



2025:DHC:10231-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 18.11.2025

+ FAO(OS) 46/2025, CM APPL. 23268/2025 and CM APPL. 53900/2025

RAMA CHAUDHARY & ORS.

.....Appellants

Through: Mr. Inderbir Singh Alagh, Sr.
Adv. along with Mr. Siddharth
Chaudhary, Adv.

versus

JOGENDER SINGH RUHELLA & ANR.

.....Respondents

Through: Mr. J. K. Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T (O R A L)

ANIL KSHETARPAL, J.

1. The present Appeal has been filed by the Appellant (Plaintiffs before the learned Single Judge) assailing the correctness of the order dated 07.01.2025 passed by the learned Single Judge, while directing them to pay a sum of Rs.68,000/- per month towards use and occupation charges for three (03) flats which, though sold by registered sale deeds in favour of the wives of the Plaintiffs, were subsequently taken possession of, by the Defendants.

2. Some facts are required to be noticed. The two brothers (the Plaintiffs) were owners of as many as seven (07) plots, which were agreed to be sold to the Defendants.

3. Ultimately, seven (07) sale deeds were executed on 15.05.2019,

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27.11.2019, 28.10.2019, 28.10.2019, 28.10.2019, 28.10.2019 and 23.07.2019 for a total sale consideration of Rs.4,60,20,000/-. Against the said consideration, 36 cheques amounting to Rs. 4,58,30,800/- were delivered to the Plaintiffs after deducting TDS (Tax Deducted at Source) of Rs.1,89,200/-.

4. Immediately after the registration of the sale deeds, the Defendants requested the Plaintiffs not to present the cheques for encashment on account of some financial difficulties.

5. Subsequently, when the Plaintiffs threatened to take legal action, one cheque of Rs.10,00,000/- was handed over, which was duly encashed. Thereafter, another cheque for Rs.10,00,000/- was issued and encashed. Thus, the Plaintiffs received a total of Rs.20,00,000/- out of the total sale consideration of Rs.4,60,20,000/-.

6. No further payment was made to the Plaintiffs.

7. A Memorandum of Understanding [hereinafter referred to as "MoU"] dated 15.03.2021 was executed between the Plaintiffs and the Defendant Nos.1 and 2, pursuant to which another set of 34 cheques were handed over to the Plaintiffs.

8. Despite the issuance of fresh cheques, the Defendants again requested the Plaintiff not to present them for encashment due to financial constraints.

9. Thereafter, another MoU dated 14.12.2021 was executed between the parties. It was agreed that Defendant Nos.1 and 2 would sell property bearing No. 2160, measuring 100 Sq. yards, out of Khasra No. 32 Min, Village Khampur Raya (now known as Guru Arjun Nagar), New Delhi- 110008, towards the remaining sale consideration. It was further agreed that Defendant Nos.1 and 2 would

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transfer two floors (two 3BHK flats on each floor), i.e., a total of four 3BHK flats, constructed on property bearing No. 2154, measuring 200 sq. yards, out of Khasra No.32 Min, Village Khampur Raya (now know as Guru Arjun Nagar), New Delhi – 110008 to adjust a portion of the outstanding sale consideration.

10. Ultimately, sale deeds for only (three) 03 flats were executed for a value of Rs. 1,25,00,000/-, with possession to be handed over to the wives of the Plaintiffs, as per the pleadings.

11. While adjusting the amount of Rs.1,25,00,000/- representing the value of the three flats, the Defendants claim to have paid a total amount of Rs.1,65,00,000/-.

12. The possession of three (03) flats is alleged to have been taken over by the Defendants.

13. The Plaintiffs filed a suit seeking following reliefs:

“(A) To pass a decree of declaration declaring the sale deeds referred to in para 1 of the plaint and also detailed in Annexure A to the suit be declared null and void and without , consideration and creating no, title in favour of the defendants with consequential relief of possession directing the defendants to restore possession of the plots mentioned in para 1 of the plaint to the plaintiffs, IN THE ALTERNATE if for any technical or legal reason, the plaintiffs are held not entitled to the aforesaid decree of declaration with consequential relief, the plaintiffs pray that under the alternate a decree for recovery of Rs.4,31,00,000/- be passed in favour of the plaintiffs against the defendants;

(B) It is further prayed that a decree for injunction be kindly passed in favour of the plaintiffs against the defendants restraining the defendants from selling, transferring or parting with possession of any portion of the property detailed in para 1 of the plaint.

(C) Cost of the suit be also awarded to the humble plaintiffs.

(D) May grant any other and further relief to the plaintiff that the Hon'ble Court may deem fit and proper in the circumstances of the case”

14. Written statement was filed by the Defendants.

15. During the pendency of the suit, an application under Order

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XV-A of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”], as amended by the High Court of Delhi, was filed by the Plaintiffs claiming *mesne profits* for use and occupation of three (03) flats, which has been allowed by the learned Single Judge.

