



2025:DHC:731



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

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Pronounced on: 04th February, 2025

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C.R.P. 110/2018

1. **SMT. GURDIAL KAUR**
W/o Late Sh. Avtar Singh
2. **SH. SUKHDEV SINGH**
S/o Late Sh. Avtar Singh
3. **SH. AMRITPAL SINGH**
S/o Late Sh. Avtar Singh
4. **SH. JINENDER KUMAR**
S/o Late Sh. Chander Prakash
5. **SH. SUNIL KUMAR**
S/o Late Sh. Chander Prakash

All through Sh. Jinender Kumar
Their Attorney Holder and R/o
1G, Vijay Nagar, Delhi-110009

....Petitioners

Through: Ms. Rakhi Dubey, Mr. Sandeep
Kumar Dubey, Mr. Sandeep Singh &
Mr. Rahul Thakur, Advocates

Versus

CHARANJIT SINGH (DECEASED) THR LRS

1. **MS. PRAMJIT KAUR**
d/o Late Sh. Charanjit Singh
R/o C-24, Mission Compound
Model Town, Saharanpur, UP
 2. **MR. AMARJIT SINGH**
S/o Late Sh. Charanjit Singh
 3. **MR. JAGMOHAN SINGH**
S/o Late Sh. Charanjit Singh
Both r/o C-24 Vijay Nagar, Delhi-110009
- Respondents



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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Civil Revision Petition under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (henceforth referred to as the 'CPC') has been filed on behalf of the Petitioners/ Defendants challenging the Order dated 14.03.2018 *vide* which Application under Order VII Rule 11 CPC, has been dismissed.
2. Briefly stated, Charanjit Singh (since deceased), now represented through his legal heirs/ *Plaintiffs*, had filed a *Suit for Possession, Recovery and Damages* against the Petitioners (Defendants) alleging himself to be the owner of premises bearing No. C-24, Vijay Nagar, Delhi, (*henceforth referred to as the 'property in question'*), admeasuring 200 sq. yards and living in half portion of the said house, which was constructed up to three-stories on the Western Side.
3. According to him, the premises had been given on lease to his late father Sh. Dayal Singh, who entered into an Agreement to Sell dated 17.06.1965 with one Sh. Avtar Singh, (*predecessor in interest of the Petitioners/ Defendants*) for sale of half portion i.e. 100 sq. yards of the property in question. However, Sh. Avtar Singh was unable pay the balance amount of consideration within the stipulated period and the Agreement to Sell was abandoned.
4. Thereafter, Sh. Dayal Singh executed a registered Gift Deed dated 07.04.1967 in favour of the Respondent/ Plaintiff- Sh. Charanjit Singh and the property now stands mutated in his name.



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5. After nearly three years from the date of Agreement to Sell i.e. on 19.05.1968, late *Sh. Avtar Singh* filed a *Suit for Specific Performance* in the Court of learned Civil Judge, Delhi against the Plaintiff and his father late *Sh. Dayal Singh*. The Suit was decreed conditionally by the learned Sub-Judge *vide* judgment and decree dated 01.03.1971 whereby it was held that since the property is on lease from L & DO, the Sale Agreement was subject to grant of permission. *Sh. Charanjit Singh* and his father *Sh. Dayal Singh*, were directed to seek permission from L & DO for sale of the property and in case no permission was granted, a sum of Rs.13,629.50/- be returned to *Sh. Avtar Singh*, Plaintiff in the said Suit.
6. *Sh. Charanjit Singh* applied for permission to L & DO to sell half portion of the property to late *Sh. Avtar Singh* but the same was rejected by L & DO, as communicated *vide* letter dated 11.06.1971.
7. In the interim, RFA was preferred by *Sh. Charanjit Singh* and his father, against the said Judgement and Decree dated 01.03.1971, which was dismissed in default on 05.02.1992. The Judgment and Decree dated 01.03.1971, therefore, became final and binding between the parties.
8. It is claimed that after nearly 23 years of the said decree i.e. in the year 1993, the Decree Holder-Avtar Singh (predecessor of defendants herein) applied for Execution of the Decree claiming that the permission has been granted by the L& DO. The Executing Court appointed a Local Commissioner for execution of the Sale Deed.
9. When the Plaintiff/ *Charanjit Singh* came to know about the same, he apprised the Executing Court about the correct facts and also that Defendants No.1 to 3/ Revisionists, namely, *Gurdial Kaur*, *Sukhdev Sigh* and *Amritpal Singh* had also applied for grant of sale permission which was



