



2025:DHC:8504-DB



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

Date of decision: 18.09.2025

+ **FAO(OS) 105/2025**

PRABHAT KATHURIA AND ORS.Appellants

Through: **Mr. Sahil Monga, Mr. Keshav
Pandey and Ms. Kanishka
Sharma, Advocates.**

versus

ANJU BABBARRespondent

Through: **Mr. Peeyoosh Kalra,
Mr. Pranaya Goyal, Ms. Nehal
Gupta and Ms. Ruchi Arya,
Advocates.**

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

% **JUDGEMENT (ORAL)**

ANIL KSHETARPAL, J.

CM APPL. 59292/2025 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present Appeal has been preferred against the Orders dated 10.07.2025 and 17.07.2025, wherein the learned Single Judge made certain observations in relation to the I.A. 16058/2025 filed in CS (OS) No. 433/2025 titled as “*Smt. Anju Babbar v. Sh. Prabhat Kathuria & Ors.* [hereinafter referred to as ‘original suit’]. By way of the said impugned Orders, the learned Single Judge allowed the



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restoration of the Respondent/Plaintiff's right to permissive possession of the property bearing number 59/24, New Rohtak Road, Karol Bagh, New Delhi - 110005 admeasuring approximately 552 sq. yds. [hereinafter referred to as 'suit property'].

4. *Vide* the impugned Order dated 10.07.2025, the learned Single Judge directed the SHO to file a status report. Subsequently, *vide* impugned Order dated 17.07.2025, the learned Single Judge directed the restoration of possession of the suit property to the Plaintiff, without adjudicating the application filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'].

5. For convenience, the parties herein shall be referred to in the same rank as they are arrayed in the original suit.

6. The Defendant No.2, namely Sh. Desh Kumar Kathuria, is the owner of the suit property. The original suit has been filed by the Plaintiff, daughter of Defendant No.2, seeking a decree of permanent injunction, claiming to be in possession of the same.

7. It has been found from the perusal of the record that the Plaintiff has not been in possession of the suit property since 04.07.2025. The Plaintiff, instead of filing a suit under Section 6 of the Specific Relief Act, 1963 seeking restoration of possession of the suit property, has filed an original suit seeking grant of permanent injunction.

8. The Plaintiff may have been in permissive possession of the suit property, however, as of now, she has to establish her rights *qua* the suit property, particularly when her other family members, including her father and brother, are also residing at the suit property. There are



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allegations that the Plaintiff and her husband have been a source of continuous nuisance to the family.

9. Learned counsel for the Plaintiff submits that in fact in Paragraph No.3.4 of the impugned Order dated 17.07.2025, the Defendant Nos. 1 to 3 had agreed to the restoration of possession of the suit property.

10. This Court has perused the impugned Orders dated 10.07.2025 and 17.07.2025. In Paragraph No.3.4 of the impugned Order dated 17.07.2025, it has been recorded that the Defendants have stated that Plaintiff's permissive possession will be restored. However, the attention of this Court has not been drawn to any signed statement of the Appellant to the aforesaid effect. Further, in Paragraph No.6 of the impugned Order dated 17.07.2025, the learned Single Judge has recorded that the Plaintiff and her husband have been stopped by force from entering the suit property. Thereafter, the learned Single Judge proceeded to direct the SHO to restore possession of the suit property.

11. In the opinion of this Court, a holistic reading of the impugned Order dated 17.07.2025 does not reveal that it was a consent order. Additionally, this Court also notes that such a course of action ought not to have been adopted, except where it is necessary in the interest of maintaining family harmony, particularly in light of the numerous police complaints.

12. Moreover, the learned Single Judge has stayed the operation of a Will executed by the Defendant No.2.

13. Such an order has no sanction in law, particularly when the Defendant No.2 is still alive. In the aforesaid circumstance, the Will can have no legal effect at present and will become operative only



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upon his death.

14. Keeping in view the aforesaid discussion, the direction of the learned Single Judge for restoration of possession of the suit property, without deciding an application under Order XXXIX Rules 1 and 2 of the CPC, and that also in a mandatory form, is set-aside.

15. The learned Single Judge is directed to decide the application under Order XXXIX Rules 1 and 2 of the CPC independently, without being influenced by any observations made either in the impugned Orders or by this Court.

16. Accordingly, the present Appeal is allowed.

17. The present Appeal, along with pending application(s), if any, is disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 18, 2025/tk/kr/hr