



2024:DHC:9394



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

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Date of decision: 29th October, 2024

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C.R.P. 322/20241. **SHRI BHAGWAN**

S/o Late Ram Rattan,
R/o 766, Desu Wali Gali,
Mahipalpur, New Delhi-110037

.....Petitioner No. 1

2. **RAJBIR**

S/o Late Ram Rattan,
R/o 766, Desu Wali Gali,
Mahipalpur, New Delhi-110037

.....Petitioner No. 2

3. **VINAY PAL**

S/o Late Rampat,
R/o 899, Mahipalpur,
New Delhi-110037

.....Petitioner No. 3

4. **TILAK**

S/o Late Rampat,
R/o 899, Mahipalpur,
New Delhi-110037

.....Petitioner No. 4

5. **RANI**

W/o Dharmender,
R/o 132, VPO Sonapat,
Haryana

.....Petitioner No. 5

Through: Mr. Israel Ali, Advocate.

versus

1. **BIRMATI**

W/o Late Umrao Singh,



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R/o House No. 890, Mahipalpur,
New Delhi-110037

.....Respondent No. 1

2. **RAKESH**

S/o Late Umrao Singh,
R/o House No. 890, Mahipalpur,
New Delhi-110037

.....Respondent No. 2

3. **MUKESH**

W/o Late Umrao Singh,
R/o House No. 890, Mahipalpur,
New Delhi-110037

.....Respondent No. 3

4. **POONAM**

D/o Late Umrao Singh,
R/o House No. 890, Mahipalpur,
New Delhi-110037

.....Respondent No. 4

5. **M/S IPL REALTORS PRIVATE LIMITED**

Through its Directors/Partners,
Having its registered Office at Plot No. 20,
Block-D, Rangpuri, Vasant Kunj,
New Delhi

.....Respondent No. 5

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Revision Petition under *Section 115 of the Code of Civil Procedure, 1908* (hereinafter referred to as "CPC, 1908") has been filed on behalf of the Revisionists/Plaintiffs to set aside the Order dated 04.10.2024 passed by learned Civil Judge, wherein the Preliminary Issue that the simplicitor Suit for Injunction is not maintainable, has been decided against



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the Revisionists/Plaintiffs.

2. Briefly stated, the Revisionists/Plaintiffs had filed the Suit bearing No. CS SCJ 339/2017 for *Permanent Injunction* in respect of the Property bearing No. 8B, Pocket-IV, Sector-23, Dwarka, New Delhi, Dwarka Residential Scheme Phase-2, measuring 400 sq. yards (*hereinafter referred to as "suit property"*) *restraining the Respondents/Defendants from carrying out the construction or alienating or parting with the possession of the suit property.*

3. The Suit for Permanent Injunction filed on behalf of the Revisionists/Plaintiffs, wherein it was stated that Late Shri Pransukh was the *bhoomidar/owner* of the agricultural land situated within the Revenue Estate of Village Mahipalpur, New Delhi. The agricultural land was acquired by the Delhi Development Authority (DDA) and in lieu thereof, the suit property was allotted to him. Shri Pransukh had three sons, namely, Shri Ram Rattan, Shri Rampat and Shri Umrao Singh. After the demise of Late Shri Pransukh, all the three sons stepped into his shoes and became entitled to the suit property jointly allotted in lieu of the acquired agricultural land. The disputes arose among the three brothers as Late Shri Umrao Singh claimed that his two brothers, namely, Shri Rampat and Shri Ram Rattan had relinquished their shares in his favour in respect of the suit property.

