



2025:DHC:4080



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

Date of Decision: 20th May, 2025

+ CS(OS) 275/2022 & CRL.M.A. 6047/2023, I.A. 17285/2023, I.A. 17296/2023, I.A. 17547/2023, I.A. 8017/2024, I.A. 8659/2024, I.A. 36602/2024

SHRI SAMAY GARG

.....Plaintiff

Through: Mr. Shiv Charan Garg, Ms. Jahanvi Garg, Advocates

versus

SHRI RAM RATTAN GUPTA & ORS.

.....Defendants

Through: Mr. Vivek Garg, Mr. Sandeep Nainwal, Advocates for D-2, 3 and 5 and D-6 in person

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

I.A. 17285/2023 (*application under Order VII Rule 11 CPC on behalf of defendant no. 3*)

1. The present application has been filed by the defendant no. 3 (Mr. Manoj Garg) under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC') seeking rejection of the plaint.

2. Vide order dated 09.04.2024 prayers (ii) and (iii) of the captioned application were rejected as being misconceived and untenable under Order VII Rule 11 CPC, therefore, the decision in this order is restricted to the surviving prayer (i) of this application.

3. Defendant no. 1 i.e. Shri. Ram Rattan Gupta expired during the pendency of present suit on 04.9.2022. Accordingly, the legal representatives of defendant no. 1 have been brought on record vide order dated 12.08.2024.



Case Setup in the Plaintiff

4. The plaintiff has filed the present suit seeking following reliefs:
- i. Declaration that the plaintiff is owner of the land admeasuring 856 sq. yds in property bearing Khasra No. 79/1 min (New) and 293/1 min (Old) *Khata* No. 1159/427 situated at village Shahpur, Daulatpur, Delhi ('suit land')
 - ii. Declaration that the *fard* and documents prepared by defendants No.1 to 6 in respect of suit land be declared as null and void.
 - iii. Permanent injunction in favour of the plaintiff restraining defendants from transferring or alienating or creating third party interest in respect of the suit land.
 - iv. Specific performance of the agreement dated 16.04.1999 directing defendant no. 1 to execute the Sale Deed in respect of the area measuring 428 sq. yds. of the suit land.
 - v. Declaration that sale deed dated 14.12.2021 registered on 14.12.2021 before the Sub-Registrar, Delhi executed by defendant no. 1 in favour of defendant no. 3 is null and void.
 - vi. Declaration that sale deed dated 14.12.2021 registered on 14.12.2021 before the Sub-Registrar, Delhi executed by defendant no. 1 in favour of defendant no. 6 is null and void.

4.1. It is stated that late Shri Mahabir Prasad Gupta and late Shri Ram Rattan Gupta [defendant No.1] were owners and in possession of 1108 sq. yards in Khasra No. 79/1 min (New) and 293/1 min (Old) *Khata* No. 1159/427.

4.2. It is stated that late Shri Satish Kumar Garg (i.e., father of the plaintiff) purchased 856 sq. yards from late Shri Ram Rattan Gupta (428 sq yards) and late Shri Mahabir Parshad Gupta (428 sq yards) on 16.04.1999 against the full payment of sale consideration amount of Rs. 85,000/-.



4.3. It is stated that the said sale consideration was paid by the father of the plaintiff i.e. late Shri Satish Kumar through cheques bearing no. 888501 and 888502 dated 16.04.1999 drawn on Dena Bank, Shakti Nagar, Subzi Mandi, Delhi for a sum of Rs. 42,500/- each in favour of late Shri Ram Rattan Gupta [defendant No.1] and late Shri Mahabir Prashad respectively; and the said cheques were encased by the vendors.

4.4. It is stated that both late Shri Ram Rattan Gupta [defendant No.1] and late Shri Mahabir Prasad Gupta (vendors) executed an Agreement to Sell, Receipt, Affidavit acknowledging the transaction and receipt of consideration, separate registered Will(s) and registered General Power of Attorney (GPA) dated 16.04.1999 in favour of late Shri Satish Kumar (vendee). It is stated that vacant possession of the suit land was handed over by the vendors to Shri. Satish Kumar.

4.5. It is stated that the father of the plaintiff was in possession of the suit land admeasuring 856 sq. yards during his lifetime and since his death on 19.08.2019 the plaintiff has been in the possession of the said land.

