



2026:DHC:3021



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

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+ **FAO 359/2025**

DHANANJAY RATHI & ORS.Appellants
Through: Mr. Jayant Mehta, Sr. Advocate with
Mr. Tanuj Gulati, Mr. Abhishek Garg,
Mr.Saksham Verma, Mr.Yogesh,
Mr.Udan, Mr.Aman, Mr.Dipanshu,
Mr. Lokesh Kr. and Mr.Harsh Rai,
Advocates

versus

GREEN ACRE FARMS PVT LTD THROUGH ITS AUTHORIZED
REPRESENTATIVE & ORS.Respondents
Through: Mr.Dayan Krishnan, Sr. Advocate,
Mr.Manish Jha, Sr. Advocate with
Mr.Rajat Juneja, Mr.Devna Soni and
Mr.Ashish Garg, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

CM APPL.81666/2025

1. Allowed, subject to all just exceptions.
2. This application is disposed of.

FAO 359/2025 & CM APPL.81667/2025 [for ad-interim injunction]

1. The appellants, who were the defendants before the Trial Court, seek to impugn order dated 06.10.2025, whereby their application filed under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure,



1908, was dismissed. The impugned order has been passed in the context of a suit filed by the respondents/plaintiffs seeking specific performance of an agreement/MOU dated 09.04.2021, along with reliefs of perpetual and mandatory injunction.

2. For the sake of convenience, the appellants are hereinafter referred to as the 'Defendants' and respondents as 'Plaintiffs'.

3. In the suit, the Plaintiffs have alleged to have entered into an agreement dated 09.04.2021 ("the Agreement"), with the late Mr. *Deepak Rathi*, who is stated to be the predecessor-in-interest of the defendants. It is their case that Mr. *Deepak Rathi* is the father of defendant nos. 1, 2, and husband of defendant no.3, and the predecessor-in-interest of the remaining defendants.

4. The Agreement pertained to the following lands.

- a. Agricultural land as measuring 2 Bighas 5 Biswas and 7 Biswansi, comprised in Khasra Nos. 763 Min (0-18-3), 767 Min (0-18-3) and 768 Min (0-9-1), situated in the Revenue Estate of Village Ghitorni, Tehsil Vasant Vihar, New Delhi (Specifically referred to as Land Parcel 1 and marked in orange color in the site plan); and
- b. Agricultural land measuring 2 Bighas 16 Biswas and 16 Biswansi, comprised in Khasra Nos. 245/1/2 Min (0-9-1), 246/1/2 Min (0-18-3), 249/1 Min (0-12-12) and 249 Min (0-17), situated in the Revenue Estate of Village Aya Nagar, Tehsil Mehrauli, New Delhi. (Specifically referred to as Land Parcel 2 and marked in orange color in the site plan).

The above two parcels of land comprise of the Suit Property.



5. As per the Agreement, Plaintiffs agreed to construct a motorable road on the Subject Land, extending from the existing 60 feet wide Anandgram Road till the lands of the plaintiffs, for common use of the parties.

6. Plaintiffs and Defendants are stated to be residing in Khasra Nos. 741,742,740/1,740/2,739/1,739/2, 744, and 745 and 763, 767, 768, 762, 769 of land parcel 1, and, of Land parcel 2 - 245/1/2, 246/1/2, 249 and 249, respectively. According to the Plaintiffs, the Suit Land was acquired by them to enjoy easementary rights on their aforesaid residential property, which had motorable access only through the proposed road to be constructed on the part of Suit Land. Late Mr. *Deepak Rathi* too could use the proposed road to access his residence. Parties, therefore, for common use, purpose and convenience, decided to construct the proposed common motorable road in the manner set out in the Agreement.

7. As per the alleged Agreement, the following was, inter alia, agreed upon between the contracting parties:

- i. The Plaintiffs/First Party were to construct and develop the subject land into a motorable common road/rasta at their own cost and expense;
- ii. The said road was to be used as a common access by both parties, with perpetual and uninterrupted right of way for ingress and egress to their respective lands;
- iii. neither party was to obstruct, interfere with, or create any third-party rights in the subject land inconsistent with its use as a common road; and
- iv. upon completion of construction of the road, the Second Party was to execute necessary documents for transfer of Land Parcel No. 1



in favour of the Plaintiffs/First Party.

8. Soon after the signing of the Agreement, Mr. *Deepak Rathi* passed away on 01.06.2021, however, the Plaintiffs, acting on the Agreement, and in consideration of the promised transfer of Land Parcel No 1 in their favour, constructed and developed a common motorable road/rasta extending from the existing 60 feet wide Anandgram road till the lands of the Plaintiffs for the common benefit of them and the Defendants on the Suit Land, between May to October 2022, when the construction was completed. Plaintiffs claim to have spent an expense of around Rs.80,00,000/- on the construction of the road.

