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

+ **FAO 68/2024 & CM APPL. 12917/2024**

SMT. SUNITA MALIK

.....Appellant

Through: Mr. Sumante De and Mr. Rohit
Khurana, Advs.

versus

SH. KAPTAN SINGH AND ORS

.....Respondents

Through: Ms. Suman Chaudhary, Adv.
for R-1 to 10.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **15.05.2025**

1. This hearing is being conducted through hybrid mode.
2. Having heard the learned counsels for the parties and on a perusal of the record, this Court proceeds to decide the present appeal preferred by the appellant, who is the defendant No. 1 in the suit instituted on behalf of the respondents, in terms of Section 104 read with Order XLIII Rule 1 of the Code of Civil Procedure, 1908 [hereinafter referred as “CPC”].
3. The appellant/defendant No. 1 has assailed the impugned order dated 21.11.2023 passed by the learned Additional District Judge-05, South West District in suit No. CS DJ No. 99/2021 titled as ‘*Kaptan Singh & Ors. vs. Sunita Malik & Ors*’.
4. *Ex facie*, the impugned order dated 21.11.2023 cannot be sustained in law. It is evident that the appellant/defendant No. 1 is claiming ownership in respect of the property in question by virtue of a registered sale deed dated 18.04.1981, which had been executed by the predecessor in interest of the present respondents/plaintiffs.

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5. Learned counsel for the appellant/defendant No. 1 has pointed out that the present suit for partition and injunction has been filed almost after 44 years of the execution of the sale deed and all this while the appellant has been in continuous use and occupation of the subject land.

6. He has alluded to Para 1 of the plaint filed by the respondents to the effect that they are claiming to be the co-sharers/owners and in deemed possession of the land comprising in Khasra No. 6/27 admeasuring 550 sq. yards. But then, in fact, the claim is laid to only an area of about 56.37 sq. yards comprised in the whole of the property.

7. In the backdrop of the fact that the registered sale deed has not been challenged, the learned Trial Court without satisfying itself about the trinity test, has proceeded to pass an injunction order against the defendants No. 1 to 4 to not to create any third-party interest in the property in question.

8. It is pointed out that even before the application under Order XXXIX Rule 1 and 2 of the CPC was partly argued, an application under Order VII Rule 11 of the CPC had been moved on behalf of the appellant/defendant No. 1 and instead of deciding the said application for the last three years, the impugned interim order has been passed throwing all the legal norms to the wind.

9. It is acknowledged by learned counsels for the parties that the issues are yet to be framed in the present case.

10. In view of the above, the impugned order dated 21.11.2023 is hereby set aside. The learned Trial Court is directed to decide the application of the appellant/defendant No. 1 under Order VII Rule 11

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11. The parties shall appear before the learned Trial Court on the date already fixed, *i.e.*, 23.05.2025. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

12. The appeal is disposed of accordingly. All pending applications also stand disposed of.

13. A copy of this order be sent to the learned Trial Court for information and necessary compliance.

DHARMESH SHARMA, J.

MAY 15, 2025/gunn/sa

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