16. The correctness of such order is impugned in the present Appeal.

17. Learned senior counsel representing the Appellant submits, while referring to Order XV-A of the CPC, that the provision contemplates a suit filed by a lessor against lessee. It is not the case of the Plaintiffs that they are lessors and the Defendants are lessees.

18. It is further submitted that the suit is not a simpliciter suit for possession and that various disputes exist between the parties. While relying upon a judgment dated 15.05.2014 passed by a Coordinate Bench of this Court in FAO(OS) 597/2013 captioned **Raghubir Rai vs. Prem Lata & Anr.**, he contends that Order XV-A is applicable only when a suit for possession has been filed by the owner/landlord against the tenant after termination of tenancy. It is also contended that claims have been raised by co-owners, due to which the Defendants withheld payment.

19. *Per contra*, learned counsel representing the Respondent submits that the Defendants have neither paid the sale consideration under the original sale deeds executed by the Plaintiffs in favour of the Defendants, nor have they allowed the Plaintiffs to enjoy the possession of three (03) flats, which were transferred in favour of the wives of the Plaintiffs pursuant to execution of the respective sale deeds.

20. It is further submitted that the Defendants have admitted receipt

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of Rs.2,00,00,000/- in the written statement and in the order dated 14.03.2023, while learned counsel representing the Plaintiffs states that the Defendants have stated in their written statement that they have paid only Rs.1,65,00,000/- towards the price of the three (03) flats.

21. This Court has considered the submissions of both the parties. Order XV-A of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”], as amended by the High Court of Delhi, reads as under:

**“HIGH COURT OF DELHI: NEW DELHI
NOTIFICATION**

No. 324/Rules/DHC

Dated: 12.11.2008

In exercise of the powers conferred by Section 122 of Code of Civil Procedure, 1908 and all other powers enabling it in this behalf, the High Court of Delhi, with the prior approval of the Government of India, hereby makes the following amendments in Order XV of the Code of Civil Procedure, 1908 :-

**THE FOLLOWING SHALL BE INTRODUCED AS
ORDER XV-A TO ORDER XV OF THE CODE OF CIVIL
PROCEDURE, 1908, APPLICABLE TO HIGH COURT OF
DELHI AND ITS SUBORDINATE COURTS :-**

ORDER XV-A

STRIKING OFF DEFENCE IN A SUIT BY A LESSOR

(A) “In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the court may direct on account of arrears upto the date of the order (within such time as the court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed.

In the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

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(2) Before passing an order for striking off the defence, the court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff owner/lessor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it would not also be treated as a waiver of notice of termination.”

NOTE: THIS AMENDMENT SHALL COME INTO FORCE WITHIN THE LOCAL LIMITS OF THE JURISDICTION OF THE HIGH COURT OF DELHI IMMEDIATELY ON THE DATE OF ITS PUBLICATION IN THE DELHI GAZETTE.

By order of the Court,
Sd/-
(AJIT BHARIHOKE)
REGISTRAR GENERAL”

22. It is evident that Order XV-A of the CPC is not restricted to a suit between a lessor and lessee. An owner may also file a suit against an unauthorized occupant, and Order XV-A of the CPC would be applicable in such circumstances.

23. The language of Order XV-A of the CPC is explicit and employs the expressions “owner or lessor” and “unauthorized occupant or lessee.”

24. In the present case, the Plaintiffs have sought the relief of possession of the original plots on which the subject flats have been constructed. Moreover, this Court is of the view that the equities are not in favour of the Defendants.

25. The Defendants have been in default from the inception. They failed to honour the payment despite issuing repeated cheques towards the sale consideration of the seven (07) sale deeds. Thereafter, they



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failed to comply with the MoUs dated 15.03.2021 and 14.12.2021, under which they had undertaken to transfer four (04) flats in favour of the wives of the Plaintiffs.

26. Furthermore, after delivering possession of the three (03) flats upon execution of the sale deeds, the Defendants took back possession without recourse to law. Even now, the Defendants have not paid the entire consideration, even after adjusting Rs.1,25,00,000/- representing the value of the three (03) flats.

27. Needless to say that once the seven (07) sale deeds were executed, no rights subsisted in favour of the Appellant.

28. The judgment in **Raghubir Rai** (*supra*) was rendered in the context of an admitted lessor-lessee relationship. However, where a simpliciter suit for possession by the owner is filed against unauthorized persons, Order XV-A is unambiguously applicable. Therefore, the submission of the learned counsel for appellant is that such an order would sustain only where suit for possession has been filed by the owner or landlord against the tenant after termination of the tenancy does not have substance.

29. Accordingly, the present Appeal, along with the pending applications, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 18, 2025

s.godara/rgk