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declined *vide* Order letter dated 05.05.1995. Since the Decree could not be executed, the learned Executing Court directed Sh. Charanjit Singh to deposit Rs.13,629.50/- within a period of four weeks which was deposited on 15.12.1998. The Executing Court recorded the satisfaction of the Decree *vide* Order dated 20.12.1999 and the Execution Proceedings were disposed of.

10. The legal heirs of Sh. Avtar Singh who expired in 1994, also filed a Civil Revision Petition No. 837/2021 in this Court challenging the Order dated 20.02.1999 passed by the learned Executing Court, which was dismissed holding that it was time barred.

11. A *Special Leave Petition* was also preferred against the said Order, which was allowed by the Apex Court on 07.02.2005 and the matter was remanded back to this Court for consideration and disposal on merits.

12. In the interim, a *Writ Petition No. 4054/1997* was filed by the Defendants seeking direction to the L & DO to grant permission to sub-divide the property, wherein even though interim stay was granted and Execution Proceedings were stayed till disposal of the said Petition but the same was dismissed by this Court on 07.12.2010 with cost of Rs.15,000/-.

13. Sh. Charanjit Singh, Plaintiff/Respondent No.1, in his Suit had further alleged that possession of half portion of the Suit property was given by the predecessor of the Plaintiff to late Sh. Avtar Singh and his family members Sh. Jitender Kumar and Sh. Sunil Kumar (Defendants No.4 & 5) in the Suit, who continued to be in possession of the suit property.

14. It was further asserted that in the year 1994, *Charanjit Singh, Plaintiff/Respondent had filed a Suit for Recovery of Possession and Damages, amounting to Rs.60,200/- against Defendants No.1 to 3, who were*



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in possession of the half portion of the property in question. It was claimed that cause of action for filing Suit for Possession and Recovery accrued in favour of the Plaintiff on 20.02.1999 when the Executing Court recorded satisfaction of the Decree. However, the said Suit was withdrawn by the Plaintiff *vide* Order dated 12.03.1999.

15. The Defendants/ Revisionists have asserted that the Charanjit Singh/ Respondent No.1 is precluded from filing fresh Suit for Possession and Recovery of Damages in view of the earlier litigation. It is alleged that on 07.12.2010 when the Writ Petition was dismissed by this Court, the prayer of Defendants No.1 to 3 for direction to L & DO for sale of the property, stood finally rejected and no scope was left for execution of the Sale Deed in their favour.

16. The Plaintiff has further alleged that the *Agreement to Sell* was given final burial and the Defendants/ Petitioners have no right to continue with the possession of the Suit Property. The cause of action according to them arose on 07.12.2010.

17. The *Defendants/ Revisionists* took the plea that the Suit was not maintainable inasmuch as the Plaintiff/ Respondent *had no exclusive right or interest in the Suit Property much less Charanjit Singh, who was neither the owner nor the landlord of the premises in dispute and thus, the Suit was not maintainable.*

18. The Plaintiff is claiming his right by virtue of *alleged Gift Deed dated 07.04.1967* executed in his favour but Sh. Dayal Singh, father of the Plaintiff, had already sold the Suit Property to Sh. Avtar Singh, the predecessor in interest and the Revisionist by way of *Agreement to Sell* dated 17.06.1965.



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19. The Suit for Specific Performance of the Agreement to Sell was filed by Sh. Avtar Singh, predecessor in interest/ Revisionist which was decreed in their favour *vide* Judgment dated 01.03.1971. In this Suit, an Issue was framed in record to the validity of the Gift Deed executed in favour of Sh. Charanjit Singh by his father. The learned Court had observed that the Gift Deed had not been executed in good faith but only to avoid the Agreement to Sell (Ex.P-2) and the said Issue was decided in favour of the Revisionist. The said Judgment and Decree has become final and has attained finality.

