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

+ **FAO 177/2017, CM APPLs. 15024/2017, 7188/2025**

M/S. QUTUB ENTERPRISES

.....Appellant

Through: Mr. Sumit Bansal, Sr. Advocate,
with Mr. Udaibir Singh Kochar,
Ms. Samvartika Pathak, Mr. Utsav
Garg, Advocates.

versus

DHAN RAJ & ORS.

...Respondents

Through: Mr. Sunil Chauhan and Mr. Aditya
Chauhan, Advocates for R-1 and 2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

31.07.2025

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1. This appeal is directed against the judgment dated 19.01.2017, by which the Appellate Court has set aside an order of dismissal of the suit filed by the respondents and remanded the matter to the Trial Court.
2. The suit [Civil Suit No. 162/2016] was filed by respondent Nos. 1 and 2 herein before the Court of Civil Judge (District South). The present appellant was arrayed as defendant No. 5 in the suit. The other defendants were respondent Nos. 3, 4, 5, and 6 herein. In the original suit, there was a sixth defendant, namely Mr. Vijay Kumar, who passed away during the pendency of the suit and has been deleted from the memo of parties pursuant to an order dated 21.04.2025.
3. The reliefs claimed by the plaintiffs in the suit were as follows:
“a) Pass a decree of declaration thereby cancelling the Sale Deed



dated 15.12.1981 allegedly executed by Sh. Rajinder Singh in favour of defendant no. 5. The decree of declaration may also be passed in favour of the plaintiff and defendants thereby declaring the purported partition proceedings dated 25.01.1982 alleged carried out on the basis of an application dated 12.01.1982 thereby partitioning the joint holdings comprised in Khasra no. 38/15 (4-12), 16 (4-16), 25 (4-16), 73/2/3 (3-12), 7 (4-16), 6/2 (4-0), 14 (4-16) and 15 91 (4-16) in all measuring 32 bigha 15 biswas situated within the revenue estate of Village Mehrauli, Delhi and as a consequential relief the entries in the revenue record may be ordered to be corrected thereby reflecting the aforesaid land to be jointly held by the plaintiffs to the extent of one half share and the remaining one half share be reflected in the name of defendants no. 1 to 4 in equal share.

b) Pass a decree of permanent injunction in favour plaintiffs and against the defendants thereby restraining the defendants their staff, agents, employees or anybody claiming through them from selling, alienating or creating any third party rights in respect of land comprised in Khasra no. 38/15 (4-12), 16 (4-16), 25 (4-16), 74/4/2 (3-12), 7 (4-16), 56/2 (4-0), 14 (4-16) and 15 (4-16), in all measuring 32 bigha 4 bighas without first partitioning the same in accordance with law;

c) Any other relief/s which this Hon'ble Court may deem fit and proper may also be passed in favour of the plaintiffs and against the defendants."

4. Summons were not issued in the suit. Instead, the suit was dismissed by the Trial Court *vide* order dated 14.05.2016, holding that the relief for declaration that a sale deed is null and void, without seeking the consequential relief of possession, was not maintainable.

5. Against this order, the plaintiffs approached the Court of the Additional Senior Civil Judge (District South). By the impugned judgment dated 19.01.2017, the Appellate Court held that the suit for declaration was maintainable, as relief of possession cannot be granted by the Revenue Courts, under Section 185 read with Schedule 1 of the Delhi Land Reforms Act, 1954.

6. The appellants had also raised certain arguments with regard to the



bar of limitation and Order II Rule 2 of the Code of Civil Procedure, 1908 [“CPC”], on which the Appellate Court made certain observations. Ultimately, the Appellate Court concluded that the suit had erroneously been dismissed on the ground of maintainability and, therefore, remanded the matter to the Trial Court in exercise of powers under Order XLI Rule 23 of the CPC.

7. This appeal has, therefore, been filed invoking the power of this Court under Order XLIII Rule 1(u) of the CPC.

8. In the course of hearing, it is agreed by Mr. Sumit Bansal, learned Senior Counsel for the appellant, and Mr. Sunil Chauhan, learned counsel for the original plaintiffs (respondent Nos. 1 and 2 in the present appeal), that the order of remand to the Trial Court need not be interfered with, but it may be clarified that the Trial Court is to proceed in accordance with law from the stage of institution of the suit. As noted above, the suit was dismissed without issuance of summons, and pleadings were, therefore, not filed before the Trial Court, nor were any issues framed.

9. Mr. Bansal and Mr. Chauhan also submit that the matter may be placed before the Trial Court for consideration, independently of the observations of the Appellate Court in the impugned judgment, which were only for the purpose of disposal of the appeal.

10. The aforesaid suggestions appear to me to be reasonable.

11. The appeal is, therefore, disposed of with the clarification that the impugned judgment of the Appellate Court was not intended to prejudice the rights and contentions of the parties in the suit, upon remand.

12. All pending applications also stand disposed of.

13. I am informed that the suit is listed before the Trial Court on



07.08.2025. The parties will appear there and proceed in accordance with law.

14. It is made clear that all rights and contentions of the parties, on the maintainability and merits of the suit, are left open for decision in accordance with law. As the other defendants in the suit have not entered appearance at any stage, the Trial Court will proceed in accordance with law, as far as they are concerned also.

PRATEEK JALAN, J

JULY 31, 2025
SS/JM/