



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

% **Reserved on: 22nd January, 2026**

Pronounced on: 06th April, 2026

+ **RFA 208/2023**

1. JAI PAL SINGH TYAGI

2. JAI NAND SINGH TYAGI

3. SUBHASH CHAND TYAGI

All sons of late Shri Hari Chand Tyagi,
R/o V.P.O.- Burari, Delhi.

.....Appellants

Through: Mr. Ravinder Sethi, Senior Advocate
with Mr. Jinender Kumar Jain and
Mr. Puneet Sharma, Advocates.

versus

1. RATTAN SINGH s/o Nand Ram, (deceased) through:

i. Shri Gajraj Singh s/o Late Rattan Singh
R/o Gali No.2, village Jagatpur, Delhi.

ii. Smt. Simlesh @ Sunita. w/o Sh. Narender
D/o Late Rattan Singh.
R/o V.P.O. Ekla, Distt. Ghaziabad, U.P.

iii. Smt. Bimlesh w/o Virender
D/o Late Rattan Singh.
R/o Shahpur, Near Dadri, District Gautambudh Nagar, U.P.

2. SINGH RAJ

3. DEVENDER

Both sons of Rattan Singh,
R/o H.No.40, Gali No.2, Jagatpur, P.O. Burari, Delhi.

4. AMIT

5. PARVEEN

Both sons of Gajraj Singh.



R/o H.No.40, Gali No.2, Jagatpur, P.O. Burari, Delhi.

6. RADHEY SHYAM s/o Chunni

7. RAVINDER KUMAR

8. MANOJ CHAUDHARY

9. VIRENDER SINGH

All sons of Shri Radhey Shyam,
R/o H.No.42, Gali No.1, Jagatpur, P.O. Burari, Delhi.

10. JAGBIR

S/o Shri Ram Dass,
R/o H.No.44, Village Jagatpur, P.O. Burari, Delhi.

11. NARENDER

12. SUBHASH

Both sons of Shri Ram Pal,
R/o H.No.48, Village Jagatpur, P.O. Burari, Delhi.

13. SUKHBIR

14. MAHABIR

Both sons of Shri Lutus,
R/o H.No.48, Village Jagatpur, P.O. Burari, Delhi.

15. RAMESH CHAND (deceased) through

S/o Sh. Tek Chand

- i. Smt. Shakuntla Devi – widow
- ii. Smt. Sangeeta - daughter
- iii. Shri Ved Pal - son
- iv. Shri Sunil - son
- v. Shri Rahul. - son

All R/o H.No.47, Village Jagatpur, P.O. Burari, Delhi.

16. ASHOK

S/o Shri Jai Pal,
R/o Village Jagatpur, P.O. Burari, Delhi.

17. JAIVEER (deceased) through



S/o Shri Balram,

- i. Sanjay - son
- ii. Manoj - son
- iii. Pramod - son

All R/o Gali No.1, Jagatpur, P.O. Burari, Delhi.Respondents

Through: Mr. Rohit Kumar, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (*herein referred to as 'CPC'*) has been filed on behalf of the *Appellants*, against *Judgment and Decree dated 13.12.2022* whereby learned ADJ, while considering the Application under Order VI Rule 17 CPC for amendment of the Suit, observed that with the admitted dispossession of the Appellants / Plaintiff, *Suit for Permanent Injunction simpliciter, had become infructuous and consequently, dismissed the Suit.*
2. The Plaintiffs / Appellants had filed Suit bearing *CS DJ No.619567/2016* for Permanent Injunction for restraining the defendants/Respondent from dispossessing them, without due process of law.
3. **Brief facts** are that the plaintiffs claimed to be in the cultivatory possession of the land bearing *Rect. No.132, Kila No.6 measuring 4 bighas 14 biswas and Rect. No.131, Kila No.20 measuring 1 bighas 11 biswas, situated in Village Burari, Delhi*, for the last more than 30 years, since before the consolidation held in the Village, which was held in the year 1980-1981.



4. The Plaintiffs had put up cement pillars on the boundaries of their field, to put up the barbed wire fencing. Defendants finding that the Plaintiffs are going to physically oust them, started mischief and threatened to take forcible possession and extended threats to their life.

