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

Reserved on: 14th October, 2026
Date of Decision: 03rd November, 2026

\# **CNR No. DLHC010135742023**

\+ RFA 302/2023, CM APPL. 5171/2026, CM APPL. 18525/2023 & CM APPL. 18526/2023

DAULAT RAM .....Appellant

Through: Mr. Paranjay Chopra, Mr. Mukesh Yadav and Mr. Arjun Yadav, Advocates.

versus

RAM SINGH .....Respondent

Through: Mr. Umang Tyagi, Mr. Siddharth Sharma, Mr. Roshan Lal and Ms. Varinda Chaturvedi, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

1. The present regular first appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as *"CPC"*) assails the judgment and decree dated 31st January, 2023, passed by the learned trial court in CS No. 107/2017, whereby the suit of the respondent/plaintiff for possession and mandatory injunction in respect of property bearing No. O1st/73, JJ Colony, Madangir, New Delhi (hereinafter referred to as the *"suit property"*) has been decreed, and the appellant/defendant and his family members have been directed to remove themselves from the suit property within two months of the passing of the decree.

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2. The facts giving rise to this appeal, in a nutshell, are as under:

2.1. The respondent/plaintiff has alleged in the plaint that the suit property was allotted to his father, namely, Sh. Gheesa Ram, in the year 1967 on license basis under the Jhuggi Jhopri Removal Scheme (hereinafter referred to as the *"JJR Scheme"*). Sh. Gheesa Ram had died on 11th August, 1987 and his wife died on 13th October, 2005. Sh. Gheesa Ram died intestate and the respondent was one of his legal heirs. The respondent was residing in the suit property during his father's lifetime; thereafter his brother, namely, Sh. Shyam Sunder, started residing there.

It is further alleged that after some time, the respondent came to know that Sh. Shyam Sunder was dealing with the appellant to sell the suit property and which is illegal, as the suit property cannot be sold under the JJR scheme. Despite this, Sh. Shyam Sunder handed over the possession of the suit property to the appellant in the month of July, 2016. The appellant has no right or title in the suit property and has refused to hand over possession of the suit property to the respondent. Hence, the respondent has filed the suit for mandatory injunction and recovery of possession of the suit property against the defendant.

2.2. In the written statement, the appellant pleaded that the suit property has not been purchased by the appellant, but it was purchased by Sh. Govind Prasad, the son of the appellant after paying lawful consideration to Sh. Shyam Sunder. The respondent has relinquished his share in the suit property after taking cash and Sh. Shyam Sunder was the exclusive owner of the suit property and therefore had every right to deal with it. The appellant has denied the allegation of the respondent that the possession of the appellant in the suit property is illegal. The respondent has filed a false and

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vexatious suit and which was liable to be dismissed.

3. Based on the rival pleadings of the parties, the learned trial court framed the following issues:

> *"1. Whether the plaint has not been properly verified? OPD.*
> *2. Whether the suit has not been properly valued for the purpose of court fee? OPD.*
> *3. Whether the suit is bad for non-joinder of necessary party? OPD.*
> *4. Whether the suit is barred by limitation? OPD.*
> *5. Whether the plaintiff is entitled to a decree of possession, as prayed? OPP.*
> *6. Whether the plaintiff is entitled to a decree of mandatory injunction, as prayed? OPP.*
> *7. Relief."*

4. The respondent examined himself as PW-1 and Sh. Vinod Meena of the Delhi Urban Shelter Improvement Board as PW-2. The appellant examined only himself as DW-1. On appreciation of the evidence on the record, the suit has been decreed by the trial court.

5. Learned counsel for the appellant has argued that the trial court has passed the impugned judgment on the basis of surmises and conjectures, which is against the facts and law and without appreciating the evidence on record. The respondent has only a 1/8th share in the suit property, which he relinquished after taking cash from his brother, Sh. Shyam Sunder, and therefore has no right or title in the suit property. Despite the fact that Sh. Govind Prasad was a necessary party in the suit, the trial court has decided the Issue no.3 against the appellant without any proper reasoning as Sh. Govind Prasad was the owner of the suit property on account of the sale-purchase documents in his favour.

6. *Per contra*, learned counsel for the respondent has argued that the trial

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court has passed the impugned judgment after properly considering the evidence on record and there is no illegality or infirmity in the impugned judgment. Learned counsel for the respondent has argued that the respondent has paid the deficient court fee as directed by the trial court in the impugned judgment, and only thereafter, the impugned decree has been prepared. The appeal is without any merit and is liable to be dismissed.

