
(2015) 10 DEL CK 0020
In the Delhi High Court
Case No : CS (OS) 2951 of 2014

Marguerite Chawla

APPELLANT

Vs

Kiran Abnashi Chawla and Others

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 39 Rule 3
Specific Relief Act, 1963 — Section 11(3), 6, 6(1)
Succession Act, 1925 — Section 211

Citation : (2015) 10 AD 653 : (2015) 234 DLT 438 : (2015) 152 DRJ 627

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Peeyoosh Kalra and Sudhindra Tripathi, for the Appellant; Airuddha Choudhury, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Najmi Waziri, J.

IA No. 1253/2015 in CS(OS) No. 2951/2014

1. This application seeks a judgment and decree on the basis of admissions made in the written statement of the defendants. The plaintiff had filed the present suit under Section 6 of the Specific Relief Act seeking to recover possession of the first and barsati floor of the property bearing No.N-258, Greater Kailash, New Delhi-110048.

Contentions

2. It is the plaintiff's case that she was married to Sh. H.P.S. Chawla on 16th April, 1963. He expired on 4.3.2014. She lived in India off and on and in 1989 she set up a home with husband Sh. H.P.S. Chawla; she was in possession of the property all along but has been surreptitiously dispossessed therefrom by the defendants while she was on way back from the United States of America after her husband's demise. She is presently 70 years" old and lives in USA.

Accordingly, the plaintiff seeks restoration/recovery of possession to her. This suit has been filed before the expiry of 6 months from the date of dispossession. In paras 1, 4, 6, 7, 8, 15, 22 and 23 of the plaint, the plaintiff has averred as under:

1. Plaintiff is 78 years old, a senior citizen and is the sole surviving legal heir of Late Mr. H.P.S. Chawla. The Plaintiff got married to Late Shri H.P.S. Chawla on 16th April, 1966 at Poughkeepsie in New York, U.S.A. and subsequent to the marriage the couple resided off and on in India at New Delhi and in U.S.A. at New York.

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4. In the year 1989 the Plaintiff and her husband established their home in India at N-258, First Floor, Barsati, Servant Quarter, Greater Kailash Part-I, New Delhi-110048 and till the demise of the husband of the Plaintiff the same was the home of the Plaintiff. The said house had been inherited by the husband of the Plaintiff from his sister, Smt. Raj Chawla Sahni in terms of her last Will. The couple did not have any issue from their wedlock.

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6. On account of severe health issues, the husband of the Plaintiff in November, 2013 travelled to New York and was admitted initially at Mount Sinani Hospital at New York and later at Memorial Sloan Kettering Cancer Centre at Manhattan at New York. Unfortunately, despite best efforts of the doctors and the best possible treatment given, the husband of the Plaintiff could not fight with the deadly disease and met his final fate on 03.04.2014.

7. During the treatment of Late Shri H.P.S. Chawla at the Memorial Sloan Kettering Cancer Centre at Manhattan at New York, Defendant No. 1 started acting strangely and made attempts to prevent the Plaintiff from meeting her own husband. The husband of the Plaintiff on account of his serious condition was in and out of Intensive Care Unit and was very feeble and in an unresponsive state and later he drifted into semi coma. The plaintiff was clueless as to why defendant No. 1 was acting in such a strange manner, little aware of the fact that defendant No. 1 had already manipulated late Sh. H.P.S. Chawla to secure financial benefits for herself out of his estate.

8. The Plaintiff, however, concerned with the health of her husband ignored the strange acts of Defendant No. 1 and used to meet her husband whenever permitted by the doctors. During one such short meeting and realising that the end was near, the husband of the Plaintiff stated to the Plaintiff "Don't worry Honey you would be well taken care of, I have ensured that".