5. It was further submitted that for the crop of Rabi and Kharif, 2004, Chunni, Ram Das, Tek Chand, Jai Pal etc., predecessor of Defendants had attempted to get their names recorded in *Khasra Girdawari*, with a view to trespass over the land in question. Coming to know of their tactic, Plaintiffs immediately protested and consequently the change was recorded in column No.21 of the said Girdawari.

6. It was further asserted that Defendants and their predecessors had manipulated the entries, in collusion with the Patwari. Moreover, Defendants in collusion with colonizers had started pressurizing the Plaintiffs to handover the land on throw away prices or else they will forcibly take possession, carve out plots and sell them to strangers, after which the Plaintiffs could be entangled in endless litigations, causing irreparable loss and injury to them.

7. It was claimed by the Plaintiff that as per the Delhi Land Revenue Rules, *Patwari* should have filled Form P-5 and that too, in the name of person found in possession other than *Bhumidar*. *Patwari firstly*, had no business to record the shares; and *secondly*, he could not have recorded possession of Sh. Chunni etc., in Column No.21. Entry in Column No.21 was made as if it was a transfer from *Bhumidars* in favour of Chunni etc. Entire process was claimed to be fraudulent and illegal.

8. As per Rules, *Patwari*, after filling Form P-5 in triplicate, is required to send a copy of the Form P-5 to the *Bhumidar*, by Registered Post and



thereafter, it has to be verified by *Kanoongo* and then submitted to *Tehsildar*, who then takes a decision about validity of the entry, and thereafter, entry could be made in *Khasra Girdawari*. No such procedure was ever followed. No notice was issued by Revenue Officials to the Plaintiffs. Moreover, filling of Form P-5, is not evidence of possession.

9. Plaintiffs claimed that because of their vigilance, Defendant's tactics failed and *Khasra Girdawaries* continued in Plaintiffs' name, without any claim by Defendants. However, there was colonization process in the land, adjoining to the land of Plaintiffs / Appellants. Defendants, in collusion with Colonizers, started pressurizing the plaintiffs to handover the possession or else they would forcibly take it.

10. Plaintiffs have been residing about 02 kms. away from the suit land. Defendants came to Plaintiffs' on 27.12.2013 and asked them to handover the land at throw away price, for which Plaintiffs did not agree. Plaintiffs thus, filed *the Suit for Permanent Injunction for restraining the Defendants from interfering in their possession.*

11. **Written statement** was filed on behalf of the Defendants, who took *preliminary objection* that the Plaintiff's Suit is abuse of process of law and is a misconceived. It was explained that property in question, situated in *Khasra No.131/20 (old Khasra No.2032)* and *Khasra No.132/16 (old Khasra No.2033)*, was sold by Sh. Dev Dutt to Sh. Rattan Singh s/o Sh. Nandram (1/4th share); Sh. Chunni and Sh. Ram Das, both sons of Sh. Chinta Ram (1/4th share); Sh. Rampal, Sh. Sukhvir and Sh. Mahavir, all sons of Sh. Lutus (1/4th share); and Sh. Tek Chand, Sh. Jai Pal and Sh. Jaivir, all sons of Sh. Balram (1/4th share), *vide* Sale Deed dated 29.05.1957. Thereafter, entire sale consideration of Rs. 2,450/- was paid and the



possession was handed over to the predecessors, as also recorded in the Sale Deed. All the purchasers, as mentioned above, belong to one family.

12. After purchase of the Suit Land, they have been in possession and are cultivating the same as owners. It was claimed that land continued to be in their uninterrupted possession and in cultivation of Defendant No.1, who is one of the original purchaser along with Defendant No.13 Sh. Sukhbir and Defendant No.14 Sh. Mahavir, while Defendant No.6 is Son of Sh. Chunni; Defendant No.10 is Son of Sh. Ramdas; Defendant Nos.11 and 12 are sons of Sh. Rampal; Defendant No.15 is Son of Sh. Tek Chand and Defendant No.16 is Son of Sh. Jai Pal. It was asserted that possession and factum of cultivation of the land by Defendants and predecessors-in-interest, was duly recorded in the Revenue Records.