4.6. It is stated that by virtue of Will dated 22.05.2019 executed by late Shri Satish Kumar and Will dated 10.10.2019 executed by late Smt. Savita Garg (mother of the plaintiff) the plaintiff became the absolute owner of the suit property by testamentary devolution. It is stated that the Class-I legal heirs of late Shri. Satish Kumar and late Smt. Savita Garg have confirmed the validity of the said Will(s) and there is no inter-se disputes between the said legal heirs.

4.7. It is stated that cause of action for filing the suit arose since defendant no. 1 (i.e., late Shri. Ram Rattan Gupta) after more than 21 years has executed two registered Sale Deeds, both dated 14.12.2021, in favour of defendant No.3(i.e., Shri Manoj Garg) for 428 sq yards and in favour of



defendant No.6 (i.e., Shri Vivek Garg) for 76 sq yards. It is stated that the said sale deed cast a cloud on the rights of late Shri. Satish Kumar, which have devolved upon the plaintiff. It is stated that defendant no. 1 had sold his share to the extent of 428 sq. yards to Shri. Satish Kumar and therefore, execution of the aforesaid sale deeds is null and void. It is stated that the defendants have also manipulated the revenue records and wrongly have their names mutated in the *fard*. It is stated that these documents came to the knowledge of the plaintiff in 2021.

4.8. It is stated that in order to grab the suit land, which was purchased by late Shri. Satish Kumar, defendant nos. 3 and 6 have got an FIR registered against the plaintiff by producing illegal documents.

4.9. It is stated that due to the aforesaid acts of the defendants, the plaintiff also lodged the complaint dated 12.02.2022 to the Station House Officer ('SHO') of PS K.N. Katju Marg for registration of an FIR against aforesaid offenders for preparation of false, forged and fabricated documents, however, till date no action has been taken neither any FIR has been registered.

4.10. Hence the present suit has been preferred seeking the relief of declaration, specific performance of contract and permanent injunction.

Arguments by the Applicant i.e. defendant no.3

5. Learned counsel for the defendant no. 3 states that the reliefs sought in the suit are barred by limitation and the entire cause of action is meritless due to suppression of facts.

5.1. He states that plaintiff is not in possession of any part of the suit land.



5.2. He states that the plaintiff has suppressed that defendant no.1 (i.e., late Shri. Ram Rattan Gupta) had cancelled/revoked the documents¹ dated 16.04.1999 in the month of July of the year 2012. He states that the factum of the cancellation was duly published in newspapers on 23.07.2012. He states that consequently late Shri. Satish Kumar has no right in the land (admeasuring 428 sq. yds) sought to be purchased from defendant no. 1. He states that the cancellation was to the knowledge of late Shri. Satish Kumar and he did not challenge the same during his lifetime.

5.3. He states that after the cancellation of the transaction dated 16.04.1999 between Shri. Satish Kumar and defendant no. 1, a Will dated 15.02.2013 was executed in favour of defendant no. 3 for land admeasuring 428 Sq. yds. He states that subsequently defendant no. 1 executed a sale deed dated 14.12.2021 for the 428 sq. yds. in favour of defendant no. 3.

5.4. He states that, in addition defendant no. 1 executed sale deed dated 14.12.2021 for a separate 76 sq. yds. in favour of defendant no. 6.

5.5. He states that defendant no. 1 own 504 sq. yds. and disposed of his share in favour of defendant nos. 3 and 6 through sale deeds dated 14.12.2021.

5.6. He states that late Shri. Mahabir Prasad Gupta also owned 504 sq. yds. however, vide Will dated 16.04.1999 he bequeathed 252 sq. yds. in favour of defendant no. 3 (i.e., Manoj Garg). He states that late Shri. Mahabir Prasad Gupta had executed another registered Will dated 16.04.1999 for 428 sq. yds. in favour of Shri. Satish Kumar. He states that however the bequest of 428 sq. yds. was erroneous and it should have been 252 sq. yds only. He states that late Shri. Satish Kumar was aware of this

¹ GPA, SPA and Will



error and revenue records were duly corrected to reflect that Shri. Satish Kumar was the owner to the extent of 252 sq. yds.

5.7. He states that defendant no. 3 has, thus, become owner to the extent of 680 sq. yds. in the suit land, having purchased 428 sq. yds. from defendant no. 1 (i.e., late Shri. Ram Rattan Gupta) and 252 sq. yds. from late Shri. Mahabir Prasad Gupta. He states that defendant no. 3 has sold majority of his share in the suit land to third parties who are not a party to this suit.

