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

+ **CS(OS) 452/2020, and I.A. 12633/2020**

INDU RANI@INDU RATHI

.....Plaintiff

Through: Ms. Kajal Chandra and
Mr.Hatneimawi, Advs.

versus

SUMITRA DEVI & ORS.

.....Defendants

Through: Mr. N. S. Dalal, Ms. Nidhi Dalal,
Mr.Alok Kumar, Ms. Rachana Dalal,
Mr.Karan Manu and Mr. Kunal
Nerwal, Advocates for D-1 to 3.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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10.02.2025

1. Having heard learned counsel appearing on behalf of the parties, the Court finds that the following issues are proposed on behalf of the plaintiff:-

"1. Whether the Plaintiff is entitled to get a decree of possession of the suit property (measuring 600 sq. yd.) situated at Khasra No.262 (New Lal Dora), Village Iradat Nagar, Naya Bans, Narela, Delhi-110082 which is illegally and lawfully owned by the Plaintiff in terms of the final decree dated 20.12.2017 passed by the Hon'ble High Court in Civil Suit bearing CS(OS) No.1705/2012? OPP

2. Whether the portion measuring 900 sq. yd. Sold by the Defendants was part of the share of Late Saroop Singh in Khasra No.262 (New Lal Dora), Village Iradat Nagar, Naya Bans, Narela, Delhi-110082? OPD

3. Whether the Defendants have illegally encroached/trespassed upon the suit property (measuring 600 sq. yd.) situated at Khasra No.262 (New Lal Dora), Village Iradat Nagar, Naya Bans, Narela, Delhi-110082 falling in the share of the Plaintiff? OPP

4. Whether the Plaintiff is entitled to a decree of mesne profits @Rs.1,00,000/- per month from 20.12.2017 (when the Plaintiff was put



in exclusive physical portion of the suit property in terms of the final decree dated 20.12.2017 passed by this Hon'ble Court) along with interest @12% per annum till the exclusive physical possession of the share of the suit property belonging to the Plaintiff is handed back to the Plaintiff by the Defendants? OPP

5. Reliefs.”

2. However, defendant nos.1 to 3 proposed nine issues, which read as under:-

“1. Whether suit is maintainable in the absence of impleading the proper and necessary parties i.e., her brothers? (OPP)

2. Whether present suit is barred under Order 2 Rule 2 as there is no new cause of action? (OPD)

3. Whether suit is barred under Order 7 Rule 11(c) since the plaintiff is escaping from paying the court fee on the ground that plaintiff is in symbolic possession? (OPP)

4. Whether the suit filed by the Plaintiff is barred by the law of limitation, as partition which has taken place long, has not been assailed within limitation period? (OPP)

5. If the partition has taken place long back between the predecessor-in-interest of the parties, same has been accepted in toto whether same could be ever reopened? (OPP)

6. Whether the decree dated 20.12.2017 between intra parties can the same be binds and applies on third parties? (OPP)

7. Whether plaintiff and her brothers are in possession of the property shown in the site plan as filed by the plaintiff and claimed by them and how much is said area? Or whether the plaintiffs are in possession of the area shown by the defendants in the two site plans? What is the area in possession of plaintiff and are brothers? (OPP and OPD)

8. Whether decree dated 20.12.2017 in CS(OS) 1705 of 2012 is obtained fraudulently by not disclosing the true facts as the partition already taken place long back? (OPD)

9. Whether the relief claimed by the plaintiff is contrary to relief granted in the decree dated 20.12.2017? (OPP)”

3. So far as the issue nos.1 to 5 proposed on behalf of the plaintiff are concerned, they stand framed.



4. With respect to proposed issues on behalf of defendant nos. 1 to 3 are concerned, Issue nos. 2, 3, 4, 5, 6, 8 and 9 seem to suggest that the relief prayed by the plaintiff in the instant case, according to the said defendants, is barred under Order II Rule 2 of CPC, as there has already been a decree dated 20.12.2017 between intra-parties, which binds and applies on the third party.

5. In view of the aforesaid, the Court finds that the proposed issue nos. 2, 4, 5, 6, 8, and 9 can be summarized as under:-

“As to whether the subject matter of the instant civil suit is barred under Order II Rule 2 of CPC in view of earlier proceedings in CS no.1705/2012? OPD”

6. So far as the proposed issue no.1 by the defendants nos. 1 to 3 is concerned, the same also stands framed, and the onus of proof would be on defendants.

7. With respect to issue no.7 is concerned, the same does not require to be framed in view of the issues already proposed by the plaintiff and stands framed by this Court.

8. In view of the aforesaid, the following issues are summarized to have framed for adjudication:-

“1. Whether the Plaintiff is entitled to get a decree of possession of the suit property (measuring 600 sq. yd.) situated at Khasra No.262 (New Lal Dora), Village Iradat Nagar, Naya Bans, Narela, Delhi-110082 which is illegally and lawfully owned by the Plaintiff in terms of the final decree dated 20.12.2017 passed by the Hon’ble High Court in Civil Suit bearing CS(OS) No.1705/2012? OPP

2. Whether the portion measuring 900 sq. yd. Sold by the Defendants was part of the share of Late Saroop Singh in Khasra No.262 (New



*Lal Dora), Village Iradat Nagar, Naya Bans, Narela, Delhi-110082?
OPD*

3. Whether the Defendants have illegally encroached/trespassed upon the suit property (measuring 600 sq. yd.) situated at Khasra No.262 (New Lal Dora), Village Iradat Nagar, Naya Bans, Narela, Delhi-110082 falling in the share of the Plaintiff? OPP

4. Whether the Plaintiff is entitled to a decree of mesne profits @Rs.1,00,000/- per month from 20.12.2017 (when the Plaintiff was put in exclusive physical portion of the suit property in terms of the final decree dated 20.12.2017 passed by this Hon'ble Court) along with interest @12% per annum till the exclusive physical possession of the share of the suit property belonging to the Plaintiff is handed back to the Plaintiff by the Defendants? OPP

5. As to whether the subject matter of the instant civil suit is barred under Order II Rule 2 of CPC in view of earlier proceedings in CS no.1705/2012? OPD

6. Whether suit is maintainable in the absence of impleading the proper and necessary parties i.e., her brothers? (OPP)

7. Reliefs."

9. List this matter before the concerned Joint Registrar for taking up appropriate steps in accordance with extant rules on 03.03.2025.

FEBRUARY 10, 2025
Nc/sp

PURUSHAINDRA KUMAR KAURAV, J

[Click here to check corrigendum, if any](#)