4. Learned Civil Judge *vide* Order dt. 20.09.2018, stayed the above-mentioned suit for grant of Injunction under *Section 10 CPC, 1908.*

5. Shri Rampat and legal heirs of Shri Ram Rattan had filed the Writ Petition (Civil) bearing No. 5115/2010 titled *Sh. Rampat & Ors. vs. Delhi Development Authority & Ors.* before this Court, in which the Petitioners asserted that they did not relinquish their shares in favour of Shri Umrao



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Singh and claimed that the Relinquishment Deed was forged and fabricated. A settlement was arrived at between Rampat and Shri Umrao Singh *vide* Settlement Agreement dated 28.01.2009, wherein they had agreed that the parties would be entitled to 1/3rd each in the suit property. It was further agreed between the parties that though the suit property may be allotted by the DDA in the name of Late Shri Umrao Singh *vide* Letter dated 02.06.2010, but Late Shri Umrao Singh had acknowledged that all the three brothers would have 1/3rd share in the suit property. It was also agreed that in case the suit property was to be sold, it should be done with the consent and concurrence of the Plaintiffs and it shall be sold only to the highest bidder in accordance with law. The learned counsel for Shri Umrao Singh made a statement that that he shall be bound by the Settlement and the same be taken on record. In view of the concluded compromise between the parties and in terms of the Settlement, the said Writ Petition (Civil) was disposed of.

6. The Revisionists/Plaintiffs have further submitted that the *Respondent No.5-M/s IPL Realtors Private Limited* filed the *Civil Suit bearing CS (OS) No. 1160/2013* titled *IPL Realtors Pvt Ltd vs. Rampat & Ors.*, for Specific Performance, Permanent Injunction and Possession against the Revisionists-Plaintiffs in respect of Agreement to Sell dated 17.03.2011 in regard to 2/3rd share (200 sq. yards) in the suit property, which is still pending at the stage of recording of evidence.

7. Another *Civil Suit bearing CS (OS) No. 1097/2013* titled *IPL Realtors Pvt Ltd vs. Birmati* had been filed by the Respondent No.5-M/s IPL Realtors Private Limited for *Specific Performance and Permanent Injunction before this Court in respect of the Agreement to Sell of December, 2011* which was



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withdrawn vide Order dated 17.02.2017.

8. In the aforesaid Suit filed before this Court, it had been claimed that Late Shri Umrao Singh had only 1/3rd share in the suit property and Smt. Birmati was authorised to sell only 1/3rd undivided share in the suit property, while remaining 2/3rd share was to go to legal heirs of Late Shri Rampat and Shri Ram Rattan. Smt. Birmati is evidently owner of the suit property to the extent of 1/3rd share and, therefore, she could not have sold the shares or transfer the possession of the suit property to the third party.

9. The Revisionist/Plaintiffs have claimed that they have come to know that the possession of the suit property has been given by Smt. Birmati in collusion with the Respondent No. 5-M/s IPL Realtors Private Limited which is carrying out the construction on the suit property.

10. It is further asserted that it has come to the knowledge of the Revisionists/Plaintiffs that in a *Suit bearing CS (OS) No. 1097/2013 which stood withdrawn by the Respondent No.5-M/s IPL Realtors Private Limited vide Order dated 17.02.2017, the Respondent No. 1-Birmati had settled the matter with the Respondent No.5-M/s IPL Realtors Private Limited and handed over the possession to the Respondent No.5-M/s IPL Realtors Private Limited, which is raising construction on the suit property.*

11. It is submitted that the Revisionists/Plaintiffs with the help of respectable persons of the Society have been able to stop the construction being carried out by the Respondent No.5-M/s IPL Realtors Private Limited. The complaints have also been made to the Police.

12. It is also submitted that the Respondent Nos. 1 to 5 had again started the construction on 31.03.2017, but again with the intervention of the respectable persons of the Society, they agreed to stop the construction,



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though the threats were extended to Revisionists/Plaintiffs. Despite repeated requests of the Revisionists/Plaintiffs, the construction has not been stopped.