5.8. He states that the Will dated 22.05.2019 of Shri. Satish Kumar relied upon by the plaintiff is not a genuine document since the plaintiff in the succession proceedings bearing suit no. 141/2022 before the Court of ACJ, North-West District, Rohini Court Delhi has averred that late Shri. Satish Kumar died intestate and the same has been recorded in the judgment dated 25.01.2024.

5.9. He states that the relief for specific performance of agreement dated 16.04.1999 vis-à-vis defendant no. 1 is barred by limitation. He states that documents dated 16.04.1999 relied upon by Shri. Satish Kumar are not genuine.

5.10. He states that the customary documents dated 16.04.1999 do not create any right or title in favour of Shri. Satish Kumar and placed reliance upon the judgment of the Supreme Court passed in **Suraj Lamp & Industries (P) Ltd. Vs. State of Haryana²**.

Arguments by the non-applicant i.e. plaintiff

6. In reply, Mr. Garg, learned counsel for the non-applicant/plaintiff states that late Shri. Satish Kumar is a vendee in possession of the suit land. He states that since the ATS dated 16.04.1999 was executed prior to 2001, therefore, the unamended Section 53A of Transfer of Property Act, 1882



(‘TPA Act’) will apply and the plaintiff as the legal heir of late Shri. Satish Kumar is entitled to protect its possession against defendant no. 1 and any person claiming through the said defendant.

6.1. He states that this ATS is admissible in evidence as it was executed prior to 2001 and therefore the embargo of Section 17(1)(A) of Registration Act, 1908 would not be applicable.

6.2. He states that the relief for specific performance is maintainable in view of the liberty by Supreme Court in the judgment of **Suraj Lamps** (supra).

6.3. He states that sale deeds have been executed by defendant no. 1 in 2021 and the present suit has been filed in 2022 and therefore the relief seeking cancellation of the sale deed is within limitation.

6.4. He states that the plaintiff was born in the year 2002, and as a minor at the time of his father's death in 2019, he was unable to protect his interests since the defendants taking advantage of his inability sought to exploit his right/interest to the extent of 856 square yards located at Khara No. 79/1 min (New).

Findings and Analysis

7. This Court has heard the parties and perused the record.

8. The suit land falls in Khasra No. 79/1 min (New) and 293/1 min (Old). Khasra No. 79/1 min (New) is a large piece of land comprising of 2135.34 Sq. Yds³.

9. The subject matter of this suit is 856 Sq. Yds. falling distinctly on the southern side of the Khasra (‘suit land’). This area has been identified by the Local Commissioner as the red portion in the site plan.

² (2012) 1 SCC 656



10. In Khasra No. 79/1 min (New) in a distinct land parcel admeasuring 1008 sq. yards which falls on the northern side, plaintiff is claiming 504 Sq. Yds. and for this a separate suit i.e., CS (OS) 186/2022 has been filed.

Plaintiff and defendant nos. 2 to 6 are lineal descendants of late Shri. Bharat Singh and between them they claim title rights in the entire parcel of 2135.34 Sq. Yds. forming Khasra No. 79/1 min (New).

This fact is being noted for completion of record.

11. There are thus, two (2) separate suits filed by the plaintiff herein for asserting his inheritance rights in the two (2) distinct parcels of land falling in Khasra no. 79/1 min (New) i.e., CS(OS) 186/2022 and CS(OS) 275/2022. The documents brought on record by parties in both suits are common and hold significant evidentiary value. During the arguments in the captioned suit, the documents evidencing the averments were cross-referred by the counsels from both the suits.

