



2026:DHC:335



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

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*Date of decision: 12<sup>th</sup> January, 2026*

CM APPL. 54284/2025

IN

+ RFA 760/2016

BRIJ KISHORE PRASAD

.....Appellant

Through: Mr. Shlok Chandra and Mr. Parikshit  
Singh Bhati, Advocates.

versus

KIRAN DEVI

.....Respondent

Through: Mr. Yashvir Kumar, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**AMIT BANSAL, J. (Oral)**

**CM APPL. 54284/2025**

1. This application has been filed seeking early hearing of the present appeal.
2. For the reasons stated in the application, the application is allowed. The appeal is being taken up for hearing today.

**RFA 760/2016**

3. The present first appeal has been filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908, seeking setting aside of the impugned judgment and decree dated 2<sup>nd</sup> April, 2016 passed by the Additional District Judge-01, South West, Dwarka District Courts, Delhi in Civil Suit No.3027/2014.
4. By way of the impugned judgment, the aforesaid suit filed on behalf



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of the respondent/plaintiff has been decreed and a decree of eviction and possession has been passed in favour of the respondent/plaintiff and against the appellant/defendant.

5. On 18<sup>th</sup> January, 2017, this Court had noted the submission of the respondent that in the execution proceedings filed by the respondent for execution of the impugned judgment, she and her family members have obtained possession of the suit premises and shifted there. A statement was given on behalf of the respondent that she would maintain *status quo* with regard to the title, possession and construction of the suit premises.

6. Subsequently, an application being CM APPL. 66347/2023 was moved on behalf of the respondent seeking permission of the Court to carry out construction on the roof of the property, which was allowed by this Court *vide* order dated 10<sup>th</sup> September, 2024, subject to approval of the concerned municipal authorities. However, it was made clear that the property shall remain subject to the directions to be passed in the present appeal.

7. Mr. Shlok Chandra, counsel appearing on behalf of the appellant has drawn attention of the Court to the order passed in the suit on 19<sup>th</sup> March, 2016. A perusal of the aforesaid order would show that part arguments in the suit had been heard on the previous date and the case was fixed for remaining final arguments. A perusal of the appearances given in the said order would show that the main counsel of the appellant/defendant was not present on the said date and only a proxy counsel was present on behalf of the appellant/defendant.

8. On the same day, an application under Order VI Rule 17 of the Code of Civil procedure, 1908 ('CPC') was filed on behalf of the



respondent/plaintiff seeking amendment in paragraph nos. 3 and 4 of the plaint.

9. The Trial Court has noted the 'no objection' of the counsel for the defendant/appellant and allowed the amendment on the same date itself. Further, the submission of the counsel for the defendant has also been noted that the defendant does not wish to file written statement to the amended plaint. The Trial Court went on to hear the remaining final arguments on the said date and reserved the judgment, which was pronounced on 2<sup>nd</sup> April, 2016.

10. At the outset, a reference may be made to paragraph 3 of the original plaint, which is set out below:

***"3. That the plaintiff is the legal heirs of Late Shiv Nath Prasad and late Phoolmati, who were the joint owners of the property bearing No.F-67, Gali No.1, Block-F, Sitapuri, New Delhi (hereinafter called the suit property) and the mother of the plaintiff namely late Poolmati died on 20.08.2017 and thereafter, the father of the plaintiff was residing on the abovesaid property, who was also died on 09<sup>th</sup> March, 2014."***

[Emphasis supplied]

11. Now a reference may be made to the proposed paragraph 3 as per the amendment application:

***"3. The Plaintiff is the only legal heir of late Shiv Nath Prasad (her father) and late Phoolmati (her mother). The Plaintiff and her mother Late Phoolmati were the joint owners of the suit property bearing No.F-67, Gali No.1, Block-F, Seetapuri, New Delhi and the mother of the Plaintiff namely late Phoolmati died on 20.08.2007 and thereafter the father of the Plaintiff was residing in the suit property and he also died on 09,03.2014."***

[Emphasis supplied]

12. It is apparent from the above that the respondent/plaintiff had materially amended the averments made in paragraph 3 of the original



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plaint. In the original paragraph 3 of the suit, it was stated that the mother and the father of the plaintiff/respondent were the joint owners of the suit property whereas, in the amended paragraph 3, a stand has been taken that the plaintiff/respondent and her mother were the joint owners of the suit property.

