

IN THE COURT OF SH. SOMITRA KUMAR,
DISTRICT JUDGE – 06 (EAST DISTRICT),
KARKARDOOMA COURTS, DELHI

CS NO. :- 671/2017

IN THE MATTER OF :-

Ms. Sunita Agarwal & Ors.

....Plaintiffs

VERSUS

Ms. Laxmiraj Vanshi & Ors.

..... Defendants

ORDER ON APPLICATION UNDER ORDER XV-A RULE 1
READ WITH SECTION 151 OF CPC

19.11.2025

1. This order shall decide application of plaintiffs under Order XV-A Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the “CPC”).
2. The present suit is a suit for recovery of possession, mesne profits, declaration and mandatory injunction in respect of the property bearing plot numbers 141, 142, 143 and 144, B Block, Gharoli Dairy/ G. D. Colony, Delhi (hereinafter referred as to “suit properties”).
3. It is averred in the plaint that defendant no. 1 occupies plot no. 141, defendants no. 2 and 3 occupy plot no. 142, defendant

no. 4 & 5 occupy plot no. 143 and defendant no. 6 occupies plot no. 144.

4. It is further averred in the plaint that plaintiff no. 1 is a widow and the other plaintiffs are her children; that in the year 1980 the abovesaid plots each measuring 60 sq. yds. were allotted to late husband of plaintiff no. 1 namely Sh. Subhash Chand by MCD, Shahdara Zone; that on 31.03.2014, Sh. Subhash Chand expired, leaving behind plaintiffs as his legal heirs, and after his death, the plaintiffs became the owners of the suit properties; that the aforesaid four plots are still registered with MCD in the name of Sh. Subhash Chand.

5. It is further averred that on 15.06.2016, when the plaintiff nos. 1 and 2, visited the suit properties, they found that defendants no. 1 to 6 had criminally trespassed and unauthorizably encroached upon the suit properties, and they had carried out unauthorized construction in the suit properties; that the said plaintiffs asked the defendants to handover the possession of the suit properties to the plaintiff as they are the owners of the same and defendants no. 1 to 6 are unauthorized occupant of the same and also asked them to stop unauthorized construction on the suit properties, however, the defendants remained adamant and refused to vacate the suit properties and continued to raise unauthorized construction on the suit properties; that the defendants threatened the plaintiffs with dire consequences; that plaintiffs approached the police authority at police station Gazipur vide complaints dated 24.11.2016 and

9.12.2016 with request to investigate the matter and take legal action against the defendants no. 1 to 6, however, no action was taken against the defendants.

6. It is further averred that the plaintiffs have filed one criminal complaint before the Ld. MM, Karkardooma Courts, Delhi and in the said complaint, the concerned IO has filed the status report from police station Gazipur, Delhi, along with statements of the defendants. As per the said statements of the defendants, the defendants have been occupying the aforesaid plots on the basis of some documents like GPA, agreement to sell, etc. However, no documents have been filed along with the said report and statements.

7. It is further averred that the documents allegedly relied upon by the defendant nos. 1 to 6, are forged and fabricated documents as the said plots was allotted to the late Sh. Subhash Chand and Sh. Subhash Chand, during his lifetime, had never transferred the said plots; that the said plots are registered in the name of the late Sh. Subhash Chand in the record of MCD till date; that defendants no. 1 to 6 have not been claiming title through Sh. Subhash Chand and, as such, admittedly, late Sh. Subhash Chand had not transferred the said plots to the defendants or any other person; that aforesaid four plots, allotted to late Sh. Subhash Chand cannot be transferred to any other person, as even the allottee cannot transfer the said plots to any other person.

8. It is further averred in the plaint that the plaintiffs got served upon the defendants no. 1 to 6 a legal notice dated 08.08.2017, thereby requiring them to vacate and hand over the possession of the aforesaid plots and to supply the documents allegedly relied upon by them, to the plaintiffs; however, defendants neither complied with nor replied to the said notice.

9. It is further averred that defendants no. 1 to 6 have been in illegal and unauthorized occupation of the aforesaid plots, therefore, they are liable to pay damages and mesne profits with effect from June 2016, in as much as the defendants no. 1 & 6 are liable to pay Rs. 20,000/- per month each and defendants no. 2 to 4 are liable to pay Rs. 10,000/- each, as per the present market rental value.

10. It is further averred in the plaint that defendants no. 1 to 6 have raised unauthorized construction over the said plots, without any sanctioned plan from the defendants no. 7 and 8, therefore, the plaintiffs got issued a communication dated 08.12.2016 thereby requesting the defendants no. 7 and 8 to demolish and seal the property in question, however, the defendants no. 7 and 8 did not take any action despite receipt of the notice. Thus, the defendants have illegally encroached upon the property of the plaintiffs and have further raised unauthorized construction. Hence, the present suit for recovery of possession, mesne profit, declaration and mandatory injunction.

