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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 28th November, 2024**+ **C.R.P. 24/2017 & CM APPL. 4060/2017 (stay) & CM APPL. 11674/2023 (for permitting the Petitioner for filing written synopsis)****YUNUS ALI**

S/o Sh. Jauddin

R/o 186, Main Road

Satbari Mehrauli

New Delhi – 110030

.....Petitioner

Through: Mr. Virendra Rawat, Mr. Rishabh
Sharma and Ms. Bhagwati Prasad
Gairola, Advocates.

versus

1. UMED ALI

S/o Sh. Sirajuddin

R/o Village Satbari,

Teshil Mehrauli,

New Delhi – 110030

.....Respondent No.1

2. RASUDDIN

S/o Sh. Sirajuddin

Minor through his next friend

Sh. Umed Ali (Real Brother)

R/o Village Satbari,

Teshil Mehrauli,

New Delhi- 110030

....Respondent No.2

3. Sh. ISHWAR CHAND (since deceased)

To be present through his LRs

3A. Ms. SHAKUNTALA DEVI

W/o Late Ishwar Chand

...Respondent No. 3A



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- 3B. **AJEET SINGH**
S/o Late Ishwar ChandRespondent No. 3B
- 3C. **BALJEET SINGH**
S/o Late Ishwar ChandRespondent No. 3C
- 3D. **PREM SINGH**
S/o Late Ishwar ChandRespondent No. 3D
- 3E. **GYAN SINGH**
S/o Late Ishwar ChandRespondent No. 3E

All R/o: H. No. 179, Village Khirki
New Delhi

4. **Sh. KISHORI LAL**
S/o Sh. Khushi Ram
R/o 5, Doctor Lane, Cole Market
New Delhi ...Respondent No. 4
5. **Sh. HARI CHAND**
S/o Sh. Khushi Ram
R/o 5, Doctor Lane, Cole Market
New Delhi ...Respondent No.5

Through: Dr. Meenakshi Kalra, Mr. S.N.Kalra,
Ms. Rushali Sikand, Mr. Kamal
Diwakar, Ms. Meghana Gade and Ms.
Anjali Chaudhary, Advocates for R-1.
Mr. Shalabh Gupta and Ms. Himani
Aggarwal, Advocates for R-4 & 5.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA
J U D G M E N T (oral)

1. The Revision Petition under *Section 115* of the *Civil Procedure*



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Code, 1908 (hereinafter referred to as 'CPC, 1908') read with Article 227 of the *Constitution of India, 1950* has been filed on behalf of the Petitioner, Mr. Yunus Ali, for setting aside the Judgment dated 27.10.2016 or to modify the same to add his name in the final Order.

2. The Petitioner, Mr. Yunus Ali, has submitted that he is admittedly the joint/co-owner and in joint possession of the Suit Property bearing No.46/2, Part of Khasra No.40 in Village Satbari, Tehsil Mehrauli, New Delhi along with the Plaintiff Nos.1 & 2, Sh. Umed Ali and Sh. Rasuddin, of which Mr. Kishori Lal/Defendant No. 1 had taken the forcible possession on 13.08.1995, in connivance with the SHO/Local Police.

3. The Revisionist has asserted that Suit under *Section 6* of the *Specific Relief Act, 1963* was filed on behalf of Respondent Nos.1 & 2, Mr. Umed Ali and Mr. Rasuddin (Plaintiffs in the main Suit) and Late Sh. Ishwar Chand for restoration of possession of the Suit Property, without disclosing that the Petitioner *herein*, Mr. Yunus Ali, was also the co-owner. The Suit has been decreed in favour of the Respondent Nos.1 & 2 (*Original Plaintiff Nos.1 & 2*), but his has been excluded from the Decree of possession.

4. It is further submitted that despite being the co-owner and in possession of the Suit Property along with the other co-owners, he had not been impleaded as a Plaintiff when the Suit was initially filed under *Section 6* of the *Specific Relief Act*. Subsequently, on an Application under *Order 1 Rule 10* of the *CPC*, he was impleaded as Defendant No.4 and had filed the Written Statement and had also



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adduced his evidence as DW-4.

