

**IN THE COURT OF MS. MEENU KAUSHIK: DISTRICT  
JUDGE – 03: NEW DELHI DISTRICT: PATIALA HOUSE  
COURTS : NEW DELHI**

**CS No. 297/19**

**Usha Devi & Others**

**Versus**

**Sandhya Joshi & Others**

**13.03.2026**

**ORDER:**

1 By way of this order I shall dispose of application moved u/O 7 Rule 11 of CPC by the defendant No.1.

2 Arguments on the application have already been heard.

3 It is submitted by ld. Counsel for applicant/defendant No.1 that present suit is barred by *res judicata* as plaintiff has failed to raise any fresh cause of action which has not been previously decided by the ld. Trial court in the previously instituted suit by defendant No.1 i.e. CS No. 56849/16 titled as Sandhya Joshi Vs. Karunesh Shukla & Others. It is submitted that said suit was decided by ld. Trial court vide order dated 28.02.2019. It is further argued that by way of present suit plaintiff has initiated retrial of the previously decided issue. It is further argued that the issue of permanent injunction with respect to the possession over the suit property of defendant No.1 has already been decided in her favour in the previous suit and thus the present suit seeking the similar

relief with respect to possession of defendant No.1 over the suit property is not maintainable. It is further argued that plaintiff herein had not filed any counter claim or sought any relief u/O 2 Rule 2 of CPC to file the present suit with respect to any other connected relief in the previous suit and hence also present suit is not maintainable.

4 Per contra, it is argued by Id. Counsel for plaintiff that in the previous suit relief was given only with respect to second floor of the suit property and at the time of deciding the suit it was held that since the plaintiff/defendant No.1 herein is in settled possession of the property, she cannot be dispossessed from the same except following the due process of law. It is further argued that present suit seeking declaration as well as possession of the entire property bearing No. B-25, Vasant Kunj Enclave, New Delhi including second floor in the property which is in possession of defendant No.1 is filed following the due process of law and thus the suit of plaintiff is not hit by the principle of *res judicata* or u/O 2 Rule 2 of CPC.

5 Submissions made on behalf of both the parties are taken into consideration. Record perused.

6 It is admitted fact on behalf of defendant No.1 that direction for not to dispossess the defendant No.1 in the present suit was given with respect to only second floor of the property while the present suit is filed with respect to the entire property including the second floor in the above mentioned property. It is claimed on behalf of plaintiff that any legal right or title of defendant No.1 in the second floor of suit property was not decided in the previous

suit and injunction in favour of defendant No.1 was granted only for not to dispossess her except following the due process of law. As per plaintiff, since in the previous suit itself it was mentioned that possession of the second floor of the property can be claimed against the defendant No.1 by following the due process of law, the present suit is not hit by the principle of *res judicata*. The contention made on behalf of plaintiff is found tenable. Further, present suit is filed seeking declaration and possession with respect to the entire above-mentioned property which includes the second floor of the property also, while, previous suit was disposed of with the directions regarding the second floor only. In conspectus of the facts, the court is of considered opinion that whether the present suit is hit by the principle of *res judicata* or with the provisions of Order 2 Rule 2 is subject matter of trial and cannot be decided at this stage without granting the opportunity to the parties to lead evidence. Thus, present application is disposed of as not allowed.

(Meenu Kaushik)  
District Judge-03  
Patiala House Courts, New Delhi  
13.03.2026