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15. In the same evening the Security guard posted at the home of the Plaintiff lodged a complaint with the Police Station Greater Kailash-I, Delhi against Defendant No. 2. On 15.04.2014 Dr. N.P.S. Chawla was informed by the

Defendant No. 2 that an FIR has been registered against him for trespassing into the property at N-258, Greater Kailash Part-I, New Delhi and he was cautioned that he should not enter the said premises without permission.

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22. Recently, the Plaintiff received an envelope from one Mr. N.S. Vashisht, Advocate Chamber No. 117, Lawyers Chambers, High Court of Delhi at New Delhi in compliance of provisions of Order XXXIX Rule 3 CPC enclosing a copy of the order dated 01.09.2014 passed by Hon"ble Mr. Justice G.S. Sistani, in Test case No. 84 of 2014 titled "Kiran Abnashi Chawla &Anr. Vs. State" and directing status quo. In the said envelope the copy of the petition preferred was also enclosed. From a perusal of the papers forwarded it was revealed that the Defendants have filed for probate of an alleged Will dated 03.11.2013 of the late husband of the Plaintiff. Despite admitting in the body of the petition that the Plaintiff herein is the legally wedded wife of Late Sh. H.P.S. Chawla, the Defendants herein have did not implead the Plaintiff as a party to the said petition.

23. It is submitted that from the various suspicious circumstances concerning and surrounding the alleged Will dated 03.11.2013, it would be revealed that the alleged Will is nothing but a fraudulent, forged, procured or otherwise arranged document that does not reflect the real last Will and testamentary disposition of late Mr. H. P.S. Chawla. It is submitted that the actual Will of late Mr. H.P.S. Chawla stated to have been made years ago was / is in the premises at N-258, Greater Kailash-I, New Delhi - 110048. As per the information provided by the security guard posted at the said address under instructions from the Plaintiff, documents were removed by Defendant No. 2 and apparently the actual Will was also taken away. Nevertheless the Plaintiff shall be joining the aforesaid probate proceedings and filing her detailed objections as to grant of probate in respect of the alleged Will dated 03.11.2013."

3. The plaintiff claims that there has been a clear admission by defendant No. 1 of her averments in the plaint that the plaintiff was the legally wedded wife of late Sh. H.P.S. Chawla and is the only Class-I legal heir who was the sole owner of the suit property and that it was her husband's permanent residence in India before his demise.

4. It is contended that the plaintiff had lived in the suit property and it was a matrimonial home for all legal and practical purposes and de hors her living in the USA, the status of the suit property as her matrimonial home remain unaltered and that she continued to have constructive possession of the same through her husband, therefore the plaintiff was in possession of the same. It is the plaintiff's case that she is an American citizen residing in New York where her husband was cremated by her on 3rd April, 2014 and defendant No. 1 also was present at the time of cremation; however, the latter flew to India on 12th April, 2014, as per immigration stamp on her passport, and subsequently trespassed into the suit property. Therefore she was not in lawful possession of

the suit property at any time. Furthermore, defendant No. 1 has admitted that she was in possession of the suit property as one of the executors of an alleged Will dated 3.11.2013.

5. It is the plaintiff's case that on 15.4.2014 she was informed by the brother-in-law that the defendants trespassed into the suit property and upon being confronted by the brother-in-law she relied upon the alleged Will dated 3.11.2013 to justify her trespass into the suit property. The brother-in-law also informed her that defendant No. 2 had removed files and documents from the home of the plaintiff. An FIR was filed with Greater Kailash, New Delhi Police Station against defendant No. 1. A police complaint was registered on 15th April, 2014 apropos the defendants' forcible entrance by physically pushing aside the guards who were looking after the property in the absence of the plaintiff's husband. A similar skirmish was reported on 7/8th April, 2014; that the defendants have deliberately remained silent about when they entered into the property, whereas from the FIR of 15th April, 2014 it becomes apparent that their forcible entry into the suit property was on that date only, hence, it establishes that the defendants were never in lawful possession of the suit property.

