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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 18.11.2025*
+ FAO 192/2025 and CM APPL. 43110/2025

VIRENDER CHAWLA & ANR.Appellants

Through: Dr. Amit George, Mr. Manish Gandhi, Mr. Dhiraj Abraham Philip, Mr. Febin Mathew Varghese, Mr.Dushyant Kishan Kaul and Ms.Lija Merin John, Advocates.

versus

NARESH & ORS.Respondents

Through:

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT (ORAL)

CHANDRASEKHARAN SUDHA, J.

1. The appellants are represented.
2. On the last date of hearing, i.e., 30.10.2025, there was no appearance on behalf of the respondents. However, on the said date, no adverse order was passed and the matter was adjourned to this day.
3. Today also, there is no appearance for the respondents.



4. Heard the learned counsel for the appellant.

5. The present appeal, under Order XLIII Rule 1 read with Section 104 of the Code of Civil Procedure, 1908 (the CPC), has been filed against the order dated 16.05.2025 passed by the learned District Judge -02, West District, Tis Hazari Courts, Delhi in CS No. 278/225, by which an application under Order XXXIX Rules 1 and 2 CPC was dismissed, holding that the appellants/ plaintiffs were unable to make out a *prima facie* case.

6. During the course of oral arguments, the learned counsel for the appellants drew the attention of this Court to Annexure A-12 and Annexure A-13. Annexure A-13 is an order dated 05.04.2023 passed in CS No. 742/2020, by which the suit filed by the respondents/defendants, claiming that the disputed area is a private temple, was rejected under Order VII Rule 11 CPC. Annexure A-12, which is an order dated 13.11.2020 of the SDM, Rajouri Garden, Delhi, states that the appellants/ plaintiffs are in



possession of the property. The relevant portion of Annexure A-

12 reads thus:-

“

11. Further, tehsildar was directed to submit field report as per revenue record. As per report received from tehsildar of Rajouri Garden it is seen that the disputed area falls in khasra no. 26 which is in Laldora area. It has been informed that at the time of field visit of Tehsildar, **first party was found in possession of the disputed property.** Statement of 02 witnesses has also been submitted according to which first party has possession of disputed property wz-5, Titarpur, Delhi.

12. First party has submitted that he has filed an injunction suit petition in honorable court. The copy of petition has been produced by first party. He has also submitted that the case filed by second party is not a title suit.

13. From the contention made above by both the parties it is clear that on the date of receipt of police information i.e. Kalandara dated 25.07.2020 received on 05.08.2020, **First party was in possession of the disputed site wz-S, Titarpur, Delhi. The dispute arose mainly when first party put barricade to start construction at the site for which first party has also taken prior permission from MCD. As per field report of Tehsildr (Rajouri Garden) the present possession is with First Party.** The temple of Balmiki Mandir is still located at the site.

14. Thus the question left before this court u/s 145 CrPC is that whether second party has been forcibly dispossessed from the suit property within two months next before the date on which the report of a police officer or other information was received by this court.

18. From available facts of the case and submission made by both the party **I am of the opinion that first party has been in**



possession of disputed property bearing no. WZ-5 Titarpur, Delhi on the date of kalandara and date of order u/s 145(1) Cr.PC and two months before it. Hence the kalandara under 145 is dropped....”

(Emphasis supplied)

7. This order is seen apparently made after the suit herein was filed on 27.07.2020 by the appellants/plaintiffs claiming title over the property based on several registered deeds. They alleged that the respondents/defendants were trying to disturb their peaceful possession. The question whether the appellants/plaintiffs have obtained title of the property, is a matter that needs to be decided in trial, after necessary oral and documentary evidence are adduced by the rival claimants. Therefore, till the disposal of the matter, the subject matter of the property needs to be preserved and the interest of both sides to be protected.

8. Apart from Annexure A-12, there is no other material presently before this Court to ascertain the state of affairs existing in the property. Annexure A-12 shows that the appellants/



plaintiffs are in possession of the property. It is submitted that the said order has not been challenged till date. In these circumstances, the impugned order is set aside and the respondents/defendants are restrained from interfering with the appellants'/plaintiffs' possession and enjoyment of the property, till the disposal of the suit.

9. It is made clear that both sides shall not create any third party interest in the property. If any constructions are required to be done, it shall be strictly in accordance with the permit that is stated to have been granted by the authority concerned to the appellants/plaintiffs.

10. The appeal stands disposed of in the aforesaid terms. Application(s), pending if any, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

NOVEMBER 18, 2025

kd/er