



2026:DHC:1078



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

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Date of Decision: 30.01.2026

+ **FAO 168/2025 & CM APPLs. 38121/2025, 38124/2025**

SH SURENDER PAL GIRI

.....Appellant

Through: Shri Puneet Kumar Saxena, Advocate

versus

SHRI RAJ KUMAR & ORS.

.....Respondents

Through: None.

+ **FAO 193/2025 & CM APPLs.43118/2025, 43119/2025, 43120/2025**

SHRI JAGDISH GOSWAMI ALIAS JAGDISH
KUMAR GIRI

.....Appellant

Through: Shri Puneet Kumar Saxena, Advocate

versus

SHRI RAJ KUMAR & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present appeals have been preferred against the common order dated 28.03.2025, whereby the applications filed by the appellants under Order IX Rule 13 CPC were dismissed. The review application filed under Section 114 read with Section 151 CPC was also dismissed vide order dated

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02.05.2025. Since common submissions have been advanced in the context of Civil Suit No. 356/2011, titled Raj Kumar v. Om Prakash Giri, the present appeals are taken up together for consideration and are being disposed of by this common order.

2. The background facts in nutshell are:

The respondents (plaintiffs in the suit) instituted a suit for recovery of Rs.19,04,000/- along with interest. In the plaint, it was averred that the defendants were owners in possession of land measuring 1750 sq. yards, forming part of land admeasuring 4 *bighas* 19 *biswas* in *Khasra* No.98, *Abadi Village Gokalpur, Delhi*, presently known as *Ganga Vihar Colony* (hereinafter referred to as the “suit property”). It was pleaded that, being desirous of purchasing the suit property, the parties entered into an agreement dated 14.10.2007 for a total sale consideration of Rs.52.50 lakhs, pursuant to which an aggregate amount of Rs.14 lakhs was paid by the plaintiffs to the defendants towards advance/part consideration. It was further averred that the defendants neither came forward to execute the sale deed nor refunded the said amount, leading the plaintiffs to institute the suit seeking recovery of the amount along with interest. Summons of the suit were issued and the defendants entered appearance and filed their written statement. However, upon their subsequent non-appearance, they were proceeded *ex parte*, culminating in the passing of an *ex parte* judgment and decree dated 21.08.2012.



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3. The appellants, arrayed as defendant nos. 3 and 4 in the suit, filed an application under Order IX Rule 13 CPC, claiming that they were never served with summons in the suit and, consequently, were unaware of the passing of the *ex parte* judgment and decree against them. It was their case that they acquired knowledge of the decree only upon service of process in Execution Petition No. 33/2024. The said applications were opposed by the respondents and, upon consideration, came to be dismissed by the Trial Court vide the impugned order.

4. Learned counsel for the appellants (defendant nos. 3 and 4) assailed the impugned order contending that the Trial Court failed to appreciate that the summons of the suit were received by *Shiv Kumar Giri* (defendant no. 2) only, who was stated to be residing separately, and therefore service upon him could not be presumed to constitute valid service upon the other defendants. It was next contended that though a *Vakalatnama* came to be filed and signed by one *Mr K Kumar*, Advocate, however, the defendants were shown to be represented through one *Ms Priyanka Rai*, Advocate. It was further contended that although a *vakalatnama* was filed in the suit, the present appellants were neither served nor had they signed the *vakalatnama* or authorised any counsel to represent them. It was argued that the written statement was filed on behalf of the defendants through a power of attorney holder, namely *Praveen Kumar Jain*, and that the present appellants had neither executed the General Power of Attorney (GPA) dated 11.08.2010 nor authorised the said attorney to act or file pleadings on their behalf. The written statement had not even been signed by the present appellants, thus,

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showing that the entire exercise was carried out by the plaintiffs in collusion. It is also submitted that a complaint has also been filed on 11.07.2025 against the plaintiffs, the said attorney and the concerned advocates, alleging unauthorised representation. Learned counsel has also handed over a certified copy of record of the Trial Court.

5. A perusal of the Trial Court record reveals that the appellants, in their application filed under Order IX Rule 13 CPC, asserted that they were never served with summons in the suit. It was further claimed that they had neither executed the GPA dated 11.08.2010 in favour of *Praveen Kumar Jain*, nor signed any *vakalatnama* in favour of Mr. *K. Kumar*, Advocate, and had not authorised the said *Praveen Kumar Jain* in any manner to represent them or to file a written statement on their behalf.