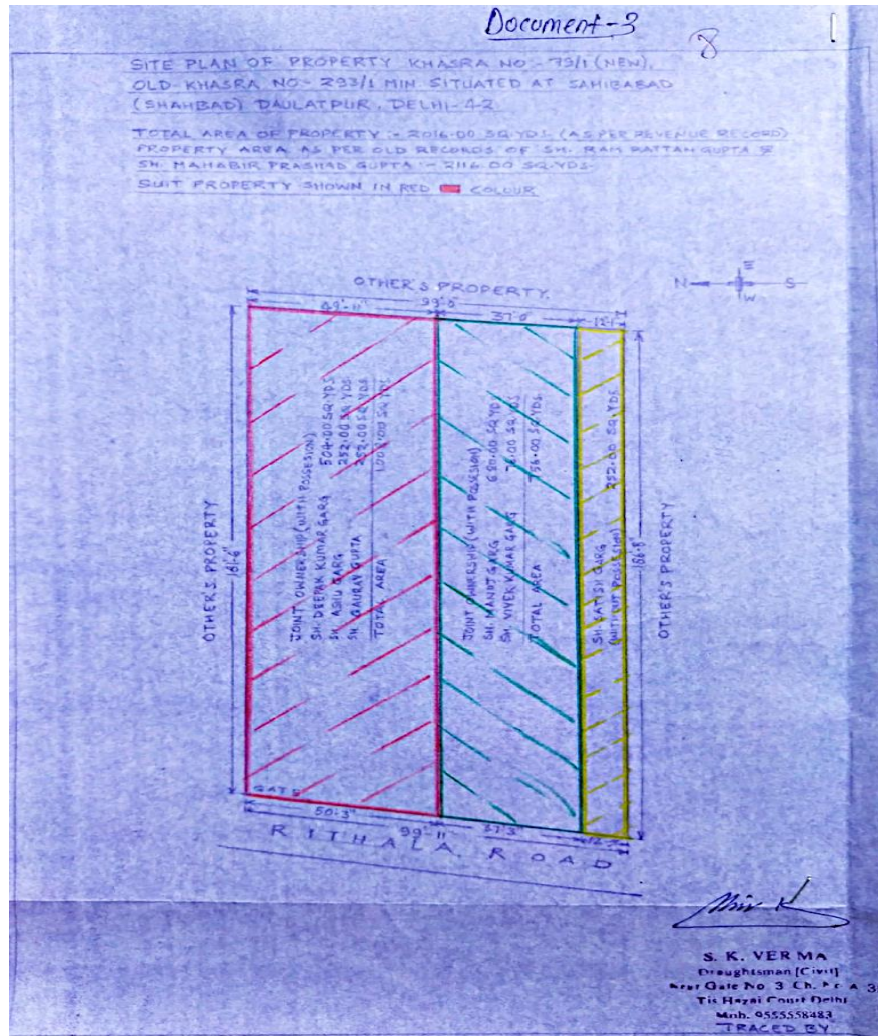
Possession

12. It is noted at the outset that as per the documents on Court record, the applicant/defendant no. 3 itself admits that plaintiff's father late Shri. Satish Kumar has right, title and interest in the suit land to the extent of 252 sq. yds. Defendant no. 3 has filed a site plan with a nomenclature '*copy of map/layout plan showing real ownership of suit property*' with its list of documents on 18.07.2023. In this plan the portion of 252 sq. yds (shown in yellow colour) has been delineated with the name of late Shri. Satish Kumar (i.e., the father of the plaintiff) duly inscribed. The only inference to be drawn from the said map is that the ownership of Shri. Satish Kumar (i.e., the father of the plaintiff) for the portion of 252 sq. yds. is admitted by the

³ The measurement is as per the site plan prepared by the Local Commissioner with the assistance of a draughtsman and filed with its report dated 17.08.2024.



defendant no. 3. The said plan has also been filed in colour in CS (OS) 186/2022 by the same defendant. The coloured site plan filed by defendant no. 3 is as under:



13. Even in this application, the applicant/defendant no. 3 admits that late Shri. Satish Kumar is the recorded owner of 252 sq. yds. purchased from late Shri. Mahabir Prasad Gupta, as per the revenue records. The relevant portion of the pleading reads as under:

It is submitted that in fact this WILL of Mahabir Prashad Gupta which he executed in favour of Satish Kr Garg for 428 sq yds was later found wrong as, after executing the WILL of 252 square yards in favour of



Manoj Garg, Mahabir Prashad Gupta only left with him 252 sq yards land area and not 428 square yards which is also mentioned in Revenue Records. Hence later on, after noticing such mistake in the WILL, Satish Kr Garg himself went to revenue deptt and got the entries corrected of his share as 252 sq yds in the Revenue Records of his own which is actually entered in the corrected updated Khatoni even during the life time of Satish Kumar Garg which he actually got from Mahabir Prashad Gupta I.e. 252 square yards in favour of Satish Kr Garg. But it is submitted that this 252 sq yards is another and extreme southern side of this Khasra.