6. It is the plaintiff's case that the suit property was her matrimonial home and her belongings are still lying there. She being the legally wedded wife of late Sh. H.P.S. Chawla, has every right to maintain the property as her own. Whereas, only on the basis of the Will the defendants have taken the law into their hands and cannot seek right, title or interest in the suit property, let alone assert the possession of the same through forcible means.

7. The plaintiff further contended that sometime in the past, she has left India to take care of her ailing mother in New York. The latter passed away on 14.8.2013. On her desire to come back to India her husband advised her to stay back as he was due for a medical check-up and intended to travel to New York for the said purpose in the near future. He did so in November, 2013 and was admitted to hospitals in New York but despite the medical treatment being accorded to him, he passed away on 3rd April, 2014. It is contended that defendant No. 1, who had worked with her husband for many years as his employee to look after his business in New York, also used to visit him in the hospital and acted in a manner which was of some concern to the plaintiff; during his treatment Mr. H.P.S. Chawla was in and out of Intensive Care Unit because of serious medical condition; he was of very feeble health and in an unresponsive state, subsequently he drifted into a semi coma state; that the defendant No. 1 had never resided in the suit property. The plaintiff has claimed that she came across a public notice in the daily "Times of India" dated 1.7.2014 purporting to tell the public at large that Sh. H.P.S. Chawla has left behind a Will bequeathing all his estate in the hand of the Executives of the said Will. Subsequently, an order of this Court dated 1.9.2014, was received by her in Testamentary Case No. 84/2014 directing maintenance of status quo apropos the estate of her husband.

8. Mr. Piyush Kalra, the learned counsel for the plaintiff would submit that only justification sought to be advanced by defendant No. 1 about her illegal trespass into the plaintiff's matrimonial home is that she has been holding possession of the property as an Executor of the estate of the plaintiff's husband and that defendant No. 1 admits that she was not in possession of the property prior to leaving her for New York in November, 2013.

9. The learned counsel further submits that there is a clear admission of the defendant No. 1 that she was not in possession of the suit property prior to leaving for New York in November, 2013, he refers to para 13 of the written statement which reads as under:-

"13. The contents of para 13 of the plaint are denied as wrong and false. It is denied that the defendants have forcefully entered into the property on 14.04.2014. It is submitted that the defendant No. 1 has always been staying at the suit property alongwith Shri Harinder Pal Singh Chawla. After the demise of Shri Harinder Pal Singh Chawla on 04.03.2014, the defendant No. 1 came back to India and stayed at the suit property. The defendant No. 1 has been staying without any hindrance or obstructions. It is denied that the defendant No. 2 had removed any files or papers from the suit property. It is submitted that there was no occasion or reason for defendant No. 2 to remove any file or per as he was always trusted by Shri Harinder Pal Singh Chawla and that Shri Harinder Pal Singh Chawla at the time of leaving for New York had left his entire estate and business under the supervision and custody of defendant No. 2."

10. On the basis of the aforesaid averments, the learned counsel for the plaintiff would contend, that the Written Statement does not disclose as to the date on which she had entered into the residence with Mr. H.P.S. Chawla. Instead the aforesaid paragraph clearly admits that the defendant No. 1 entered into the suit property at best, only after 4th March, 2014 when she came to New Delhi; the claim of defendant no.1 that she was staying in the suit property without any hindrance or obstruction is immaterial. Collaterally, defendant No. 2 has stated that he was never in possession of the suit property earlier.

11. Therefore, the learned counsel would argue that it is admitted that the plaintiff is the legally wedded wife of Sh. H.P.S. Chawla and her permanent residence in India was the suit property where she was living with her husband off and on, therefore the property is a matrimonial home and she had constructive possession over it throughout till the intrusion and trespass in the property by the defendants. Interestingly, the defendant No. 1 has failed to disclose the date, the month or even the year in which she entered into the suit property against the interests of the plaintiff. Therefore, the learned counsel contends that silence apropos the date or period when she entered into the suit property would need to be inferred adversely against her. Accordingly it has to be presumed that defendant No. 1 entered into it only on or after the 15th April, 2014.

