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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **RSA 193/2014, CM APPL. 12116/2025****DELHI DEVELOPMENT AUTHORITY**AppellantThrough: Ms. Manika Tripathy, SC for DDA
with Mr. Aakash Mahak, Mr. Gautam
Yadav, Ms. Manisha Pandey, Advs.

versus

KALU RAM @ KALU & ORSRespondentsThrough: Mr. Sanyam Khetarpal, Mr. Vijay
Kasana, Mr. Vishal Chaudhary, Mr.
Shoeb Mehmood, Advs.for R-2 LRS
of 1, 6, 7
Mr. Kushagra Kumar, SPC, for UOI

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*Date of Decision: 25.03.2025.***CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J. (Oral)****CM APPL. 12380/2014 (Stay)**

1. Learned counsel for the respondent on instructions seeks permission to withdraw the present application.
2. In view of the above, the present application stands dismissed as withdrawn.

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1. The present regular second appeal has been filed challenging the impugned order dated 24.04.2024 in RCA No.57/2014 titled as *Delhi Development Authority v. Sh. Kalu Ram @ Kalu and Ors.* wherein it was inter alia held that plaintiffs are admittedly in possession of the suit property. It was inter alia held that there is nothing on record to infer that the possession by the respondents No. 1 to 14/plaintiffs is illegal or unlawful as the appellant/defendant No. 1 categorically failed to prove that subsequent to the acquisition of the property the possession was taken over by LAC and handed over to the appellant/DDA. Learned Trial Court further inter alia held that from the testimony of the witnesses, it is established that the possession of the property in question was not taken over by LAC nor handed over to DDA being constructed and situated within the Abadi of East Vinod Nagar and respondents are in possession till today. Learned Trial Court further inter alia held that the appellant cannot be permitted to take law in his own hands and illegally and forcibly dispossess the respondent from the suit property without following the procedure of law.
2. It is pertinent to mention here that this appeal was earlier taken up for hearing by a coordinate Bench of this Court on 10.07.2018, and the following order was passed:

“1. The appellant Delhi Development Authority (DDA) has preferred this Regular Second Appeal under Section 100 CPC against the judgment and decree [dated 24th April, 2014 in RCA No.57/2014 Case ID No.02402C0342932013 of the Court of Additional District Judge (ADJ)-02, North-East District,



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Karkardooma Courts, Delhi] of dismissal of the first appeal under Section 96 CPC preferred by the appellant DDA against the judgment and decree [dated 18th December, 2012 in Civil Suit No.530/2009 Unique ID No.02402C0070142005 of the Court of Commercial Civil Judge, North-East District, Karkardooma Courts, Delhi] of permanent injunction restraining the appellant DDA from dispossessing the respondents/plaintiffs from an immoveable property, without following the due process of law.

2. Though notice of this Second Appeal was issued and the Second Appeal is pending for the last nearly four years, but without recording as to what substantial question of law arises for adjudication in this Second Appeal. Otherwise, against concurrent judgments of the Suit Court and the First Appellate Court, no second appeal lies.

3. The judgment and decree under appeal being only of injunction restraining the appellant DDA from dispossessing the respondents/plaintiffs save by due process of law, and finding that the suit, from which this appeal arises, is pending since March, 1990, I have enquired from the counsel for the appellant DDA as to why the appellant DDA has not initiated proceedings for dispossession of the respondents/plaintiffs and/or for recovery of possession of the property in their possession.

4. The counsel for the appellant DDA has drawn attention to the orders dated 2nd March, 2015, 9th April, 2015 and 20th May, 2015 in this appeal, to contend that it has been prima facie found that some of the respondents/plaintiffs had died prior to the passing of the decree in the suit but their legal representatives were not brought on record. It is also contended that the amended plaint filed after the date of demise of some of the respondents/plaintiffs continued to bear the signatures of the deceased respondents/plaintiffs. It is argued that the respondents/plaintiffs have practised a fraud on the Court and the decrees of the Courts below are liable to be set aside on this



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ground alone.

5. *As per the amended plaint at page 90 of the paper book, there were as many as 14 respondents/plaintiffs and I have enquired from the counsel for the appellant DDA, that even if some of the respondents/plaintiffs had died prior to the passing of the decree and their heirs were not substituted, how would it affect the decree, insofar as against the other respondents/plaintiffs. It has further been enquired, whether a decree can be set aside on a finding of fraud, in Second Appeal, without the parties being relegated to leading evidence thereon and whether not it would lead to further delays. It appears that the appellant DDA does not take any action, even according to law, for dispossession till any proceedings are pending and if the parties are relegated to evidence, the appellant DDA till then will again stay its hands. It is thus felt that it is expedient that the appellant DDA forthwith takes action in accordance with law for dispossession of the respondents/plaintiffs.*

6. *The counsel for the appellant DDA has also argued that the respondents/plaintiffs are rank trespassers and there is no need to file a suit or initiate any proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 against them.*

7. *Even if that be so, whatever is the law applicable to dispossession of rank trespassers, as the respondents/plaintiffs are claimed to be, the appellant DDA merely by taking the said steps can recover possession.*

8. *The counsel for the appellant DDA states that he will obtain instructions in this respect.*

9. *Else, it prima facie appears that a finding of the respondents/plaintiffs being in settled possession being a finding of fact, the question of disturbing the same in this Second Appeal may not arise.*

10. *Two persons claiming to be Mahesh Verma, son of*



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respondent No.6 Jai Charan and Raj Pal, son of respondent No.7 Harcharan, state that their Advocate Mr. Mahmood Hasan has suffered a bereavement and has not come to the Court.