(‘Emphasis Supplied’)

14. Due to the factual controversy in this suit with regard to the actual physical possession of the suit land, this Court had appointed a Local Commissioner vide order dated 12.08.2024. A site plan of Khasra no. 79/1 min (New) has been filed along with the report of the Local Commissioner dated 17.08.2024 showing the suit land admeasuring 856 Sq. Yds. in red. A substantial part of this area is still lying open and vacant. The report also indicates that the defendants have recently started interfering in the possession of the plaintiff vis-à-vis this land.

15. This Court therefore finds no merit in the submission of defendant no. 3 that plaintiff is not in possession of the suit land. On the contrary, having perused the Local Commissioner’s report this Court finds merit in the submission of the plaintiff that defendants have been interfering in late Shri. Satish Kumar’s settled possession of the suit land and prima facie denying the legal heir of late Shri Satish Kumar his entitlement in the suit land.

Documents relied by the parties to establish ownership

16. It is undisputed that late Shri. Mahabir Prasad Gupta and defendant no. 1 were owners of a parcel of land admeasuring 1108 Sq. Yds. falling on the southern side of Khasra No. 79/1 min (New).



17. Late Shri. Satish Kumar entered into a transaction dated 16.04.1999 with late Shri. Mahabir Prasad Gupta and defendant no. 1 on 16.04.1999 for purchase of 856 sq. yds out of the said 1108 Sq. Yds. The proposed vendors executed an ATS, receipt, affidavit, registered GPA and separate Wills in favour of late Shri. Satish Kumar.

Shri. Mahabir Prasad Gupta executed the aforesaid documents for disposing 428 Sq. Yds. and defendant no. 1 executed the aforesaid documents for disposing his 428 Sq. Yds., in favour of late Shri. Satish Kumar. In this manner, late Shri. Satish Kumar was a transferee in possession.

18. Defendant no. 3 is the nephew of late Shri. Satish Kumar and had knowledge of the said transaction because simultaneously on 16.04.1999 a Will for 252 Sq. Yds. out of the said 1108 Sq. Yds. was also executed in favour of defendant no. 3 separately by Shri. Mahabir Prasad Gupta.

19. Defendant no. 3 has pleaded that the transaction dated 16.04.1999 vis-à-vis 428 Sq. Yds. was cancelled by defendant no. 1 in 2012 and has pleaded that a notice of cancellation was issued to Shri. Satish Kumar, in the year 2012. However, no notice of cancellation issued by defendant no. 1 to Shri. Satish Kumar has been placed on record.

The agreement dated 16.04.1999 records that the entire sale consideration has been paid over and possession has been received by late Shri. Satish Kumar. The relevant clauses of this agreement read as under:

- “1. That **the first party** after having received the entire sale consideration amount from the second party in full & final settlement **has delivered the vacant physical possession of the said land** unto the party who has occupied the same in the spot.
2. That hereinafter **the first party shall not create any charge over the said property as the first party has got no claim, title or interest in the same** and the second party has become its sole,



absolute and exclusive owner and is at liberty to sell, transfer and use the same in any manner.

.....

9. That **this agreement is irrevocable** and binding upon the parties hereto and their respective legal heirs, successors etc.”

(Emphasis supplied)

20. Defendant no. 3 has failed to show that there was any mutual reversion of physical possession of 428 Sq. Yds. from Shri. Satish Kumar to defendant no. 1 in 2012. Shri. Satish Kumar’s possession of the suit land purchased from defendant no. 1 was protected under Section 53A of Transfer of Property Act, 1882. In this case, since the ATS is of the year 1999, the unamended Section 53A as it existed prior to amendment in 2001 would govern the transaction. The defendant no. 3 has not placed on record any document showing that late Shri. Satish Kumar handed back the possession to defendant no. 1 post cancellation.

21. The Supreme Court recently in a judgment dated 20.12.2024 in the case titled as **Giriyappa & Anr. v. Kamamma & Ors.**⁴ examined Section 53A of the TP Act as well as Section 16 of the Specific Relief Act, 1963 and observed that, if the specified pre-requisites are met, the transferor or any person claiming under him is debarred from enforcing any right against the transferee in respect to the property which the transferee has taken or continue in possession, except for rights explicitly stated by the terms of the contract. The relevant portion of the order reads as under:

“11. From the aforesaid, it is evident that the protection of a prospective purchaser/transferee of his possession of the property involved, is available subject to the following prerequisites:

(a) There is a contract in writing by the transferor for transfer for consideration of any immovable property signed by him or on his behalf, from which the terms necessary to

⁴ 2024 INSC 1043



constitute the transfer can be ascertained with reasonable certainty;

(b) The transferee has, in part-performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part-performance of the contract;

(c) The transferee has done some act in furtherance of the contract and has performed or is willing to perform his part of the contract.