9. It is claimed by the Plaintiffs that the parties started using the road in question as a common facility in terms of the Agreement. However, upon the Plaintiff requesting the Defendants to execute the necessary documents for transfer Land Parcel No. 1 in their favour, the Defendants started making unreasonable demands from the Plaintiffs in breach of the Agreement.

10. It is further alleged by the Plaintiffs that Defendants started obstructing the use of the road by the Plaintiff. It is alleged that the hired anti-social elements of the Defendants obstructed the Plaintiffs and complaints were filed on several occasions on to local police on 27.02.2023 and thereafter on 04.03.2023, 07.03.2023 and 15.03, 2023.

11. It is further alleged in the suit that the Defendants actions are in breach of the Agreement and it is apprehended by the Plaintiffs that the Defendants might completely block the Plaintiffs from using the road in question or they might create third party rights in the Land Parcel No 1, thereby depriving the Plaintiffs of the Suit Land.

12. In these circumstances the suit has been filed by the Plaintiffs seeking



the relief of specific performance of the Agreement dated 09.04.2021, along with perpetual and mandatory injunctions.

13. The Defendants have vehemently opposed the claims made in the plaint, so much so that The Agreement itself has been alleged to be forged and fabricated. The Defendants have denied the signatures of Late Mr. *Deepak Rathi* on the Agreement and have alleged that the Plaintiffs have forged the Agreement in order to illegally usurp the Suit Land. It is claimed that Mr. *Deepak Rathi* was suffering from Covid-19 in the pandemic around the time when the alleged Agreement is claimed to have been signed.

14. Defendant has relied upon a forensic report dated 17.04.2023 from Truth Labs, which is a private forensic agency which has opined that Mr. *Deepak Rathi's* signature on the Agreement appears to be electronically reproduced. The Defendants use the said forensic report in support of their allegation of forgery and fabrication.

15. Defendants have also questioned the incredulity of the Agreement contending that the Land Parcel No 1 being of substantially higher value, could not have been agreed to be transferred for a meagre amount of Rs. 80,00,000, the consideration amount mentioned as the cost of construction, which was for the purpose of specific performance only.

16. In their written statement, the Defendants have also contended that the Agreement being unregistered cannot be enforced.

17. The Defendants have denied that the road has been constructed by the Plaintiffs, and have rather claimed that the same was done by them, on which considerable amounts have been spent. The Defendants have relied upon some quotations from a contractor to show the road construction work undertaken by them, thereby refuting the claim to the contrary made by the



Plaintiffs.

18. The Defendants have objected to the *ex-parte* interim order passed by the Trial Court- alleging haste shown by the Trial Court. It is their case that the notice in the suit was issued on 25.03.2023 for 27.03.2023. Service was not effected upon the Defendants whereas the Trial Court recorded deemed service of the Defendants on the ground of alleged refusal of service by the Defendants. According to the Defendants, the Trial Court ought to have ordered issuance of fresh process on the Defendants rather than recording deemed service at the very first instance. In this regard, reliance is placed on *Dorab Cawasji Warden vs Coomi Sorab Warden & Ors*¹.

19. Countering the Defendant's allegation, Mr. *Krishanan*, learned Senior counsel, who appears on behalf of the Plaintiffs, submits that the defendants have suppressed various material facts from this court inasmuch as though the reliance has been placed on the written statement, however, the same itself has not come on record of the Trial Court as the same was filed beyond the permissible time and application for condonation of delay is still pending consideration. It was next submitted that the Defendants have failed to challenge the *ex parte* order and the present appeal is filed to circumvent the hurdle of limitation by now seeking vacation of the *ex parte* injunction order dated 27.03.2023.

20. On merits, it is contended that the plaint was accompanied by photographs of the constructed road. The Defendants' reliance on the report of Truth Labs was also assailed on the ground that the same being procured by the Defendnat from a private lab and the conclusion arrived whereof are contested by the Plaintiffs. Reliance is also placed on *Mariam Fasihuddin v.*

¹ (1990) 2 SCC 117



State of Karnataka², where the Supreme Court observed that a paid report from a private laboratory is unsafe and untrustworthy. Lastly, on a demurrer, it is contended that though the written statement has not come on record, even the WhatsApp chats filed along with the written statement would show that the understanding between the parties was for entering into some kind of argument with respect to construction of a road. Clause (2) of MOU provided that the original agreement was kept by the Defendants. Referring to Section 2(d) of the Indian Contract Act 1872, it was stated that the sale consideration was in fact the cost of the construction of the motorable road/rasta itself.

21. In rejoinder, Mr. *Mehta* has referred to an earlier suit CS(OS) 2488/2014, (renumbered as Civil Suit No.59396 of 2016) filed by the Plaintiffs against Late Mr. *Deepak Rathi*, in relation to the Suit Land and some other parcels of land in the vicinity. In the said suit the Plaintiffs had alleged to have entered into an agreement dated 21.02.2013 with Mr. *Deepak Rathi*, for exchange of land parcels inter-se between the parties. The suit was resisted by Mr. *Deepak Rathi*, forcing the Plaintiff to withdraw the suit. Mr. *Mehta* would argue that the present suit is a second attempt to usurp the Suit Land by the Plaintiffs, having failed in the first attempt, as stated above. It is argued that the Plaintiffs have been using forged documents to illegally usurp the Suit Land.

