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

% ***Date of decision: 19.12.2025***

+ **FAO 2/2025 and CM APPL. 303/2025**

KUSUMAppellant

Through: Ms. Sangeeta Chandra and Ms. Nidhi
Garg, Advocates.

versus

ASHOK KUMAR MUNNARespondent

Through: Mr. Kshitij Mathur, Advocate.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT (ORAL)

CHANDRASEKHARAN SUDHA, J.

1. This appeal under order XLIII Rule 1 (r) of the Code of Civil Procedure, 1908 (the CPC) has been filed by the plaintiff in DJ 12/2021 on the file of the Court of Additional District Judge-01 (West), Tis Hazari Courts, Delhi aggrieved by the order dated 04.03.2024, by which three applications filed by the respondent/defendant, one for review of the order dated 05.04.2022 by which the application under Order XXXIX Rules 1 & 2 was allowed; two



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for modifying the order 05.04.2022 and an application under section 151 CPC was allowed.

2. In this appeal, unless otherwise specified, the parties will be referred to as described in the suit.

3. The plaintiff filed the aforesaid suit for declaration, possession and injunction alleging thus:- The defendant is the maternal uncle of the plaintiff. The suit property bearing no. F-28, Karam Pura, Delhi measuring 22 Sq. yards was purchased by the plaintiff's mother, namely, Kanta Devi from Luddar, s/o Prabhu Dayal, R/o - F-28, Karam Pura, New Delhi through General Power of Attorney dated 12.06.1985. The mother of the plaintiff died on 09.05.2011 leaving behind her husband Om Prakash and her daughter, the plaintiff herein. The plaintiff's father passed away on 02.12.2016 leaving behind the plaintiff as the sole legal heir of Kanta Devi. Thus, the plaintiff became the owner of the suit property.

3.1. The plaintiff's mother sometime in the year 2010, let out



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one room and a kitchen on the first floor of the aforesaid property to one tenant for a monthly rent of ₹ 3,000/-. The rent was being collected by the plaintiff's mother till her death in April, 2011. After the demise of the plaintiff's mother, the rent from May, 2011 was being collected by the defendant claiming to be the owner of the first floor of the building bearing no. F-28, Karampura, Delhi.

3.2 There are several criminal cases pending against the defendant in the various courts situated at Delhi. The defendant, a man of ill-repute is in the habit of illegally grabbing the property of poor people with the assistance of the local police officials. The plaintiff had lodged several complaints against the defendant. The defendant keeps threatening the tenant of the plaintiff residing in the second floor of the suit property, namely, F-28, Karampura, Delhi claiming to be the owner of the suit property.

3.3 The cause of action is alleged to have arisen in the year 2011 when it came to the knowledge of the plaintiff that the defendant was illegally receiving rent from the tenants of the



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plaintiff. The cause of action is also stated to have arisen on 13.12.2020, when the plaintiff lodged a police complaint against the defendant as he was threatening to evict the tenants of the plaintiff. Hence, the suit.

4. The respondent/defendant entered appearance and filed written statement denying the allegations in the plaint. It was contended that the defendant has been in possession of the property for more than 12 years and hence, the suit was barred by limitation. The defendant is the absolute owner of the property and hence, it was contended that the plaintiff, who is relying on false and fabricated documents is not entitled to the reliefs prayed for.

5. The trial court after hearing both sides as per order dated 04.03.2024 allowed the application by which the defendant and his agents were restrained from creating any third party interest in the first floor and terrace of the suit property till the disposal of the suit. During the course of the arguments, it was submitted on behalf of the defendant that the plaintiff can be given the liberty to



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repair the commode in the property. On the basis of the submissions made, the trial court passed the order by which the defendant was directed not to dispossess the plaintiff from the suit property without following the due process of law during the pendency of the suit.

6. Pursuant to the aforesaid order, an application for review was moved by the defendant contending that the reliefs granted went beyond the prayer sought for in the plaint. The trial court by the impugned order allowed the application and modified its earlier order by which liberty was granted to the plaintiff to repair the commode. The relief that was granted was confined to restraining the defendant from creating any third-party interest in the property. Aggrieved, the plaintiff has come up in appeal.

7. It is submitted by the learned counsel for the appellant/plaintiff that the trial court went wrong in reviewing the order when the order passed was a consent order. The relief sought for in the plaint was relating to the terrace of the entire building. It



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is also submitted that the plaintiff intends to move an application for clarification/ amendment of the reliefs sought for in the plaint, to make it clear that the terrace referred to in the plaint means the terrace of the entire building. It is also submitted that the report of the Local Commissioner will make the description of the property clear and hence, no modification or review of the order of injunction was called for. On the other hand, it is submitted by the learned counsel for the respondent/ defendant that there is no infirmity or ambiguity in the order that has been passed by the trial court calling for an interference by this Court.

8. Heard both sides.

9. The prayer in the plaint reads thus:-

“ a) Pass a decree of declaration to the effect that the Plaintiff is the lawful owner of the suit property.

b) Pass a decree of possession in favour of plaintiff in respect of First floor and terrace of the property bearing F-28, Karampura, Delhi-15, measuring 22 sq. yards located in Karampura, Delhi.



