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

Reserved on: 29th May, 2025

Date of Decision: 02nd September, 2025

+ CS(OS) 464/2018

SHRI SURJEET SINGH

.....Plaintiff

Through: Mr. Siddharth Aggarwal, Adv.
versus

SHRI SWAMBERJEET SINGH
& ANR.

.....Defendants

Through: Defendants are *ex-parte*

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

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J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present suit has been filed by the plaintiff under Section 6 of the Specific Relief Act, 1963 [‘Act of 1963’] seeking a decree for possession *qua* the ground floor portion in the Bungalow No. D-138, Anand Niketan, New Delhi [‘entire property’]. The ground floor portion is the suit premises.

2. It is the case of the plaintiff that he was dispossessed on 01.03.2018 from the ground floor portion.

2.1. It is stated that late Sh. Jaswant Singh [father of the parties herein], was the owner of the entire property i.e., Bungalow No. D-138. It is stated that Sh. Jaswant Singh died on 04.12.2003, leaving behind a Will dated 15.09.1998, by virtue of which, Smt. Jagjit Kaur [mother of the parties herein] became the



exclusive owner of the entire property.

2.2. It is stated that late Smt. Jagjit Kaur during her lifetime, let out the ground floor portion to one, Shri Panya Bootpee [‘the tenant’]. It is stated that Smt. Jagjit Kaur died on 09.06.2017, leaving behind her last Will dated 22.03.2010, by way of which she bequeathed the entire property to the plaintiff herein.

2.3. It is stated that therefore, the plaintiff is the exclusive owner of the entire property i.e., Bungalow no. D-138 since 09.06.2017. It is stated that on 09.10.2017 the tenant i.e., Shri Panya Bootpee vacated the ground floor portion and placed the plaintiff in possession of the said floor. It is stated that since 09.10.2017, the plaintiff is in possession of the said floor.

2.4. It is stated that however, on 01.03.2018, defendant no. 1 in connivance with defendant no. 2, illegally broke open the locks of the ground floor and dispossessed the plaintiff from the said floor.

2.5. It is stated that in the aforesaid facts and circumstances, the plaintiff has filed the present suit seeking possession of the ground floor of the suit property, on 24.08.2018, that is within 6 months from the date when the plaintiff was dispossessed.

Submissions on behalf of the plaintiff

3. Mr. Siddharth Aggarwal, learned counsel for the plaintiff stated that the summons of the suit were issued upon the defendants vide order dated 27.09.2018 and thereafter, *vakalatnama* was filed on behalf of the defendants. He stated that the same has been duly recorded in the order dated 17.12.2018.

3.1. He stated that the defendants have also filed their written statement; admitting that the ground floor portion of the suit property was let out by Smt. Jagjit Kaur [mother of the parties herein] from time to time and the said floor



was vacated by the tenant in October 2017. He stated that however, the defendants have falsely alleged that the keys of the ground floor were handed over by the tenant to Smt. Manmohan Kaur [wife of the plaintiff herein].

3.2. He further stated that the defendants have claimed in their written statement, that on 01.03.2018, when defendant no. 1 arrived in India and requested the keys of the ground floor from Smt. Manmohan Kaur; in response Smt. Manmohan Kaur stated that the said floor is open or that defendant no. 1 can enter the said floor. He stated that the said allegations put forth by the defendants are falsified by the legal notice dated 20.04.2018 [Ex. P-1/1] issued by defendant no. 1.

3.3. He stated that since the defendants stopped appearing in this matter, the defendants were proceeded ex parte vide order dated 24.11.2023; and on the said date, the Court also framed issues. He stated that the plaintiff has led evidence of himself as PW-1 and has proved the possession letter dated 09.10.2017 executed by the tenant as Ex. PW-1/2. He stated that since PW-1 has not been cross-examined and therefore, the averments made in the evidence affidavit have remained unrebutted. He stated that therefore the plaintiff's averment with respect to the receipt of possession of the ground floor of the suit property on 09.10.2017 from the tenant and plaintiffs' dispossession on 01.03.2018 stands unrebutted.

3.4. He stated that in absence of any cross-examination on the averments of the witness, this Court can proceed to rely upon the same. In this regard, he relied upon the judgment of the Division Bench of this Court in **Jasdeep Singh Kalsi v. The State and Others**¹.

