



2026:DHC:9023



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

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Reserved on: 12th August, 2026

Pronounced on: 12th October, 2026

Uploaded on: 12th October, 2026

CNR No: DLHC010880932024

+ **RSA 203/2024, CM APPL. 70416-70417/2024 & 10075/2026**

KULSUM BEGUM

W/O Late Islam Ahmad Qureshi

R/O House No.111-A, Basti Hazrat

Nizamuddin, New Delhi-110013

.....Appellant

Through: Mr. Brahamjeet Tyagi and Mr. S. K.
Sharma, Advs.

versus

SYED YAYAH NIZAMI

S/O Mohd Zakaria

R/O 54, Basti Hazrat

Nizamuddin New Delhi-13

.....Respondent

Through: Mr. Rajat Aneja, Senior Advocate
with Ms. Kaanchi Ahuja, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present **Regular Second Appeal** under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") has been filed against the Judgment and Decree dated 02.08.2024 passed in RCA No. 32/2024, whereby the learned First Appellate Court dismissed the Appeal and affirmed the Order dated 05.12.2023 passed by the learned Trial Court



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in **CS SCJ No. 1935/2019**, rejecting the plaint under Order VII Rule 11(d) CPC.

2. The Plaintiff, Kulsum Begum, filed **Suit No. CS SCJ 1935/2019** seeking Declaration of title, by way of adverse possession, in respect of property bearing No. 111-A, Basti Hazrat Nizamuddin, Delhi, along with a decree of Permanent Injunction.

3. The facts, in brief, as narrated in the plaint, are that the Plaintiff is the widow of Islam Ahmed Qureshi, son of Mohd. Razi. The Plaintiff stated that one Iliyas was in possession of property bearing No. 111-A, Basti Hazrat Nizamuddin, Delhi-110013 (*hereinafter referred to as the "suit property"*), which he left when he left for Pakistan. Thereafter, the Plaintiff's father-in-law, Mohd. Razi, entered into possession of the premises and remained there.

4. The Plaintiff asserted that the Defendant, Nayah Nizami, had never interfered with the possession of the Plaintiff, her father-in-law or her husband. She claimed that her possession had continued since Partition and in any event, since her marriage to Islam Ahmed Qureshi, in 1957.

5. The Plaintiff further stated that her children were born in the suit property and were married from there. Her husband also passed away in the premises, on 18.11.1996.

6. In support of her possession, the Plaintiff relied upon her ration card, election card, voting slips and other documents, which, according to her, evidenced her peaceful enjoyment and possession of the suit property.

7. The Plaintiff claimed that her possession was hostile to the Defendant and that *animus possidendi*, existed as they continued in possession. She



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further stated that her husband had constructed one room in 1992 and two additional rooms in 1993–94, without objection from the Defendant.

8. The Plaintiff also asserted that she had never recognised the Defendant as the owner of the suit property and had always challenged his title, claiming that the property belonged to Iliyas, who had left for Pakistan.

9. According to the Plaintiff, the suit property had been declared Evacuee Property under Section 7 of the Evacuee Property Act. The Custodian General of India had issued a notice to Mohd. Zakaria, the Defendant's father, but he did not attend those proceedings or file any claim to the suit property. The Plaintiff therefore, claimed that the property remained with the Custodian General as *evacuee property* and that her possession was continuous, adverse and hostile to the Defendant.

10. The Plaintiff stated that the Defendant had filed **Eviction Petition No. 6265/2016 against Dr. Arshad and others**, without impleading her. She filed objections before the Rent Controller, contending that the area in which the suit property was situated, had not been urbanised and that the provisions of the Delhi Rent Control Act did not apply to the premises, for want of a Notification.

11. The Plaintiff had earlier filed **Civil Suit No. 893/2017**, seeking a Declaration of title to the suit property by prescription or adverse possession. She stated that the Suit was withdrawn on 01.12.2017, with permission to institute a fresh suit. The Plaintiff further pleaded that, at the time, there was no law enabling her to seek such relief.

12. The Plaintiff relied upon the decision of the *Supreme Court in Ravinder Kaur Grewal v. Manjit Kaur, Civil Appeal No. 7764/2014, decided on 07.08.2019*, and the subsequent decision in *Krishnamurthy S. Setlur v.*



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O.V. Narasimha Setty, Civil Appeal No. 6111/2009, decided on 26.09.2019. which recognised the right to seek a declaration of title, on the basis of adverse possession under Article 65 of the Limitation Act, 1963.

