

IN THE COURT OF SH. BHARAT AGGARWAL, LD. CIVIL

JUDGE-02, WEST, TIS HAZARI COURT, DELHI

SUIT NO.612835/2016

Sh. Satya Dev Gupta
S/o Late Sh. K.C. Gupta,
R/o A-1/232, Janakpuri,
New Delhi - 110058

.....Plaintiff

Versus

1. Smt. Nitika Gupta
W/o Late Sh. Manish Gupta
(Accused in FIR No. 0392/16, U/S 302 IPC,
P.S. Janakpuri, Delhi)
2. Sh. Amit Gupta
S/o Sh. Amar Chand Gupta
R/o D-1/11, Janakpuri,
New Delhi – 110058
3. Station House Officer
Police Station Janakpuri,
New Delhi - 110018

.....Defendants

Suit filed on – 15/07/2016

Judgment reserved on – 29/08/2020

Date of decision – 29/08/2020

SUIT FOR MANDATORY INJUNCTION

JUDGMENT: -

The present suit is yet another reflection of fading family ties and relationships turning sour. The father in law has sought possession of the home where he allegedly allowed the daughter in law to reside. Unfortunately, the son of the Plaintiff and husband of the Defendant no. 1 demised in mysterious circumstances prior to filing of the present suit.

Pleadings of the Plaintiff: -

1. Before adjudicating upon the issues framed in the present suit, it is necessary to state the pleadings in the present suit concisely.

The present suit has been filed by the plaintiff against his daughter in law and her brother seeking possession in the form of mandatory injunction. The plaintiff has prayed for a decree of mandatory injunction directing the defendants to vacate and handover the keys of the property bearing No.A-1/232, Janakpuri, New Delhi-110058 (hereinafter referred to as the “**suit property**”) to the plaintiff after removing the goods belonging to the defendant no.1.

It is stated by the plaintiff that he is the owner of the suit property which has been constructed up to two and a half storeys admeasuring approximately 250sq. yds. which was allotted by DDA on leasehold basis and was later converted into free hold vide conveyance deed dt.12/08/1996. It is stated that the plaintiff’s only son Late Sh. Manish Gupta was married with the defendant no.1 on 08/10/2002 and a girl namely Ms. Misthi Gupta was also born from this wedlock on 16/03/2009. It is stated that the plaintiff allowed his deceased son and the daughter in law i.e. the defendant no.1 to live on the ground floor of the suit property and the defendant no.1

used to mentally and physically harass the plaintiff and his wife who are senior citizens and as a result of which they had to leave the house. It is alleged that the deceased son of the plaintiff was murdered by the defendant no.1 on or about 16/04/2016 at about 10.30 P.M. and an FIR No.0392/10 dt.27/04/2016 was also registered against the defendant no.1.

It is further alleged that the defendant no.1 did not even inform the plaintiff and his wife about the death of the son of the plaintiff and on 17/04/2016 when the plaintiff came back from the hospital, one ASI Jahangir Singh of Police Station Janakpuri inspected the ground floor of the suit property for 15 minutes. He then locked the ground floor and handed over the keys to the defendant no.2 despite the objections raised by the plaintiff. Thereafter, the defendant no.2 changed the previous lock with a new lock. It is further alleged that on 17/04/2016, defendant no.2 alongwith some other cousin brothers removed the valuable belongings of the deceased son of the plaintiff Late Sh. Manish Gupta and the plaintiff visited the police station to raise objection before the SHO for illegally handing over the keys of the ground floor of the suit property by the aforesaid ASI to the defendant no.2. It is further stated that the plaintiff has told the defendant no.1 and defendant no.2 to remove their articles lying in the ground floor of the suit property, but they have failed to do so. Plaintiff has also written letter dt.30/05/2016 to the DCP West and SHO in respect of the same but to no avail. It is further stated that the defendants have no right in the ground floor of the suit property and the plaintiff is the owner of the suit property who allowed his son and his daughter in law i.e. defendant no.1 to reside in the same out of love and affection without any consideration. In these circumstances, the plaintiff has prayed for possession in the form of mandatory injunction.