¹ 2018 SCC OnLine Del 12977 [at paragraph 14]



3.5. He stated that though the defendants were proceeded ex parte on 24.11.2023, however on 27.02.2024, the counsel for the defendants appeared along with defendant no. 1. He stated that however, when PW-1 tendered his evidence affidavit on 16.12.2024, there was no appearance on behalf of the defendants and therefore, the PW-1 was not cross-examined.

3.6. He stated that since this is a suit filed under Section 6 of Act of 1963, the ingredients of plaintiff's possession as on 01.03.2018 and subsequent dispossession from the ground floor of the suit property have been proved and therefore, the plaintiff is entitled for a decree.

4. The written submissions dated 22.05.2025 and the supplementary submissions dated 11.06.2025 filed on behalf of the plaintiff are on record.

5. This Court has heard the learned counsel for the plaintiff and perused the record.

Stand of the defendants in the written statement

6. Since the defendants were unrepresented at the hearing dated 29.05.2025, this Court has perused the written statement filed by the defendants. The written statement discloses that prior to the institution of this suit, the defendants had already filed a suit for partition with respect to the entire property i.e., Bungalow no. D-138 before this Court, which was registered as CS(OS) 227/2018 titled **Swamberjeet Singh and Another v. Surjeet Singh and Others**. In the said suit, this Court has passed an ad-interim order dated 11.05.2018, thereby directing the parties to maintain status quo *qua* the suit property.

6.1. In addition, it is stated that after the death of Smt. Jagjit Kaur [mother of the parties herein], the parties had approached the Anand Niketan Cooperative Housing Society ['Society'] on 22.06.2017 submitting a



declaration that the plaintiff, defendant no. 1 and defendant no. 2 are the co-owners of the entire property. The declaration dated 22.06.2017 signed by the plaintiff, defendant no. 1 and defendant no. 2, which was submitted to the Society in terms of Rule 27 of the Delhi Cooperative Societies Rules, 1973 [‘DCS Rules’] has been placed on record. The certificate(s) dated 28.06.2017 issued by the Society acknowledging defendant nos. 1 and 2 as the owner and resident of the entire property have also been placed on record.

6.2. Vis-à-vis handover of possession of the ground floor of the suit property by the tenant in October, 2017, it is stated that the tenant vacated the ground floor and handed over the keys to Smt. Manmohan Kaur, the wife of the plaintiff.

6.3. It is stated that the ground floor portion was consistently let out to the tenants earlier by late Shri Jaswant Singh [father of the parties] and after his demise, by Smt. Jagjit Kaur [mother of the parties]. It is stated that the last tenant was Thai embassy, which was inducted by the Smt. Jagjit Kaur and therefore, handover of possession of the ground floor portion to Smt. Manmohan Kaur is not for the exclusive benefit of the plaintiff. It is stated that the possession letter dated 09.10.2017, which has been placed on record is alleged to have been signed by one, Mr. Panya Bootpee; however, he was not the tenant in the suit property. The veracity of the said possession letter has been disputed. It is stated that the plaintiff himself was never in possession of the ground floor portion and therefore he has not been allegedly dispossessed.

6.4. It is stated that the plaint bears the date of 17.09.2018, whereas, it is alleged that the plaintiff was dispossessed on 01.03.2018 and therefore, the suit filed six (6) months after the alleged dispossession is not maintainable



under Section 6 of the Act of 1963.

Analysis and Finding

7. This suit has been filed under Section 6 of the Act of 1963 on the plea that it is the plaintiff who received possession of the ground floor portion from the tenant on 09.10.2017; thereafter, the plaintiff was dispossessed by defendants on 01.03.2018; and that this suit has been filed on 24.08.2018, within six (6) months for recovery of possession.

8. With respect to the submission of the defendants that the suit has been filed beyond six (6) months as the plaint bears the date of 17.09.2018, the plaintiff in its replication has clarified that though the suit was initially filed with the registry of this Court on 24.08.2018, the suit remained pending due to office objections and was first listed on 19.09.2018. It is stated that the plaint was re-signed on 17.09.2018 as the last page of the plaint had to be re-typed to mention the contact details of the counsel for the plaintiff.

