



2025:DHC:6905-DB



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

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Judgment reserved on: 08.08.2025

Judgment pronounced on: 18.08.2025

+ **FAO(OS) 75/2025, CM APPL. 39144/2025, CM APPL. 39145/2025 and CM APPL. 39147/2025**

SURENDRA MOHAN TARUN (DECEASED) THR LR

SURAJ SAXENA

.....Appellant

Through: **Mr. Udit Arora, Advocate for
LRs.**

versus

SARABJIT SINGH

.....Respondent

Through: **Mr. Nishant Datta, Mr. Chirag
Rathi, Mr. Kunal Sejwal, Mr.
Dipesh Kashyap and Mr.
Yatharth Rathi, Advocates.**

+ **FAO(OS) 60/2025, CM APPL. 30674/2025, CM APPL. 30675/2025, CM APPL. 30676/2025 and CM APPL. 30677/2025**

SHRI SURAJ SAXENA

.....Appellant

Through: **Mr. Aatreya Singh, Adv.**

versus

SHRI SARABJIT SINGH

.....Respondent

Through: **Mr. Nishant Datta, Mr. Chirag
Rathi, Mr. Kunal Sejwal, Mr.
Dipesh Kashyap and Mr.
Yatharth Rathi, Advocates.**

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. With the consent of the learned counsel representing the parties,



2025:DHC:6905-DB



two appeals, being FAO(OS) 60/2025 and FAO(OS)75/2025, which arise from two interlocutory orders in CS (OS) No. 1418/2010 captioned as ***Sarabjit Singh vs Surendra Mohan Tarun***, shall stand disposed of by this Judgement.

2. In **FAO (OS) 60/2025**, the Appellant has filed the appeal under Section 104 read with Order XLIII of Code of Civil Procedure, 1908¹ assailing the Order dated 09.08.2023 passed by the learned Single Judge appointing a Receiver to take over possession and management of the property being C-9, Gulmohar Park, New Delhi-110049², particularly in view of the fact that name plate of the counsel representing the deceased Defendant, namely, Sh. Suraj Saxena (Appellant herein) was found at the entrance of the suit property. Additionally, there was a violation of the undertaking by the Defendant, who had promised not to carry out any construction or part with possession of the suit property.

3. In **FAO (OS) 75/2025**, the Appellant assails the Order dated 07.10.2024 passed by the learned Single Judge in R.A. No. 314/2023, wherein review filed by the Appellant against the Order dated 09.08.2023, was dismissed.

4. The cause title of FAO (OS) 75/2025 shows Late Sh. Surendra Mohan Tarun through Sh. Suraj Saxena as Appellant. However, the learned Counsel representing the Appellant submits that Sh. Suraj Saxena, a practising advocate, is himself the Appellant, and he has filed an application seeking permission to amend the cause title.

¹Hereinafter referred to as “CPC”

²Hereinafter referred to as “Suit property”



2025:DHC:6905-DB



FACTUAL MATRIX

5. Be that as it may, in order to comprehend the issues involved in the present case, relevant facts in brief are required to be noticed.

5.1 The Respondent/Sh. Sarabjit Singh filed a suit, being CS (OS) No. 1418/2010, as a Plaintiff for possession, permanent injunction and *mesne* profits in the year 2010. He claims that the Defendant/Late Sh. Surendra Mohan Tarun sold the suit property on receipt of valuable consideration in his favour, in the year 1982. On 15.03.1982, the Defendant/Sh. Surendra Mohan Tarun, accordingly, executed an Agreement to Sell, a General Power of Attorney, a Possession Letter, an affidavit, a receipt and a registered Will, all dated 15.03.1982, in his favour, besides handing over the original title documents.

5.2 Up until the riots of 1984, the Plaintiff/Respondent herein used to reside/visit the suit property frequently; however, subsequent thereto, the Plaintiff/Respondent herein appointed two caretakers for the suit property. The caretakers were permitted to use the property along with their family members and to take care and clean the property.

5.3 In the year 2009, the deceased Defendant/Late Sh. Surendra Mohan Tarun forcibly took possession of the suit property in the absence of the Plaintiff, compelling the Plaintiff to file the suit. The Defendant claimed that he did not execute the documents and continues to be the owner of the property.

5.4 On 02.08.2011, while an application under Order XXXIX, Rule



2025:DHC:6905-DB



1 and 2 of the CPC filed by the Plaintiff was under consideration, the Defendant undertook not to carry out any construction on the suit property or part with the possession to create a third-party interest. However, on 16.11.2021, the Defendant/Sh. Surendra Mohan Tarun passed away.

5.5 In January 2022, the Plaintiff/Respondent noticed that the suit premises had a name plate of the Defendant's counsel, namely, Sh. Suraj Saxena, and of a Trust, namely, Basant Ram Shanti Devi Charitable Trust. It was also noticed that construction had been carried out in violation of the undertaking.

