



2025:DHC:4414-DB



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

Date of decision: 21.05.2025

+ **FAO(OS) 62/2025**

SH. KAMAL KUMAR NEWARAppellant

Through: Mr. Ashok Gurnani, Mr.
Mukesh Kr. Gupta, Advs.

versus

SH. NAND KUMAR NEWARRespondent

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

RENU BHATNAGAR, J. (ORAL)

CM APPL. 31228/2025

1. Allowed, subject to all just exceptions.

CM APPL. 31230/2025

2. For the reasons stated in the application, the delay of 99 days in re-filing the appeal is condoned.

3. The application stands disposed of.

FAO(OS) 62/2025 AND CM APPL. 31229/2025

4. This appeal has been filed by the appellant, under Order XLIII of the Code of Civil Procedure, 1908 (hereinafter referred to as, 'CPC') read with Section 10 of the Delhi High Court Act, 1966, challenging the Order dated 26.11.2024 passed by the learned Single Judge of this Court in I.A. No. 46100/2024 in CS (OS) 362/2009, titled *Nand Kumar Newar v. Kamal Kumar Newar*, whereby the application filed by the appellant herein under Section 151 of the



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CPC, for bringing on record the additional documents, was dismissed by the learned Single Judge, observing as under:

“2. The suit is stated to be ripe for final arguments. Issues in the matter were framed as early as on 09.08.2010 and recording of evidence was concluded on 19.02.2020.

3. On a query posted by the court, the learned counsel appearing on behalf of the defendant fairly concedes that majority of documents which he is seeking to place on record are public documents and on which he could have very well laid his hands on at an early stage.

4. In view of the above, the present application seems to have been filed to delay the suit, which is at the stage of ‘Final Hearing’.”

5. The factual matrix of the case is that the respondent herein has filed the above suit for recovery of possession and damages against the appellant in respect of two rooms on the ground floor, one room on the mezzanine floor, along with a common bathroom and kitchen of the property No. A-1/281, Safadarjung Enclave, New Delhi (hereinafter referred to the “suit premises”), alleging that the respondent had purchased the plot of land from the DDA by means of a perpetual lease dated 11.01.1979, and that after the purchase, he constructed the building on the said plot from his own funds. It is further alleged in the suit that the respondent had permitted the appellant to reside in the property and allowed him to use the suit premises. The respondent asserts that the possession of the appellant was purely permissive in nature, and the respondent had no legal right, title, or interest in the suit premises, which exclusively belongs to the



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respondent.

6. The respondent further alleged that over time, the appellant's behaviour towards him became hostile and cruel, leading the respondent to ask the appellant to vacate the premises. Since the possession was merely permissive, the respondent claimed that the appellant was bound to vacate the property. However, upon the appellant's failure to do so, the respondent filed the above suit, seeking recovery of possession along with damages.

7. In the written statement, the appellant has taken the defence that the property in question is neither the absolute nor exclusive property of the respondent herein. He contends that the property is held as part of a Hindu Undivided Family (HUF), of which he is a coparcener along with the respondent, their other brother Shri Vijay Kumar, their late brother Basant Kumar, and their deceased father, Shri Trilok Chand Newar. It is further contended that the said property was acquired from the funds of the HUF, which was engaged in various business activities.

8. Issues in the Suit were framed on 09.08.2010. Vide an order dated 31.05.2018, a Local Commission was appointed to record the evidence of the parties, and the evidence of the parties was concluded on 19.02.2020, and the Suit was placed for final hearing.

9. It is only on or about 29.10.2024, that the appellant filed the above mentioned application, seeking permission to place on record additional 184 documents, which has been dismissed by the impugned order.



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10. It is the case of the appellant that the existence of the HUF comprising the aforementioned persons, and the availability of funds at the disposal of the HUF at the time of acquiring the property in question, were among the most relevant, material, and vital facts that the respondent was under an obligation to disclose in the suit filed by him.

11. It is contended by the appellant that most of the documents that are now sought to be brought on record, are official documents and therefore, would only require a formal proof of the same and cannot be denied by the respondent.

12. We have considered the submissions made by the learned counsel for the appellant, however, do not find any force in the same.

13. Although the appellant has rightly contended that the Court has the power under Order VIII Rule 1A, sub-Rule 3 of the CPC, read with Chapter 1 Rule 16 of the Delhi High Court (Original Side) Rules, 2018, to allow the additional documents to be taken on record and admitted in evidence at a later stage, it is incumbent upon the party to demonstrate the relevance of the documents to the adjudication of the case and justify the reasons for not producing them at the appropriate earlier stage. In the present case, the appellant has remained silent on both these crucial aspects.

14. In the present case, there is absolutely no explanation given by the appellant for not producing these documents at the appropriate stage. The above Suit has been filed by the respondent on or about 06.02.2009. It has been pending adjudication for almost 16 years.



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Recording of the evidence of the parties was concluded on 19.02.2020. The appellant cannot be permitted to set the clock back in time and to restart the trial of the Suit. It is not the case of the appellant that these documents were not in the power and possession of the appellant or could not have been discovered by him with due diligence. The attempt of the appellant appears to be only to delay the adjudication of the Suit.

15. Accordingly, having found no infirmity in the Impugned Order, the appeal along with the pending application is, accordingly, dismissed.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 21, 2025

p/my

Click here to check corrigendum, if any