13. On that basis, she claimed that a fresh cause of action had arisen in her favour and sought a *Declaration of title by adverse possession, together with Permanent Injunction for restraining the Defendant, his agents, heirs and successors from interfering with her peaceful possession of the suit property.*

14. The Defendant/Respondent filed an Application under **Order VII Rule 11 CPC, seeking rejection of the plaint**, inter alia, *on the ground* that no property bearing No. 111-A, existed. It was further contended that the Suit was barred under *Order XXIII Rule 1 and Order II Rule 2 CPC*, since the Plaintiff had withdrawn her *earlier Suit bearing No. 893/2017* as well as by the *principle of res judicata, under Section 11 CPC.*

15. The Defendant further asserted that he had been declared the owner/landlord of the entire property, whereas the Plaintiff claimed a right only in respect of a portion of it. It was also contended that the Plaintiff was claiming through persons, against whom an eviction Order dated 14.02.2017 had been passed, *which was affirmed by the Supreme Court.* The Defendant also stated that the Plaintiff's objections in **Execution Petition No. 331/2017 had been dismissed by the learned ARC**, after evidence had been led.

16. The Defendant also objected that the *Suit was not properly valued for the purposes of court fee and jurisdiction.* It was contended that the Plaintiff claimed ownership without paying court fee on the market value of the property, which was stated to be not less than ₹2.5 crores and beyond the pecuniary jurisdiction of the Court.



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17. The Defendant further contended that the Plaintiff was seeking, through the present Suit, to overreach the jurisdiction of the Court and to stay or stop the proceedings in *Execution Petition No. 331/2017*. It was also asserted that *the Suit was barred under Section 41(a) of the Specific Relief Act, 1963*. The Defendant accordingly, prayed that the plaint be rejected.

18. The ***Plaintiff filed a Reply, opposing the Application.***

19. The **learned Civil Judge** noted that the Plaintiff had earlier filed *Civil Suit No. 893/2017*, seeking, inter alia, a Declaration that the eviction Order dated 14.02.2017 was not binding on her and that she was the owner of the suit property by way of adverse possession. The Plaintiff had also sought a Declaration that the suit premises were outside the jurisdiction of the Delhi Rent Control Act and a Permanent Injunction for restraining the Defendant from dispossessing her, except by due process of law.

20. The learned Civil Judge further observed that, on 01.12.2017, the Plaintiff withdrew the earlier Suit while stating that she had filed objections in *Execution Petition No. 331/2017*. *The Suit was disposed of as withdrawn, without prejudice to the Plaintiff's rights and contentions in accordance with law.* The learned Civil Judge held the withdrawal as having been sought to pursue the objections in the Execution proceedings and *held that no permission to institute a fresh Suit had been granted.*

21. The learned Civil Judge further noted that the Plaintiff's objections in the Execution proceedings, had been decided by the learned ARC after issues were framed and evidence was led. The learned Civil Judge referred to the finding of the Ld. ARC that the objectors had failed to prove independent title and that their claim to a separate property bearing No. 111-



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A was unsupported. **In view of the aforesaid, the Suit of the plaintiff was rejected under Order 7 Rule 11 CPC.**

22. Thereafter, the Plaintiff/Appellant **challenged the Order dated 05.12.2023 by filing an Appeal bearing RCA DJ No. 32/2024.**

23. By Judgment dated 02.08.2024, the learned District Judge dismissed the Appeal, holding that the Plaintiff had withdrawn her earlier Suit bearing No. 893/2017, to pursue her objections in the Execution proceedings and had not obtained permission to institute a fresh suit.

24. It was also noted that, by Order dated 10.03.2022, the learned ARC had dismissed the Plaintiff's objections after finding that she had failed to establish an independent title to the suit property under Section 25 of the Delhi Rent Control Act. Concurring with the learned Civil Judge, **the learned District Judge held that the present Suit was barred under Order XXIII Rule 1(4) CPC and the principle of *res judicata* under Section 11, Explanation VII, CPC.**

25. Aggrieved by the Judgment and Decree dated 02.08.2024 in RCA DJ No. 32/2024, **the Plaintiff/Appellant has filed the present Regular Second Appeal, under Section 100 CPC.**

26. The **grounds of challenge** are, that the learned Courts below erred in applying Order XXIII Rule 1 CPC. The Appellant contended that the earlier Suit bearing No. 893/2017 was withdrawn on 01.12.2017, before the Supreme Court's decision in *Ravinder Kaur v. Manjeet Kaur*, and that the subsequent Suit was based on a fresh cause of action arising from the recognition of a right to seek a declaration of title by adverse possession. She further submits that, when the earlier Suit was withdrawn, there was no



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legal basis for seeking such relief and no permission to institute a fresh Suit was required.