Pleadings of the Defendants: -

2. Written statement was filed on behalf of the defendant no.1 whereby *inter alia* it was stated that the suit is liable to be dismissed as the plaintiff has not valued the suit properly in terms of Section-7 of the Court Fees Act, 1870 at the market value of the property. It is further stated in Para-1 of the written statement that plaintiff has admitted that defendant no.1 and her husband were allowed to remain on the ground floor as licensees and the suit is liable to be dismissed for non-payment of appropriate court fees. From perusal of the said para it appears that the defendant no.1 has also admitted the nature of possession in respect of the suit property as that of a licensee.

It is further submitted by the defendant that the suit is liable to be dismissed as simpliciter suit for mandatory injunction is not maintainable. It is further stated that plaintiff and the deceased husband of defendant no.1 used to work under joint business and, therefore, all the earnings from the joint business were invested under the head of Hindu Undivided Family (HUF) and Late Sh. Manish Gupta was a well-qualified architect and he used to invest all his earnings with the Hindu Undivided Family of which plaintiff is Karta until a few years of his marriage. It is stated that plaintiff and his wife used to demand dowry and they also remained in jail on the account of complaint/FIR No.150/2001, Police Station Vikas Puri, u/s 498A/406/34 IPC made by the estranged wife of the son of the plaintiff. It is stated that defendant no.1 alongwith her husband remained in Gurgaon from 2002 to 2007 and in the year 2007 upon plaintiff's request, defendant no.1 alongwith her husband rejoined the plaintiff on the assurance that the ground floor of the suit property shall be transferred in the name of the husband of the defendant no.1. Allegedly, it was also promised that the share of the husband of the defendant no.1 in the HUF shall be released to him after quantification of the same. It is stated that as per the settlement

between the plaintiff and the deceased husband of the defendant no.1, the defendant no.1 was given the ground floor of the suit property and, therefore, the plaintiff cannot ask for possession of the same now. It is further submitted that the suit property is a matrimonial house of the defendant no.1 in terms of Section-2(s) r/w Section-3 & 19 of Protection of Women from Domestic Violence Act, 2005 and, therefore, the suit is liable to be dismissed as she has a right to reside therein.

3. Defendant no.2 & 3 were proceeded ex-parte in the case vide order dt.17/12/2016. Replication has also been filed on behalf of plaintiff to the written statement of defendant no.1 wherein the averments made in the written statement were denied and those made in the plaint were reiterated and reaffirmed.

It was stated in the replication *inter alia* that the plaintiff allowed his son and daughter in law i.e. the defendant no.1 to live in the suit property out of love and affection and their status always remained as that of a licensee and, therefore, plaintiff is not required to pay the court fees on the market value of the suit property. It was further stated that the plaintiff and deceased son of the plaintiff Late Sh. Manish Gupta never worked under any joint business. It was also denied that any earnings under the joint business were invested under the head of HUF. It is further stated that the defendant no.1 cannot claim a right of residence from her father in law or mother in law specifically in the property which is owned by the father in law and the defendant no.1 can only ask for right of residence in the shared household of her husband. It was further stated that the suit property was purchased by the father of the plaintiff Late Sh. Kishan Chand Gupta from DDA and from whom the plaintiff has purchased the suit property on the basis of agreement to sell, GPA, Receipt, etc.

Issues: -

4. From the pleadings of the parties, following issues were framed in the suit vide order dt.17/12/2016: -

- (a) Whether the plaintiff is entitled for the decree of mandatory injunction as prayed for? OPP
- (b) Whether the present suit has not been valued properly for the purpose of court fees and jurisdiction? OPD
- (c) Relief.