20. The Gift Deed in favour of Sh.Charanjit Singh is, therefore, illegal and invalid and confers no right, title and interest on Sh. Charanjit Singh and the present Respondents, who are the legal heirs of Charanjit Singh. The Suit of the Respondents is **barred by *res judicata*** and the title is claimed only on the basis of the ***Gift Deed, which has already been held to be a sham and an invalid document.***

21. It is further asserted that the ***Suit was bad for non-joinder and mis-joinder of the necessary parties*** as the other legal heirs of late Sh. Dayal Singh have not been made a party to the Suit.

22. Furthermore, the Plaintiff despite being aware that the suit property has already been sold by Defendants No.1 to 3 (Revisionists No.1 to 3) to Revisionist No.4 & 5, have impleaded Revisionists No.1 to 3, as a party in the present Suit. A Legal document of Sale has already been executed in favour of Revisionist No..4 & 5 and the possession has already been given. These facts have been ***mala fidely concealed*** by the Plaintiff who has also not filed the requisite documents on record.

23. The *next ground* taken for the Suit being non-maintainable was that earlier Suit for possession had been withdrawn on 12.03.1999 without any



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liberty to file a fresh Suit and thus, *the present Suit is barred under Order XXIII Rule 1 CPC.*

24. Further, the Suit is *barred by limitation* since the possession of the Suit Property is with the Defendants since 1965. The limitation for seeking possession of immovable property is 12 years from the date when possession of the Defendant becomes hostile to that of the actual owner. No date has been mentioned in the Plaint as to when the predecessor in interest of the defendants was requested to vacate the property, but it can be safely assumed that the possession became adverse to the owner when the Written Statement was filed in the year 1968 in the Suit.

25. A Legal Notice dated 10.02.1966 was served upon late Sh. Avtar Singh for vacating the property and even from that date also, the Suit has become barred by limitation. Another legal Notice dated 16.08.1994 was served upon the Defendants to vacate the property; even from that date also the Suit for Possession is barred by limitation.

26. It is submitted that the *cause of action* had arisen in favour of the Sh. Charanjit Singh/Plaintiff on 07.04.1967 on which date allegedly the Gift Deed was executed by late Sh. Dayal Singh in his favour. Sh. Charanjit Singh, after expiry of almost 43 years of alleged illegal possession of the Defendants/ Petitioners has filed the present Suit, which is *blatantly barred by limitation.*

27. It is further asserted that Suit is also not maintainable since the possession of the Revisionists is protected under *Section 53A of the Transfer of Property Act, 1882.*

28. On the basis of objections taken by the Revisionists, *the learned District Judge framed the following two preliminary Issues:-*



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(1) *Whether the Suit is barred by limitation?*

(2) *Whether the suit is barred under Order XXIII Rule 1 CPC?*

29. The matter is pending for arguments on these two preliminary Issues. However, on 13.02.2014 this Court observed that since hearing on preliminary Issues was taking substantial time, it would be in the interest of both the parties if all the Issues are framed and the matter is put on trial. However, despite this Order, the Issues have not been framed till date. Left with no option, *the Revisionists/ Defendants filed the Application under Order VII Rule 11 CPC, which has been dismissed vide impugned Order.*

30. The grounds on which the impugned Order is challenged by the revisionists/Defendants is that it is based on conjectures and surmises and without appreciation of facts applicable in the case. It is not appreciated that the Gift Deed dated 07.04.1967 has already been held to be a sham document. Moreover, the Suit is barred by limitation in terms of Article 66 of the Schedule II of the *Limitation Act, 1963.*

31. Despite the admission of the Plaintiff on material aspects, it has been held by the Trial Court that these issues are a matter of evidence. The admission made in the pleadings, have not been rightly appreciated as the Suit is liable to be rejected.

32. Further, it is contended that under *Section 27 of the Limitation Act*, after expiry of the period of the limitation, there is extinguishment of right in property in favour of successor in interest, and as such the impugned Order dated 14.03.2018, dismissing Petitioner's Application under Order CII Rule 11 CPC, is liable to be set aside.

33. Petitioners in their Written Synopsis have essentially narrated the same facts as stated in the Revision Petition.



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34. Learned counsel for the Respondents/Plaintiffs in the Written Submissions has given the chequered history of the present case as already detailed above.