13. This is a material amendment that has been allowed by the Trial Court, that too without giving an opportunity to the appellant/defendant to file a response to the amendment application. Not only that, it has been recorded that the defendant/appellant does not wish to file an amended written statement.

14. In my considered view, the approach of the Trial Court was completely erroneous. It has been noted in the appearance section of the order dated 19<sup>th</sup> March, 2016 that the main counsel of the appellant is not available on the said date, yet the Trial Court allowed the amendment application on the very first date and also closed the right of the defendant to file an amended written statement to the amended plaint.

15. Counsel appearing on behalf of the respondent/plaintiff submits that this order was passed in the presence of the appellant/defendant, who was personally present in Court.

16. This submission is denied by the counsel for the appellant/defendant, who submits that the appearance of defendant has been noted incorrectly.

17. Be that as it may, it is nobody's case that the appellant/defendant was legally qualified or was representing himself in the case. The fact of the matter was that the appellant/defendant was represented by a lawyer, who was conducting the case on his behalf. The appellant/defendant was not expected to know the implications arising out of the amendment application.



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Therefore, the Trial Court ought to have granted an opportunity to the appellant/defendant to file a reply to the said amendment application. Further, even if the amendment was allowed, the Trial Court ought to have given an opportunity to the appellant/defendant to file an amended written statement.

18. Counsel for the respondent/plaintiff further submits that the appellant/defendant also accepted the cost of Rs.5,000/- that was imposed for allowing the amendment on the respondent/plaintiff.

19. Once again, acceptance of cost of Rs.5,000/- would not alter the position that the amendment should not have been allowed in the absence of the main counsel of the appellant/defendant and without giving an opportunity of filing a reply.

20. Counsel for the appellant/defendant has also drawn my attention to paragraph 20 of the impugned judgment wherein, while dealing with Issue No.1, the Trial Court returned the following finding:

*“20. ...Even though the defendant has taken a defence that the half portion of the suit property was sold to him by Mr. Shiv Nath Prasad, father of the plaintiff, but nothing has come on record as to how it was sold to him and which particular portion was sold to him. No such details have been placed on record by the defendant...”*

21. In this regard, counsel for the appellant/defendant has drawn my attention to paragraph no.4 of the written statement, which is set out below:

*“4. ... In reply it is submitted that father of the plaintiff sold the half portion of the property to the defendant No.1 on dated 09.11.2013 and the relevant paper was executed by the father of the plaintiff in favour of defendant No.1, which has been seized by the police officials of P.S. Dabri and seizure memo was issued to the defendant No.1 on 04.08.2014.”*

22. Clearly, the aforesaid finding of the Trial Court is contrary to the



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stand taken by the appellant/ defendant in the written statement.

23. In my considered view, the entire approach of the Trial Court was opposed to the principles of natural justice and erroneous. The appellant/defendant was not given a proper opportunity to deal with the amendment application filed on behalf of the respondent/plaintiff as also to file an amended written statement. The judgment was also reserved in the absence of main counsel of the appellant/defendant.

24. In view of the discussion above, the present appeal is allowed and the impugned judgment dated 2<sup>nd</sup> April, 2016 passed by the Trial Court is set aside.

25. The matter is remanded back to the Trial Court and the proceedings in the suit shall recommence from the stage of consideration of the amendment application filed on behalf of the respondent/plaintiff. The Trial Court shall give an opportunity to the appellant/defendant to file a response to the said application and the suit shall proceed from there.

26. The Registry shall send the necessary records of the case back to the Trial Court. The parties shall appear before the Trial Court on 9<sup>th</sup> March, 2026.

27. In terms of the order passed by this Court on 18<sup>th</sup> January, 2017, no third party rights shall be created in the suit property till the final disposal of the suit.

28. All pending applications stand disposed of.

**AMIT BANSAL, J**

**JANUARY 12, 2026**

*Vivek/-*