8.1. This Court has examined the objection sheet issued by the registry available in the record of the plaint. The objection sheet bears out that the suit was initially filed on 24.08.2018 and indeed an objection directing furnishing the details of the plaintiff's counsel at the foot of the pleading was raised by the registry. In these facts, this Court is persuaded to accept the response of the plaintiff in the replication and treat the plaint to have been filed on 24.08.2018. This Court thus finds that the suit was filed within six (6) months from the period reckoned from 01.03.2018.

9. This Court vide order dated 24.11.2023 framed the following issues: -

- (i) Whether the plaintiff is entitled to relief of possession of the portion of the ground floor of Property bearing No. D-138, Anand Niketan, New Delhi-110021, as shown red in site plan annexed with the Plaint? **OPP**



(ii) Whether the Plaintiff does not disclose any cause of action?

OPD

(iii) Relief.

10. The defendants after filing their written statement, stopped appearing and were proceeded ex parte vide order dated 24.11.2023. In these facts, the plaintiff led his evidence and examined himself as PW-1 and tendered in evidence, the site plan as Ex. PW-1/1 and the possession letter dated 09.10.2017 as Ex. PW-1/2. The plaintiff has also relied upon the legal notice [Ex. P-1] dated 28.04.2018 issued by defendant no. 1.

11. This Court will now proceed to decide both these issues together.

12. It is admitted by the parties that the ground floor of the suit property had been let out by Smt. Jagjit Kaur [mother of the parties herein] to the tenant during her lifetime. Smt. Jagjit Kaur died on 09.06.2017 and during this time, the ground floor was occupied by a tenant. Thus, landlord-tenant relationship existed between Smt. Jagjit Kaur and the tenant.

13. The plaintiff has contended that the ground floor portion was vacated by the tenant on 09.10.2017 and possession was handed over by the tenant to the plaintiff. The defendants as well at paragraph 9(xviii) of its preliminary objections in their written statement admit that the tenant vacated the ground floor in October, 2017 but contend that the possession was handed over to Smt. Manmohan Kaur, the wife of the plaintiff.

In these facts, the occupation of the ground floor by the tenant until October, 2017 and its subsequent vacation by the tenant in October, 2017 is unequivocally admitted by the parties.

14. The plaintiff has not placed on record any documents to show that the tenant attorned to the plaintiff as a landlord after 09.06.2017. The plaintiff has



also not averred in the plaint or the evidence affidavit that the tenant had attorned to him as the landlord.

15. In these facts, this Court is of the considered opinion that the handover of the possession of the ground floor of the suit property by the tenant to the plaintiff or to his wife, Smt. Manmohan Kaur [as asserted by the defendants] is in the plaintiff's capacity as the legal heir of late Smt. Jagjit Kaur. This is evident from the contents of the possession letter dated 09.10.2017 [Ex. PW-1/2] relied upon by the plaintiff. In the possession letter dated 09.10.2017, the details of the plaintiff are described as the son of late Smt. Jagjit Kaur [mother of the parties herein], which is contrary to the common usage, where the details of parentage usually mentioned is the name of the father. Illustratively, in the memo of parties of this suit, the plaintiff has mentioned his father's name and not his mother's name. Similarly, all his affidavits filed in these proceedings mention the father's name.

Thus, the factual mention of late Smt. Jagjit Kaur in the possession letter leads to the inference that the tenant handed over the possession to the plaintiff in his capacity as the legal heir of late Smt. Jagjit Kaur i.e., the landlady. In the considered opinion of this Court, the possession was not handed over by the tenant to the plaintiff on 09.10.2017 in his independent capacity but in his capacity as the legal heir of late Smt. Jagjit Kaur.

16. The plaintiff has averred in the plaint that he has inherited the entire property including the ground floor portion to the exclusion of the defendants on the basis of the Will dated 15.09.1998 executed by late Shri Jaswant Singh [father of the parties] and Will dated 22.03.2010 executed by late Smt. Jagjit Kaur [mother of the parties]. The defendants in their written statement have disputed the existence and the validity of the Will dated 15.09.1998 as well



as the Will dated 22.03.2010 and have stated that both Shri Jaswant Singh [father of the parties herein] and Smt. Jagjit Kaur [mother of the parties herein] died intestate leaving behind their five (5) children, who inherited the suit property equally to the extent of 1/5th share each. The two (2) sisters of the plaintiff have also not admitted or accepted these Wills to be valid, as they have executed a relinquishment deed dated 13.04.2018 for their undivided 1/5th share each in favour of the defendants.