13. The Defendants and their predecessors-in-interest had purchased another parcel of land, adjacent and adjoining to the Suit Land, admeasuring 122 sq. yards on 19.08.2002, from Sh. Budh Ram s/o Late Sh. Thanwaria, with the objective of having an easy and uninterrupted access to the Suit Land under their cultivation. Plaintiffs were aware of this fact.

14. Plaintiffs or their predecessors-in-interest, after sale of the land in 29.05.1957, have never been in possession; much less cultivatory possession in the Suit Land and they have been aware *and conscious of the possession of the same being with the Defendants.*

15. It was further stated that Defendants had put concrete pillars sometimes in the end of November 2013, to fence the land to safeguard the crop from the stray cattle; and allegation to the contrary by the Plaintiffs, is false and *mala fide.*



16. In fact, on account of the ad-interim Orders passed by this Court, Defendants have not put up any fencing, which has resulted in further destruction of *Jia* sown by them in December 2013. They moved an Application before this Court for vacating the ad-interim Orders on the land.

17. The falsity of the stand taken by the Plaintiffs regarding the recording of Defendant's name in the Revenue Record, stands further exposed from the Record itself.

18. Moreover, Plaintiffs cannot allege to be unaware and illiterate, as admittedly Plaintiff No.2 is a Lawyer and had in fact, been assisting the Defendants professionally. It is apparent that Plaintiffs have taken advantage of the same and have managed to manipulate the Records.

19. It was submitted that Suit for Injunction was not maintainable as the Plaintiffs were not in possession and had never been in cultivatory possessions, since 1957. The Suit was thus, not *maintainable and barred under Section 41(h) of the Specific Relief Act.*

20. It was further submitted that Suit Land is admittedly agricultural land, governed by The Delhi Land Reforms Act and thus, *Suit was barred under Section 185 of The Delhi Land Reforms Act.*

21. On merits, Defendants claimed to have total control of Suit Land, continuous uninterrupted possession and open possession of the same as owners and cultivating it for more than the last 57 years. All the allegations made in the Suit were denied.

22. *An Application under Order XXXIX Rules 1 and 2 CPC was filed by the Plaintiffs seeking protection of their possession, which got dismissed by learned ADJ on 25.10.2018 by observing that there was serious dispute*



regarding nature of the title and possession of the Suit Land, in which circumstances, it was not prudent to grant injunction.

23. Plaintiff thus, moved an *Application under Order VI Rule 17 CPC in January, 2019*, wherein it was stated that on 07.11.2018, on the occasion of Diwali, while Plaintiffs were busy with the celebrations, Defendants backed by declared bad character in their family, entered into the land of the Plaintiffs and trespassed over it and started rising boundary wall and making small rooms, so as to physically oust the plaintiffs from the Suit Land.

24. The Plaintiffs, on coming to know about this illegal act of the Defendants, protested but finding it physically difficult to oust them, they made a Police Complaint vide DD No.31B on 12.11.2018 to SHO, PS: Timarpur, Delhi. The matter was investigated by the Police and a Report dated 17.12.2018 addressed to SDM, Civil Lines, Tis Hazari, Delhi, was made that necessary action may be taken against the unauthorised construction.

25. The Plaintiffs asserted *that Defendants had trespassed on the land on 07.11.2018, i.e. during the pendency of the Suit*. Hence, Plaintiffs sought an amendment in the Suit to add the subsequent events and to *amend the relief by directing the Defendants to restore the possession of the land to the Plaintiffs and to remove illegally raised boundary walls and room from 07.11.2018 onwards*.

26. This *Amendment Application was contested by the Respondents who filed a formal Reply*.

27. *Learned ADJ in the impugned Order dated 13.12.2022*, considered the contents of the Amendment Application and noted that while the law on amendment of pleadings envisages amendment including subsequent events,



but there are two options with the Court when such subsequent events happen. The **first option** was to amend the plaint, incorporate the subsequent events and mould the relief accordingly, which the plaintiffs are seeking vide the present Application. **The second option** is to consider the suit as infructuous, and Plaintiff may file Suit for Possession under Section 6 of The Specific Relief Act, to seek restoration of possession.