5. Despite the evidence led on behalf of the Petitioner, decree has been made in favour of the Plaintiff Nos.1 & 2 and his name has been excluded.

6. He has submitted that it is clearly borne out from the averments in his Written Statement as well as from his Affidavit of Evidence coupled with the admission made by the Respondent No.1, Mr. Umed Ali in the Suit about the possession of the Petitioner.

7. It is thus, submitted that the impugned Judgment and decree may be modified and the name of the Petitioner, be also included in the final Decree.

8. **Learned counsel on behalf of the Respondent Nos.1 & 2 (Plaintiff Nos.1 & 2 in the original Suit)** has vehemently opposed the Revision Petition and has submitted that neither in the Written Statement nor in the Affidavit of Evidence, there is any averment or admission that the Petitioner was ever in joint physical possession of the Suit Property. In fact, in his cross-examination, he was unable to give the date of the possession or produce any document to show his physical possession in the Suit Property.

9. Moreover, the Petitioner has already filed a *Suit for Partition* against Respondent Nos.1 & 2. It is submitted that there is no infirmity in the final Decree and the Revision Petition is liable to be rejected.

10. **Learned counsel on behalf of the Respondent Nos.4 & 5** has argued that no Counter Claim had been filed by the Revisionist



seeking the joint physical possession. Furthermore, no issue in this regard had also been framed or modified. It is, therefore, argued that there is no infirmity in the impugned Order.

11. Submissions heard and the Record Perused.

12. Mr. Umed Ali and Mr. Rasuddin, the Plaintiffs in the main Suit, had filed the Suit for Possession under *Section 6 of the Specific Relief Act, 1963* alleging that they had been forcibly dispossessed by the SHO and police officials at the instance of Respondent No.4 Mr. Kishori Lal, (Defendant No. 1 in the main Suit).

13. The Plaintiffs had explained that Mr. Abdullah, their grandfather was the owner of agricultural land including the Suit Land admeasuring 607 square yards in village abadi (Lal Dora) situated in the revenue estate of Village Satbari, Tehsil-Mehrauli, New Delhi, which included the Suit property. In 1947 during partition, Mr. Abdullah along with his two sons, Mr. Rehmuddin and Mr. Nassurrudin, migrated to Pakistan while his other two sons, Mr. Rafi Mohammad and Mr. Sirajjuddin remained in India and continued to reside in the Suit Property.

14. It was claimed that the Suit Property was wrongly declared as an *Evacuee Property* and shown as vested in Custodian, even though the Suit property continued to be in possession of Mr. Rafi Mohammad and Mr. Sirajjuddin. After the demise of Mr. Sirajjuddin, father of the Plaintiffs and Mr. Rafi Mohammad, they continued to be in physical possession.

15. The Rehabilitation Department allotted the Suit Property to Mr.



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Ishwar Chand on 18.12.1964, while Mr. Rafi Mohammad and Mr. Sirajuddin continued to be in possession of the Suit Property, which was never taken from them by Rehabilitation Department or by the Plaintiff No. 3, Mr. Ishwar Chand.

16. The Plaintiff No. 1, Mr. Umed Ali raised a boundary wall and constructed four rooms. Subsequently, in order to prefect their title, they entered into an Agreement to Sell with Mr. Ishwar Chand, Plaintiff No. 3, for a sale consideration of Rs.1,20,000/- out of which Rs.30,000/- was paid to the Plaintiff No. 3, as advance money.

17. The Plaintiffs had asserted that they never met the Defendant No. 1/Mr. Kishori Lal or the Defendant No. 2/Mr. Hari Chand nor did they ever file any legal proceedings against them or claim possession. They were dispossessed by the Defendant No. 3/Mr. Udai Bir Singh/SHO, along with 20 other Policemen on 13.08.1995, illegally and forcibly. Consequently, the Suit under *Section 6* was filed by Mr. Umed Ali and Mr. Rasuddin, for recovery of possession of the Suit Property on the basis of their continuous and uninterrupted physical possession of the Suit Property.