Evidence :-

5. In order to prove his case, plaintiff got examined himself as PW-1 and led his evidence by way of affidavit which is exhibited as Ext. PW-1/A wherein he reiterated the averments made in the plaint. PW-1 also relied upon certain documents which are as under :-

Identification Mark	Description
Ex. PW-1/4 (OSR)	Photocopy of the Conveyance Deed dt.12/08/1996.
Ex. PW-1/5 (OSR)	Site plan.
Mark-A	Photocopy of the letter dt.30/05/2016 written by plaintiff to DCP (West) and SHO.
Mark-B	Photocopy of postal receipt.
Mark-C	Photocopy of postal receipt.
Ex. PW-1/9 & PW-1/10	Copy of delivery certificates with respect to the postal receipts.

PW-1/plaintiff was cross-examined by the counsel for defendant no.1 whereby he stated that his deceased son was having a bachelors in

architecture and was not working prior to the year 2002. He further stated that the income generated by him always remained with him. He admitted that there is a Hindu Undivided Family in the name of Satya Dev Gupta HUF which consists of himself, his wife and his deceased son. He further stated that his deceased son had a second marriage with the defendant no.1. He further admitted that there was an FIR u/s 498A/406 IPC against him, his wife and his deceased son at the behest of erstwhile daughter in law. He further stated that the defendant no.1 alongwith his deceased son remained in the first floor of the property since October, 2002 to December, 2007 and no police complaint was ever made against the defendant no.1, however, complaints were made to the parents of defendant no.1. He further stated that his son shifted to Gurgaon in the year 2007. He also stated that he never demanded any expenses from his son since the year 2002 to 2007.

He stated that the suit property was on a plot which was purchased on lease hold basis in auction from DDA by father of the plaintiff and which was subsequently purchased by the plaintiff from his father. He further stated that the construction on the ground floor was carried out in the year 1980 and first part of the second floor was constructed in the year 1986 and the construction of all the floors were carried out prior to execution of conveyance deed in his favour. He also admitted that no lease hold right in the property was ever given in his favour by the DDA. He stated that the conveyance deed was executed in the year 1996 whereas his father expired in the year 1999.

Ld. Counsel for the defendant no.1 asked various questions to the plaintiff/PW-1 regarding the Satya Dev Gupta, HUF, however, all the questions were not answered by the witness stating them to be irrelevant. He further stated that the year of completion of architecture course of his son was 1996. He further admitted that his deceased son Late Sh. Manish

Gupta was not in regular job since the year 1996 till 2005 and he was simply assisting the plaintiff in his work and was also doing independent jobs. He further admitted and he and his wife never made any complaint about the quarrelsome nature of the defendant no.1 to any authority and the complaints were only made to the parents of defendant no.1 with the intention of reconciliation. He further admitted that at the time of incident they were not at the suit property. He stated that his deceased son and defendant no.1 came in possession of part of the ground floor of the property towards the end of 2009 and was in possession till the date of death of his son. He further stated that he allowed his son and daughter and his grand-daughter to stay in the part of ground floor of the suit property out of love and affection. He stated that there is no settlement in writing in pursuance of which he allowed his son to live in the portion at the ground floor and again he had reiterated that he allowed his son, defendant no. 1 and his daughter in law to stay in the property out of love and affection. Thereafter upon the statement of the counsel for the plaintiff plaintiff's evidence was closed vide order dt.13/09/2017.

However, the defendant was given one more opportunity to cross-examine the plaintiff by the Hon'ble High Court of Delhi and after such cross-examination, plaintiff closed the evidence vide order dt.21/07/2018.

Thereafter, several opportunities were given to the defendant no.1 to lead evidence, however, no evidence was led on behalf of the defendants in the present case and eventually defendant's evidence was closed vide order of the court dt.17/01/2020.

Decision with reasons :-

6. The arguments were heard on behalf of parties and the record has been carefully perused. Now, I shall give my issue-wise findings which are as under: -

7. **Issue No.(b) -**

(b) *Whether the present suit has not been valued properly for the purpose of court fees and jurisdiction? OPD*

The onus to prove this issue was upon the defendants.

