



2025:DHC:1390



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

% ***Pronounced on: 28th February, 2025***

+ **C.R.P. No. 128/2023**

1. **SHRI ANIL KUMAR**
S/o Shri Dharambir Singh
R/o Village Mawimeera,
Post Office Lawar,
Tehsil Sardana, District Meerut,
U.P.Petitioner No.1
2. **ASHOK KUMAR**
S/o Jasman
R/o Village Salempur Gurjar,
District Gautam Budh Nagar, U.P.Petitioner No. 2
3. **SHRI BIJENDER KUMAR**
S/o Shri Deep Chand
R/o Village Kamla, Tehsil Baraut,
District Baghpat,
U.P. ...Petitioner No.3
4. **SHRI KHALIQ ZAMA**
S/o Qazi Zaheer,
R/o Village Sale Nagar,
Tehsil & District Meerut,
U.P.Petitioner No.4

Petitioner No. 2 to 4 represented by their
Attorney Shri Anil Kumar (Petitioner No.1)

Through: Mr. Madan Lal Sharma, Ms.
Vidhi Kumar and Mr.
Tejaswini Verma, Advocates.

versus



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**HAIDER ALI**

S/o Late Khairati Hussain,

R/o A-60, Gali No.1,

Sarojini Naidu Park,

Shastri Nagar, Delhi-110031

....Respondent

Through: Mohd. Zahid, Advocate.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T****NEENA BANSAL KRISHNA, J.**

1. The Revision Petition has been preferred by the Petitioners (*defendants in the Main Suit* No. 618478/2016, '*Haider Ali vs. Hasan Ahmed & Ors.*'), against the Order dated 06.04.2023 of the learned Add. District Judge, Delhi whereby the Application under Order VII Rule 11 of the Code of Civil Procedure, (*hereinafter referred to as 'IPC'*), has been dismissed.

2. ***Briefly stated***, Suit No. 618478/2016 (*Original Suit bearing CS No. 58/2004*) was filed by the Plaintiff, Sh. Haider Ali in respect of the Property bearing No. S-611 and 611E, Plot No. 2 situated in Nehru Enclave, School Block, Shakarpur, Delhi ad measuring 400 Sq. Yds. comprised in Khasra No. 237 and 238 situated in the Revenue Estate of Village Shakarpur, Delhi (*hereinafter referred to as 'the Suit Property'*) claiming himself to be the owner, having purchased it from Sh. Hasan Ahmed *vide* Agreement to Sell, GPA, Will, Money Receipt etc. dated 16.12.1999, for a consideration of Rs.8,90,000/-. He further asserted that he has been in possession of the Suit Property since then.



3. He further asserted that ***Defendant No. 2, Sh. Kuldeep Rai now represented through his legal heirs, had filed an earlier Suit No. 1859/1999*** for Possession and Injunction, against Sh. Hasan Ahmed (Defendant No. 1), which was finally decided *vide* Compromise Decree dated 29.05.2002 which has attained finality.

4. Sh. Hasan Ahmed aggrieved by the Compromise Decree moved an *Application under Order 1 Rule 10 CPC*, which was dismissed. He thereafter, filed a *Review Petition being RA No. 19/2002*, pleading that he had purchased the property from Sh. Hasan Ahmed and was the owner of the Suit Property, but the Review Application was withdrawn by him with liberty to take recourse to the appropriate proceedings. Sh. Haider Ali then chose to prefer a Complaint Case 445/2002 under Section 406/419/420/504/34 of the IPC, which was dismissed on 10.04.2006 for non-prosecution.

5. A Revision Petition preferred against the said Order dated 10.04.2006 also got dismissed by the learned ADJ *vide* order dated 07.03.2007.