7. I have heard the learned counsel for the parties and perused the record, including the trial court record.

8. PW-1 had tendered his affidavit in evidence as Ex. PW-1/1. In the affidavit, PW-1 had deposed on the same lines as stated in his plaint. In cross-examination on behalf of the appellant, PW-1 had denied the suggestion that the suit property had been bequeathed by his father in the name of his brother Sh. Shyam Sunder. He had no documents to show that the suit property was purchased by the appellant from his brothers and sisters. He had denied the suggestion that the suit property was purchased by Sh. Sanjay and not by his father.

PW-2 from the office of DUSIB has deposed that the record of the suit property was missing from the files. He has proved the application form and guidelines regarding grant of freehold rights to the residents under JJR scheme as Ex.PW-2/1 (colly). In cross-examination on behalf of the appellant, PW-2 has deposed that there is no policy which came into existence after 2013, that permits the sale and purchase of the properties allotted under the JJR scheme. The property can be converted into freehold if there is a complete chain of the documents.

DW-1 has tendered his affidavit in evidence as Ex.DW-1/A. In his cross-examination, on behalf of the respondent, DW-1 has deposed that the

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suit property is in his possession since the filing of the suit (vol. my son had purchased the suit property). He has brought on record the documents, i.e., GPA, agreement to sell and purchase, Special Power of Attorney, Affidavit, Indemnity Bond, Possession Letter, Receipt and Will as Ex. DW-1/PX-1 (colly). He admitted that all the documents executed by Sh. Shyam Sunder were only notarized and nothing had been registered before the Sub-Registrar. The property belonged to the father of Sh. Shyam Sunder and the same was allotted to father of Sh. Shyam Sunder and Sh. Shyam Sunder had given share of the suit property to his brother Sh. Ram Singh in his presence. The suit property was mortgaged by Sh. Ram Singh and another brother, namely, Sh. Panna Lal with another person whose name he did not remember. He had paid money to Sh. Shyam Sunder and Sh. Shyam Sunder had paid to another person who had kept the property mortgaged with him and in lieu thereof, the suit property was given to him by Sh. Shyam Sunder. He stated that the property was under the JJR Scheme but did not know whether the suit property came under DDA or the MCD. He could not tell whether registry of this property was allowed or not.

9. It is the case of the respondent that the suit property was allotted to Sh. Gheesa Ram, the father of the respondent, on license basis under the JJR Scheme. In his cross-examination, the appellant (DW-1) has also admitted that the suit property belonged to Sh. Gheesa Ram and was under the JJR Scheme. From the evidence of PW-1 and PW-2, it is also proved that the sale-purchase of the suit property is not permitted under the JJR Scheme. Despite this fact, the documents at Ex. DW-1/PX-1 (colly.) do not convey any title or create any interest in the suit property.

It is apposite to refer to the judgment passed by the Hon’ble Supreme

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Court in ***Suraj Lamp and Industries Private Limited (2) Through Director Vs State Of Haryana And Another 2012 1 Scc 656,*** wherein it has been held as under:

> *"24. We therefore reiterate that immovable property can be legally and lawfully transferred/ conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53-A of the Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales."*

10. The appellant has also admitted in his cross-examination that he is in possession of the suit property since the filing of the suit. In Ex. DW-1/PX-1(colly.), the agreement to sell dated 15th May, 2016 is between the appellant and Sh. Shyam Sunder, receipt dated 15th May, 2016 is also between them whereas the Will and possession letter dated 15th July, 2016 is by Sh. Shyam Sunder in favour of Sh. Govind Prasad. Some of the documents on behalf of the Sh. Shyam Sunder are in favour of the appellant and some of them are in favour of Sh. Govind Prasad. There is no evidence on record produced on behalf of the appellant, to prove that Sh. Shyam Sunder was legally entitled and authorized to hand over the possession of the suit property to him.

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11. Keeping in view the aforesaid legal position, the nature of the documents Ex.DW-1/PX-1(colly.) and the evidence on record, this Court is of the opinion that the appellant is not the owner of the suit property and in fact, he is in unauthorized possession of the suit property.

12. The respondent, being a co-sharer in the suit property is legally entitled to file the present suit against the appellant without impleading Sh. Govind Prasad, as the appellant has failed to bring on record any trustworthy evidence showing that Sh. Govind Prasad has been in legal possession of the suit property being its owner. Accordingly, the argument of the appellant that suit is bad for non-joinder of necessary party is without any merit as an effective decree can be passed in the suit in the absence of Sh. Govind Prasad.

13. In view of the aforesaid discussion, this Court finds no sufficient ground to interfere with the impugned judgment and decree dated 31st January, 2023 and it is upheld. Accordingly, the present appeal stands dismissed. Pending applications, if any, also stand disposed of.

RAJNEESH KUMAR GUPTA
JUDGE

NOVEMBER 03, 2026/*ik*

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