12. Refuting the aforesaid arguments, the learned counsel for the defendants would submit that the suit is not maintainable because the plaintiff has not been able to show that she was in a settled possession prior to date of dispossession. He relies upon the dicta of Supreme Court in *Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. and Another*, (2003) 10 SCALE 950 : (2004) 1 SCC 769 : (2003) 6 SCR 850 Supp : (2004) AIRSCW 4205 : (2003) 8 Supreme 928 which held that a settled possession must be effective and undisturbed and to the knowledge of the owner without any attempt of concealment by the trespasser. He further relies upon dicta of this Court in *Roop Lalwani and Others Vs. Sunita Lalwani and Others*, (2014) 4 AD 310 : (2014) 208 DLT 494 : (2014) 142 DRJ 146 which held that mere deployment of security guards outside the property cannot be held that the plaintiff possessed the property before being dispossessed and therefore reserved protection for possession under Section 6 of the Specific Relief Act. The Court held that Section 6 action is intended to be, must remain in the nature of a summary trial upon determination of two factors i.e. (i) the person was factually in possession and (ii) such person had been dispossessed. The learned counsel submits that the plaintiff's claim that the guards deployed in the drive way of the suit property by or on behalf of the plaintiff and had been pushed away by the defendants to take possession of the suit property is vague and a tenuous claim since it does not establish that the plaintiff was in settled possession which is a pre-requisite for a Section 6 action.

13. Furthermore, it is argued, the plaintiff had left India many years ago to take care of her mother and has had virtually no marital relationship with the late Sh. H.P.S. Chawla, whereas quite to the contrary, the defendant No. 1 was a live-in partner of Mr. H.P.S. Chawla for decades and indeed, he had left the keys of the suit property with defendant No. 2 before he left India for his treatment for the United States of America in November, 2013. It is contended had only visited India once sometime in 1989-1990 when she stayed in the country for about 4 to 5 months to finalize the break up between the plaintiff and Sh. Harinder Pal Singh Chawla and once more in 2010-2011. Apart from these two instances she had never stayed in the suit property. The written statement reads as under:

"Preliminary Submissions:

4. Shri Harinder Pal Singh Chawla has left behind a will dated 03.11.2013 and the defendant No. 1 is one of the executors of the said will. As per Section 211 of the Indian Succession Act, 1925, the entire estate of Shri Harinder Pal Singh Chawla has vested in the executors and neither the plaintiff nor any other class-II legal heirs will have a right to claim the property of Shri Harinder Pal Singh Chawla pending the probate proceeding. Any claim of the plaintiff or of any other party would not be maintainable keeping in view the fact that neither the plaintiff nor any class-II legal heir of Shri Harinder Pal Singh Chawla were in possession of the property in question on the date of his demise."

14. The parawise reply to this reads as under:-

"4. The Plaintiff herein has never been in possession of the suit property and that the suit property was always exclusive possession of late Shri Harinder Pal Singh Chawla and the Defendant No. 1 herein. The Defendant No. 1 as the life partner of Shri Harinder Pal Singh Chawla has been living in the suit property during the lifetime of Shri Harinder Pal Singh Chawla. After the demise of Shri Harinder Pal Singh Chawla on 03.04.2014, the said property has been in the possession of the Defendant No. 1 as the executor of the estate of Shri Harinder Pal Singh Chawla."

It is also contended that since the suit was filed five months after alleged date of dispossession it is not maintainable under Section 6 of the Specific Relief Act.