11. Defendants No(s). 1, 2, 4, 5, 6 and 10 contested the present suit by filing separate written statements. It is, inter alia, pleaded

on behalf of the said defendants in their written statements that the true fact is that Sh. Subhash Chand has already sold the above said plots bearing No. 141, 142, 143 & 144 at Block B, Gharoli Dairy/G D Colony, Delhi to Sh. Ashok Kumar, s/o- Sh. Gordan, R/o- Village Gharoli, Shahdara, Delhi on 26.03.1992 for a sum of Rs. 1,60,000/- (Rs. One Lakh Sixty Thousand) and after receiving the above-said consideration amount, Sh. Subhash Chand had executed GPA affidavit, registered Will and agreement to sell in favour of the Sh. Ashok Kumar and he had also handed over the peaceful and vacant possession to Sh. Ashok Kumar. Later on Sh. Ashok Kumar sold, transferred all his rights, title and interests in the said plots of the suit properties to different third parties vide GPA, Agreement to sell, Will, Affidavits etc., including defendant no. 1 who purchased property bearing no. B-141; that through chain of various purchasers, property bearing no. B-142 was sold to defendant no. 2, property bearing no. B-143A was sold to defendant no. 4, property bearing no. B-143B was sold to defendant no. 5, property bearing no. B-144 was sold to defendant no. 6, and property bearing no. B-142B was sold to defendant no. 3 and the said defendants have been in possession of the said properties since their purchase; the said defendants, thereafter carried out constructions on the said plots from their own funds; that the plaintiff no. 1 is well aware of the documents executed by her husband namely Late Sh. Subhash Chand in favour of Sh. Ashok Kumar on 26.03.1992; that the various documents of defendants such as Ration Card, Aadhar card, Election ID card, gas

connection, property tax receipt issued by MCD, PAN card, electricity bills, letter issued by MCD and DDA for change of land use of Gharoli Dairy Colony as residential dated 04.12.2008 and 20.04.2008 respectively etc., are the relevant documents pertaining to ownership and possession of the defendants of respective portion of the suit properties. In view of averments in the written statement, it is stated by the said defendants that the plaintiffs have no rights, title and interest in the suit property and the present suit may be dismissed with heavy cost.

12. In the instant application, the plaintiffs largely reiterated the contents of the plaint and it is further stated that after the death of Sh. Subhash Chand-who was the allottee of the suit properties-the plaintiffs are the owners of the suit properties being his legal heirs that the four plots of the suit properties are still registered in the name of Late Sh. Subhash Chand, which is reflected from the reply dated 11.07.2016 received from the EDMC under RTI Act; that defendants no. 1 to 6 have criminally trespassed the suit properties, occupied the same in an unauthorized manner and raised the unauthorized construction over the same.

13. It is further averred in the application that one FIR no. 18/18 dated 16.01.2018 has also been lodged against the defendants no. 1 to 6 at police station Gazipur, Delhi for committing offence of trespassing and making forged documents qua suit properties; that in aforementioned FIR, the police officials has also filed the report qua status of the suit properties

and mentioned therein that the suit properties still belong to late Sh. Subhash Chand, who is the allottee of suit properties. Furthermore, the suit properties are only for dairy purpose which cannot be used for the residential purpose.

14. It is further averred that admittedly, the defendants no. 1 to 6 are residing at suit properties; that in entire written statement filed by the defendants, defendants failed to explain the contentions of aforementioned FIR and not denied the status of trespassing for which offence, the said FIR has been lodged against the defendants; that despite lodging of FIR against the defendants, they continued their illegal possession as trespasser on suit properties till date and that the defendant no. 10 is also co-occupier of the suit property bearing no. 142-B, Gharoli Dairy / GD Colony, Delhi.

15. It is further averred that in view of aforesaid facts and circumstances, the defendant no. 1 to 6 and defendant no. 10 are residing over suit properties as trespasser and they have no right and title qua suit properties and their occupation are illegal and unauthorized occupation at the suit properties and the status of the defendants no. 1 to 6 and 10 qua the suit properties are that of trespasser; that in view of FIR no. 18/18, which contentions have not been denied by the defendants no. 1 to 6 and 10 and report of police officials and written statement of defendants no. 7 and 8, the ownership of defendant no. 1 to 6 and 10 are disputed because of occupation which is illegal at suit properties by defendants no. 1 to 6 and 10, defendants are liable to pay the use

and occupation charges @ Rs. 25,000/- each with effect from filing of the suit till such time the property is actually vacated and handed over to the plaintiffs.

