



2025:DHC:7112



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

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Date of Decision: 25.07.2025

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C.R.P. 215/2023, CM APPL. 41044/2023 & 14016/2025

SAWAN KIRPAL RUHANI MISSION

.....Petitioner

Through: Mr. Rajiv Tyagi, Advocate

versus

SUDHIR KUMAR SEHGAL & ANR.

.....Respondents

Through: Mr. APS Ahluwalia, Sr. Advocate
with Mr. S.S Ahluwalia, Ms. Saniya
Zehra, Advocates for R-1 along with
R-1 in person.Mr. Manish Kaushik, Mr. Mishal
Johari and Mr. Yashpriya Sahran,
Advocates**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 read with Section 209 of the Indian Succession Act, 1925 seeking to challenge the Order dated 24.03.2023 passed by the learned Additional District Judge-02, (West), Tis Hazari Courts, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, an Application under Section 192 of the Indian Succession Act, 1925 [hereinafter referred to as "Act"] has been dismissed by the learned Trial Court by giving a finding that in the circumstances of the case and in view of the fact that the Petitioner/Applicant before the learned Trial Court is also pursuing a remedy of revival of an original suit to recover possession, the orders are declined.



2. Learned Counsel appearing on behalf of the Petitioner [Applicant before the Trial Court] has made following submissions:

- (i) Firstly, he submits that the examination of the provisions of Section 193 and 194 of the Act as is requisite has not been undertaken.
- (ii) Secondly, it is contended that under Section 209 of the Act, an Appeal is barred hence the remedy of Civil Revision will arise under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”].
- (iii) Lastly, relying on the judgment of the Supreme Court in *Uma Devi Nambiar v. T.C Sidhan*¹, it is contended by the learned Counsel that this matter can be examined in the revisionary jurisdiction of this Court.

3. Learned Senior Counsel appearing on behalf of the Respondent, on the other hand, has averred that the Impugned Order does not suffer from any infirmity. Learned Senior Counsel submits that the maintainability of the Petition itself is an issue. Reliance in this behalf is also placed on the judgment of *Uma Devi* case to say that the Supreme Court has held that if a person is aggrieved by the order under Part VII of the Act, the proper remedy would be a civil suit and not a Petition for Revision under Section 115 of the CPC.

3.1 Learned Senior Counsel on behalf of the Respondent, in addition seeks to rely upon the judgment of the Supreme Court in the case of *Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad v. Ajit Prasad Tarway*² to submit that the High Court could not have invoked the jurisdiction under Section 115 of the CPC unless the

¹ (2004) 2 SCC 321

² (1972) 3 SCC 195



learned Trial Court's order is not in accordance with law or unless it has exercised its jurisdiction illegally or with material irregularity. It is submitted that here in the present case no such ground has been made out.

3.2 Relying on the Paragraph VIII in the Rejoinder filed by the Petitioner, learned Senior Counsel has submitted that the Rejoinder contains an admission that there is no error of jurisdiction. Reliance is placed on Paragraph VIII of the Rejoinder which is set out below:

*“VIII. The contents of Ground VIII of the Reply as stated are denied. The contents of the corresponding Ground in said paragraph of the Petition are reiterated. It is further reiterated that the present Petition is maintainable under law for the reasons cited in the Petition. It is denied that the present Petition is filed as an Appeal and the Petitioner is exercising its legal remedy prescribed under law. It is further denied that the present Petition is barred by limitation. The said Respondent should be put to strict proof of its claim in the said paragraph of his Reply. **It is submitted that the Petitioner is not questioning the jurisdiction of the Learned District Judge to adjudicate upon the Petition under Section 192 of the Indian Succession Act, 1925 but on the improper exercise of jurisdiction in accordance with the Scheme of Chapter XXIII of Part VII of the Indian Succession Act, 1925 and for failure to examine and consider the Petition in terms of the Scheme of Chapter XXIII of Part VII of The Indian Succession Act, 1925 wherein dual remedy have been provided to successor or beneficiary under the WILL of recovery of possession of the property Willed through a summary procedure as also the remedy by way of bringing a Suit in relation to any other substantive relief.**”*

[Emphasis Supplied]

3.3 In addition, it is contended that the Respondents have been in uninterrupted and continuous possession of the premises bearing no B-10/19, Rajouri Garden, New Delhi [hereinafter referred to as “subject premises”] for the last more than 50 years and that the claim of the Petitioner is misconceived.

4. Briefly, it is the case of the Petitioner that a Will dated 15.12.1987



under which a bequest of the subject premises was set out, was executed by one Mrs. Agyawati Sehgal in favour of the Petitioner. The Will although dated 15.12.1987 was only discovered by the Petitioner in the year 2021.