17. Since the sisters of the plaintiff and the defendants have relinquished their share in favour of defendants on 13.04.2018, the plaintiff and defendants are presently the only persons claiming co-ownership in the entire property including the ground floor portion.

18. The plaintiff has not placed on record details of any legal proceedings filed by the plaintiff for seeking a probate of Will dated 15.09.1998 and Will dated 22.03.2010. On the other hand, as noted above the defendants have already instituted a suit for partition based on intestate succession before this Court [i.e., CS(OS) 227/2018]. The defendants have also relied upon the declaration dated 22.06.2017 signed by the plaintiff along with defendant nos. 1 and 2 as per Rule 27 of the DCS Rules, acknowledging the joint rights of the parties in the entire property; though the said declaration has been denied by the plaintiff.

19. In these facts, where the Will(s) dated 15.09.1998 and 22.03.2010 relied upon by the plaintiff, have been disputed by the other legal heirs of the by the testator/testatrix of the said Will(s) to the knowledge of the plaintiff, it is incumbent upon the plaintiff to seek a probate/letter of administration of



the said Will [Re. **Pamela Manmohan Singh v. State and Others**². Until a probate/letter of administration is applied for and granted by the competent Court or until the genuineness of the Will is proved before the Court in CS(OS) 227/2018; the presumption in law is that the suit property has devolved intestate upon all the natural legal heirs; and the plaintiff is a co-owner in the entire property.

20. In these facts, this Court is of the considered opinion that the handover of possession by the tenant to the plaintiff on 09.10.2017 was in latter's capacity as the legal heir of Smt. Jagjit Kaur. It is settled law that possession of one co-owner is in the eye of law possession of all the co-owners, even if only one of them is in actual possession. This position has been succinctly set out by the Supreme Court in **Jai Singh v. Gurmej Singh**³ at paragraph no. 9 which reads as under: -

“9. It is to be noted that in the subsequent Full Bench judgment in Bhartu case [1981 PLJ 204], the earlier decision in Lachhman Singh case [AIR 1970 P&H 304] was distinguished on facts. The principles relating to the inter se rights and liabilities of co-sharers are as follows: -

- (1) A co-owner has an interest in the whole property and also in every parcel of it.
- (2) **Possession of joint property by one co-owner is in the eye of the law, possession of all even if all but one are actually out of possession.**
- (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.
- (4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as,

² 1999 SCC OnLine Del 1077 [paragraph no. 2]

³ (2009) 15 SCC 747



when a co-owner openly asserts his own title and denies, that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition.”

(Emphasis supplied)

21. Since the plaintiff along with the defendants is a co-owner of the suit property by operation of Hindu Succession Act, 1956 [‘Act of 1956’], the receipt of physical possession on 09.10.2017 was for and on behalf of all the co-owners. The defendants were admittedly out of India and the tenant’s handover to the plaintiff was only in the plaintiff’s limited capacity as a legal heir and not in any independent capacity entitling him to exclusive possession. Thus, the plaintiff as well as the defendants were jointly entitled to actual physical possession of the ground floor of the suit property after its vacation by the tenant.

So also, the defendants were not entitled to exclude the plaintiff from possession as on 01.03.2017 or thereafter. In fact, defendants in their legal notice dated 20.04.2018 [Ex. P-1] acknowledge this fact and state that they had given a spare key of the lock to the wife of the plaintiff. The defendants therefore, acknowledged the right of the plaintiff to be in joint possession. The relevant portion of the legal notice reads as under: -

“That on 21.03.2018 our clients asked your wife to open the common front big gate as their other heavy goods were to come. Your wife stated that the keys of the said gate were not traceable and told our



clients that since our client urgently required they could get a key maker/Carpenter - to open the lock. The key maker was hired who in the presence of your wife Smt. Manmohan Kaur and your son Mr. Harjeet Singh opened the lock and changed the same. One key of the new lock was given to your wife Smt. Manmohan Kaur. However, to the utter shock of our clients your wife Smt. Manmohan Kaur called the police and filed a false and frivolous complaint against our clients. On investigation it was very clear that there was no case made out and hence no action was taken by the local police.”