16. In view of aforesaid submissions, it is prayed on behalf of the plaintiffs that defendants no. 1 to 6 and 10 be directed to pay / deposit the use and occupation charges @ Rs. 25,000/- as arrears w.e.f. filing of present suit till date and may be further directed thereafter continue to pay / deposit the use and occupation charges till such time the property is actually vacated and handed over to the plaintiffs.

17. Ld. counsel for the plaintiffs has relied upon judgment of Hon'ble High Court of Delhi in case **Paramjeet Singh Kalsi Vs. Manoj Shukla @ Vijay & Anr.** (F.A.O. no. 85/2018, date of order 07.01.2019); **Torque Bikes (P) Ltd. Vs. Harsha Gupta** (RFA no. 491/2018, date of order 06.07.2018) and **Raghubir Rai Vs. Prem Lata & Anr.** (2014 (211) DLT 516).

18. Reply to the said application has been filed on behalf of the defendants no. 1 to 6 and 10. In the reply, the said defendants reiterated the contents of their written statement and it is further stated on behalf of the defendants no. 1 to 6 and 10 that the premise of the instant application appears to be that the plaintiffs are alleged owners of plot nos. 141, 142, 143 and 144 at Block B, Gharoli Dairy / G. D. Colony, New Delhi; and that the defendants do not have any right, title or interest and have criminally trespassed and illegally and unauthorized occupied the said plots and have illegally raised the unauthorized construction

of the said plots. However, the entire case of the plaintiffs as canvassed in the present application is ex facie false and is liable to be dismissed with exemplary cost.

19. It is further averred that the present application is not maintainable under Order XVA of CPC; that Order XVA of CPC proceeds on the premise of existence of jural relationship of Lessor-Lessee, which is the fundamental pre-condition under Order XVA CPC. In the present case, without prejudice to the case of the defendants, even as per the case of the plaintiffs, there is no jural relationship of Lessor-Lessee between the plaintiffs and the defendants.

20. It is further averred that defendants are innocent, third party purchasers for valuable consideration in a long chain of purchasers and had thus purchased the rights, title and interest of the built property on respective plots from the respective predecessor-in-interest and evidenced vide documents being agreement to sell, general power of attorney, Will etc.; that defendants no. 1-2, 4-6 and 10 are owners in physical possession and occupation (alongwith their respective families) of their respective properties situated at Gharoli Dairy Farms, G. D. colony, Mayur Vihar Phase-III, Delhi-96 i.e. plot no. B-141- defendant no. 1; plot no. Block B-142A- defendant no. 2; plot no. block B-142(B)-Smt. Kiran Devi, plot number block B-143A- defendant no. 4, plot no. block 143 (B)-defendant no. 5, plot number block B-144- defendant no. 6.

21. Submissions heard. Record has been carefully perused. Written arguments filed on behalf of defendants no. 1 to 6 and defendant no. 10 has also been perused.

22. In the present case, it is seen that as per averment in the plaint, the suit properties were allotted to the husband of plaintiff no. 1 and the father of plaintiffs no. 2 to 4, namely Sh. Subhash Chand by Municipal Corporation of Delhi, Shahdara Zone. It is the case of the plaintiffs that after the expiry of Sh. Subhash Chand on 31.03.2014, plaintiffs being the legal heirs of the late Sh. Subhash Chand became owners of the suit properties. It is further the case of the plaintiffs that on 15.06.2016, plaintiffs no. 1 and 2 visited the suit properties and found that defendant no. 1 to 6 had criminally trespassed and unauthorizedly encroached upon the suit properties and they had raised unauthorised construction on said properties.

23. Per contra, it is the case of the defendants no. 1 to 6 and 10 that they have derived right, title and interest in the suit properties from late Sh. Subhash Chand and defendants are bonafide purchasers of the suit properties. On behalf of the defendants, documents such as GPA, Will, etc., executed in the year 1992 were placed on record, through which the defendants claims to have acquired right, title and interest in the suit properties.

24. The plaintiffs in support of the present application mainly relied on the action taken report filed by police official of PS Gazipur, Delhi before then Ld. MM, KKD courts, Delhi claiming

that said report mentions that suit properties are still registered in the name of late Sh. Subhash Chand. However, said report also mentions that the said defendants have been residing in the said properties for a long time. Further, it is the contention of the defendants that the late Sh. Subhash Chand handed over the possession of the suit properties in the year 1992 to their predecessor in interest and till his death in the year 2014, he never challenged the right, title and interest of defendants no. 1 to 6 and 10 in the suit properties.