27. The Appellant also submitted that the learned ARC's Order dated 10.03.2022 concerned her objections to Execution and her independent right to resist dispossession under Section 25 of the Delhi Rent Control Act; it did not determine her claim to title by adverse possession. According to the Appellant, the Rent Controller had no jurisdiction to decide title, and the *issue of res judicata* could not be determined, while considering an Application under Order VII Rule 11 CPC.

28. The Appellant contends that, while deciding the Application under Order VII Rule 11 CPC, the learned Courts below relied on the Written Statement and other matters, beyond the plaint. Only the plaint and the documents relied upon by the Plaintiff could be considered, and that the Suit should have proceeded to trial. Further, she stated that the subsequent Suit raised a distinct cause of action and *was not barred by Order II Rule 2 or Section 11 CPC*.

29. The Appellant further submitted that the Order dated 01.12.2017, disposing of the earlier Suit as withdrawn "*without prejudice to the rights and making contentions in accordance with law,*" was misconstrued as granting liberty only to pursue the Objections in the Execution. Further, she asserted that her objection to valuation was not decided and an opportunity was not given to her, to correct it.

30. Moreover, the judgments relied upon by her were not properly considered. Relying on *Ravinder Kaur v. Manjeet Kaur*; *Keshav Sood v. Kirti Pradeep Sood*; *Nagaraj & Anr. v. B.P. Mruthunjayanna & Ors.*;



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Darshan Kaur Bhatia v. Ramesh Gandhi & Anr., and Shri Hanumandas Totala v. Hemant Vithal Kamat & Ors.,

31. Further, the Appellant proposed the substantial questions of law as under:

“(i) *Can Order XXIII Rule 1(3) CPC is applicable to the existing facts of the case on the grounds that the case withdrawn was instituted and there was no authority of law?*

(ii) *Whether the court of Rent Controller can decide the issue of adverse possession in any situation?”*

32. She sought setting aside of the judgment dated 02.08.2024 and 05.12.2023 and *restoration of the Suit.*

33. The **Respondent, in its written synopsis, opposed the Appeal**, by submitting that it raised no substantial question of law and that the Suit was barred under *Order XXIII Rule 1 CPC and Section 11, Explanation VII, CPC*. The Respondent contended that the Order dated 01.12.2017, did not grant permission to institute a fresh Suit, and that the Appellant’s claim of independent title, had already been adjudicated against her in the Execution proceedings, after issues were framed and evidence was led.

34. It was further submitted that Ravinder Kaur (supra) did not displace the principles of res judicata or permit re-agitation of the claim. *The Respondent also alleged suppression of material facts*, disentitled her from any relief, for which he relied upon *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1.

35. The dismissal of the Appeal, was thus, sought.



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**Submissions heard and record perused.**

36. The Plaintiff/Appellant filed **Suit No. 1935/2019** seeking a Declaration that she is the owner, by way of adverse possession, of property bearing No. 111-A, Basti Hazrat Nizamuddin, Delhi-110013, and a decree for Permanent Injunction.

37. For an understanding of the factual background, reference may be made to the Order dated 06.11.2024 passed in W.P. (C) No. 15470/2024. The respondent had filed *Eviction Petition No. 6265/2016* under Section 14(1)(e), read with Section 25B, Delhi Rent Control Act **against Dr. Md. Arshad and others**. *The tenants' Application for leave to defend was allowed by the learned ARC, vide Order dated 08.08.2016.*

38. This Order was challenged in **Civil Miscellaneous Main No. 1007/2016** before this Court. The petition was allowed on 14.02.2017, and the order granting leave to defend, was set aside. An Eviction Order was consequently passed against the tenant and in favour of the Respondent.

39. **Dr. Md. Arshad preferred SLP No. 15776/2017, which was dismissed on 04.07.2017.** Thereafter, the owner/landlord initiated execution of the Eviction Order by filing an Execution Petition No. 331/2017.

