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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 47/2025 & CM APPL. 12409/2025**
SH. RAJVIR @ RAJBIRAppellant
Through: Mr. Shekhar Prit Jha, Ms. Preeti
Kumari and Ms. Tamanna S.,
Advs.
versus

NARESH YADAV & ORS.Respondents
Through: Mr. Kirti Uppal, Sr. Adv. with
Mr. Bhavishya Mehra, Mr.
Aditya and Mr. Pratisth, Advs.
for R-1.
Mr. Ranjeet Pandey, Standing
Counsel with Miss Mansa, Adv.
for R-2/MCD.
Mr. Manish Kumar (SPC) for
R-3 (SHO PS Mehrauli).

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
% **03.03.2025**

CM APPL. 12410/2025 – EXMP.

7. Allowed, subject to all just exceptions.
8. The application stands disposed of.

FAO 47/2025 & CM APPL. 12409/2025

9. The appellant has preferred the present appeal under Section 104 read with Order XLIII Rule of the Code of Civil Procedure, 1908 [“CPC”] assailing the impugned order dated 12.02.2025 passed by learned District Judge-06 (South), Saket Courts, New Delhi [“**trial Court**”] in CS DJ No. 4202/2024.
10. Learned counsel for the respondent No.1 is present on advance notice. Learned counsels for the respondent Nos.2 and 3 are also present on advance notice.



11. Having heard the learned counsels for the parties and on perusal of the record, the factual matrix is that the appellant/ plaintiff preferred a suit for declaration, possession, permanent and mandatory injunction with regard to the property in question measuring 44 sq. yards out of 132 sq. yards (*khasra* No. 175) situated at C-14, Paryavaran Complex, Saidulajab, Mehrauli, South Delhi-110030.

12. The appellant/plaintiff claims that the property in question is an ancestral property in nature and he derives the right, title and interest thereto from his ancestors. The respondent No.1 is stated to be a the subsequent purchaser of the property in question and admittedly in possession of the property in question, having bought the same from one of the co-owners of the property in question.

13. It appears that during the course of proceedings, the learned trial Court appointed a Local Commissioner, who visited the premises on 23.11.2024 and submitted a report to the following effect:

- That suit property is demolished and no one is residing in it.
- That suit property was under construction, however, the construction is presently halted due to pollution-related concerns i.e. Grap IV restrictions.
- None of the parties were able to share title deed/documents qua the suit property

14. It appears that subsequently, on an application moved by the appellant/plaintiff, the Local Commissioner visited the premises again on 11.01.2025 pursuant to directions of the learned Trial Court and submitted a report to the following effect:

- New construction has been raised on the suit property after the inspection was done by the previously appointed local Commissioner.



15. This Court is unable to find any illegality, perversity or incorrect approach adopted by the learned Trial Court in dismissing the application under Order XXXIX Rule 1 & 2 of the CPC.

16. Learned Senior Counsel appearing for the respondent No.1/defendant states that since evidently the respondent No.1 is owner and in possession of the property in question, he shall not raise any construction/repairs except in accordance with the law.

17. Learned Counsel for the appellant/plaintiff has no objection if the present appeal is disposed of in terms of the aforesaid statement.

18. In view of the above, nothing survives in the present appeal and the same is accordingly disposed of without prejudice to the rights and contentions of the parties directing the respondent no.1/defendant not to raise any construction in the property except in accordance with law.

19. The pending application also stands disposed of.

DHARMESH SHARMA, J

MARCH 3, 2025/sm