(Emphasis Supplied)

22. In these facts, it appears to this Court that disputes arose between the parties, when the plaintiff resisted the defendants’ entry to the ground floor portion leading to inter-se disputes in March, 2017 and the consequent dispossession of the plaintiff from the ground floor by the defendants. However, the defendants have acknowledged the right of the plaintiff to joint possession in their legal notice [Ex. P-1] as noted above and therefore, they cannot resist the plaintiff’s right for joint possession.

23. To summarise:

- i. Plaintiff along with the defendants and his two (2) sisters would be entitled to inherit the entire property i.e., Bungalow no. D-138 as per Hindu Succession Act, 1956. Since, the two sisters have relinquished their rights in the entire property in favour of the defendants; the plaintiff and the defendants are the only co-owners as per Act of 1956.
- ii. Plaintiff has relied upon Will(s) dated 15.09.1998 and 22.03.2010 to claim ownership of the entire property to the exclusion of the defendants and his sisters; however, despite being aware about the challenge to the validity of the said Will(s) by the other legal heirs, the plaintiff has failed to take any steps to obtain probate/letters of



administration for the said Wills. Until, the plaintiff proves the validity of the said disputed Wills, the plaintiff cannot be presumed to be the absolute owner of the entire property. The validity of the Wills would have to be proved either in CS (OS) 227/2018 or any other proceedings initiated by the plaintiff for such purpose.

- iii. The plaintiff received possession of the ground floor portion from the tenant on 09.10.2017 in his capacity as the legal heir of late Smt. Jagjit Kaur. The possession was however, not handed over to him by the tenant in his independent capacity, whether as a landlord or as an exclusive owner.
- iv. Thus, the possession held by the plaintiff after 09.10.2017 until 01.03.2018 was for and on behalf of all the legal heirs of Smt. Jagjit Kaur and not for himself exclusively. [**Jai Singh v. Gurmej Singh** (supra)]
- v. In this suit, the plaintiff is thus, entitled to joint possession of the ground floor portion in his capacity as the co-owner as well as the fact that the plaintiff received possession of the said floor from the tenant on 09.10.2017.

24. The plaintiff is thus, held entitled to joint possession with the defendants of the ground floor of property bearing no. D-138, Anand Niketan, New Delhi. This Court finds that the plaintiff is not entitled to exclusive possession of the ground floor; to the exclusion of the defendants.

25. It was stated before this Court that the defendants reside abroad and have not visited the property bearing no. D-138, Anand Niketan, New Delhi for a long time and in fact, the ground floor is in a state of disrepair, lying abandoned. The plaintiff will be entitled to take possession of the ground floor



portion of the property as delineated in the site plan [Ex. PW-1/1] through a bailiff appointed by the Court, however, it shall not be entitled to resist the ingress/egress of defendant nos. 1 and 2 to this ground floor portion as and when they visit India. The plaintiff, defendant no.1 and defendant no. 2 will be jointly entitled to the use and enjoyment of the ground floor portion.

26. Needless to state that the aforesaid directions shall be subject to the final decision in the proceedings initiated by the plaintiff for proving the Will(s) dated 15.09.1998 and 22.03.2010.

27. Issue nos. 1 and 2 are decided accordingly.

28. This Court while holding that the plaintiff is entitled to joint possession of the ground floor of the suit property along with defendant nos. 1 and 2 has moulded the relief sought prayed for in the plaint. [Re. **J. Ganapatha and Others v. N. Selvarajalou Chetty Trust**⁴]

29. The suit is decreed in terms of the aforesaid directions set out at paragraphs 23 to 26.

30. The registry is directed to prepare a decree in terms thereof.

31. The present suit along with applications, if any, stands disposed of.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

SEPTEMBER 02, 2025/mt/msh/MG

Click here to check corrigendum, if any

⁴ 2025 SCC OnLine SC 633 [paragraph no. 20]