

**Shanti Devi & Ors. Vs. Parvinder**

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**SooperKanoon Citation :** [sooperkanoon.com/893](http://sooperkanoon.com/893)

**Court :** Delhi

**Decided On :** Nov-12-2014

**Judge :** Sunil Gaur

**Appellant :** Shanti Devi & Ors.

**Respondent :** Parvinder

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: November 12, 2014 + RSA3302014 SHANTI DEVI & ORS. Through: ..... Appellants Mr. Manish Vats & Mr. Sandeep Gupta, Advocates versus PARVINDER ..... Respondent Through: Nemo. CORAM: HON'BLE MR. JUSTICE SUNIL GAUR

**JUDGMENT**

(ORAL) % C.M.No.18494/2014 (u/S151CPC) Allowed subject to all just exceptions. C.M.No.18493/2014 (u/S5of the Limitation Act) Delay of thirty days in filing the accompanying application is condoned for the reasons stated in the application. Application is disposed of. RSA No.330/2014 & C.M.No.18492/2014 (stay) After framing of issues on an application under Section 151 of CPC, trial court has dismissed respondents suit for possession and permanent injunction. However, the First Appellate Court has reversed the findings of the trial court and has restored respondent-plaintiffs suit RSA No.330/2014 Page 1 for being tried in accordance with the law while holding as under:

The counsel for the respondents No.2 to 8 has next contended that since the suit property is a dwelling-house and the respondents No.2 to 8 are co-owners and in joint possession thereof alongwith the respondent No.1, the appellant could not have sought possession in view of Section 44 of the Transfer of Property Act, 1882 and it was incumbent for him to seek partition in accordance with Section 4 of the Partition Act, 1893. I find no merits in the above contention. The issue as to whether the respondents No.2 to 8 are the joint owners of the suit property is also a matter of evidence and requires trial for its adjudication.

The factual background of this case stands already noted in the opening paragraph of the impugned judgment and needs no reiteration. At the hearing, it was contended by learned counsel for appellantsdefendants that the respondent-plaintiff cannot proceed with their suit for possession on the basis of General Power of Attorney, as General Power of Attorney sales have been held to be not valid by the Apex Court in Suraj Lamp & Industries Vs. State of Haryana & anr. (2012) 1 SCC656 It was vehemently urged by learned counsel for appellants that without the consent of co-sharers, the suit property cannot be sold and due to this infirmity, the suit of the respondent-plaintiff is not maintainable and the impugned judgment deserves to be set aside and the trial court judgment ought to be restored. Upon hearing and on perusal of the impugned judgment and trial RSA No.330/2014 Page 2 court judgment, I find that the question whether the subject property could be sold without the consent of co-sharers is an aspect which is required to be decided at trial and cannot be pre-judged. There is no perversity in the impugned order. No substantial question of law arises in this second appeal. Hence this appeal is dismissed with no order as to costs. Application for stay is dismissed as infructuous. (SUNIL GAUR) JUDGE NOVEMBER12 2014 r RSA No.330/2014 Page 3