25. In view of contentions and counter-contentions of the parties, it is a matter of trial whether defendants no. 1 to 6, 10 had illegally encroached on the suit properties and are unauthorizedly occupying the same or whether the peaceful and vacant possession of the suit properties was handed over by the original allottee, Sh. Subhash Chand to the predecessor in interest of the said defendants namely Sh. Ashok Kumar vide GPA, Agreement to sell, Will etc and thereafter said defendants derived any rights and interest in the suit properties including possessory right through the said predecessor in interest. Further, admittedly Sh. Subhash Chand was the allottee of the suit properties; therefore, it is also a disputed question whether his legal heirs can claim ownership rights in the suit properties.

26. Further, it is also the case of the defendants that the present suit is barred by limitation as the documents through which the defendants claims to have derived right, title or interest in the suit properties were executed in the year 1992 and it is also the claim

of the said defendants that the peaceful and vacant possession of the suit properties was also handed over to their predecessor in title in the same year. However, the present suit was filed in the year 2017. In this connection, it is pertinent to note that an issue “that the present suit being barred by limitation” has already been framed as issue no. 6 in the issues framed on 17.04.2023. Therefore, the maintainability of the present suit on the ground of limitation is also a matter of trial.

27. In this connection, it is also pertinent to refer Order XV-A of CPC (which was introduced in the CPC as applicable to Delhi vide notification published in the Delhi Gazette dated 14th November 2008, as under:

ORDER XVA

STRIKING OFF DEFENCE IN A SUIT BY A LESSOR

(A) In a **suit by an owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him**, the defendant shall deposit such amount as the Court may direct on account of arrears upto the date of the order (within such time as the court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the Court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed.

In the event of any default in making the deposits, as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence.

(2) Before passing an order for striking off the defence, the Court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence.

(3) The amount deposited under this rule shall be paid to the plaintiff owner/lessor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it shall not also be treated as a waiver of notice of termination. (emphasis added).

28. The legal position concerning the power of the court under Order XV-A CPC is settled. The Order XV-A CPC empowers the court to direct the defendant who though may not be liable to be ejected immediately without trial but who, on preponderance of probabilities is found liable to deposit such amount as may appear to be reasonable during the pendency of proceedings.

29. In **Raghubir Rai v. Prem Lata & Anr.** 211 (2014) DLT 516 (DB), the Division Bench of Hon'ble High Court of Delhi observed as under:

24. We are of the view that the Court, in exercise of powers under Order XV-A of the CPC is empowered to direct deposit at such rate as the erstwhile tenant / defendant may on the basis of material on record be found to have agreed to pay to the landlord for the said period even if the tenant before the Court may not have admitted the same or disputed / controverted the same. Similarly, in a suit between the owner of immovable property and an unauthorized occupant, Order XV-A empowers the Court to direct the defendant who though may not be liable to be ejected / dispossessed immediately without trial but who, on preponderance of probabilities may not be found to have a right to continue in possession of the property, to deposit during the pendency of the suit such amount as may appear to be reasonable, to safeguard the right of the owner of the property and to ensure that such owner is compensated at least for the time taken in adjudication of a false defence taken up by the defendant in unauthorized occupation. This, in our view is necessary to avoid the process of the Court being abused by unscrupulous litigants and to curb the growing tendency of using the process of litigation as a tool of oppression. (emphasis added).

30. Order XV-A of CPC provides for relief to owners and lessors, and in the present case, the plaintiffs are admittedly not lessors of the suit properties and defendants no. 1 to 6 and defendant no. 10 are not lessees in the suit properties. Further, it is also a disputed question whether the legal heirs of the late Sh. Subhash Chand, who was the original allottee of the suit properties, can claim ownership rights in the suit properties. Therefore, essential ingredients of order XV-A of CPC are not satisfied in the matter.

31. In view of the aforesaid discussion and analysis, there are many issues of fact and law involved in the present matter; therefore, at this stage without any trial in the matter, it cannot be said on preponderance of probabilities that the defendants no. 1 to 6 and 10 do not have a right to continue in possession of the of the suit properties. Further, judgments relied upon by the plaintiffs are also not applicable to the facts and circumstances of the present case.

32. For the foregoing reason, **the application under Order XV-A Rule 1 r/w Section 151 of CPC filed on behalf of the plaintiffs stands dismissed.**

**Announced in the open Court on
this 19th day of November, 2025**

**(SOMITRA KUMAR)
District Judge-06/ East
Karkardooma Courts, Delhi**