22. To counter the Plaintiff's argument that the *ex-parte* injunction order dated 27.03.2023 has not been challenged by the Defendants, it is submitted by the Defendants that they had sought vacation of injunction order under Order 39 Rule 4 of the Code of Civil Procedure, 1908, which is a remedy

² (2024) 11 SCC 733



permissible in law.

23. After examining the rival contentions, this Court does not find any infirmity in the impugned order.

24. The original interim injunction order was passed *ex-parte* on 27.03.2023 restraining the Defendants from creating any interruption in the access of the plaintiffs to their respective lands and also restrained any construction or creating any third party interest in the suit land. In this order, the Trial Court *prima facie* found merit in the case set up by the Plaintiffs asserting their rights under the Agreement. The Court, balancing the convenience of the parties, came to the conclusion that pending the adjudication of the suit, the use of the disputed road should not be denied to the Plaintiff. After examining the provisions of the Agreement, and the material on record, the trial court concluded that the Plaintiffs had constructed the road under the Agreement, and were entitled to its use without any interference from the Defendants. The Trial Court recorded, the following findings:

- i. that the balance of convenience lies in favour of the Plaintiffs as they have acted upon the Agreement dated 09.04.2021;
- ii. that there is nothing on record, at this stage, to show that the Defendants had approached any legal authority when the alleged development/construction activity was undertaken by the Plaintiffs;
- iii. that there is no material on record to indicate that the Defendants had taken any steps to challenge the Agreement as being false or fabricated;
- iv. that the order dated 27.03.2023 only granted motorable access



over the suit land and preserved the property, and did not warrant interference at this stage; and

- v. that no change in circumstances or undue hardship, as required under Order XXXIX Rule 4 of The code of Civil Procedure, 1908, was made out so as to justify variation or vacation of the injunction.

25. The Trial Court leaned in favour of maintaining status quo regarding the use of the road by the parties, rather than denying the Plaintiffs such use, for which the Trial Court did not have any reasons to reach such conclusion. The order was passed *ex-parte* so the Trial Court rightly proceeded based on the material available on record. There is no reason for this Court to conclude otherwise.

26. It is contended by the Defendants that the Trial Court showed undue haste in passing the interim order dated 27.03.2023 *ex-parte*. However, it is pertinent to note that the order was passed *ex-parte*, based on the service report, received by the Trial Court. In the impugned order dated 06.10.2025 rejecting the Defendant's application under Order 39 Rule 4 of the Code of Civil Procedure, 1908, it is recorded by the Trial Court that mere bald denial by the Defendants of service is not sufficient to conclude that service was not effected. The trial court observed that the address of the Defendants provided in the plaint was not denied by the Defendants. There was no reason offered by the Defendants explaining why service could not be have been effected on the given addresses. For the said reason the Trial Court's finding regarding service cannot be faulted with.

27. While deciding the Defendants application under Order 39 rule 4, the Trial Court has observed that the Defendants allegation of forgery regarding



the Agreement, is a triable issue, that will require adjudication. The Trial Court in its discretion has chosen not to give much weightage to the forensic opinion by a private lab, at this stage, and weighing the evidence, has found *prima facie* merit in the Plaintiffs case.

28. Mr. *Deepak Rathi*, whose signatures are alleged to be forged, is unfortunately dead, the issue would require the parties to lead credible and conclusive evidence, to prove their respective contentions. There is nothing legally wrong in the Trial Court's discretion in not discarding the Agreement at this interim and preliminary stage.

29. The Trial Court has referred to the material in support of its *prima facie* finding regarding construction of road by the Plaintiff and the monies spent by them. The Defendants rival claim would require a detailed trial and it can't be ignored that the written statement of the Defendant is not on record yet.

30. In the opinion of this Court, the Trial Court has no reason to vacate the interim injunction order dated 27.03.2023 merely based on the unsubstantiated denials of the Defendants, at this pre-trial stage.

31. As stated above, the Trial Court has decided to grant discretionary relief of interim injunction, based on the existence of the triple test i.e., *prima facie* case, balance of convenience and irreparable loss.

32. The Defendants have not been able to demonstrate absence of any of the above three conditions. The Trial Court has *prima facie* found merit in favour of the Plaintiffs. Since the Plaintiffs demonstrated use of the road since May 2021, the Trial Court found the balance of convenience in favour of the Plaintiffs. Yielding to the easementary rights of the Plaintiffs, in the discretion of the Trial Court, denial of use of the common road, would result



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in irreparable loss.

33. In view thereof, this Appellate Court has no reason to interfere with the discretion exercised by the Trial Court. There is no legal infirmity in the impugned order.

34. Accordingly, the present appeal is hereby dismissed alongwith the application.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 10, 2026

pmc