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

+ **RSA 59/1999 & CM APPL. 2169/1999**

OM PARKASH (DECD) THR. LR'SAppellant

Through: Mr. Sheetesh Khanna, Mr. Ajay
Singh Tomar and Mr. Kartik
Wadhwa, Advocates.

versus

SRI RAM (DECD) THR. LR'SRespondent

Through: Mr. Udaibir Singh Kochar, Ms.
Samvartika Pathak and Mr. Pushkar
Khanna, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

17.09.2025

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By way of the present regular second appeal filed under section 100 of the Code of Civil Procedure 1908 ('CPC'), the appellant has impugned judgment dated 20.03.1999, whereby the first appellate court has dismissed the first appeal filed by the present appellant impugning judgment dated 08.12.1983 passed by the learned Sub-Judge, Delhi in Suit No. 3/71.

2. By way of judgment dated 08.12.1983, the learned trial court had decreed the suit filed by the original plaintiff, granting a decree of possession (after removing a *pucca* wall) in favour of the original plaintiff and against the original defendant in respect of an area ad-measuring about 9.5 yds. in length and 7.5 yds. in breadth on the back and 6.5 yds. in breadth in the front, which is part of property bearing Municipal No. 196-B situate in Panna Udaiyan, Village Narela, Delhi.



3. Notice on this appeal was issued on 17.11.1999.
4. Subsequently however, during the long pendency of the present appeal, several of the parties on both sides passed-away, which has led to impleadment of their respective legal representatives from time-to-time.
5. Furthermore, since the trial court record was not requisitioned at the inception of the present appeal, it transpired that subsequently, the trial court record was not traceable; and the first appellate court had weeded-out the record in accordance with extant rules, which was brought to the notice of this court *vide* office noting dated 01.07.2024.
6. The efforts to reconstruct the trial court and the appellate court records by the parties has also proved futile.
7. As recorded in yesterday's order dated 16.09.2025, learned counsel appearing for the appellant had filed certain documents, which however were not on record till yesterday; but have now been brought on record, which documents, learned counsel submits, are part of the record that was before the learned trial court at the relevant time.
8. Mr. Udaibir Singh Kochar, learned counsel appearing for the respondent submits, that they have no objection if the court considers the additional documents that have been filed on behalf of the appellant under cover of Index dated 04.09.2025.
9. Since the suit from which the present regular second appeal arises was instituted in *December 1970*, culminating in the passing of the judgment and decree dated *08.12.1983* by the learned trial court; and subsequently leading to judgment dated *20.03.1999* passed by the learned first appellate court, this court does not consider it necessary



to narrate the entire factual matrix of the matter in the present decision, especially considering the limited remit of the present second appeal under section 100 of the CPC.

10. In the above backdrop, the court has heard Mr. Sheetesh Khanna, learned counsel for the appellants as well Mr. Udaibir Singh Kochar, learned counsel for the respondent on the proposed questions of law, as set-out in the Memo of Appeal, which read as follows:

“The following substantial questions of law arise in the present appeal.

1. Whether the courts below were justified in holding that Chet Ram had acquired valid title from Niader and Siri Chand, in the absence of any evidence that said 2 persons were competent to sell the suit land.

2. Whether the courts below were justified in law in holding that there could be no adverse possession of open land by mere acts of tethering cattle on the land.

3. Whether in light of finding that Om Prakash and prior thereto his father has been in possession of the land since long and without returning a finding whether Siri Chand was in possession of the land at any point of time, 12 years prior to the suit, were the courts below justified in decreeing the suit.

4. Whether the findings of the courts below are sustainable on the evidence on record.

5. Whether the findings of the court below are rendered by ignoring the material evidence on record.”

11. In the course of hearing, upon being queried, learned counsel for the appellant confirms that the original defendant Om Parkash, now represented by his legal representatives, had never challenged Sale Deed dated 21.05.1924 that stood in favour of one Chet Ram, who



was the father of the original plaintiff Sri Ram (now represented by his legal representatives).

12. In the aforesaid backdrop, this court proceeds to deal with the proposed questions of law as set-out in the Memo of Appeal in the following manner:

12.1. Insofar as proposed question of law No.1 is concerned, suffice it to say that the question of validity of the title of Chet Ram to the suit property, which property he was admittedly holding under Sale Deed dated 21.05.1924, does not arise in the present second appeal, since there was no prayer in the suit to either cancel that sale deed or to declare it void.

12.2. Insofar as proposed question of law No. 2 is concerned, the issue as to whether the appellant's possession of the land was 'adverse' to that of the respondent (by way of tethering cattle on the land) could only proceed on an admission that the respondent (or his predecessors) held title to the suit land. But then, it is observed that the appellant had disputed that the respondent was the true owner of the suit land; and therefore, the question of adverse possession against the respondent also does not arise as a question of law.

12.3. Insofar as proposed question of law No.3 is concerned, on a plain reading of it, the question relates to a finding of fact as regards possession of the suit land. These questions of fact have already been dealt-with and decided by the learned trial court, and the findings of the learned trial court have been upheld by



the learned first appellate court. Such findings of fact cannot be subject of a second appeal under section 100 of the CPC.

12.4. Insofar as proposed questions of law Nos. 4 and 5 are concerned, these are clearly related to matters of evidence that had come on record before the learned trial court; and therefore, these matters cannot be entertained as questions of law in the present second appeal under section 100 of the CPC.

13. As a sequitur to the above, this court is of the view that no question of law, muchless any substantial question of law, arises in the present case.
14. The present second appeal is accordingly dismissed, observing that the respondent (through his LRs) is at liberty to file for enforcement of judgement and decree dated 08.12.1983 passed by the learned trial court in suit bearing No. 3/71, by filing appropriate execution proceedings, in accordance with law.
15. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 17, 2025

V.Rawat