12. In terms of this provision, if the above preconditions stand complied with, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and person(s) claiming under him, any right in respect of the property of which the transferee has taken or continue in possession, other than a right expressly provided by the terms of the contract, notwithstanding the fact, that the transfer, as contemplated, had not been completed in the manner prescribed therefor by the law for the time being in force. Noticeably, an exception to this restraint is carved out qua a transferee for consideration, who has no notice of the contract or of the part-performance thereof.

13. Section 53-A of the Transfer of Property Act was inserted partly to set at rest the conflict of views in this country, but principally for the protection of ignorant transferees who take possession or spend money in improvements relying on documents which are ineffective as transfers or on contracts which cannot be proved for want of registration. The effect of this section, is to relax the strict provisions of the Transfer of Property Act and the Registration Act in favour of transferees in order to allow the defence of part performance to be established.

14. Section 53-A is an exception to the provisions which require a contract to be in writing and registered and which bar proof of such contract by any other evidence. Consequently, the exception must be strictly construed.”

(Emphasis supplied)

22. Defendant no. 3 has failed to show that the transaction was mutually cancelled by defendant no. 1 and late Shri. Satish Kumar. Defendant nos. 1 and 3 have failed to explain how did the possession revert to them from late Shri. Satish Kumar.



23. The plea that defendant no.3 became the owner since defendant no. 1 had lawfully cancelled the said GPA/SPA/Will dated 16.04.1999 by adopting the legal process/channel in 2012 and simultaneously a fresh/new Will of the same 428 sq. yards was executed on 15.02.2013 and sale deed executed on 14.12.2021 by defendant no. 1 in favour of defendant no. 3 cannot be accepted as conclusive at this stage while deciding the application under Order VII Rule 11 CPC.

24. Defendant no. 3 is a purchaser with notice of the aforesaid ATS dated 16.04.1999 executed by defendant no. 1 in favour of late Shri. Satish Kumar and his sale deed would be subject to the rights of Shri. Satish Kumar and his legal heirs. (Re: Section 53A of TP Act, 1882)

Limitation and Cause of Action

25. Late Shri. Satish Kumar passed away in the year 2019 and the impugned sale deeds have been executed by defendant no. 1, subsequently in favour of defendant no. 3 in 2021. It prima facie appears to this Court that defendant no. 1 and defendant no. 3 after the death of late Shri. Satish Kumar have sought to change the status quo vis-à-vis possession of the suit land, which is otherwise open and vacant. Moreover, upon meaningful perusal of the pleadings/averments in the plaint it appears that the cause of action in favour of legal heirs of late Shri. Satish Kumar to challenge the said sale deeds arose in 2021 when they learnt about the said sale deeds as well as when defendants started interfering in their possession. This suit is, thus, prima facie within limitation.

26. Even otherwise, it is a settled law that the issue as to when the cause of action arose in favour of late Shri Satish Kumar and his legal heir, i.e., the plaintiff to seek the reliefs in the suit is a mixed issue of fact and law,



therefore the said issue becomes a triable issue and shall be decided at trial and hence, the plaint cannot be rejected at the threshold.

Will dated 22.05.2019 of late Shri. Satish Kumar

27. The plaintiff has relied upon Will dated 22.05.2019 to maintain this suit as a legal heir of late Shri. Satish Kumar. The plaintiff has also placed on record a Memorandum of family settlement dated 20.12.2020 ('MOFS') in CS(OS) 186/2022 executed between all the class-I legal heirs of late Shri. Satish Kumar. The MOFS records that all the class-I legal heirs accept the validity of the Will. The suit land is a subject matter of the bequest made in the said Will. The plaintiff as per the said Will is entitled to the right, title and interest of late Shri. Satish Kumar in the suit land.

The Applicant/Defendant no. 3 has challenged the veracity of the said Will by referring to the proceedings in succession case bearing no. 141/2022, wherein the plaintiff while seeking a succession certificate with respect to a Life Insurance Policy had stated on oath that there is no Will qua the said policy.