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c) *Pass a decree of mandatory injunction thereby directing the defendant to give possession of the suit property in favour of the Plaintiff by executing all necessary legal documents*

d) *Pass a decree of permanent injunction thereby restraining the defendant, their agents, associates, assigns, successors, nominees, representatives or any one acting on whose behalf from creating any third party rights in respect of property bearing No F-28, First floor and terrace of the property bearing F-28, Karampura, Delhi-15 , measuring 22 sq. yards located in Karampura, Delhi.*

e) *An order for costs of this suit and the proceedings and also damages which the plaintiff has suffered due to illegal possession of premises by the defendant.*

and/or

f) *such other and further orders may also be passed which this Hon'ble Court may deem and proper in the interest of justice.”*

(Emphasis supplied)

10. The relief sought for in the application under Order

XXXIX Rule 1 reads thus:

“It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to pass an ad-interim ex-parte injunction in favour of the plaintiffs and against the



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defendants thereby restraining the defendant their agents, associates, assignees, successors, nominees, representatives etc. or anyone acting whose behalf from creating any third party rights in respect of first floor and terrace of the property bearing No F-28, Karampura, Delhi-15 measuring 22 sq yds located in Karampura, Delhi during the pendency of this suit.”

(Emphasis supplied)

11. The trial court after hearing both sides passed the following order which reads thus:

“During course of arguments, counsel for defendant submits that the defendant will not forcibly dispossess the plaintiff from the suit property during the pendency of the suit. He further submitted that plaintiff may carry out repair in the suit property only to the extent of repair of commode.

In view of submission of counsel for defendant, defendant is directed not to dispossess the plaintiff from the suit property without following due process of law during pendency of the suit. Plaintiff may also carry out repair of commode. It is made clear that the plaintiff shall not make any structural changes in the suit property. With these observations, application under Order 39 Rule 1 & 2 CPC is disposed of.”

12. It was this order that was sought to be reviewed and



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modified by the defendant. The trial court after hearing both sides passed the following order:

“In said applications, ld. counsel for defendant has taken the plea that the order dated 05.04.2022 is beyond the pleadings of the plaintiff. Perusal of application u/o 39 Rule 1 &2 CPC moved by plaintiff shows that the plaintiff has made the prayer therein that defendant and his agents be restrained from creating third party interest in respect of first floor and terrace of the suit property. The prayer clause of said application also shows that no other relief has been sought by plaintiff in said application. Perusal of record also shows that in the main suit along with the relief of declaration, mandatory and permanent injunction, plaintiff has also made the prayer for decree of possession qua first floor and terrace of the suit property. This Court is of the considered view sabove; it is clear that the relief granted vide impugned order is beyond the pleadings/case of the plaintiff and accordingly order dated 05.04.2022 is set aside.

This Court is of the further view that qua the relief asked in the application u/o 39 Rule 1&2 CPC moved by plaintiff, plaintiff has shown the prima-facie case as he has filed on record the order/judgment dated 24.08.2016 passed by the Court of Ld. ADJ-02, West, THC whereby right was granted in favour of plaintiff in respect of suit property. This Court is also of the view that balance of convenience also lies in favour of grant of relief to plaintiff and this Court is also of the view that irreparable loss



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shall be caused to plaintiff if the relief prayed in application u/o 39 Rule 1&2 CPC is not granted in favour of plaintiff. Accordingly, in terms of prayer made in the application u/o 39 Rule 1&2 CPC moved by plaintiff, defendant and his agents are restrained from creating third party interest in the first floor and terrace of the suit property till the disposal of the suit. However, nothing expressed herein shall tantamount to expression of opinion on the merits of the case. Accordingly, said three applications are disposed off.”

13. As is evident from the reliefs sought for in the plaint, the prayer is to declare the title of the plaintiff in the suit property, which property is described as property bearing No. F-28, Karampura, Delhi measuring 22 sq. yards. The relief of recovery of possession is in respect of first floor and terrace of property bearing No. F-28, Karampura, Delhi, which is stated to be in the possession of a tenant, which apparently means that the plaintiff was not in possession of the first floor at the time of the filing of the suit or thereafter. Though, the allegation is that the first floor is in the possession of a tenant whose name or other details have not been specified, the said tenant has not been made a party in the



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suit. The sole defendant is not alleged to be in possession of the suit property. But, a decree for recovery of possession of the suit property is made against the defendant.

14. The submission of the learned counsel is that the terrace referred to in the plaint is the terrace of the entire building and not the terrace on the first floor. I have already referred to the prayers in the plaint as well as the reliefs sought for in the injunction application. The initial order of injunction and thereafter, the modified order was passed based on the prayers then, contained in the plaint and in the application seeking injunction. In the light of the prayers sought for, no error has been committed by the trial court in either of the orders.

15. Further, the plaint is quite vague as to the number of floors the building has. In paragraph No.9 of the plaint the allegation is that the plaintiff's mother rented out "one room set and one kitchen" on the first floor of the property to a tenant. However, in paragraph No.15 of the plaint, it is alleged that the



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defendant is threatening to evict the tenant of the plaintiff residing in the second floor of the suit property, namely, F-28, Karampura, Delhi. It is not clear whether the terrace referred to the plaintiff is the terrace on the first floor or the terrace on top of the first floor. The pleadings are also not clear as to whether, the commode for which repairs was sought for is situated in the first floor, which is the tenanted premises alleged to be in the possession of the tenant or any other portion of the building. The pleadings also do not make it clear as to whether the plaintiff is in occupation of any portion or the floor(s) of the building. In these circumstances, the trial court was right in modifying the initial order of injunction by finding that the relief regarding the repair of the commode was beyond the reliefs sought for in the application under Order XXXIX Rule 1.

16. Further, in case the plaintiff is amended, it is up to the plaintiff to move appropriate application(s) seeking further reliefs. In the background of the pleadings contained in the plaintiff and in the application under Order XXXIX Rule 1, the relief granted by



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the trial court suffers from no infirmity.

17. In the result, I find no infirmity in the impugned order calling for an interference by this Court. The appeal is thus dismissed.

18. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

DECEMBER 19, 2025

Kd/ABP/rs