



2025:DHC:7740



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 03rd September, 2025

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CM(M) 311/2023 & CM APPL. 9448/2023

NAVENDU AGGARWAL

.....Petitioner

Through: Mr. Gobind Malhotra, Mr. Lovish Sharma, Mr. Rehan Saifi, Mr. Gurpreet Singh, Ms. Namrata Malhotra and Mr. Avneet Kaur, Advocates.

versus

ISHENDU AGGARWAL

.....Respondent

Through: Mr. Sudeep Singh, Mr. Akul Mehandru and Mr. Vaibhav Mehal, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Mr. Bal Krishana Aggarwal (since deceased) had two sons and a daughter.
2. One such son i.e. Mr. Ishendu Aggarwal (respondent herein) filed a suit seeking mandatory and permanent injunction against his brother Mr. Navendu Aggarwal (petitioner herein) and his wife.
3. Mr. Ishendu Aggarwal, in his such suit, averred that he was in peaceful possession of front room/shop measuring 12' x 9' situated in front portion of DDA flat bearing No. C4G/24A, Ground floor, Janakpuri, New Delhi since year 2002. The flat was owned by his father and such shop was also constructed by his father.



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4. His father, on account of nuisance of his other son debarred him from his properties by virtue of a public notice and, in terms of registered *Will* dated 18.09.2019, said flat, including the suit shop measuring 12' x 9', had been bequeathed to him and his sister, to the exclusion of the other son i.e. Mr. Navendu Aggarwal (petitioner herein).
5. His father died on 11.07.2020 and said shop and flat continued to be in his exclusive possession.
6. As per plaint in question, on 08.01.2021, in the absence of the plaintiff, the defendants broke open the lock and entered into the part of the suit property and took forceful and unlawful possession of the residential portion of the flat, though, the plaintiff was able to hold physical possession of the suit shop.
7. The suit was filed as defendant was trying to take forcible possession of suit shop as well.
8. Alongwith the abovesaid suit, an application was moved seeking injunction to the effect that defendant may be directed not to disturb the peaceful possession of the suit shop.
9. Learned Trial Court held that the plaintiff was able to show a *prima-facie* case in his favour and that the *balance of convenience* was also in his side and, resultantly, defendant was directed not to disturb the peaceful possession of the suit shop.
10. Such order was taken in appeal by the defendant but his such appeal has also been dismissed by the learned First Appellate Court *vide* order dated 01.12.2021.
11. Such order is under challenge.
12. Sh. Malhotra, learned counsel for petitioner submits that the



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averments made in the plaint are false and that the petitioner is rather owner of the suit property by virtue of *Will* dated 06.07.2020, which is genuine and valid *Will*. He submits that the respondent had left the suit flat in the year 2008 as he was expelled by their father and he was never in possession of flat and shop. The *Will*, as allegedly executed in 2019, has been labelled as forged and fabricated. The other grievance coming from the side of the petitioner is to the effect that a *simpliciter* suit seeking injunction was not maintainable. Relying on *Anathula Sudhakar Vs P. Buchi Reddy (Dead) By Lr's & Ors (2008) 4 SCC 594*, he contends that such aspect of maintainability has not been appropriately appreciated either by the learned Trial Court or by the learned First Appellate Court.

13. It is also argued that the petitioner herein had also filed a separate suit, which was rather prior in time, and in such previous suit filed by the petitioner herein, he had categorically claimed that he was in possession of the suit shop and, in such a situation, even otherwise, the injunction order could not have been passed, when the possession, as well as keys of the suit shop, continues to be with the petitioner, even till date.

14. Fact, however, remains that all the relevant aspects have been duly considered not only by the learned Trial Court but also by the learned First Appellate Court and, after careful appreciation of the entire facts, both the courts have come to a specific conclusion that there was a *prima-facie* case in favour of the respondent herein.

15. The aspect of possession cannot always be decided, merely, on the basis of the pleadings.

16. As per the averments made in the plaint filed by the respondent herein i.e. Mr. Ishendu Aggarwal, the plaintiff claims to be in possession of the suit



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shop whereas, according to his brother, the possession is with him.

17. Undoubtedly, as informed, the respondent herein has already filed an application under Order XXXIX Rule 2A CPC and reply to the abovesaid application has also been filed in which it has been reiterated by the petitioner herein that he continues to have the possession and the keys and, therefore, the grant of injunction was totally meaningless.

18. Fact remains that said aspect is required to be considered by the learned Trial Court, as and when, it takes up the abovesaid application filed under Order XXXIX Rule 2A CPC.

19. All in all, since both the brothers claim themselves to be in the possession of the suit shop, only a comprehensive trial would give the requisite answer thereto. Fact remains that respondent claims his possession since 2003 and strongly relies on one licence in his favour to run cybercafé from the suit shop and as per photographs placed by him, his computers are still lying therein. Moreover, concurrent Findings returned by the Ld. Trial Court and First Appellate court also does not warrant any interference under Article 227 of Constitution of India.

20. Since the respondent/plaintiff has claimed that he is having physical possession, though the same is disputed by his adversary, there is also no point in asking plaintiff to seek relief of possession or declaration and, therefore, it cannot be, at this stage, at least, said that the suit is not maintainable.

21. Thus, there does not seem to be any arbitrariness in exercise of jurisdiction by the learned Trial Court and the First Appellate Court and finding no illegality or perversity in the impugned order, the present petition is hereby dismissed.



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22. The pending application also stands disposed of in aforesaid terms.
23. Needless to say, the abovesaid observations are tentative in nature and shall not be construed as expression on merits of the case.

(MANOJ JAIN)
JUDGE

SEPTEMBER 3, 2025/ss/pb