6. In the meanwhile, Sh. Haider Ali filed the ***present Civil Suit bearing CS(OS) 58/2004*** to seek a Declaration of him being the owner of the Suit Property and for setting-aside the Compromise Decree dated 29.05.2002, on the ground that he was the rightful owner of the Property as *Sh. Hasan Ahmed* had sold the suit property to him by virtue of the Agreement to Sell, etc. *dated 16.12 1999, and* that the Decree had been obtained consequent to a fraud committed by Sh. Kuldeep Rai in collusion with Sh. Hasan Ahmed. He also sought Declaration of various Agreement to Sell, etc. executed in favour of Defendant Nos. 3 to 6, as null and void He also sought



Declaration of GPA dated 18.03.2004 executed by Sh. Kuldeep Rai in favour of his son, Sh. Surinder Kumar Dang, as null and void. He further sought a *Declaration* that the GPA and another document dated 27.07.2005, in respect of the Suit Property executed by Sh. Surinder Kumar Dang (son/GPA Holder) of Sh. Kuldeep Rai, in favour of Sh. Anil Kumar and Sh. Khaliq Zama, be also declared as null and void.

7. *Defendant Nos. 3 to 6, namely, Sh. Bijender Kumar, Sh. Khaliq Zama, Sh. Anil Kumar and Sh. Surinder Kumar Dang*, then moved an Application under Order VII Rule 11 of CPC giving the entire chain of the documents as well as the prior litigation.

8. It was asserted that Sh. Kuldeep Rai had purchased the Suit Property *vide* Sale Deed dated 30.01.1970 that its erstwhile owner, Sh. Suresh Chand. Sh. Kuldeep Rai filed ***Suit No. 1859/1999 against Sh. Hasan Ahmed/Defendant No. 1*** alleging that he had illegally trespassed into the Suit Property, which was finally decreed *vide* Compromise Decree dated 29.05.2002. Thereafter, several litigations were undertaken on behalf of Sh. Kuldeep Rai, through his son, Sh. Surinder Kumar Dang and Anil Kumar and others, who eventually were able to get the possession of the Suit Property on 14.02.2011.

9. The Petitioners then moved an Application under OVII Rule 11 CPC in which it was stated that the Respondent/Plaintiff, Sh. Haider Ali, never acquired any ownership rights and thus, his Suit in the light of the earlier litigations, did not disclose any cause of action and was liable to be rejected.

10. Learned ASJ *vide* impugned Order dated 06.04.2023 observed that the defences taken by the Defendants, cannot be looked into while deciding the



Application under Order VII Rule 11 CPC and thereby dismissed the Application under Order VII Rule 11 CPC.

11. Aggrieved by the said Order, the present Revision Petition has been preferred by the Petitioners/Defendant Nos. 3 to 6.

12. **Learned counsel on behalf of the Respondent/Plaintiff** has contended that there are triable issues, which have been raised in the present Suit, to seek the Decree dated 29.05.2002 as null and void and the Application under Order VII Rule 11 CPC has been rightly rejected.

13. **Submissions heard and the record perused.**

14. The genesis of the disputes agitated *herein*, commenced in the year 1999 when Sh. Kuldeep Rai filed *Suit No. 1859/1999 against Sh. Hasan Ahmed*, for Possession claiming that he has illegally trespassed into the Suit Property. Eventually, Sh. Kuldeep Rai entered into a Compromise with Sh. Hasan Ali and on the Application filed by them, their statements were recorded in the Court and the Compromise Decree dated 29.05.2002 was passed whereby the Defendant No.1, Sh. Hasan Ahmed was directed to hand over the possession of the property to Sh. Kuldeep Rai.

15. Sh. Haider Ali/Plaintiff in the present Suit has asserted that the Compromise Decree is fraudulent on the premise that on 16.12.1999, Sh. Hasan Ahmed had executed GPA etc. in his favour. Pertinently, there is not a single averment as to how Sh. Hasan Ahmed acquired ownership in the Suit Property, while Sh. Kuldeep Rai, erstwhile registered owner of the Suit Property had made the specific averments that he had illegally trespassed into the Suit Property.



16. Sh. Haider Ali is claiming his title on the basis of Agreement to Sell, etc. executed in his favour by Sh. Hasan Ahmed on 16.12.1999. Sh. Hasan Ahmed, who was a trespasser and had no right, title and interest in the Suit Property, could not have transferred a title better than what he had in respect of the Suit Property in favour of Sh. Haider Ali. So being the case, the Plaintiff has no basis to claim that the Compromise Decree dated 29.05.2002 be declared as null and void. His claim to be declared as an owner of the Suit Property is totally without any basis and without any proper documents, and the Suit has to be rejected outrightly.