Ld. Counsel for the defendants had vehemently argued that the present suit has not been properly valued for the purpose of court fees and jurisdiction by the plaintiff as the plaintiff in the name of mandatory injunction has actually sought possession of the suit property. He has argued that even though the Plaintiff has worded the relief as “mandatory injunction”, he is actually praying that defendant be directed to handover the possession of the suit property after removing the goods belonging to her, which is a relief in the nature of possession and as per Section -7(v) of the Court fees Act, 1870. Therefore, the suit has to be valued for the purpose of court fees at the market value of the suit property.

On the other hand, counsel for plaintiff has argued that the present suit has been filed for mandatory injunction as the defendant no.1 was inducted in the suit property as a licensee out of love and affection by the Plaintiff. Defendant no.1 happens to be the daughter in law of the plaintiff and it is submitted that the plaintiff has a right to get the suit property vacated from the defendants as she was only allowed to stay in mere capacity of a licensee. Therefore, in these circumstances, it is submitted that the suit for mandatory injunction is very well maintainable and the court fees applicable on the suit for possession is not required to be paid in the present case.

At this juncture, it is relevant to point out the observations of the Hon’ble Supreme Court of India made in case titled as **Sant Lal Jain V/s Avtar Singh**, (AIR 1985 SC 857) which are reproduced herein below: -

“There was no specific plea taken by the defendants that the

suit should be one for recovery of possession and the suit for injunction is not maintainable. In fact, before the trial court and the first appellate Court the stress was on something else i.e. the effect of Section 60(b) of the Indian Easements Act, 1882 (in short the `Easements Act') and the alleged non-maintainability of the suit on the ground of non-joinder of necessary parties. Before the High Court the plea was taken for the first time that the suit was not maintainable being one for mandatory injunction and for prohibitory injunction and not one for recovery. Strictly speaking the question is not a substantial question of law, but one whose adjudication would depend upon factual adjudication of the issue relating to reasonableness of time. The correct position in law is that the licensee may be the actual occupant but the licensor is the person having control or possession of the property through his licensee even after the termination of the licence. Licensee may have to continue to be in occupation of the premises for some time to wind up the business, if any. In such a case licensee cannot be treated as a trespasser. It would depend upon the facts of the particular case. But there may be cases where after termination or revocation of the licence the licensor does not take prompt action to evict licensee from the premises. In such an event the ex-licensee may be treated as a trespasser and the licensee will have to sue for recovery of possession. There can be no doubt that there is a need for the licensor to be vigilant. A licensee's occupation does not become hostile possession or the possession of a trespasser the moment the licence comes to an end. The licensor has to file the suit with promptitude and if it is shown that within reasonable time a suit for mandatory injunction has been filed with a prayer to direct the licensee to vacate the premises the suit will be maintainable.”

It is further beneficial to refer to the observations of the Hon'ble Supreme Court of India made in case titled as **Joseph Severance and Others V/s Benny Mathew and Others**, [(2005) 7 SCC 667] which are reproduced herein below: -

“In the present case it has not been shown to us that the appellant had come to the court with the suit for mandatory injunction after any considerable delay which will disentitle

him to the discretionary relief. Even if there was some delay, we think that in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another round of suit with all the attendant delay, trouble and expense. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds is possession of the property to which he may be found to be entitled. Therefore, we are of the opinion that the appellant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction.”

In view of the aforesaid observations of the Hon’ble Apex Court, it is quite apparent that a suit seeking possession in the nature of mandatory injunction is maintainable if the plaintiff has filed the suit within a reasonable time after termination of the license of the defendant. The plaintiff in such a case is not required to value the suit as in the case of a suit for possession against a trespasser, which is required to be done at the market value of the property in dispute. Defendant no.1 has not claimed any independent rights in the suit property except the right to reside which has been dealt with while deciding issue no.(a). It can be observed without hesitation that the defendant no.1 was a mere licensee in the suit property and her license has been terminated by the plaintiff by his conduct and filing of the present suit. It can also be said without any hesitation that the suit has been filed within a reasonable time after the termination of the said license and, therefore, the suit in the nature of mandatory injunction is held to be maintainable as the present suit against the licensee can be filed for injunction. Therefore, the argument of the Ld. Counsel for the defendant that court fees in respect of possession was required to be paid, is bereft of any merits and for the aforesaid reasons is hereby dismissed.