4.1 It is also the case of the parties that the Petitioner had been trying to revive a civil suit bearing No. 7/96 captioned ***Agyawati Sehgal v. Asha Sehgal & Ors.*** which was filed by Mrs. Agyawati Sehgal where the Petitioner has filed proceedings for being substituted as plaintiff and to challenge the possession of the Respondents.

5. At the outset, it is apposite to set out the relevant provisions of the Act which are below:

“192. Person claiming right by succession to property of deceased may apply for relief against wrongful possession.—(1) If any person dies leaving property, movable or immovable, any person claiming a right by succession thereto, or to any portion thereof, may make application to the District Judge of the district where any part of the property is found or situate for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.

(2) Any agent, relative or near friend, or the Court of Wards in cases within their cognizance, may, in the event of any minor, or any disqualified or absent person being entitled by succession to such property as aforesaid, make the like application for relief.

193. Inquiry made by Judge.—The District Judge to whom such application is made shall, in the first place, examine the applicant on oath, and may make such further inquiry, if any, as he thinks necessary as to whether there is sufficient ground for believing that the party in possession or taking forcible means for seizing possession has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled and is likely to be materially prejudiced if left to the ordinary remedy of a suit, and that the application is made bona fide.

194. Procedure. - If the District Judge is satisfied that there is sufficient ground for believing as aforesaid but not otherwise, he shall summon the party complained of, and give notice of vacant or disturbed possession by publication, and, after the expiration of a reasonable time, shall determine summarily the right to possession (subject to a suit as hereinafter provided) and shall deliver possession accordingly. Provided that the Judge shall have



the power to appoint an officer who shall take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he shall have concluded the inquiry necessary for summoning the party complained of or not.

195. Appointment of curator pending determination of proceeding.- *If it further appears upon such inquiry as aforesaid that danger is to be apprehended of the misappropriation or waste of the property before the summary proceeding can be determined, and that the delay in obtaining security from the party in possession or the insufficiency thereof is likely to expose the party out of possession to considerable risk, provided he is the lawful owner, the District Judge may appoint one or more curators whose authority shall continue according to the terms of his or their respective appointment, and in no case beyond the determination of the summary proceeding and the confirmation or delivery of possession in consequence thereof: Provided that, in the case of land, the Judge may delegate to the Collector, or to any officer subordinate to the Collector, the powers of a curator: Provided, further, that every appointment of a curator in respect of any property shall be duly published.”*

5.1 The provisions set out a summary procedure for a person claiming a right by succession to a property or a portion thereof when the possession has been seized by a third party or it is apprehended that such possession shall be seized. Section 193 of the Act empowers the District Judge who is examining the application to make any further enquiries as he thinks necessary as to whether there are any grounds for the party/applicant to take possession or that the party who has seized the possession has no lawful title and that the applicant under Section 192(1) or the person on whose behalf he applies is likely to be materially prejudiced if left to the ordinary remedy of a suit. The provision also requires that the application is made *bona fide*.

6. The import of this provision has been discussed by the Supreme Court in ***Uma Devi*** case wherein it was held that Sections 192, 193 and 194 of the Act are interlocutory in nature and aimed at protecting the possession of the deceased's property pending a full suit. The scope of the provisions as



discussed in the judgment out in ***Uma Devi*** case are below:

*“19. Coming to the scope and ambit of Sections 192, 193, 194 and 195 it is to be noted that they form a part of Chapter XIII dealing with the modalities to be adopted for protection of properties of the deceased being covered by Part VII. **These proceedings are essentially interlocutory in character and necessarily summary depending upon the filing of an application for relief seeking the Court to determine who has a right to possession pending the final determination of the rights of the parties in a regular suit.***

*20. **Section 192, inter alia, provides that a person who claims right by succession can make an application in respect of a property, movable or immovable, left behind a person who has died. Section 193 provides for an enquiry by the District Judge to whom such an application is made and Section 194 deals with the procedure to be adopted when an application is made under Section 192.***

*21. **The Court before taking any steps in the matter under Section 194 is required to be satisfied of the existence of such strong ground of belief on both points i.e. the person in possession has no lawful title and that the person applying is likely to be materially prejudiced if left to the ordinary remedy of a regular suit. An order under Section 194 is in nature of summary decision and can only be passed if the conditions embodied in Section 193 are fulfilled.** The expression “subject to a suit” means subject to a suit contemplated under Section 208 i.e. a regular suit to establish title and obtain possession.*