13. Hence, the prayer is made that a Decree of Permanent Injunction in favour of the Plaintiffs and against the Respondent Nos. 1 to 5/Defendant Nos. 1 to 5, *thereby restraining the Respondent Nos.1 to 5/Defendant Nos. 1 to 5 from carrying out the construction or alienating or parting with the possession of the suit bearing No. 8B, Pocket-IV, Sector-23, Dwarka, New Delhi, Dwarka Residential Scheme, Phase-2, measuring 400 sq. yards shown in the red colour in the site plan.*

14. On completion of the pleadings, the Preliminary Issue was framed *vide* Order dated 03.07.2024 which reads as under: -

“Whether the suit is not maintainable in the present form being a simplicitor suit for injunction? OPD-5.”

15. Learned counsel for the Revisionists/Plaintiffs had contended that the simplicitor *Suit for Injunction* was maintainable as they were in symbolic possession of 1/3rd share in the suit property.

16. However, learned counsel for the Respondent No. 5-M/s IPL Realtors Private Limited had argued that from the averments made in the Plaint, it was evident that Revisionists/Plaintiffs were not in possession of any portion of the suit property at the time of filing of the Suit and thus, they were not entitled to the relief of injunction.

17. The learned Civil Judge referred to the various facts as detailed in the Plaint to conclude that the Revisionists/Plaintiffs as per their own averments in the Plaint that they were not in possession of any part of the suit property at the time of filing of the Suit. Reliance was placed on the decision in Anathula Sudhakar vs. P. Buchi Reddy, AIR 2008 SC 2033 to conclude that



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a simplicitor Suit for Injunction is not maintainable when the Revisionists/Plaintiffs are not in possession of the suit property. Consequently, it was held that the Suit of the Revisionists/Plaintiffs for Injunction is not maintainable and the Preliminary Issue has been decided against the Revisionists/Plaintiffs, though an opportunity was given to the Revisionists/Plaintiffs to suitably amend the Suit and claim the comprehensive reliefs in accordance with law.

18. Submissions heard and the record perused.

19. The Revisionists/Plaintiffs in the Suit had made a simple prayer that a Decree of Permanent Injunction may be passed in favour of the Plaintiffs and against the Respondent Nos. 1 to 5/Defendant Nos. 1 to 5, thereby restraining the Respondent Nos.1 to 5/Defendant Nos. 1 to 5 from carrying *out the construction or alienating or parting with the possession of the suit* bearing No. 8B, Pocket-IV, Sector-23, Dwarka, New Delhi, Dwarka Residential Scheme, Phase-2, measuring 400 sq. yards shown in the red colour in the site plan.

20. The Revisionists/Plaintiffs had referred to the Settlement Deed dated 28.01.2009 arrived at between Late Shri Rampat, Late Shri Ram Rattan and Late Shri Umrao Singh, wherein the parties had agreed though the suit property may be allotted by DDA in name of Umrao Singh, all three brothers would also have 1/3rd share each in the suit property.

21. There is no challenge that all the three brothers and now their legal heirs are entitled to 1/3rd share in the suit property.

22. The Revisionists/Plaintiffs being the joint owner of the suit property, have a right to its protection from any construction being raised by one of the co-owners to their disadvantage. Likewise, Revisionists/Plaintiffs are



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also entitled to protection of the suit property against creation of any third-party rights. It may be a Suit for Injunction, but the reliefs sought by way of injunction are fully tenable and maintainable.

23. The learned Civil Judge has misdirected himself by presuming it to be a Suit to protect possession of the Revisionists/Plaintiffs in the suit property. Had it been a simplicitor Suit for Injunction seeking a restraint against the dispossession, the discussion made by the learned Civil Judge would have been tenable, as has been rightly observed that the holistic pleadings between the parties clearly reflect that they were not in physical possession of the suit property. However, the relief here was not with regards to the protection of physical possession, but from raising construction and creating third-party rights. Therefore, the findings of the learned Civil Judge are not based on the reliefs that were sought by the Revisionists/Plaintiffs.

24. Accordingly, the impugned Order dated 04.10.2024 is hereby set aside. The Preliminary Issue is decided in favour of the Revisionists/Plaintiffs and against the Respondents.

25. The learned Trial Court shall proceed with the trial to decide the Suit on merits.

26. The present Revision Petition is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 29, 2024

S.Sharma