Accordingly, issue no.(b) is decided in favour of plaintiff and against the defendants.

8. **Issue No.(a) -**

(a) *Whether the plaintiff is entitled for the decree of mandatory injunction as prayed for? OPP*

The onus to prove this issue was upon the plaintiff.

In view of the aforesaid observations it has become clear that a licensor is entitled to decree of mandatory injunction if he terminates the license of the defendant licensee and files the suit within a reasonable period of time. The Plaintiff has heavily relied upon the conveyance deed Ex. PW-1/4 and sought possession on the basis of his alleged ownership. The said document or the factum of ownership is not disputed by the Defendant either. The plaintiff has been able to establish that the defendant no.1 was a licensee in the suit property. Several arguments were advanced by the Ld. Counsel for the defendant no.1 praying that the suit shall be dismissed. Such arguments shall be dealt with one by one herein below.

(A) Ld. Counsel for the defendant no.1 submitted that the present suit for simplicitor injunction would not be maintainable. Ld. Counsel relied upon the observations made by the Hon'ble Supreme Court in **Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors [(2008) 4 SCC 594]**. He further stated that plaintiff is required to seek declaration in respect of the suit property and only thereafter he can seek injunction. In these circumstances it has become appropriate to refer to the relevant observations made by the Hon'ble Supreme Court in Anathula Sudhakar (supra). The relevant para(s) are quoted here as under:-

“...11. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

11.1) Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

11.2) Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

11.3) Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

12. We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper ...

...17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in *Annaimuthu Thevar* (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be

driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case....”

Therefore, from the aforesaid observations it can be concluded that when a cloud is raised by the defendant over the title of the plaintiff in the suit property, the plaintiff would be first required to seek declaration of his title before seeking any relief of injunction and it was in these circumstances that it was observed that mere suit for simpliciter injunction would not be maintainable. In the present case, the plaintiff has relied upon conveyance deed dt.12/08/1996 Ex. PW-1/4 executed by the father of the plaintiff in favour of the plaintiff in respect of the suit property. It is argued by the plaintiff that the suit plot was allotted to his father Late Sh. K.C. Gupta by DDA on lease hold basis and the said plot was purchased by the plaintiff on 05/01/1979 from his father by way of registered GPA, Agreement to sell, Receipt, etc. and thereafter the said plot was converted into freehold vide conveyance deed dt.12/08/1996. Relying upon the aforesaid documents, the plaintiff has argued that he is the absolute owner of the suit property and defendant no.1 i.e. the daughter in law of the plaintiff was merely inducted in the property as a licensee.

On the other hand, Ld. Counsel for the defendant no.1 has argued that the deceased husband of defendant no.1 and plaintiff used to work under the joint business and all the earnings from the joint business were invested under the head of Hindu Undivided Family. He further submits that in the year 2007 plaintiff approached the husband of the defendant no.1 and requested to join their accommodation i.e. the suit property with an

assurance that the ground floor of the suit property shall be transferred to the husband of defendant no.1 and the value of all the other properties purchased under the head of Hindu Undivided Family shall be quantified and the share of the husband of the defendant no.1 shall be released to him. He further argued that it was on the basis of said settlement, that the defendant no.1 and her deceased husband re-joined the plaintiff at the suit property and, therefore, the plaintiff cannot now seek the portion which was given to the deceased son of the plaintiff under the settlement.