15. The learned counsel for the defendants further relies upon the judgment in T.K. Lathika Vs. Seth Karsandas Jamnadas, AIR 1999 SC 3335 : (1999) 6 JT 400 : (1999) 5 SCALE 303 : (1999) 6 SCC 632 : (1999) 2 SCR 116 Supp : (1999) 2 UJ 1512 : (1999) AIRSCW 3330 : (1999) 7 Supreme 601 to contend that since the testamentary case is pending adjudication apropos the Will propounded by defendant No. 1, no order should be passed in the present case as it would quite likely prejudice the probate proceedings. He relies upon the para 9 of the said judgment which held as under:-

"9. If the ban contained in the third proviso to Section 11(3) of the Act applies, its corollary is that the petition filed by the landlord has to be expelled on the sole ground that the landlord was then not entitled to file it. In such a situation the court should not enter into the merits because whatever is said or found on the merits would then be without jurisdiction. High Court should have first decided the question of maintainability of the petition and only if that point was found in the affirmative the merits need have been gone into."

16. On the other hand, the learned counsel for the plaintiff has relied upon the dicta of the Supreme Court in Sadashiv Shyama Sawant [D] through L.Rs. and Others Vs. Anita Anant Sawant, (2010) 2 JT 305 : (2010) 3 SCC 385 : (2010) 2 SCR 1070 : (2010) 3 UJ 1130 which held in paras 18 and 19 as under:-

"16. As noticed above, the views of the High Courts differ about maintainability of suit for possession by the landlord under Section 9 of 1877 Act in respect of property let out to the tenant who has been dispossessed forcibly by a third party. That language of Section 6(1) of the Act and first paragraph of Section 9 of 1877 Act is exactly identical admits of no doubt. The key words in Section 6(1) are "dispossessed" and "he or any person claiming through him". A person is said to have been dispossessed when he has been deprived of his possession; such deprivation may be of actual possession or legal possession. Possession in law follows right to possession. The right to possession, though distinct from possession, is treated as equivalent to possession itself for certain purposes.

17. In Halsbury's Laws of England (Fourth Edition, page 617 - para 1111), "physical and legal possession" is distinguished as under:

"Possession" is a word of ambiguous meaning, and its legal senses do not

coincide with the popular sense. In English law it may be treated not merely as a physical condition protected by ownership, but as a right in itself. The word "possession" may mean effective, physical or manual control, or occupation, evidenced by some outward act, sometimes called de facto possession or detention as distinct from a legal right to possession.....

"Possession" may mean legal possession: that possession which is recognized and protected as such by law. The elements normally characteristic of legal possession are an intention of possessing together with that amount of occupation or control of the entire subject matter of which it is practically capable and which is sufficient for practical purposes to exclude strangers from interfering. Thus, legal possession is ordinarily associated with de facto possession; but legal possession may exist without de facto possession, and de facto possession is not always regarded as possession in law. A person who, although having no de facto possession, is deemed to have possession in law is sometimes said to have constructive possession."

17. The learned counsel for the plaintiff would also submit that reliance upon the Roop Lal (supra) is misplaced because the case concerned Class II heirs whereas the present case deals with Class I heirs of the deceased and the plaintiff has been in constructive possession of the suit property through her husband and has installed the guards within the compound of the house and not outside it. Therefore, the guards and the caretakers had full access to the house on behalf of the plaintiff who had continuous constructive possession of the same through her husband.

Analysis and Conclusion

18. In Indra Sarma Vs. V.K.V. Sarma, (2014) 1 ABR 615 : (2014) 2 AD 447 : AIR 2014 SC 309 : (2013) 3 DMC 830 : (2013) 15 JT 70 : (2014) 1 RCR(Civil) 263 : (2014) 1 RCR(Criminal) 179 : (2013) 14 SCALE 448 while examining the right of a live-in partner to maintenance or monetary consideration under S. 2(f) of the Domestic Violence Act the Supreme Court held:

64. Appellant had entered into this relationship knowing well that the Respondent was a married person and encouraged bigamous relationship. By entering into such a relationship, the Appellant has committed an intentional tort, i.e. interference in the marital relationship with intentionally alienating Respondent from his family, i.e. his wife and children. If the case set up by the Appellant is accepted, we have to conclude that there has been an attempt on the part of the Appellant to alienate Respondent from his family, resulting in loss of marital relationship, companionship, assistance, loss of consortium etc., so far as the legally wedded wife and children of the Respondent are concerned, who resisted the relationship from the very inception. Marriage and family are social institutions of vital importance. Alienation of affection, in that context, is an intentional tort, as held by this Court in Pinakin Mahipatray Rawal case (supra), which gives a cause of action to the wife and children of the Respondent to sue

the Appellant for alienating the husband/father from the company of his wife/children, knowing fully well they are legally wedded wife/children of the Respondent..

65. We are, therefore, of the view that the Appellant, having been fully aware of the fact that the Respondent was a married person, could not have entered into a live-in relationship in the nature of marriage. All live-in-relationships are not relationships in the nature of marriage. Appellant's and the Respondent's relationship is, therefore, not a "relationship in the nature of marriage" because it has no inherent or essential characteristic of a marriage, but a relationship other than "in the nature of marriage" and the Appellant's status is lower than the status of a wife and that relationship would not fall within the definition of "domestic relationship" Under Section 2(f) of the DV Act. If we hold that the relationship between the Appellant and the Respondent is a relationship in the nature of a marriage, we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the Respondent in connection with that type of relationship, would not amount to "domestic violence" Under Section 3 of the DV Act.

66. We have, on facts, found that the Appellant's status was that of a mistress, who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. Children born out of such relationship also suffer most which calls for bringing in remedial measures by the Parliament, through proper legislation.

67. We are conscious of the fact that if any direction is given to the Respondent to pay maintenance or monetary consideration to the Appellant, that would be at the cost of the legally wedded wife and children of the Respondent, especially when they had opposed that relationship and have a cause of action against the Appellant for alienating the companionship and affection of the husband/parent which is an intentional tort.

19. In the present case the plaintiff has denied the close relationship as sought to be portrayed between defendant no.1 and the plaintiff's deceased husband. Thus the claim of defendant no 1 has a far weaker foundation than in facts in Indra Sarma (supra), which in any case held that a, live-in or mistress or survivor in a bigamous relationship does not enjoy the status of marriage, hence she does not get the protection of law for maintenance.

20. There is no dispute that the plaintiff is the legally wedded wife of Sh. H.P.S. Chawla, while defendant no.1 was, at best, his live-in partner. Her live-in status, assuming to be true, would not confer upon her any better right in law to dislodge the wife's lawful right to the matrimonial home. During the subsistence of a marriage, while there may be silent tolerance of a live-in relationship by the wife, the live-in status does have the approval of law to oust the rightful and

legal status of the wife in the matrimony. The live-in would be, at best, an unwanted guest in the wife's matrimonial home. The presence of such a guest, on the wife's sufferance, would not clothe the live-in with animus possidendi of the home to constitute ouster or cause detriment of the wife's legal or physical possession of the home. The wife's possession of the matrimonial home is a legal and natural corollary to the bond of marriage vis-a-vis a third party or stranger to the matrimony, such as a live-in. Therefore in the present case, as a wife the plaintiff need not have had locks on every door or been in actual physical or de-facto possession.

21. In her written statement, defendant No. 1 has admitted the plaintiff's legal status as the wife of Mr.H.P.S. Chawla and her essential role and requirement of consent for the deceased husbands cremation:

"6.25. It is pertinent to submit here that at the time of preparation of the documents at the funeral home, the plaintiff was called by the sister of the defendant No. 1 for her signatures as she was the legally wedded wife of Shri Harinder Pal Singh Chawla. On the said occasion the plaintiff was constantly on conversation with Dr. N.P.S. Chawla and that inspite of the opposition of the defendant No. 1, she made request for the Ashes of Shri Harinder Pal Singh Chawla. The defendant No. 1 was deprived of the Ashes and that she has no knowledge till now as to whether the pious Ashes of Shri Harinder Pal Singh Chawla has been brought to India for emersion."

