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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 1900/2015 & IAs No.17155/2019 (of D-1 u/O I R-10 CPC),
17156/2019 (of D-1 u/O XXXIX R-1 CPC), 1925/2019 (of D-1 u/S
151 CPC), 2480/2019 (of D-2 u/S 151 CPC), 5622/2019 (of D-1 u/S
151 CPC), 8707/2019 & 8708/2019 (both of D-1 u/O VIII R-1A CPC)
& 11368/2019 (of D-1 u/S 151 CPC) & CCP(O) Nos.20/2019,
66/2019 & 77/2019
MANIKA MADAN Plaintiff

Through: Ms. Payal Jain, Adv.

Versus

MAMTA NAGPAL & ANR Defendants

Through: Mr. Vikram Singh, Adv. for D-1.
Ms. Mansi Gupta, Adv. for D-2 with
husband Mr. Meheresh Lalit of D-2.

AND

TEST.CAS. 4/2016 & IAs No.11357/2019 (of R-2 u/S 151 CPC),
11362/2019 (of R-2 u/S 151 CPC) & 17248/2019 (of R-2 u/S 151
CPC)

MANIKA MADAN Petitioner

Through: Ms. Payal Jain, Adv.

Versus

STATE & ORS. Respondents

Through: Mr. Vikram Singh, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **11.12.2019**

1. The matters are listed today in terms of order dated 14th November, 2019 in Test.Cas. No.4/2016.
2. The files of RFAs No.987/2016, 659/2018 & 697/2018 have been received.
3. CS(OS) No.1900/2015 is also listed today.

CS(OS) 1900/2015 & TEST.CAS. 4/2016

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4. What is recorded in paragraphs 19 to 21 of the order dated 14th November, 2019 is borne out from the record.

5. On enquiry, it is stated that issues even have not been framed in CS(OS) No.1900/2015.

6. The counsel for Mamta Nagpal states that the files of RFAs No.987/2016, 659/2018 & 697/2018 were called because it was his contention on 14th November, 2019 that Ms. Payal Jain, Advocate appearing for Manika Madan in Test.Cas. No.4/2016 is the advocate against Manika Madan, Mamta Nagpal and Baruna Madan in proceedings subject matter of RFAs.

7. On enquiry, it is informed (i) that one Raj Rani had instituted a suit for recovery of possession of property No.1102-04, Gali No.13, Naiwala, Abdul Rehman Road, Karol Bagh, New Delhi against the father of Manika Madan, Mamta Nagpal and Baruna Madan; (ii) that while it was the plea of Raj Rani in the said suit that the father of Manika Madan, Mamta Nagpal and Baruna Madan was a licensee in the property, it was the plea of the father of Manika Madan, Mamta Nagpal and Baruna Madan that he was a tenant in the property; (iii) that the father of Manika Madan, Mamta Nagpal and Baruna Madan died during the pendency of the suit and after his demise only Mamta Nagpal contested the suit; and, (iv) that a decree for recovery of possession has been passed and against which RFA No.987/2016 has been filed by Mamta Nagpal.

8. It is the contention of the counsel for Mamta Nagpal that Ms. Payal Jain, Advocate is the advocate for Raj Rani aforesaid and thus has an interest adverse to Manika Madan, Mamta Nagpal and Baruna Madan and in CS(OS) 1900/2015 & TEST.CAS. 4/2016

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these proceedings has become the advocate for Manika Madan and during evidence has been eliciting answers to benefit Raj Rani aforesaid and Ms. Payal Jain, Advocate cannot do so by virtue of Rule 33 of Bar Council of India Rules, 1975. It is further contended that though the stand of the father of Manika Madan, Mamta Nagpal and Baruna Madan was that he was a tenant but Ms. Payal Jain, Advocate got Manika Madan and Baruna Madan, after the demise of the father, to make a statement in the suit admitting the plea of Raj Rani, of their father being a licensee in the property and the decree for possession has been passed *inter alia* on the said ground.

9. Ms. Payal Jain, Advocate has drawn attention to pages 163 to 166 of RFA No.987/2016 being affidavits of Manika Madan and Baruna Madan filed in the suit aforesaid, after the demise of their father, stating that the father had moved into the said property on mutual consent “to look after the assets of his elder brother deceased Desh Raj Madan” and that after the death of father, it was decided between Manika Madan, Mamta Nagpal and Baruna Madan that Mamta Nagpal shall take care of the said property and she took possession of the property on the pretext of getting the household items removed therefrom but subsequently started construction work. Ms. Payal Jain, Advocate states that the same is not inconsistent with the stand of the father in the suit.

10. *Prima facie*, from the said affidavit at page 163 and from the factum of Manika Madan and Baruna Madan not preferring any appeal against the decree for possession, it appears that they are not wanting to contest the claim for recovery of possession. The affidavit at page 163 and 164 does not claim tenancy of the father, but is more akin to the plea of licensee.



11. Ms. Payal Jain, Advocate seeks time to address further on the said issue.
12. List Test.Cas. No.4/2016 & CS(OS) No.1900/2015 on 8th January, 2020, as already scheduled.
13. The files of RFAs No.987/2016, 659/2018 & 697/2018 summoned for today be also sent to this Court on 8th January, 2020.

A copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

DECEMBER 11, 2019
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