In the considered opinion of the Court, this issue need not detain this Court since the class-I legal heirs of late Shri Satish Kumar are ad-idem that the suit land should devolve upon the plaintiff herein. The suit can be maintained by the plaintiff as he is even otherwise a class-I legal heir. Whereas, the applicant/defendant no. 3 is not a class-I legal heir of late Shri Satish Kumar and therefore cannot make submissions on the said Will.

Plea of defendant no. 3 regarding documents dated 16.04.1999 are forged and not executed

28. The plea of the defendant no. 3 that no consideration was paid by late Shri Satish Kumar to the vendors under the agreement dated 16.04.1999 is contrary to the terms of the said agreement which records receipt of payment. The plea of defendant no. 3 that the documents dated 16.04.1999



were not executed between Shri. Satish Kumar and defendant no. 1 fails to persuade this Court as defendant no. 3 has itself contended that defendant no. 1 has allegedly cancelled the documents dated 16.04.1999 in 2012. The plea of cancellation raised by defendant no. 3 is based on the premise that 16.04.1999 documents existed. The pleas of defendant no. 3 are therefore, contradictory. This Court therefore is not persuaded at this stage to accept this plea.

29. In view of the foregoing discussion, this Court finds that the plaint of the present suit discloses cause of action and it cannot be rejected at the threshold.

30. Accordingly, the captioned application is dismissed.

I.A. No. 7607/2022 (application under Order XXXIX Rule 1 and 2 CPC by plaintiff) and **I.A. 17547/2023** (application under by plaintiff under Order XXXIX Rule 1 and 2 CPC for stay of the construction in suit land)

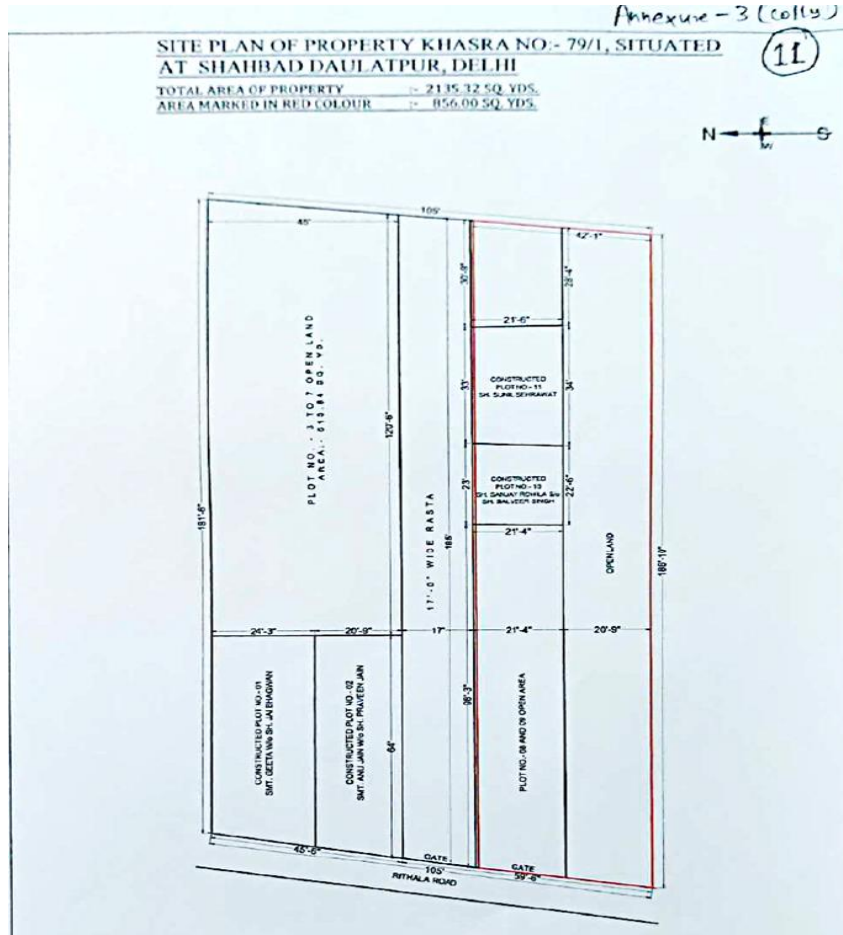
31. The application i.e. I.A. No. 7607/2022 has been filed by the plaintiff under Order XXXIX Rule 1 and 2 CPC seeking to restrain the defendants from creating any third-party interest or raising any construction in respect of the suit land.