28. It was noted that the Suit for restoration of possession under Section 6 of Specific Relief Act, had already been filed and the Plaint therein was identical to what was proposed to be filed in the present Suit, by way of amendment of the Original Plaint.

29. It was also noted that once the Plaintiff had already exercised the option of file a Suit under Section 6 of Specific Relief Act for restoration of possession, permitting an Amendment in the present Suit for the same relief, would result in multiplicity of litigations.

30. Consequently, in the light of the Suit filed by the Plaintiffs, the amendment was disallowed. Furthermore, since as per the submissions of the Plaintiffs themselves, they had been dispossessed and were no longer in possession, the Suit for Injunction was held to have become infructuous and was accordingly, disposed of.

31. Aggrieved by the dismissal of the Suit, present First Regular Appeal has been filed.

32. The grounds of challenge are that enquiry in the two Suits, are different as even if the Plaintiffs fails to prove dispossession within six months, they still have a chance to prove the possession on the date of filing of the Suit and there was no bar in continuing the Suit. Furthermore, the Suit



for possession filed under S.6 Specific Relief Act, was not based on the title and therefore, present Suit cannot be termed as infructuous.

33. Furthermore, it was not considered that amendment in the Plaint had become necessary because of the subsequent events, and such amendment would not have changed the nature of the case. Unless the Plaintiffs / Appellants brought the facts on record, that they have been disposed during the pendency of the Suit, there would have been no ground for the Court to mould the relief for the Plaintiffs to give the relief, accordingly.

34. Furthermore, even if the Court wanted to dismiss the Suit as infructuous, an opportunity of being heard should have been given to the Plaintiffs / Appellants.

35. It is further asserted that in case the Plaintiffs were able to prove their prior possession on 03.01.2014, but were not able to prove dispossession within 6 months of filing the Suit under Section 6 of Specific Relief Act, they would have at least sought the relief of *status quo* in regard to the possession, as it existed at the time of institution of the Suit. Therefore, a prayer is made that impugned Judgment and Decree dated 13.12.2022, be set aside.

Submissions heard and record perused.

36. Plaintiffs had filed Suit for Permanent Injunction / Protection of their possession in the Suit Property and to refrain the Defendants from dispossessing them illegally and without due process of law, in 2014. It is the admitted case of the Plaintiffs that they got dispossessed from the Suit Property on 07.11.2018. Once they were dispossessed from the Suit Property, there was a question of protection of their possession.



37. Even if they had been able to establish that they were in possession of the Suit Property at the time of institution of the Suit, then too, the case of protection of the possession was lost during the pendency of the Suit, when they were dispossessed on 07.11.2018. The only remedy in the light of subsequent events was to seek the possession.

38. It is pertinent to note that Application under Order XXXIX Rules 1 and 2 CPC for Permanent Injunction to refrain the Defendants from dispossessing the Plaintiffs, had been dismissed. There was no finding during the entire proceedings of the Plaintiffs being in admitted possession, though that was their assertion.

39. In these circumstances, learned ADJ rightly observed that the protection of the possession by way of Permanent Injunction cannot be granted in view of Plaintiffs having lost the possession and the Suit has become infructuous. The Plaintiffs have already preferred Suit for possession under Section 6 of Specific Relief Act, on the ground that they have been dispossessed on 07.11.2018. In case they can establish their possession in the Suit Property, they would get the relief. Moreover, there was nothing that prevented the plaintiff to seek possession simplicitor, but they have chosen the remedy of S.6 Specific Relief Act.

40. Further, as has rightly been observed, the amendment sought, completely changed the original cause of action and entailed major amendments. Also, it was rightly noted that the proposed amended Plaint and the Suit under S.6 Specific Relief Act, was almost identical and would have resulted in multiplicity of litigation. Their contention that in case, they are unable to prove the possession, their Suit may get dismissed, reflects sublimity of the contentions of the Plaintiffs.



41. In view of the subsequent event, Plaintiffs always have right to file a fresh Suit. The proposed amendment in fact, would have amounted to a Plaint with different relief, from one which had been sought originally.

42. There is no merit in the present Regular First Appeal, which is hereby, **dismissed**. The pending Applications are disposed of, accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 06, 2026/R