



2025:DHC:5225-DB



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

Date of decision: 03.07.2025

+ **FAO(OS) 113/2022 & CM APPL. 44031/2022**
KRISHAN DAS CHOUDHRYAppellant
Through: **Mr.Rajat Aneja, Mr.Saubhagya**
Chauriha, Ms.Jyoti N, Advs.

versus

RAJESH ALIAS RAJ CHAUDHARY & ORS.Respondents
Through: **Mr.S.N. Choudhri, Mr.Dipit**
Sareen, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908 (in short, 'CPC') read with Section 10 of the Delhi High Court Act, 1966, challenging the Judgment dated 17.08.2022 passed by the learned Single Judge of this Court in I.A. 8633/2021 in CS(OS) 287/2020, titled ***Krishan Das Choudhry v. Rajesh alias Raj Chaudhary & Ors.***, dismissing the application filed by the appellant herein under Order XII Rule 6 of the CPC with costs of Rs.50,000/-.
2. To give a brief background of the facts from which the present appeal arises, the appellant has filed the abovementioned Suit praying



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for a decree of mandatory and permanent injunction against the respondents herein, directing them to remove the locks allegedly illegally put by them from inside the main gate of the property bearing no. J-3, South Extension, Part I, New Delhi-110049 (hereinafter referred to as, 'Suit Property') and to further close the access alleged to be illegally created by them by the demolition of the intervening wall of the property bearing no. J-2, South Extension, Part I, New Delhi-110049 and the Suit Property. The appellant further prayed for permanent injunction restraining the respondents from causing any interference or creating obstruction with the possession of the Suit Property by the appellant.

3. The appellant has claimed the ownership to the extent of $\frac{2}{3}$ rd shares in the Suit Property, by way of a Sale Deed dated 20.05.2005 alleged to have been executed in his favour by Ms.Anupama and Mr.Rahul, the alleged second wife and son of late Mr.Mohinder Singh, who was the brother of the appellant. The remaining $\frac{1}{3}$ rd share in the Suit Property is claimed by the appellant to have been bequeathed in his favour by his mother, late Smt.Shiv Devi, by way of a Will dated 27.10.2004.

4. The learned counsel for the appellant has made various submissions to contend that the respondents herein are estopped from challenging the validity of the Sale Deed executed by Ms.Anupama and Mr.Rahul in favour of the appellant. He has drawn our attention to the earlier Suits that were filed between the parties, including CS(OS) 841/2004. He also relied on the Settlement Agreement entered into between the appellant and the legal heirs of late



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Mr.Mohinder Singh in CS(OS) 243/2006. He further submits that though the Will dated 27.10.2004 of late Smt.Shiv Devi had been set up by the appellant in CS(OS) 841/2004; the respondents never challenged the same till the filing of their written statement in the Suit in question.

5. On the other hand, the learned counsel for the respondents submits that the issues in the Suit have already been framed by an Order dated 12.03.2024, and the learned Local Commissioner has been appointed to record the evidence of the parties. He submits that presently, PW1 is in the process of being cross-examined. He submits that there is a challenge not only to the alleged Sale Deed but also to the Will.

6. We have considered the submissions made by the learned counsels for the parties.

7. By the Order dated 12.03.2024 of the learned Single Judge, the following issues have been framed in the Suit:

“i) Whether the Plaintiff is the owner of the suit property? If so, to what effect? OPP

ii) Whether the Plaintiff or the Defendants have been in possession or occupation of the suit property? Onus on parties

iii) Whether the Defendant No.2 has any ownership rights in the subject property by virtue of an oral gift/family arrangement? OPD

iv) Whether Smt. Shiv Devi had any ownership rights in the suit property? OPP

v) Whether Smt. Shiv Devi left behind any valid and legally enforceable Will in favour of



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the Plaintiff? If so, to what effect? OPP

vi) Whether the Will is not validly enforceable in law? OPD

vii) Whether the suit is barred by limitation? OPD

viii) Whether the suit is maintainable in the absence of a prayer for declaration? OPD

ix) Whether the Plaintiff is entitled to any mandatory and permanent injunction as prayed in the plaint? OPP

x) Whether Late Sh. Mohinder Singh out of deep love and affection for Defendant No.2 and pursuant to a family arrangement had transferred the possession of the suit property to Defendant No.2, making him the owner thereof? If so, its effect. OPD

xi) Whether the Defendant No.2 is in unhindered, uninterrupted and hostile occupation and possession of the suit property since, 1981, as owner thereof. If so its effect? OPD

xii) Whether the suit has been properly valued and proper court fee has been paid thereon? OPD

xiii) Whether the Defendants have any locus to challenge the settlement deed entered into between the Plaintiff herein and the legal representatives of the Late Mohinder Singh? OPD”

8. Though *prima facie* we may find some substance in the submissions of the learned counsel for the appellant on the challenge to the Sale Deed by the respondents, we would not like to delve



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further into the said issue inasmuch as the Suit could not have been decreed by invoking the provision of Order XII Rule 6 of the CPC only on such *prima facie* view. Validity of the Will also to be established by the appellant in accordance with law. In our view, the application has, therefore, rightly been rejected by the learned Single Judge.

9. As noted hereinabove, the learned Local Commissioner has been appointed to record the evidence of the parties.

10. While we do not interfere with the Impugned Order, we direct the learned Local Commissioner to expedite the recording of the evidence of the parties and refuse any unwarranted requests for adjournment by the parties. On the conclusion of the evidence, the parties shall request the learned Single Judge to expedite the adjudication of the Suit.

11. We make it clear that any observations made by the learned Single Judge in the Impugned Order or by us in the present order shall not, in any manner, influence the outcome of the Suit.

12. Keeping in view the nature of the controversy, we, however, set aside the Impugned Order insofar as it has imposed costs of Rs.50,000/- on the appellant.

13. The appeal and the pending application are disposed of in the above terms.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

JULY 3, 2025/Arya/SJ

Click here to check corrigendum, if any