During the cross-examination of PW-1/plaintiff he stated that the deceased son of the plaintiff completed his bachelor in architecture in the year 1996. He further stated that the son of the plaintiff was not in regular job since the year 1996 till 2005 and he was assisting Plaintiff in his works. The plaintiff has stated that the suit property was purchased by him from his father on 05/01/1979 which was also converted into free hold vide conveyance deed dt.12/08/1996 in his favour. Therefore, it becomes evident that the suit property was purchased by the plaintiff in his name and there could not have been any financial contribution in the same by the son of the plaintiff or deceased husband of the defendant no.1 as admittedly he completed his bachelors degree in the year 1996 when the conveyance deed was executed in favour of the plaintiff and he cannot be expected to be earning before that. Even otherwise, the defendant no.1 in the written statement has admitted that she and her husband were allowed to remain on the ground floor of the suit property as licensees and the Defendant No. 1 has not disputed the contention that the Plaintiff is the registered owner of the suit property.

Counsel for defendant no.1 has argued that there was a settlement as per which the ground floor of the suit property came to the hands of the son of the plaintiff, however, such argument has remained completely unsubstantiated on record. Despite various opportunities the defendant has

not led any evidence in the present case and the defendant has failed to create any iota of doubt or suspicion regarding plaintiff's title in the suit property. The observations made by the Hon'ble Supreme Court in *Anathula Sudhakar* (Supra) would only be applicable if the defendant raises a cloud over the title of the plaintiff and hence, the reliance of the defendant no. 1 on *Anathula Sudhakar* (Supra) is bad and meritless. In the case at hand the defendant has miserably failed to raise any cloud over the title of the plaintiff in the suit property and hence the suit for mandatory injunction is very well maintainable.

(B) It has been argued on behalf of the defendant that as such there is no termination of alleged license by any notice and, therefore, it cannot be said that there has been termination of license of the defendant no.1. On the other hand, it has been argued on behalf of plaintiff that upon the death of the deceased son of the plaintiff, it was made clear to the defendant no.1 that she shall not be allowed to reside in the suit property as plaintiff has levelled serious allegations against the defendant no.1 that she had murdered plaintiff's deceased son. The court was also apprised that FIR for the offence of murder is already registered against the defendant no.1 and trial in the criminal case is already pending in the appropriate criminal court having jurisdiction wherein the Defendant No. 1 is the Accused.

It is not the requirement of law that termination of the license has to be only in the form of a written notice. It has to be seen from the facts and circumstances of each case and from the conduct of the parties as to whether there was a termination of defendant's or licensee's license by the plaintiff and thereafter the suit has been filed within reasonable time or not. In the written statement, the defendant no.1 has admitted that the deceased son of the plaintiff and the defendant no.1 were allowed to remain on the

ground floor as licensee of the said portion and, therefore, what remains to be seen is whether the license was terminated by the plaintiff or not.

It is alleged by the plaintiff that son of the plaintiff was murdered on or about 16/04/2016 and on 17/04/2016 the ASI inspected the spot of the crime i.e. the ground floor of the suit property and after locking the said portion handed over the keys to the defendant no.2 despite the objection raised by the plaintiff. Thereafter, the present suit seeking possession in the nature of mandatory injunction came to be filed by the plaintiff on 15/07/2016 i.e. within three months of the death of the son of the plaintiff. Therefore, upon comprehensive perusal of the facts and circumstances in the present case it cannot be said that the termination of license by the plaintiff was not within a reasonable time. It is not the expectation of law that the license has to be only terminated by way of a written notice or any legal notice. It has been held in catena of judgments by the Hon'ble Supreme Court that the service of summons in a suit would also amount as notice to the other side about the termination of their license in the subject matter property. Reference can also be made to the observation of Hon'ble Supreme Court of India in Nopany Investments (P) Ltd. V/s Santokh Singh (HUF), cited as {(2008) 2 SCC 728} and of the Hon'ble Delhi High Court in Pradeep Khanna vs. Renu Khetarpal [(2015) 219 DLT 417]. The Courts have time and again observed that institution of a suit for possession in itself is a notice to the Defendant and the suit doesn't merit dismissal merely because no notice was served prior to institution. Even otherwise, in the considered opinion of this court, the suit at hand is pending since July 2016 and the Defendant has been very well aware about the Plaintiff's intention to take back the possession of the suit premises. Even if the argument of Ld. Counsel is to be believed yet, non-service of notice doesn't merit dismissal once the suit has been heavily contested and gone through the rigors of trial.