5.6 Consequently, two applications, being I.A. No. 3209/2022 and I.A. No. 3210/2022, seeking appointment of a Receiver and ad-interim injunction in respect of the suit property, respectively, were filed.

5.7 On 09.08.2023, after considering all aspects of the matter, it was considered appropriate to appoint a Receiver to take over possession of the suit property because it was found that there are three sets of Claimants, who are now claiming the property from the original Defendant, who has died during pendency of the suit. The first set of claimants is the alleged Class II heirs of the Defendant, the second set comprises Ms. K. Jeevan Rita Murthy (who is not a party to the Original Suit), a domestic help and legatee under the alleged Will executed by the deceased Defendant, and the third claimant is the Appellant/Sh. Suraj Saxena, counsel who was representing the Defendant in the present litigation.

5.8 Notably, the alleged Class II heirs did not object to the



2025:DHC:6905-DB



appointment of a Receiver. Ms. Murthy claims that she is residing at the suit property; however, statements made by her before the Police indicate otherwise, that she resides with her family at a property bearing No. 117A, Arjun Nagar, Safdarjang Enclave, New Delhi.

5.9 A review petition bearing R.A. No. 314/2023 was filed seeking to recall the Order dated 09.08.2023. *Vide* Order dated 07.10.2024, the said review petition was dismissed by holding that the Court cannot render a finding of ownership in favour of the Applicant/Appellant in a review petition with liberty to resort to appropriate remedies in law or to contest the suit.

SUBMISSIONS OF THE PARTIES

6. The Appellant/Sh. Suraj Saxena claims that the Late Sh. Surendra Mohan Tarun bequeathed immovable property in his favour *vide* registered Will dated 15.05.2021, which was followed by a registered Codicil dated 07.08.2021, whereas moveable property was bequeathed in favour of M/s Basant Ram Shanti Devi Charitable trust.

7. Learned counsel representing the Appellant has submitted that the Court has travelled beyond pleadings in the application while appointing a Receiver. The Appellant is deprived of the *de facto* possession of the property. The Court has also not followed the five well-known tests laid, namely, “*panch sadachar*” laid down by the Courts correctly, before appointing a Receiver.

8. *Per contra*, the learned counsel representing the Respondent submits that the Appellant has never been in possession of the suit



2025:DHC:6905-DB



property and has no ownership rights over it. Merely his name plate has been put up outside the property. He further submits that the suit property is likely to be damaged, and the conduct of the Appellant proves that he did not honour his undertaking.

ANALYSIS

9. This Court has considered the submissions of the parties and carefully perused the material on record.

10. The Respondent has claimed that the person claiming to be in possession of the suit property is neither related nor authorised by the Defendant. It has been disclosed that the Late Sh. Surendra Mohan Tarun was unmarried and did not have any legal heirs. Moreover, the original documents produced by the Respondent/Plaintiff have undergone forensic examination and have been found to be genuine.

11. It is undisputed that there is a violation of the undertaking dated 02.08.2011, whereby it was expressly agreed that no third-party rights would be created in respect of the property. In such circumstances, there is no substance in the first submission of learned counsel representing the Appellant.

12. It is evident that the Appellant is proved not to be in settled possession. The Court has recorded that three sets of the Claimants claim the suit property, wherein one set, being Class II Heirs, has not disputed the appointment of the Receiver. The claim of the second set, i.e., Smt. K. Jeevan Rita Murthy to the effect that she is in possession, is contrary to her statement before the Police. Furthermore, the third



2025:DHC:6905-DB



set comprising the Appellant, has failed to prove possession, inasmuch as the list of articles belonging to the deceased Defendant, as filed by him, does not demonstrate or establish possession of the suit property.

13. With regard to the last submission, it be noted that in paragraph No.10 of the Order dated 09.08.2023, the Court applied the five tests, which are normally referred to as “*panch sadachar*”, and the Court found that the Plaintiff has successfully made out a case for appointment of a Receiver with respect to the suit property.

14. Interference in interlocutory orders passed by the Court of first instance is not appropriate in the Appellate Forum, unless the Order suffers from material irregularity or perversity. If the Order has been passed by the Court while exercising discretion, the Appellate Court normally would not interfere in the same unless the cause of justice suffers.

15. In this case, by appointing a Receiver, the cause of justice has been served because the Appellant, at the cost of repetition, claims that his client (Defendant) executed a Will in his favour. The Appellant was representing the Defendant in this litigation.

16. The lawyers practising in the Court are considered Officers of the Court, who are expected to help the Courts in advancing the cause of justice, while ensuring justice for the poor, downtrodden and deprived. There is a big responsibility on the shoulders of practising advocates to maintain the grace and reputation of the institution. They are not expected to claim the interest in the property left behind by their clients.



2025:DHC:6905-DB



17. In view of the foregoing discussion, both the Appeals lack merit and are hence dismissed.

18. The present Appeals, along with pending applications, are disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 18, 2025/sg/er