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

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***Date of decision: December 30, 2022***

+ W.P.(C) 17772/2022, CM APPLs. 56789/2022 & 56790/2022

SURESH CHIKARA

..... Petitioner

Through: Mr. Deepak K. Tyagi and Mr. Ranjan  
Rajput, Advocates

versus

GOVT OF NCT OF DELHI THROUGH ITS CHIEF SECRETARY  
& ANR. .... Respondents

Through: Mr. Anurag Nasiar, Mr. Tushar  
Sannu, Advocates for R-1 with SI  
Mahendra Pratap, Mukherji Nagar.  
Mr. P.K. Rawal and Mr. Tarun  
Agarwal, Advs. for R-2 alongwith R-  
2 in person

**CORAM:**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**J U D G M E N T (oral)**

1. By virtue of the present petition, learned counsel for the petitioner challenges the order dated 22.11.2022 passed by the Appellate Authority of Divisional Commissioner, Department of Revenue, Govt. of NCT of Delhi, whereby the appeal preferred vide diary no. 3859 dated 13.02.2020 under Rule 22(3) (4) of the Delhi Maintenance and Welfare of Parents and Senior Citizen Amended Rules against the original order 31.12.2019, the District Magistrate (North) was disposed of. Vide the said original order dated 31.12.2019, the District Magistrate rejected the eviction application of the father of the petitioner-respondent no.2 on the ground that the civil suit was pending and as per the status report filed by I.O, it was a simple property

dispute between father and son and that no ill-treatment had been proved.

2. The Appellate Authority in the impugned order under challenge, after observing that the entire case of the petitioner herein was that his father was not the owner of the property i.e. House bearing no. 365/1, Ground Floor, Pradhan Gali, Nirankari Colony, Delhi – 110009 and the same was built-up by the petitioner from his hard earned money and that the petitioner was in possession of his share by virtue of an oral partition in 1985 and that a Civil Suit with respect to the property was pending and further that The Maintenance and Welfare of Parents and Senior Citizen Act, 2007 and Delhi Rules 2009, amended time to time, is a welfare legislation and have been framed for the benefit and protection of senior citizens/Parents, so that they can spend their twilight years peacefully, held as under:-

*“15. Keeping in view of the facts and circumstances of the case and the law framed for the protection of the parents senior citizens, respondent has no right to reside in the suit property against the wishes of the appellant i.e the father. Also as the respondent has no right to reside, his family too has no right to reside accordingly. Hon’ble Delhi High Court in Darshna Vs The Govt. of NCT of Delhi & Ors. held that ‘A daughter-in-laws right to reside in the premises of her in-laws cannot be greater than her husbands’.*

*16. There is infirmity in the impugned order and accordingly appeal is hereby allowed being devoid of merits. The respondent along with his family and belongings is hereby directed to vacate the suit property in accordance with law and hand over the peaceful possession to the appellant and further not to interfere in the peaceful living of the appellant.*

*The Appeal stands disposed off accordingly. Copy of this order be provided to both parties. Record of the Proceedings before DM (North) be also sent back to DM with copy of this order.”*

3. Learned counsel for the petitioner submits that, admittedly, though the petitioner is son of the registered owner of the property in question and is in possession, however, admittedly, he does not possess any title documents in

his favour.

4. Learned counsel for the petitioner though initially submitted that the petitioner has instituted a suit challenging the title of his father-respondent no.2 on the basis of an alleged oral settlement, however, during the course of proceedings, on a pointed question by this Court qua the details of the aforesaid suit, learned counsel for the petitioner submits that in fact no suit has been instituted, but in a suit for possession and permanent injunction being CS DJ No. 1100/17 pending in the Rohini District Court, New Delhi instituted by the father-respondent no.2 against the petitioner, only a defence qua that has been raised but no counter-claim of such nature has been instituted by the petitioner against the father-respondent no.2.

5. Learned counsel for the petitioner further draws attention of this Court to the judgment dated 28.03.2022 in FAO 78/2021 titled as ***Kartar Singh vs. Suresh Chhikara*** and to the order dated 02.06.2022 in CM (M) 570/2022 titled as ***Suresh Chhikara vs. Kartar Singh*** to submit that if the property is vacated in terms of the impugned order dated 22.11.2022, serious prejudice will be caused to the petitioner as the trial in the above suit will be effected. Further, the said judgment and order in the above proceedings relied upon by the learned counsel for the petitioner do not cut any ice as they can hardly be a ground to either issue notice or to hear this matter on merits. Alas, the same is no reason for entertaining and/or allowing the instant petition in present form. In any event, the said judgment and order passed in the above proceedings have no bearing and the impugned order has been passed following the due process of law and calls for no interference.

6. By virtue of the present petition, the petitioner is merely seeking to continue to be in illegal possession of the property, despite knowing fully

well that the person in possession does not and cannot become the owner. In the facts of the present case, the father of the petitioner-respondent no.2, being the holder of the title documents of the property in question, there is nothing wrong in the impugned order dated 22.11.2022. The petitioner is merely trying to re-agitate the issues which under fact and law are already settled.

7. In view of the aforesaid, especially the fact that the petitioner is not the owner of the property in issue, the present writ petition, admittedly, has been filed by a rank outsider who has no right and/or claim to the property in question against a person who is the real owner of said property in issue.

8. This Court finds no merit in the present petition and is accordingly *dismissed in limine*.

9. Accordingly, the respondent no. 2 shall approach the concerned Authorities for enforcement/execution of the order dated 22.12.2022, which shall, needless to say, proceed in accordance with law at the best manner possible.

**SAURABH BANERJEE, J**  
**(VACATION JUDGE)**

**DECEMBER 30, 2022/rr**