(C) Another fact which was vehemently argued by the counsel for the defendant no.1 was that the son of the plaintiff and husband of the defendant no.1 had contributed to the suit property and to the business of the plaintiff which was run as a Hindu Undivided Family. He relied on the part of the cross-examination of the plaintiff where the plaintiff refused to answer queries pertaining to source of income, constitution, details of the properties, etc. of the HUF Satya Dev Gupta. He further argued that the plaintiff did not answer all these questions pertaining to the HUF by calling them irrelevant. On this basis, Ld. Counsel for defendant no.1 argued that there existed a 'Hindu Undivided Family Satya Dev Gupta' wherein the husband of the defendant no.1 and the plaintiff were both members and husband of defendant no.1 has substantially contributed to the income of the said HUF. He further buttressed the said argument by stating that as per settlement between the plaintiff and the husband of the defendant no.1, the son and daughter in law shifted to the suit property with the understanding that the ground floor of the suit property would be given to the husband of defendant no.1. The plaintiff on the other hand has vehemently denied any such settlement and he reiterated its position that the defendant no.1 alongwith her deceased husband was only allowed to reside in the suit property as licensees out of natural love and affection.

Needless to say, that the averments and the allegations pertaining to existence of Hindu Undivided Family between the plaintiff and husband of the defendant no.1 and contributions of funds in a common pool remained completely unsubstantiated on record. The defendant has not been able to establish the fact of existence of HUF or contribution in a common pool of funds by the plaintiff and the husband of the defendant no.1. Therefore, in the facts and circumstances of the present case, the arguments of the Ld. Counsel for defendant no.1 that the suit shall be dismissed as according to

settlement the husband of the defendant no.1 was to own the ground floor of the suit property, is devoid of any merits and, hence, dismissed.

(D) Ld. Counsel for defendant no.1 argued that since the suit property is a matrimonial house of the defendant no.1 and she was in a domestic relationship with the son of the plaintiff, therefore, in view of the Protection of Women from Domestic Violence Act, 2005 she has a right or interest in the suit property which is a “shared household” and the husband of the defendant no.1 was having undivided interest in the house in question.

It is apposite to deal with the arguments advanced by the counsel for Defendant no.1 in light of various judgments by the Hon’ble superior courts. Section-2(s) of the Protection of Women from Domestic Violence Act, 2005 defines shared household as:

“a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared”.

The concepts of ‘shared household’ and ‘matrimonial home’ have been considered in numerous judgments by the Hon’ble Supreme Court of India as well as the Hon’ble Delhi High Court. In “S. R. Batra and Anr. V/s. Taruna Batra, {(2007) 3 SCC 169}”, the Hon’ble Supreme Court had considered the issue of “shared household” voluminously and laid down

various principles to determine whether there was a “shared household” and what the rights of the daughter-in-law are. Interpreting the provisions of the Protection of Women from Domestic Violence Act, the Hon’ble court held as under: -

“In our opinion the wife is only entitled to claim a right to residence in a shared household, and a ‘shared household’ would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No.2, mother of Amit Batra. Hence it cannot be called a ‘shared household’.”

Later the Hon’ble Delhi High Court in *Neetu Mittal V/s Kanta Mittal* { 2008 (106) DRJ }, further reinforced the law laid in *Taruna Batra* (supra) case and held as under: -

“8. As observed by the Supreme Court, ‘Matrimonial home’ is not defined in any of the statutory provisions. However, phrase ‘Matrimonial home’ refers to the place which is dwelling house used by the parties, i.e., husband and wife or a place which was being used by husband and wife as the family residence. Matrimonial home is not necessarily the house of the parents of the husband. In fact, the parents of the husband may allow him to live with them so long as their relations with the son (husband) are cordial and full of love and affection. But if the relations of the son or daughter-in-law with the parents of husband turn sour and are not cordial, the parents can turn them out of their house. The son can live in the house of parents as a matter of right only if the house is an ancestral house in which the son has a share and he can enforce the partition. Where the house is self-acquired house of the parents, son, whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents upto the time the parents allow. Merely because the parents have allowed him to live in the house so

long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout the life.”