*22. **The effect of a summary decision even in an extreme case is not a bar to a regular suit. The underlying object of Section 208 and Part VII is particularly to protect the property appertaining to large estates in case of a dispute as to succession.** As noted above, it has a great similarity to a proceeding under Section 145 of the Code with respect to certain specified properties where its scope is large in as much as it embraces all properties movable and immovable and once for all it settles the right to hold possession of the property summarily directing the other disputants to seek their remedy in proper Court by appropriate proceedings. A person aggrieved by an order passed by a summary proceeding under Part VII is required to seek remedy by a suit and not by an application for revision. This remedy is preserved by Section 208. Section 209 makes the position further clear. It provides that the decision of a District Judge in a summary proceeding under Part VII shall have no other effect than that of settling the actual possession, but for this purpose it shall be final and shall not be subject to any appeal or review. **But where instead of a summary disposal, there is in depth analysis of the evidence and conclusive conclusions/decisions arrived at it cannot be said that there has been a proper exercise of the power conferred while dealing with an application***



under Section 192 of the Act.”

[Emphasis Supplied]

6.1 It was further held by the Supreme Court that before taking any steps in the matter under Section 194 of the Act, the Court is to be satisfied of the existence of strong grounds, both of the title of the Applicant and that the Applicant would also be materially prejudiced, if left to the remedy of a suit.

7. A review of the Impugned Order shows that the learned Trial Court has after making the enquiry under Section 193 found that in the circumstances in the particular case, this provision will not be applicable.

The relevant extract of the Impugned Order is below:

*“7. Section 193 of the Indian Succession Act lays down that after conducting inquiry from the Applicant, if the District Judge is of the opinion that it will not be expedient to direct the applicant to have recourse to the remedy of a civil suit for recovering possession, he shall proceed with the summary proceedings after issuing notice to a party complained of. The authority vested in the District Judge under Section 193 of the Indian Succession Act is discretionary. However, discretion to be exercised is guided discretion, keeping in view the facts brought before the Court. **For the following reasons, this Court is of the opinion that Applicant should not be permitted to have recourse to summary procedure as laid down in section 192 and section 193 of the Indian Succession Act.***

*8. **Even though the Will set up by the Applicant is a registered one, only a copy of the same has been filed along with the present application.** Ld. Counsel appearing for the applicant though contends that original Will is on the records of the civil suit no 7/96, titled as Agya Wati Vs Asha Sehgal where-in the Applicant has now moved an application for revival, and substitution as plaintiff. Said assertion is not supported by the contents of **the present application which does not state anything about the whereabouts of the Original Will 15.12.1987. Nevertheless, even assuming that the original Will exists, Applicant itself has stated that it is seeking substitution as a plaintiff in the civil suit which was instituted by Ms. Agya Wati Sehgal in her lifetime. Once the Applicant is seeking to revive the said civil suit wherein also recovery of possession for immovable property from L.Rs of Surrender Sehgal is the relief claimed, there is no reason to permit the Applicant to have recourse to section 192 of the Indian Succession Act.** Further, the time lag after which the claimed Will has*



*surfaced i.e. 15.12.1987 and more pointedly, the manner in which it has surfaced i.e. around October/November, 2021 from the old boxes of Sh. Bhagwan Dass Khurana which were searched by his son Sh. Ramesh Kumar Khurana (AR of the Applicant here-in), 14 yrs, after his death puts a serious question mark on the authenticity of the Will dt. 15.12.1987. **In the understanding the Court, the Applicant will have to first prove the genuineness of the Will set up by it.** In any case, section 193 permits the District Judge to handover the possession of a movable or immovable property through a summary procedure only if it feels that it should not direct the Applicant to have recourse to an ordinary civil suit for recovering possession. **For the reasons mentioned above, this Court has not been able to come to such a conclusion. Applicant is anyways already pursuing the remedy of an ordinary civil suit to recover possession. As a corollary, the application stands declined.**”*

[Emphasis supplied]

8. So far as concerns the reliance on Section 209 of the Act by the learned Counsel for the Petitioner, no doubt the provision sets out that the remedy of an Appeal is not available. The provision also sets out that it shall have no other effect except that of settling the actual possession. Section 209 is set out below:

***“209. Effect of decision of summary proceeding.—**The decision of a District Judge in a summary proceeding under this Part shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, and shall not be subject to any appeal or review.”*

9. A plain reading of this provisions shows that for the purposes of settling possession, this order shall be final and shall not be subject to any Appeal or review. The Supreme Court in ***Uma Devi*** case while applying this provision has held that a person aggrieved by an order passed by a summary proceeding under Section 192 of the Act is required to seek remedy by a suit as per Section 208 and not by an application for revision. Section 209 of the Act provides that the decision of a District Judge in a summary proceeding under Part VII shall have no other effect than that of settling the actual



possession, but for this purpose it shall be final and shall not be subject to any appeal or review. The Supreme Court further held that while dealing with an application under Section 192 of the Act, there has to be some consideration of the genuineness of the Will but such consideration cannot be in a conclusive and detailed manner.

