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CS DJ ADJ 15366/16

KELA DEVI Vs. MAHESH KUMAR ORS.

01.12.2023

Present: None for Plaintiff.
Ms. Anjali Pathak, Ld. Counsel for Defendant
no. 2.

Vide the present order, I would decide the application under Order XII R 6 of CPC moved by Defendant no. 2.

The application under Order XII R 6 of CPC prays that a decree be passed in favour of Defendant no. 2 granting her the right to live in the suit property peacefully and without interruption.

The premise of the application moved by Defendant no. 2 is that the Plaintiff is not the owner of the suit property as she had claimed that the suit property was purchased after sale of another property located in Jeevan Park, Uttam Nagar, New Delhi, whereas, the Plaintiff has claimed that she was still living in Jeevan Park in the year 2005 and therefore, question of purchasing the suit property in the year 2004 does not arise.

Whether or not the Plaintiff is the owner of the said property is a question for trial and even if there are contrary averments in the plaint, the same cannot be construed as an unequivocal admission by the Plaintiff. No relief can be granted to the Defendant for peaceful possession in an application moved by her under Order XII R 6 of CPC. If the Defendant no. 2 wishes to claim any title or right in the suit property, then she would have to file a suit / counter claim as the

case may be. Certainly the Defendant cannot be granted a decree in the suit filed by the Plaintiff. The application is entirely misconceived, frivolous and vexatious.

Application under Order XII R 6 of CPC is accordingly dismissed.

Put up for further proceedings on **19.03.2024**.

(DIVYANG THAKUR)
ADJ-03/ SOUTH-WEST
DWARKA/ NEW DELHI
01.12.2023 (A)