Recently, the Hon’ble Delhi High court in “Vinay Varma V/s Kanika Pasricha & Another (2019 SCC OnLine Del 11530)”, emphasising on striking a balance between the rights of the parents/in-laws and the rights of the daughter-in-law, laid down few guidelines for the benefit of the courts which are reproduced herein below: -

“46.....

- (a) The court/tribunal has to first ascertain the nature of the relationship between the parties and the son’s/daughter’s family.
- (b) If the case involves eviction of a daughter in law, the court has to also ascertain whether the daughter-in-law was living as part of a joint family.
- (c) If the relationship is acrimonious, then the parents ought to be permitted to seek eviction of the son/daughter-in-law or daughter/son-in-law from their premises. In such circumstances, the obligation of the husband to maintain the wife would continue in terms of the principles under the DV Act.
- (d) If the relationship between the parents and the son are peaceful or if the parents are seen colluding with their son, then, an obligation to maintain and to provide for the shelter for the daughter-in-law would remain both upon the in-laws and the husband especially if they were living as part of a joint family. In such a situation, while parents would be entitled to seek eviction of the daughter-in-law from their property, an

alternative reasonable accommodation would have to be provided to her.

- (e) In case the son or his family is ill-treating the parents then the parents would be entitled to seek unconditional eviction from their property so that they can live a peaceful life and also put the property to use for their generating income and for their own expenses for daily living.
- (f) If the son has abandoned both the parents and his own wife/children, then if the son's family was living as part of a joint family prior to the breakdown of relationships, the parents would be entitled to seek possession from their daughter-in-law, however, for a reasonable period they would have to provide some shelter to the daughter-in-law during which time she is able to seek her remedies against her husband."

Thus, it stands clear that while the daughter-in-law's right to residence and a roof over her head is extremely important, the parent's right to enjoy their own property and earn income from the same is also equally important. Reverting to the facts in hand, it is clear that defendants have not been able to prove their claim of existence of Hindu Undivided Family between the plaintiff and the husband of the defendant no.1, or the contribution to a common pool of funds by the plaintiff and the husband of the defendant no.1. Even otherwise, it is not the case of the Defendant that the Defendant No. 1, i.e., the daughter in law was living in the suit property with the Plaintiff and his wife, i.e., her in-laws together as a part of a joint family. Thus, the property being the absolute property of the plaintiff cannot be construed as a "shared household" within the scope of Section-2(s) of the Protection of Women from Domestic Violence Act, 2005. In

view of aforesaid discussion, the argument of Ld. Counsel for the Defendant pertaining to shared household also falls flat. The submissions made by the counsel for defendant no.1 are not sustainable and bereft of any merit in their entirety.

Accordingly, issue no.(a) is decided in favour of the plaintiff and against the defendants.

9. Issue no.(c)-

(c) Relief – In view of the findings given on issues no.(a) & (b), documents placed on record, pleadings of the parties and evidence led by the parties, the plaintiff has proved his case on the scale of preponderance of probabilities. Accordingly, the suit of the plaintiff is hereby decreed and following reliefs are awarded to the plaintiff.

(a) A decree of mandatory injunction in favour of plaintiff and against the defendants thereby directing the defendants to vacate and handover the keys of the suit property bearing No.A-1/232, Janakpuri, New Delhi-110058 to the plaintiff, after removing the goods belonging to the defendant no.1, within 30 days from today.

(b) Costs of the suit.

Decree sheet be prepared accordingly. File be consigned to record room after completing the necessary formalities.

(BHARAT AGGARWAL)
Civil Judge, Delhi (West)-02

Pronounced, through video conferencing through Cisco Webex application, on 29/08/2020.