35. It is further explained that since Late Shri Avtar Singh was not able to pay the balance amount within the stipulated period in terms of Agreement to Sell dated 17.06.1965, it appeared that he had abandoned the Agreement to Sell. Consequently, Shri Dayal Singh had executed a registered Gift Deed dated 07.04.1967 in favour of the Respondent, by virtue of which, the entire property admeasuring 200 sq. yards has been gifted to the Respondent. The Gift Deed was executed after due permission was accorded by the L&DO. Even the property stands mutated in the name of Respondent *vide* Mutation Order dated 30.06.1967.

36. It is further submitted that after nearly three years from the Agreement to Sell i.e. 19.05.1968, Late Shri Avtar Singh had filed a Suit for Specific Performance, in which a conditional Decree was passed by the learned Special Judge on 01.03.1971. The Sale Deed was to be executed in favour of Late Shri Avtar Singh if the permission was granted by L&DO. The permission eventually was not granted by L&DO. In the execution proceedings, the Respondent deposited Rs. 13,629.50/- and the execution proceedings were consequently closed on 20.02.1999 after recording that the deposit of the said amount has been made on behalf of the Respondent.

37. The Respondent/Plaintiff has further clarified that the first Suit for Possession was filed by the Respondent on the conclusion of the Execution proceedings, but the Orders of the Execution Court were challenged by way of Revision whereby the Execution Petition was stayed till the disposal of Civil Writ Petition No. 4054/1997. The issue of permission from L&DO



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got finally settled in 2010 and soon thereafter, the Suit for Possession has been filed.

38. It is asserted that for the purpose of Application under Order VII Rule 11 of CPC, 1908, it is only the contentions made in the Plaint which have been considered.

39. The Plaintiff has specifically averred that the cause of action for recovery of possession has arisen in 2010. Whether the Suit is barred by limitation as claimed by the Revisionists/Defendants is a mixed question of fact of law which can be determined only by way of evidence and the averments made by the Defendants in their defence, cannot be considered while adjudicating the Application under Order VII Rule 11 of CPC, 1908.

40. It is, therefore, submitted that the Application under Order VII Rule 11 of CPC, 1908 has been rightly rejected by the learned Trial Court and the present Revision Petition is without any merit.

41. **Submissions heard and record perused.**

42. This case has a chequered history in so much as the litigation is traceable to 1965 when admittedly an Agreement to Sell dated 17.06.1965, in respect of half of the property i.e. 100 sq. yds. out of 200 sq. yds., was executed between Late Sh. Dayal Singh, father of the Plaintiff and Late Sh. Avtar Singh, father of the Defendants. Pursuant thereto, the possession of the Suit Property, was handed over to Late Sh. Avtar Singh. A three storeyed building was constructed and Sh. Avtar Singh and thereafter, his legal heirs, have been in continuous possession in respect thereof.

43. In the interregnum, the Lease Deed dated 28.09.1965, got executed on 15.04.1967, in favour of Late Sh. Dayal Singh, who after obtaining permission from L&DO, gifted this Property to Sh. Charanjit



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Singh/Plaintiff. It has been further explained that when the permission was sought, the L&DO had raised a query *vide* letter dated 09.03.1967 enquiring if the property in question, was a single plot to which Sh. Dayal Singh had responded on 10.03.1967 that it was one plot of 200 sq. yds. even though, he had already entered into an Agreement to Sell in respect of 100 sq. yds.

44. The *first aspect* which has been challenged, is that the alleged Gift Deed executed in favour of Sh. Charanjit Singh, was void since there already existed an Agreement to Sell in favour of Sh. Avtar Singh, predecessor in interest of the Defendants.

45. It has also been contended that in *Suit for Specific Performance that got filed by Sh. Avtar Singh on 15.07.1968*, this specific issue was framed and the learned Sub Judge in its Judgment dated 01.03.1971 has held that the Gift Deed was sham, illegal and invalid, created only to defeat the rights of Sh. Avtar Singh, under the Agreement to Sell. It is claimed that once a Gift Deed has already been declared as sham and illegal, the Plaintiff, Sh. Charanjit Singh, could not have instituted the present Suit for possession, on the basis of same Gift Deed as the finding in respect of Gift Deed, has become *res judicata*.

