mere fact that at one time, respondent no. 2 Smt. Sushila Jain had disowned petitioner no. 1 and respondent no. 1 from her properties but that alone did not extinguish their rights in property after her death.

- 9) On 16-12-2025, the date fixed in the present appeal before this court, the appellant/respondent no. 4 filed photocopy of one judgment dated 27-3-2018 passed in a civil suit of permanent injunction instituted by respondent no. 2 Smt. Sushila Jain against the present petitioner no. 1 and others. That suit was decreed and the petitioner no. 1 was restrained from interfering in the

possession of respondent no. 2 Smt. Sushila Jain in the property and also was restrained from entering in the said property. Further, a copy of the Will dated 8-8-2019 was also filed to show that Smt. Sushila Jain bequeathed this Kundan Nagar property in favour of present appellant/respondent no. 4. The copies of these documents were never filed in the Id. Trial Court or even also not referred to in the present appeal anywhere. First time photocopies of these documents were placed on record of this court on 16-12-2025, when the Id. Presiding Officer was on leave and the Reader of the court took the same from the present appellant/respondent no. 4 and placed on record. Appellant/respondent no. 4 before placing these documents on record even did not obtain any prior permission of the court or moved any application alongwith the same for filing it. It is unbelievable that appellant/respondent no. 4 was having no knowledge of the judgment dated 27-3-2018 and Will dated 8-8-2019 earlier because in the civil suit for injunction, she was appearing in the court on behalf of respondent no. 2 Smt. Sushila Jain as her attorney and along with respondent no. 3 Smt. Mamta Jain was jointly contesting the case before Id. Trial Court who was one of the attesting witnesses of the Will.

These two documents were not brought on record before Id. Trial Court at any stage nor its reference was given even in the present appeal but suddenly and secretly filed photocopies on record without even permission of the court. Thus, these two documents cannot be considered at all while disposing of this appeal. Appellant/respondent no. 4 can file a separate proceeding in this regard to claim ownership of the property in question and to annul the rights of the present petitioners to stay in that Kundan Nagar property being their sharehold accommodation on basis of alleged Will dated 8-8-2019. Till the petitioners are evicted from this property in question legally, they have every right to enjoy the same by living in it as per the impugned judgment.

- 10) During the trial before the Id. Trial Court, it simply came on record that respondent no. 2 Smt. Sushila Jain had filed a civil suit against the present petitioner no. 1 and others, which was decided in her favour by holding that she was the exclusive owner of the property in question. However, no copy of the judgment dated 27-3-2018 was produced before Id. Trial Court. Otherwise also, as per this judgment, a relief of permanent injunction was

granted against the petitioner no. 1 but the relief of permanent injunction was personal in nature in favour of respondent no. 2 Smt. Sushila Jain. After death of respondent no. 2 Smt. Sushila Jain, the said judgment and decree dated 27-3-2018 cannot be enforced against the present petitioners. As no Will allegedly executed by respondent no. 2 Smt. Sushila Jain in favour of appellant/respondent no. 4 was brought on record before Id. Trial Court, so Id. Trial Court was justified to hold that as per normal rule of succession, even the respondent no. 1 gets a right of joint ownership in the property and is having equal share with other legal heirs of respondent no. 2. It means petitioners now after death of respondent no. 2 can get the benefit of shared household in Kundan Nagar property in which respondent no. 1 has joint undivided share and right until the appellant/respondent no. 4 establish her exclusive right in it on basis of alleged Will dated 8-8-2019 and get petitioners removed from the property through court of law. This judgment dates 27-3-2018 was never filed before the Id. Trial Court and even no detail and particulars of this judgment was given at any stage till the passing of impugned judgment. Now suddenly relying upon this judgment by the

appellant/respondent no. 4 is not permissible which otherwise also is not enforceable after death of respondent no. 2 Smt. Sushila Jain as it was creating only a personal right. In case appellant/respondent no. 4 has allegedly got any exclusive right in the property through the alleged Will of respondent no. 2 Smt. Sushila Jain, then a separate proceedings are to be initiated by her but she cannot be allowed to frustrate the judgment of Id. Trial Court under which she was simply given directions to handover the keys of the house to the present petitioners. Her challenge to the impugned judgment is very limited and taking of other grounds in the present appeal relating to respondents no. 1 and 3 cannot be taken into consideration especially when these two respondents have not come forward to challenge the said judgment.

- 11) In view of the above, present appeal is hereby dismissed with costs of Rs. 10,000/- payable by the appellant/respondent no. 4 to both the petitioners. Since the appellant/respondent no. 4 is saying that she is not having any keys of the Kundan Nagar house with her, so the Id. Trial Court can order for break open the locks

of the property and to give its possession to the present petitioners according to the findings given in the impugned judgment dated 18-1-2025 which is upheld. Present appellant/respondent no. 4 is at liberty to take any legal action on the basis of the alleged Will dated 8-8-2019 of respondent no. 2 Smt. Sushila Jain by instituting a separate proceeding but till the time petitioners are not ordered to be evicted in that proceedings by court of law, they cannot be forcibly asked to leave from the said Kundan Nagar property. Thus, interim stay order dated 12-11-2025 is hereby vacated. Appeal file be consigned to record room and TCR along with copy of judgment be sent back to ld. Trial Court which can proceed with execution if any.

Dt.-13-3-2026.

(Ashwani Kumar Sarpal)
Principal District & Sessions Judge
East District, Karkardooma, Delhi.