22. Assuming that defendant No. 1 was in a live-in relationship with late Sh. H.P.S. Chawla, it would not necessarily mean that she was in settled possession of the property. This is all-the-more implausible since she was living in United States of America and was not in actual physical possession of the suit property for a sufficiently long period nor could it be said that her possession, if any, contained an element of animus possidendi. The fact remains that the plaintiff being the legal wife and having set a matrimonial home with the deceased Mr. H.P.S. Chawla in 1989 would not lose the said status by her living away the suit property to take care of her ailing mother. The wife would not lose status of constructive possession of a matrimonial home, which she had in law - through her husband, simply because of distance or passage of time apropos the element of physical presence in or de facto possession, as outlined in *Puran Singh and Others Vs. The State of Punjab*, AIR 1975 SC 1674 : (1975) 4 SCC 518 : (1975) SCR 299 Supp . Dispossession must contain an element of animus possidendi which is not shown anywhere in the present case by the defendants, nor has it been shown that defendant No. 1 was either in possession of the property or held it for a sufficiently long period. Furthermore, even if it is assumed that the keys to the suit property were handed over to defendant No. 2 by late Sh. H.P.S. Chawla prior to his departure to the United States of America in November, 2013 for the supervision and custody of the suit property, it would not necessarily mean that the defendants have been in "possession" or that Sh. H.P.S. Chawla had given possession of the premises to the defendants of the property, as his

legal heirs or as beneficiaries of the alleged Will. The act of giving keys to the said defendants would mean nothing more than keeping the keys with the defendants. The possession in law would be retained by late Sh. H.P.S. Chawla and through him by his wife - the plaintiff. The rights of the defendants, if any, in the suit property, would be determinable upon adjudication of the pending probate case. Besides there is nothing to show that the defendants exercise domain over the suit property to the exclusion of the legal possession of the plaintiff. On the contrary, the deployment of security guards by the plaintiff coupled with the police complaint filed on 15th April, 2014 to the effect that the security guards were pushed aside and the possession was allegedly forcibly taken by the defendants, goes to prove that the defendants" were never in possession of the suit property earlier.

23. It is clear from the defendants" written statement especially in paras 6.25 to 6.26. that they were not in possession of the suit property till 15.4.2014.

24. The suit has been filed within a period of 6 months from the date of dispossession, therefore it is maintainable under Section 6 of the Specific Relief Act. The fact that the defendants had not specified the date from which they come into possession of the suit property - their reply in this regard is silent, therefore an adverse inference has to be drawn against them apropos the date they took possession. The plaintiff"s contention are that she was dispossessed on 15.4.2014, which is after the demise of Sh. H.P.S. Chawla and only after return of defendant No. 1 to India on 12.4.2014, has to be accepted. The plaintiff having been in constructive possession of the suit through her husband cannot be dispossessed by the defendants. Any rights that the defendants may have in the suit property, as per the Will propounded by them, would be the subject matter of the pending Testamentary Case. However, that pendency can neither abridge nor constrain the rights of the plaintiff to seek recovery of the suit property from which she has been forcibly dispossessed.

25. In view of the above, the Court finds that the plaintiff was in constructive and legal possession of the suit property. This legal possession entails a right to possession. Having been deprived of her legal possession she is entitled under Sec. 6 of the Specific Relief Act, to recovery of its possession and restoration of status quo ante. In the circumstances, the suit is decreed in favour of the plaintiff under Order XII Rule 6 CPC of the CPC, on the basis of the admissions in the written statements. The recovery of possession however, would not adjudicate upon claims -- as may be, apropos interests in or ownership of the suit property. Let possession of the suit property be handed over to the plaintiff within two weeks from today. Decree sheet be drawn up accordingly.

26. The suit and application are disposed-off.