46. The findings on the Gift Deed in favour of Sh. Charanjit Singh, were given viz-a-viz the right of Sh. Avtar Singh, to seek Specific Performance of Agreement to Sell. It is a settled law that even if the property is gifted or sold by the original owner who had entered into the Agreement to Sell, such sale Agreement would be with the encumbrances, created by the original owner, which the subsequent owner would be bound to honour. In this context, the Agreement to Sell was held to be binding and executable against Sh. Dayal Singh, independent of the Gift Deed executed in favour of



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Sh. Charanjit Singh.

47. Furthermore, Sh. Dayal Singh has died and Sh. Charanjit Singh being one of the son of Sh. Dayal Singh, by way of inheritance acquired right title, interest in the property in question. Pertinently, the other legal heirs of Sh. Dayal Singh, have not challenged the Gift Deed in favour of Sh. Charanjit Singh and have never asserted any right title, interest in the Suit Property. In any case, it is established law that a co-owner can seek possession of the property from the third party and he takes a possession for and on behalf of the entire set of legal heirs. In case, there are any *inter se* disputes, the other co-owners are at liberty to agitate their independent rights. It is, therefore, evident that neither is the Suit barred by *res judicata* as Sh. Charanjit Singh has acquired a right title, interest in addition to the Gift Deed, but also by virtue of inheritance on the death of his father, Sh. Dayal Singh. ***For the same reason, it cannot be said that the Suit is bad for non-joinder of other legal heirs of Late Sh. Dayal Singh.***

48. Admittedly, Sh. Avtar Singh had filed a *Suit for Specific Possession on 15.07.1968*, which was decreed on 01.03.1971 wherein a conditional decree dated 01.03.1971 was passed, according to which the Sale Deed was to be executed in favour of Sh. Avtar Singh, after obtaining the requisite Sale permission from L & DO. It was further observed that if the permission by L & DO was denied then Sh. Dayal Singh would deposit the entire sale consideration of Rs.13,629.50 in the executing Court, to be released to Sh. Avtar Singh. This decree dated 01.03.1971 got challenged in RFA preferred by the Plaintiff, Sh. Charanjit Singh and by his father Sh. Dayal Singh, which was dismissed in default on 05.02.1992.

49. The legal heirs of Sh. Avtar Singh (who had expired in 1994), also



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filed a *Civil Revision Petition No. 837/2021*, before this Court.

50. Thereafter, in the year 1993, after the Dismissal of RFA preferred by Charanjit Singh/Plaintiff, Late Sh. Avtar Singh applied for Execution of the decree i.e. after nearly 23 years, claiming that the permission has been granted by L&DO. The Executing Court appointed the Local Commissioner for execution of the Sale Deed. However, the Plaintiff, on coming to know about the Orders of the Executing Court, immediately approached the Executing Court and apprised that L&DO has already rejected the sale permission. The Defendant Nos. 1 to 3/Revisionist Nos. 1 to 3 had also sought permission for execution of the Sale Deed but that also got declined *vide* Letter dated 05.05.1995.

51. The Executing Court thereafter *vide* its Order dated 08.12.1998, directed the Plaintiff, to deposit Rs.13,629.50/-, within the period of four weeks. The amount was deposited on 15.12.1998, after which, the Executing Court by its Order dated 20.02.1997, recorded the satisfaction of decree and disposed of the Execution proceedings.

52. Against this Order dated 20.02.1999 of the Executing Court, the Revisionist Nos. 1 to 3 (*legal heirs of Sh. Avtar Singh*) filed a ***Civil Revision No. 837/2001***, before this Court against the Order which got dismissed as being time barred. The ***SLP filed***, however, was allowed by the Apex Court *vide* Order dated 07.02.2005 and the matter was remanded back for reconsideration and disposal on merits.

53. From this chain of events, it is evident that the Execution proceedings remained pending and there was no final closure of the right of the Defendants to seek execution of Sale Deed, which was dependent upon the permission by the L&DO for sale.



