



\$~

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

%

Judgment reserved on: 18.08.2025***Judgment pronounced on: 27.08.2025***+ FAO(OS) 90/2025, CM APPL. 50289/2025 & CM APPL.
50290/2025

RAJIV JAIN

.....Appellant

Through: Mr. A.K. Singla, Sr.
Adv. with Mr. Akshay
Bhandari & Ms. Shriya
Gilhotra, Advs.

versus

ANJU GUPTA & ORS.

.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****J U D G M E N T****ANIL KSHETARPAL, J.**

1. The present Appeal assails the correctness of Order dated 30.07.2025 [hereinafter referred to as "Impugned Order"] passed by the learned Single Judge in CS(OS) 848/2024, whereby the application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure [hereinafter referred to as "CPC"] filed by the Appellant/Plaintiff and the application under Order XXXIX Rule 4 of the CPC filed by Respondents/Defendant Nos.1 to 3 were disposed of by varying the *ex-parte* ad-interim injunction dated 23.10.2024.



2. *Vide* the Impugned Order, Respondent Nos.1 to 3 have been permitted to raise construction on the property bearing No. 15-A, Sanjay Nagar, Gulabi Bagh, New Delhi-110007 [hereinafter referred to as the “suit property”]. This permission is subject to the express stipulations that:

- i. no third-party rights shall be created;
- ii. construction shall be entirely at their own risk; and
- iii. no equity shall be claimed on that basis.

3. This partially modifies the earlier order which had restrained all construction activity.

FACTUAL MATRIX:

4. The Appellant claims rights in the suit property on the basis of a sale deed dated 21.06.2023, stated to have been executed by Respondent No.5 in his favour. Respondent Nos.1 to 3, on the other hand, assert ownership based on a sale deed dated 10.11.2023, executed by Respondent No.4 acting as attorney of late Shri Vijay Kumar Gupta under a Power of Attorney dated 22.06.2011.

5. On the Appellant's application, an *ex-parte* injunction was granted on 23.10.2024 restraining Respondents from raising construction or creating third-party rights. Respondent Nos.1 to 3 subsequently moved an application under Order XXXIX Rule 4 of the CPC seeking vacation of the *ex-parte* order. *Vide* the Impugned Order, the learned Single Judge permitted Respondent Nos.1 to 3 to raise



construction on the suit property subject to the safeguards noted above.

CONTENTIONS OF THE APPELLANT

6. Learned senior counsel for the Appellant contends that the Impugned Order suffers from perversity and ignores the well-established parameters for grant of interim injunction, namely, existence of *prima facie* case, balance of convenience and irreparable injury.

7. It is urged that permitting Respondent Nos.1 to 3 to raise construction, despite the serious dispute regarding title and pending adjudication on the validity of the Power of Attorney dated 22.06.2011 and sale deed dated 10.11.2023 relied upon by the said respondents, is likely to result in multiplicity of proceedings and seriously prejudice the Appellant's rights,

8. It is further urged that the learned Single Judge failed to consider that criminal proceedings alleging forgery and fabrication of documents are also pending against the Respondents and that the Impugned Order ignores these serious allegations.

FINDINGS AND ANALYSIS

9. We have considered the submissions advanced by learned senior counsel for the Appellant and perused the Impugned Order along with the material placed on record.



10. The scope of appellate interference under Order XLIII Rule 1(r) of the CPC against an order granting or refusing interim relief is well circumscribed. As held by the Supreme Court in *Wander Ltd. v. Antox India (P) Ltd.*¹, an appellate court will not interfere with the discretion exercised by the trial court unless it is shown that the discretion has been exercised arbitrarily, capriciously or perversely, or where the court has ignored settled principles of law regulating the grant or refusal of interlocutory injunctions.

11. The parameters for grant of temporary injunction are well settled— *prima facie* case, balance of convenience and irreparable loss, as reiterated in *Kishoresinh Ratansinh Jadeja v. Maruti Corp.*². These principles have to be applied in a manner that the court does not virtually decide the suit at an interim stage.

12. Tested on the aforesaid principles, we find no infirmity in the Impugned Order warranting appellate interference. The learned Single Judge has recorded that Respondent Nos.1 to 3 are in settled possession of the property and have placed on record a registered sale deed. The permission granted to raise construction has been coupled with safeguards:

- i. no third-party rights shall be created;
- ii. construction shall be at their own risk; and
- iii. no equity shall be claimed based on the said construction.

¹ (1990) Supp SCC 727

² (2009) 11 SCC 229



13. This approach seeks to balance equities between the parties without conferring an undue advantage at the interim stage.

14. The apprehension of multiplicity of proceedings, in our view, does not by itself constitute a ground to injunct a party in possession, particularly when ownership is asserted under a registered instrument. Whether the sale deed dated 10.11.2023 and the underlying Power of Attorney dated 22.06.2011 are valid is a matter of trial and evidence. The pendency of criminal proceedings does not *ipso facto* alter this position at the interlocutory stage.

15. It is pertinent to note that an earlier suit instituted by late Shri Vijay Kumar Gupta was rejected under Order VII Rule 11 of the CPC on account of insufficiency of court fees, and not on merits. In any event, by virtue of Order VII Rule 13 of the CPC, such rejection does not operate as a bar to the institution of a fresh suit. The question whether the present suit attracts the rigour of Order VII Rule 11 CPC does not fall for determination in this appeal, which is confined to the order under Order XXXIX Rules 1 and 2 of the CPC. That issue is accordingly left open for consideration at the appropriate stage.

16. We therefore see no perversity, patent illegality or misdirection in the reasoning adopted by the learned Single Judge. The exercise of discretion is neither arbitrary nor capricious to warrant interference under appellate jurisdiction.

17. Learned counsel for the parties have not made any other submissions.



2025:DHC:7367-DB



CONCLUSION

18. For the foregoing reasons, the Appeal is devoid of merit and is accordingly, dismissed. All pending applications also stand dismissed. Nothing stated herein shall be construed as an expression on the merits of the suit. The learned Single Judge shall proceed uninfluenced by any observations in this judgment.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 27, 2025/sg/pl