9.1 Undisputedly, the Petitioner has availed of his remedy by attempting to revive the civil suit bearing No. 7/96 challenging the title of the Respondents.

10. The learned Trial Court has after examining the record, given a finding that even though the Will set up by the Petitioner/Applicant is said to be a registered one, only a copy of the same was filed before the learned Trial Court. Once the Petitioner/Applicant is able to revive the civil suit bearing no. 7/96, the learned Trial Court found no reason to permit the Petitioner/Applicant to have recourse to Section 192 of the Act. Further, the time lag after which the claimed Will dated 15.12.1987 surfaced and the manner in which it surfaced from the old boxes of Sh. Bhagwan Dass Khurana which was searched by his son Sh. Ramesh Kumar Khurana, 14 years after his death creates a serious doubt on the authenticity of the Will dated 15.12.1987. Therefore, the learned Trial Court without going into the merits of the genuineness of the Will decided the application summarily on the *prima facie* genuineness of the Will dated 15.12.1987. Given the settled law in this behalf, this Court finds no infirmity with this finding.

11. In addition, the challenge to maintainability as raised by the Respondents is required to be looked into. The Respondents have relied upon *Uma Devi* case to submit that the remedy of revision is not available.



11.1 In the ***Uma Devi*** case, the Supreme Court has held that an Application under Section 192 of the Act, the learned Trial Court cannot go into a detailed examination of a Will. A disputed question of title will have to be examined in a civil suit in the following manner:

23. In the case at hand by several orders/judgments on earlier occasions/stages, it has been specifically held that the genuineness of the Will has to be established in a regular suit. While dealing with an application under Section 192 of the Act, obviously there has to be some consideration of the genuineness of the Will. But it cannot be in a conclusive and detailed manner as has been done in this case. Further, when admittedly half of the share in the property indisputably belonged to Appellant 1, the District Judge while dealing with an application under Section 192 could not have either ventured to undertake even a summary decision of a disputed title of the respondent or even delivered possession of the whole property to original Respondent 1 in preference to the person whose title and claims are beyond controversy at least in respect of her half share. This itself shows that the consideration was not proper and the entire exercise wholly impermissible. The High Court dismissing the revision petition holding that the jurisdiction was discretionary, is to put it even in mild terms, a serious error and misdirection virtually placing a premium on grave illegality committed resulting in miscarriage of justice.

[Emphasis supplied]

12. It is no longer *res integra* that the challenge under provisions of Section 115 of the CPC cannot be made unless the three ingredients as set out therein are satisfied being that the jurisdiction of the Court has been exercised either with illegality or with material irregularity or there is absence of jurisdiction by the Court to make such an order. The provision of Section 115 is set out below:

“Section 115 – Revision

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears

(a) to have exercised a jurisdiction not vested in it by law, or



(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.

[Emphasis Supplied]

13. It is settled law that the revisionary jurisdiction of this Court is limited to examine whether the learned Trial Court has failed to exercise jurisdiction vested in it or has exercised jurisdiction which is not vested or has acted with illegal or material irregularity. The Supreme Court in the case of ***Ambadas Khanduji Shinde & Ors. v. Ashok Sadashiv Mamurkar & Ors.***³; clarified that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of CPC, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. It has been held as follows:

*“14. Apart from the factual aspect, order lacks merit on the ground of jurisdiction. The High Court cannot interfere with the concurrent factual findings while exercising jurisdiction under Section 115 of the Civil Procedure Code. **It is settled law that revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction by the subordinate courts. Under Section 115 of the Civil Procedure Code, it is not open for the High Court to correct errors of facts or law unless they go to root of the issue of jurisdiction. In the facts on hand, the courts below have passed reasoned orders well within the jurisdiction conferred upon them. We arrive at the conclusion that the High Court committed error in interfering with the judgment and decree of the trial court.**”*

³ (2017) 14 SCC 132



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[Emphasis Supplied]

14. In view of what is stated above and in view of the disputed questions of fact that are set out a summary trial would not be apposite in terms of the law as discussed above.

15. In view of the foregoing discussions, this Court finds that the Impugned Order does not require any interference by this Court no material irregularity or absence of jurisdiction or illegality has been shown against the Impugned Order by the Petitioner.

16. The Petition is, accordingly, dismissed. All pending Applications stand closed.

17. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 25, 2025/g.joshi