17. *Sh. Haider Ali*/Plaintiff also took a plea that the Suit Property is located in the different Khasra Numbers than what it was asserted to be. To ascertain whether the Suit Property was situated in Khasra No. 238 or Khasra No. 240, the learned ADJ had appointed the Local Commissioner for proper demarcation and the property was duly demarcated by SDM and it was found that the Suit Property was in fact, located in Khasra No. 238 and not in Khasra No. 240 as was being alleged by Sh. Haider Ali.

18. These findings found a quietus in the Order of learned ADJ dated 03.07.2004, who referred to the Demarcation Report to dismiss the Application under Order XXXIX Rule 1 and 2. This Order got challenged before this Court in *FAO 419/2010* but this Court in its Order dated 14.12.2010 concluded that the property stood duly demarcated and there was no *prima facie* case in favour of Sh. Haider Ali, as even if it was presumed and believed that Sh. Haider Ali had got the possession of the Suit Property from Sh. Hasan Ahmed, but it was violative of Section 52 of the Transfer of Property Act and could not have conferred any right, title or interest in



favour of Sh. Haider Ali and consequently, dismissed the Application under Order XXXIX Rule 1 & 2 CPC.

19. Pertinently, from the Demarcation Report of the SDM dated 27.07.2004, it is finally established that there was no discrepancy in regard to the identity of the Suit Property.

20. The next aspect for consideration is that *Sh. Kuldeep Rai had filed the Execution Petition No. 29/2002, through his Son/GPA Holder, Sh. Surinder Kumar Dang*, which eventually was withdrawn on 28.07.2005 by Decree Holder by making a statement that the Property has already been sold to Defendant Nos. 3 to 6 *vide* GPA, etc. A compromise has been entered into with the Applicant/Sh. Anil Kumar and Sh. Khaliq Zama in regard to the piece of land measuring 120 sq. yds. Further, Compromise has been arrived at with Sh. Khaliq Zama and Sh. Bijender Kumar with regard to 180 sq. yds of land. Also, Compromise with Sh. Ashok Kumar, had been entered into with regard to the 100 sq. yds. of the Property. He had sold the entire property admeasuring 400 sq. yards to the aforesaid persons and received the sale consideration. Therefore, Sh. Kuldeep Rai was left with no right title and interest of the Suit Property. He further stated that the aforesaid purchaser can file the Execution Petition against the Judgment Debtors. He, therefore, withdrew his own Execution Petition.

21. Thereafter, another *Execution Petition No. 68/2010* got filed by the subsequent purchaser in execution of which the possession of the Suit Property was received by them on 14.02.2011, through Bailiff and the Execution Petition was disposed of as satisfied.



22. The subsequent events further corroborate that Sh. Kuldeep Rai, who was the original owner of the Suit Property and who had never sold it to Sh. Haider Ali, after getting a Compromises Decree in his favour, sold the Suit Property to the Defendants *herein*, who also were successful in getting the possession of the Suit Property, through execution on 14.02.2011.

23. The entire sequence of events stands chronicled in the Orders of the Courts, which clearly establishes that the Plaintiff, Sh. Haider Ali, had no right title and interest in the Suit Property. He has also lost possession of the Property, through legal process on 14.02.2011.

24. The only argument raised on behalf of the Plaintiff was that he has a valid defence and the documents and the defence of the Defendants, cannot be taken into account while considering the Application under Order VII Rule 11 CPC. However, it is the averments made by the Plaintiff himself that he is claiming the title in the Suit Property through Sh. Hasan Ahmed, who had no right title and interest in the Suit Property. The Suit itself was not maintainable. The various Orders of the Courts which have been referred above, are not the private documents of the Petitioners/Defendants but in fact are the various Judgments and Orders of the Courts of law, which are *public documents* and can be considered by the Court.

25. Therefore, it necessarily has to be held that there has been no cause of action disclosed in the Suit. The impugned Order dated 06.04.2023 rejecting the Application under Order VII Rule 11 CPC, is hereby set-aside.

26. The Suit of the Plaintiff is hereby, rejected as not disclosing any cause of action.



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(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 28, 2025
RS