32. The Local Commissioner's report dated 17.08.2014 is on record and it records the status of construction and possession on the spot in Khasra No. 79/1 min (New) as on 17.08.2024. The report encloses as Annexure-3, the site plan of Khasra No. 79/1 min (New) admeasuring 2135.32 Sq. Yds. and the suit land has been outlined with red colour admeasuring 856 sq. yds. For the purpose of this application, the said site plan is being made the basis of the interim order.

33. The Local Commissioner's report records that in the suit land delineated in red colour in the site plan, there are two constructed plots with



private number plot no. 10 and plot no. 11. It further records that there is a plot no. 8 and plot no. 9 which are vacant. And, there is an open strip of land, which has not been assigned any private number. The said site plan is reproduced as under:



With respect to the possession of the open strip of land the Local Commissioner’s report reads as under:

“8. That at around 12:30 pm the measurement of the abovesaid property was concluded by the undersigned after which the undersigned inquired in respect of possession of the open land in the disputed portion situated inside the property bearing Khasra No. 79/1, situated at Shahpur Daulatpur, Delhi from the persons namely Jai Bhagwan, Praveen Jain, Sanjay Rohila who were present at the time of commission and identified themselves as the owner of the plot no.1, 2 and 10 respectively. According to the abovesaid persons the possession of the open land marked/outlined with the red colour in the site plan attached



is with the defendant No. 2, 3, 5 and 6 namely Shri. Deepak Garg, Manoj Garg, Gaurav Gupta and Vivek Garg. That in the meantime the defendant no. 6 namely Shri. Vivek Garg had given some papers to the undersigned as follows:

.....

9. That the undersigned **further inquired** with the persons namely Shri. Rakesh Kumar S/o Shri. Ram Nath, R/o Khasra No. 65/2, Rithala Road, Shahbad Daultapur, Delhi 110042 and Shri. Satish Kumar S/o Late Shri. Kartar Singh, R/o House No. 522, Shahbad, Daultapur, Delhi 110042 **who were identified themselves as the persons resides nearby the suit property. As per the abovesaid persons the property in dispute was in possession of the plaintiff but he was stopped by the defendants from entering into the suit premises.”**

(Emphasis supplied)

34. The aforesaid report of the Local Commissioner prima facie shows that there has been a concerted effort of the defendants to interfere in the possession of the legal heirs of late Shri. Satish Kumar. This Court finds merit in the submission of the plaintiff that since he was the minor at the time of his father's death in 2019, defendants have sought to take advantage of his inability to protect his interest to the extent of 856 Sq. Yds. in the Khasra No. 79/1 min (New).

35. In view of the findings recorded while deciding I.A. 17285/2023 and materials placed on record this Court is of the considered opinion that Plaintiff has made out a prima facie case in its favour as regards to the possession of the suit land being with late Shri. Satish Kumar. Moreover, the *fard* placed on record as well as the site plan relied upon by the defendant no. 3 itself record/show the rights of late Shri. Satish Kumar in the suit land. In the present case, the balance of convenience lies in favour of the plaintiff, and there is likelihood of irreparable injury being caused to the plaintiff. Therefore, defendants are directed to maintain status quo with respect to title



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possession and construction of the suit land until the final disposal of this suit.

36. The captioned application, accordingly, stands disposed of.

37. In view of the orders passed today, I.A. 17547/2023 is also allowed.



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38. This is an application filed by the Shri. Ram Kumar Garg stating that this suit has been filed for identical reliefs which have already been claimed in CS (OS) 186/2022.

39. This Court has by a separate judgment pronounced today dealt with CS (OS) 186/2022 and rejected the said plaint. However, it is observed that subject matter of CS (OS) 186/2022 is a parcel of land admeasuring 1008 Sq. Yds. falling on the northern side of Khasra No. 79/1 min (New), whereas the subject matter of the present suit is a distinct parcel of land admeasuring 856 Sq. Yds. falling on the southern side of Khasra No. 79/1 min (New). Therefore, this Court is of the opinion that the land parcels which were subject matter of both these suits are separate and distinct.

40. This application, is therefore dismissed for being without any merits.

CS(OS) 275/2022

41. List on **03.09.2025**.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

MAY 20, 2025/hp/AM/MS