18. ***Defendant No. 1 and 2, Mr. Kishori Lal and Mr. Hari Chand in their Written Statement***, had explained that by an Agreement dated 23.09.1963, legal heirs of Late Sh. Pyare Lal including the Plaintiff No. 3/Mr. Ishwar Chand S/o Mr. Pyare Lal, sold their entire Suit Property to one Mr. Gurdial and Mr. Pandit Gian Prakash, for a sum of Rs.2,52,000/- *vide* registered Agreement to Sell dated 25.09.1963. Since 23.09.1963, Mr. Pyare Lal entered into the



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Agreement to Sell from time to time and sold the parcels of land from the property in question to different persons, through Agreements/GPA, etc.

19. It is asserted that in respect of the Suit Property, Special Power of Attorney dated 12.02.1975, was executed in favour of Mr. Hari Chand/Defendant No. 2. On 09.07.1986, the Rehabilitation Department handed over the Suit Property to Defendant No. 2 as Plaintiff No. 3/Mr. Ishwar Chand S/o Mr. Pyare Lal had ceased to be the owner or have any interest in the Suit Property. It is asserted that on 13.08.1995, the Plaintiff had tried to forcibly take possession of the Suit Property but was stopped by the Police and an FIR was also registered.

20. While the Suit was pending, the present Applicant/Mr. Yunus Ali moved an Application for impleadment under *Order 1 Rule 10* of the *CPC*, by asserting that he was the co-owner of the Suit Property with the Plaintiffs, having purchased it through Agreement to Sell dated 18.10.1995 and entitled to joint possession.

21. The Suit was decreed *vide* Order dated 27.10.2016 in favour of the two Plaintiffs, Mr. Umed Ali and Mr. Rasuddin by observing that they had been illegally dispossessed from the Suit Property by the Defendants.

22. The Applicant thereafter, moved an Application under *Section 152 of the CPC* before the learned ADJ/Trial Court seeking amendment in the Judgment, on the ground that he is the co-owner with the two Plaintiffs and therefore, his name be also included in the



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final Judgment/Decree.

23. The learned ADJ *vide* impugned Order dated 23.01.2017 The dismissed the Application. It was observed that the Applicant/Defendant No. 4/Mr. Yunus Ali was seeking addition of his name in the decree on the ground that he is the co-owner of the Suit Property and is to be considered as having constructive possession even though he did not have the physical possession. However, noting that these are *inter se* disputes between the Original Plaintiffs and the Applicant for which separate Suit has already been filed, his name was denied to be included in the impugned Order.

24. The ***sole question*** is whether the Judgment and the decree, needs modification to include the name of the Applicant, in the final Decree.

25. The Plaintiffs, Mr. Umed Ali and Mr. Rasuddin, were claiming to be in continuous possession since prior to partition, through their grandfather, Mr. Abdullah, who at the time of partition, had left along with his two sons, for Pakistan while the Applicant's father along with his Uncle, had continued to stay herein. The learned Trial Court in detail considered the evidence to hold that they had been forcibly dispossessed on 13.08.1995 and directed the restoration of their possession under *Section 6* of the *Specific Relief Act*.

26. Pertinently, the Petitioner/Mr. Yunus Ali is asserting that he had purchased the Suit Property *vide* Agreement to Sell dated 18.10.1995 i.e. the date after the dispossession of the Plaintiffs. He may have purchased the property, but it was subsequent to the



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dispossession.

27. Under *Section 6* of the *Specific Relief Act*, only such persons, who have been forcibly and illegally dispossessed, are held entitled to restoration of possession. As per the submissions of the Petitioner himself, he acquired ownership after the date of dispossession.

28. Moreover, he is claiming to have a legal co-ownership and that he is in deemed constructive possession. It is quite apparent from his submissions, that he is claiming his right and title to the property and the possession from the Plaintiffs, on the basis of an Agreement to Sell. It is a dispute *inter se* the parties for which admittedly Mr. Yunus Ali has already filed a Suit for Partition. He may claim his possession to be constructive with the Plaintiffs, but all that is a subject matter of the Suit for Partition.

29. The learned trial court has rightly held that there is no error in the Judgment and has dismissed the Application under *Section 152 of the CPC*.

Conclusion:-

30. In light of the aforesaid discussion, it is held that there is no merit in the present Revision Petition, which is hereby dismissed.

31. The Revision Petition is disposed of accordingly, along with the pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 28, 2024



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rk/RS