40. The **plaintiff/Appellant filed Objections under Order XXI Rule 97 CPC**, and an issue was framed, *as to whether she had an independent title to the suit property, as envisaged under Section 25 of the Delhi Rent Control Act*. The learned ACJ on consideration of the evidence led by the parties, held that the Objector/Plaintiff herein, had failed to establish an independent title or the existence of a separate property bearing No. 111-A. The learned ACJ also noted that, in her reply to the Notice, the objector had stated that her family was residing with the family of Md. Iliyas, in the tenanted



premises. ***The issue was decided against the Objector and he was held to have no independent title in the suit property*** and that her claim was through the tenant, against whom the eviction petition had been decided, ***vide Order dated 10.03.2022.***

41. The Order dated 10.03.2022, was not challenged by the Plaintiff and has attained finality. The issue of the objector's independent title, having been finally decided against her, it could not have been re-agitated by way of the present suit.

42. It is contended on behalf of the appellant that the findings of the learned Additional Rent Controller were confined to the Delhi Rent Control Act and cannot operate as *res judicata* in civil proceedings.

43. In *Yadaiah & Anr. v. State of Telangana & Ors.*, (2023) 10 SCC 755, the Hon'ble Supreme Court explained that an incidental, supplemental or non-essential observation does not have that effect; only a determination fundamental to the earlier decision and forming a vital part of its reasoning on the merits, can operate as *res judicata* in subsequent proceedings.

44. In the present case, the appellant's claim to an independent title in the suit premises was directly considered while considering her objections to an Eviction Order against the tenant, and it is after framing of Issues and consideration of evidence led by both the parties, that the Objections were decided against her. That determination was essential for the decision on her objections and was not merely incidental.

45. Once the plaintiff's title has been decided by a Court of competent jurisdiction after recording evidence, the decision operates as *res judicata*. ***The two courts, therefore, rightly held that the plaintiff's suit was barred by***



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the principles of res judicata under Section 11 CPC as well as Issue Estoppel.

46. Further, it is also an admitted fact that the plaintiff had earlier filed **Suit No. 893/2017**, making the same claim for a *Declaration of ownership, by way of adverse possession*. The plaintiff withdrew the said Suit, *vide* Order dated 01.12.2017. In the Application for withdrawal, it was stated that the suit suffered from a formal defect, as pointed out on the previous date of hearing, and that the plaintiff wished to withdraw the Suit in accordance with law.

47. The statement of learned counsel for the plaintiff was recorded on 01.12.2017, who stated that, on the plaintiff's instructions and authority, the Suit was being withdrawn because the plaintiff had filed objections in Execution Petition No. 331/2017, titled *Syed Mohammad Yayah Nizami v. Dr. Arshad*, before the learned ACJ/CCJ/ARC. The Suit was thus sought to be withdrawn "*without prejudice to the rights and making contentions in accordance with law*". On the basis of that statement, the learned ACJ disposed of the Suit as withdrawn, noting that the objections had been filed in the Execution Petition.

48. The Orders passed in the earlier suit, *CS No. 893/2017*, show that the Suit was withdrawn because the plaintiff had filed Objections concerning her title in the execution proceedings and intended to pursue them. The Suit was not withdrawn on account of a technical defect, nor was permission sought to institute a fresh suit on the same cause of action. Order XXIII Rule 1(4) CPC provides that, where a plaintiff withdraws a Suit without permission to file a fresh Suit on the same cause of action, the plaintiff is precluded from instituting a fresh Suit in respect of the same subject matter.



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49. In the present case, the plaintiff had not obtained permission to institute a fresh Suit on the same cause of action. The present suit was barred under Order XXIII Rule 1(4) CPC, as rightly held by the learned Civil Judge in the Order dated 05.12.2023 and upheld by the learned District Judge, in the Order dated 02.08.2024.

50. The plaintiff has vehemently contended that the earlier suit was withdrawn, because the law did not permit a declaration of title based on adverse possession, and that this position was recognized only subsequently by the Supreme Court, in the case of *Ravinder Kaur*. However, that was not the reason for withdrawing the earlier Suit. The Appellant cannot, therefore, raise it, as a new ground. Further, the judgment in *Ravinder Kaur* did not declare the law of adverse possession, for the first time. The contention that the judgment propounded a new law, is misconceived.

51. The Appellant has also objected that, while deciding the Application under Order VII Rule 11 CPC, reference was made to contentions raised in the Written Statement. However, the Court considered only the Orders passed by the courts, of which judicial notice can be taken under **Section 57** of the Indian Evidence Act.

52. No substantial question of law arises, in the present Second Appeal.

53. **There is no merit in the present Appeal, which is dismissed.**

54. The pending Applications, if any, are also disposed of, accordingly.

(NEENA BANSAL KRISHNA)

JUDGE

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