6. A perusal of the Trial Court record reveals that the plaint was instituted on 16.10.2010, whereupon summons of the suit, including *dasti*, were issued and made returnable on 10.11.2010. On the said date, Mr. *K. Kumar*, Advocate, appeared on behalf of the defendants and time was granted for filing the written statement. On the next date i.e., on 02.12.2010, Ms. *Priyanka Rai*, Advocate, appeared for the defendants and a copy of the written statement was supplied, whereafter time was granted to place the power of attorney on record. On the next date, i.e., 13.12.2010, the General Power of Attorney was produced and taken on record, and the Trial Court proceeded to frame issues.



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7. After the framing of issues, the defendants failed to appear before the Trial Court and were ultimately proceeded *ex parte*. Consequently, the suit proceeded without their participation, culminating in the passing of the *ex parte* judgment and decree dated 21.08.2012.

8. A perusal of the certified copy of the Trial Court record placed before this Court shows that, as per the Process Server's report, summons of the suit were sought to be served at the address mentioned in the plaint, where the defendants were shown to be residing. The Process Server met *Shiv Kumar Giri* (defendant no. 2), who accepted service on his own behalf as well as on behalf of the other defendants. The record further reflects that a *vakalatnama*, bearing signatures purporting to be of the defendants, including the power of attorney holder, was signed on 10.11.2010 and filed on record, on which date Mr. *K. Kumar*, Advocate, appeared before the Trial Court. On the next date of hearing, the defendants were represented through Ms. Priyanka Rai, Advocate, and the written statement was placed on record. Although learned counsel for the appellants contended that the written statement was not signed by them and only signed by Praveen Kumar Jain, a copy of the registered GPA is available on the Trial Court record, which contains the photographs, thumb impressions and signatures of all the defendants, including the present appellants.

9. It is also relevant to note that the appellants have not disclosed the specific date on which they were served in the aforesaid Execution Petition. Further, upon a query by this Court as to whether any steps have been taken pursuant to the criminal complaint stated to have been filed against *Praveen*

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Kumar Jain and the concerned advocates, learned counsel fairly stated that no further proceedings have been initiated. A perusal of the said complaint also indicates that no specific allegation has been made therein with regard to the forgery of the GPA.

10. The contention of the appellants that they were never served with summons in the suit, were unaware of the institution of the plaint, and acquired knowledge of the proceedings only upon service of process in the Execution Petition, does not merit acceptance. A perusal of the order dated 13.12.2010 passed by the Trial Court records the presence of defendant no. 3 in the order sheet itself. The relevant extract of the said order reads as under:

*“IN THE COURT OF SH.VINOD KUMAR,
ADDL. DISTRICT JUDGE-04, NORTH EAST, KKD, DELHI
CS No.127/2010*

Sh. Raj Kumar

Versus

Sh. Om Parkash Giri & Ors.

13.12.2010

Present: Plaintiff with counsel Sh Shive Kr Sharma, adv.

Sh. Praveen Kumar, the Special Power of Attorney, for all the defendants along with defendant no.2 and 3.

Sh. K. Kumar, adv. for all the defendants.

Sh. K Kumar, adv. for all the defendants submits that defendant n.1 is physically challenged person and defendant no.4 is out of station. Therefore they could not come to the court.

Ld. Counsel for plaintiff has filed the copies of the documents along with the list. Copies supplied.

Ld. Counsel for defendants files Special Power of Attorney and it is taken on record.



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From the pleadings following issues are hereby framed:-

1. *Whether the signatures of the defendants were procured by the plaintiff on blank papers on which the agreement to sell, receipt of money etc. were written by the plaintiff? OPD*
2. *Whether the suit of the plaintiff is premature? OPD*
3. *Whether the plaintiff's suit is not maintainable in view of the fact that the defendants have no rights to transfer the suit property? OPD*
4. *Whether the plaintiff is entitled to recovery of suit amount as prayed in the plaint? OPD*
5. *Relief.*
6. *Interest.*
7. *Costs.*

No other issue is raised or pressed. Plaintiff shall lead evidence on affidavit. The advance copy of the affidavit be supplied to Ld. Counsel for defendants at his chamber.

To come up for PE on 15.1.2011.

Sd/-

ADJ-04/NE/KKD

13.12.2010"

11. The aforesaid circumstance clearly belies the contentions advanced on behalf of the appellants and demonstrates that the plea of non-service and lack of knowledge of the suit proceedings is unsustainable. This Court, therefore, finds no merit in the present appeals, which are accordingly dismissed with costs of Rs.10,000/- to be deposited within 2 weeks of uploading of this order with DSLSA.

12. All pending applications, if any, shall also stand disposed of.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 30, 2026

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