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54. The Revisionists then in the interim, filed a **Writ Petition No. 4054/1997**, before this Court wherein the learned Single Judge granted a stay to the execution proceedings *vide* Order dated 12.03.2007. Ultimately, this Writ Petition also evidently got dismissed *vide* Order dated 07.12.2010, which implies that the right of getting the Sale Deed executed by the Defendants in their favour, got concluded only in December, 2010. Since it was a conditional decree, the right to get the Sale Deed executed in terms of the decree dated 01.03.1971, survived and did not finally get concluded on 07.12.2010.

55. In the aforesaid circumstances, the cause of action in favour of Sh. Charanjit Singh and his legal heirs, to seek possession from Sh. Avtar Singh, only arose on 07.12.2010. ***The present Suit has been filed on 14.12.2010, which is well within the period of limitation.*** It may hereby be clarified that the cause of action has arisen not from the date of execution of Agreement to Sell or from the date of decree dated 01.03.1971 but when it was finally adjudicated that the Defendants/Revisionists are not entitled to execution of the Sale Deed, in their favour on account of denial of permission by L&DO. Before then, any Suit for Possession if filed by the Plaintiff, was not maintainable. ***The Suit of the Plaintiff is well within the limitation.***

56. **The next ground for rejection of Plaint taken by the Revisionists was that the Suit is barred under Order XXIII Rule 1 CPC.** It is not in dispute that on 16.08.1994, the Plaintiff, Sh. Charanjit Singh had given a Notice to the Defendants that they were in unauthorized use and occupation of the Suit Property and called upon them to vacate the Suit premises. Thereafter, a Suit for Possession on Recovery of Damages got filed on 20.12.1994. However, the said Suit for Possession got withdrawn on



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12.03.1999. It is asserted that once, *the Suit for Possession had been filed and withdrawn under Order 23 Rule 1 CPC, by the Plaintiff, without seeking any liberty to file the Suit on the same cause of action, the present Suit has become barred.*

57. The earlier Suit for Possession that was filed by the Plaintiff in December, 1994, was premised on the basis that the decree dated 01.03.1971, had got finalised on dismissal of the RFA filed by the Plaintiff, on 20.11.1993. However, as already detailed above, it was a conditional decree whereby the right of the Defendants, to seek execution of the Sale Deed was kept alive, till the permission for the same was denied by L&DO. This issue got finally concluded only with dismissal of the Writ Petition on 07.12.2010.

58. Though, the Plaintiff had sought the possession immediately on dismissal of the RFA but there were Execution proceedings which were initiated and remained pending. Therefore, the Plaintiff had no right to seek possession because of the conditional Decree still being alive and execution of the same was being sought by the Revisionists. Pertinently, while withdrawing the Suit for Possession, it had been noted that because of the subsequent events, the earlier cause of action has ceased to exist and new circumstances have emerged. ***It is evident that the Suit for Possession got withdrawn but did not debar the Plaintiff for seeking Possession on fresh grounds.***

59. The present Suit is based on the facts that the right of the Defendants, to get the Sale Deed executed, has been finally adjudicated when the Writ Petition filed by them before this Court for direction to L&DO, to grant sale permission was finally dismissed on 07.12.2010 and the Execution Petition



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was also finally dismissed. The cause of action has now arisen on account of there being no right of Defendants, to seek the execution of the Sale Deed. **The Suit is based on independent and subsequent facts and the dismissal/withdrawal of the earlier Suit for Possession, cannot be termed as a *res judicata* or a bar to filing of present Suit under Order 23 Rule 1 CPC.**

60. In the end, the Revisionists had sought protection of their possession under Section 53A of Transfer of Property Act on the ground that they got the possession admittedly under the Agreement to Sell dated 17.06.1965. While this argument may seem attractive in the first instance, but it cannot be overlooked that when it has finally been adjudicated that no Sale Deed can be executed pursuant to the Agreement to Sell in the Execution proceedings, any right to seek protection of possession also came to an end, giving a cause of action to the Plaintiff to seek possession.

61. It is hereby, concluded that there is no merit in the impugned Order dated 14.03.2018 and the Application under Order VII Rule 11 CPC, has been rightly rejected.

62. The Revision Petition along with pending Application(s) is disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

FEBRUARY 04, 2025
r/RS