11. The counsel for respondent, after hearing, in accordance with permission granted, has given a handwriting note of his following submissions for recording in this order:

“1. There was fraud by all plaintiffs/respondents. The plaintiffs/respondents as a whole filed an Amended Plaint in 2009 with signatures/thumb impressions of deceased plaintiffs. Moreover, various other acts/documents perpetuated this fraud.

2. A decree which is vitiated by fraud is a nullity and can be set aside by any Court in any proceeding.”

12. List on 24th July, 2018.

A copy of this order be given dasti under the signatures of the Court Master.”

3. It is pertinent to mention here that on 27.11.2018, it was noted that the written note, as recorded in the order dated 10.07.2018, was submitted by the appellant, and accordingly, the proceedings dated 10.07.2018 were modified to that effect in terms of Section 152 of the CPC. However, thereafter, incidentally, the matter could not be taken up for hearing on any effective date.
4. The suit was filed on behalf of certain plaintiffs, and even after their demise, or in cases where some of the respondents/plaintiffs had passed away before the decree was passed, their legal representatives were not brought on record. These aspects were noted and considered by the coordinate Bench of this Court on 10.07.2018.



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5. It appeared to the coordinate Bench that if the appellant/DDA had not taken any action in this regard, even with respect to dispossession, while proceedings were still pending, and if the parties were relegated to evidence, the appellant/DDA would again have to stay its hands. Thus, it was felt expedient that the appellant/DDA forthwith take action in accordance with the law for the dispossession of the respondents/plaintiffs.
6. In brief, a civil suit bearing No. 530/2009 was filed before the learned Commercial Civil Judge-cum-ARC, North East, Karkardooma Courts, seeking a permanent injunction concerning property bearing Khasra No. 32, 34, and 76, situated in East Vinod Nagar (Khichripur), Delhi. The suit was decreed, and a decree of permanent injunction was granted in favor of the plaintiffs and against the defendants.
7. Aggrieved by this, the DDA/Appellant filed the first appeal, RCA No. 57/2014. The learned ADJ, North East, Karkardooma Court, Delhi, vide the impugned order, passed the following directions:

34. I have gone through the judgment reported as AIR 2008 SC 2033 wherein the scope of a suit for permanent injunction was examined by Hon'ble Supreme Court in detail and the position in regards to the suits for prohibitory injunction relating to immovable property is summarized as under:-

(i) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simplicitor.



(ii) As a suit for injunction simplicitor is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of the title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(iii) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the Court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the Court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(iv) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The Court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.



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It was further held while answering the scope of the suit for permanent injunction relating to immovable property, the general principles as to when a mere suit for permanent injunction will lie and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief are well settled. It is mentioned:-

11.1 Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simplicitor will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in lawful possession is not entitled to an injunction against the rightful owner.

11.2 Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simplicitor, without claiming the relief of possession.

11.3. Where the plaintiff is in possession but his entitled to the property in dispute, or under a cloud, or where a defendant asserts a title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

The ratio of the judgment is squarely applicable in the facts and circumstances of the case and the suit of the plaintiffs for permanent injunction is found to be maintainable.”

8. The DDA has filed an appeal challenging this order and has been contesting the same for more than ten years. Learned counsel for the DDA submitted that the respondents are mere trespassers who have



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committed fraud upon the Court. However, the crucial question remains whether the DDA can proceed against them without following the due process of law. If this proposition is accepted and the order under challenge is bound to be upheld. However, learned First Appellate Court has inter alia held that the DDA was not permitted to take the law into its own hands and dispossess the respondents forcibly and illegally without adhering to the legal procedure. Notably, there was no restraint on the DDA from taking action against the respondents in accordance with the law. It is a matter of concern that while the DDA, as the custodian of vast parcels of land within the GNCT of Delhi, is engaged in litigation, it has not taken any concrete action to take possession in accordance with law. At no point did the impugned order restrain the DDA from proceeding legally against the respondents.

9. Mr. Sanyam Khetarpal, learned counsel for the respondents, submitted that the acquisition proceedings concerning the land in question have already lapsed. This assertion has been disputed by the learned standing counsel for the appellant.
10. This Court considers that any further continuance of this appeal would not only burden the public exchequer but also result in a waste of precious judicial time.
11. In these circumstances, the present appeal, along with all pending applications, stands disposed of without any further orders. Regarding the allegations of forgery, this Court refrains from making any observations and adheres to the findings recorded by the coordinate



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Bench in its order dated 10.07.2018. However, the DDA is at liberty to take appropriate action in accordance with the law.

DINESH KUMAR SHARMA, J

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