

17 CS 2513/16

**DEEPAK VERMA AND ORS. Vs. NARESH KHURANA AND
ORS.**

24.03.2025
1st call at 12:50 PM

One regular Stenographer is on medical leave. No substitute stenographer has been provided.

Present: Sh. Rakesh Chander Aggarwal, Ld. Counsel for
plaintiffs
Sh. Trilok Chand, Ld. Counsel for D-1 and D-2
Sh. Praveen Kumar, Ld. Proxy Counsel for D-3.

Arguments heard on the application under order I
Rule 10 r/w Section 151 CPC.

Put up for orders at 2:00 PM.

(Deepanker Mohan)
District Judge-04
Shahdara District/KKD Courts/Delhi
24.03.2025

24.03.2025
2nd call at 02:18 PM

Present: Sh. Rakesh Chander Aggarwal, Ld. Counsel for
plaintiffs through VC
Sh. Trilok Chand, Ld. Counsel for D-1 and D-2
through VC
None for D-3.

1. It has been argued by Ld. Counsel for plaintiff that
inadvertently, the name of the proposed defendant has been

mentioned as Subhash Khurana instead of Sh. Suresh Khurana. He further submits that by way of present application, he wants to implead Suresh Khurana as defendant No.4. He further submits that D-4 is a necessary party to the present suit because Sh. Suresh Khurana through his Counsel has sent a legal notice dated 25.04.2009 to Sh. Sudhir Verma wherein he stated that the suit property is a HUF property and defendant No.1 has no right to enter into an agreement to sell dated 15.12.2008 in respect to the suit property with plaintiff. It is also mentioned in the said notice that the aforesaid agreement has been executed without the consent of Sh. Suresh Khurana and other coparceners. It is further argued that Sh. Suresh Khurana is a necessary party to the present suit because if he is a coparcener of HUF and the suit property belongs to HUF then an effective decree cannot be passed in the absence of Sh. Suresh Khurana. He further submits that the averments about the notice dated 25.04.2009 has also been mentioned in para No.4 and 5 of the amended plaint. He further submits that if the present application be allowed then the same shall not prejudice the defendants, however, it will assist this Court to decide all the issues involved in the present suit effectively.

2. On the other side, Ld. Counsel for D-1 and D-2 opposed the aforesaid application. It is argued that Sh. Suresh Khurana has nothing to do with the suit property and he is not the necessary party to the present suit. It is further submitted that the present application has been filed at a belated stage i.e. after more than 11 years from the filing of the present suit. It is further

argued that the notice dated 25.04.2009 was filed by plaintiffs along with the plaint, however, plaintiffs have not made party to Sh. Suresh Khurana at the time of institution of the present suit. It is further argued that the aforesaid application is deserve to be dismissed with costs.

3. File perused.

4. The plaintiffs have filed the present suit seeking the relief of specific performance, declaration and permanent injunction in respect to suit property on the basis of agreement to sell dated 15.12.2008. As per plaint, plaintiffs have entered into an agreement to sell dated 15.12.2008 with defendant No.1 in respect to suit property for a total sale consideration of Rs.27 lakhs. Plaint also disclosed that father and mother of plaintiffs were already tenant of defendant No.1 in one of the part of the suit property i.e. ground floor of property bearing No.1-D/14, forming part of Khasra No.444/189, situated at Netaji Subhash Marg, East Babarpur, in the area of Village Babarpur, Illaqa Shahdara, Delhi-110032 ad-measuring 40 sq. yards (38 sq. yards as per defendant No.1). The plaintiffs have never stated that their mother and father were the tenants of HUF instead of defendant No.1. The father and mother, being the tenant of part of the suit property, would be having the knowledge about their landlord and owner of the suit property, however, plaintiffs have never disputed that the part of the suit property was let out to their parents by defendant No.1.

5. Admittedly, Sh. Suresh Khurana is not the signatory and party to the agreement to sell dated 15.12.2008. The

defendant No.1 has pleaded in his written statement that the suit property is not a HUF property and D-1 is the absolute owner of the suit property. It is also pleaded that part of the suit property i.e. first floor has already been sold by D-1 to D-3 vide registered sale deed dated 08.03.2013. Admittedly, the said sale deed has not been challenged by Sh. Suresh Khurana or any other family member before the competent court of law. The application does not disclose the name of HUF as well as the name of Karta of the said HUF. Admittedly, the addressee of the notice dated 25.04.2009 i.e. Sh. Sudhir Verma is not party of the present suit. The notice dated 25.04.2009 was filed along with the plaint, however, plaintiffs have not made party to Sh. Suresh Khurana at the time of institution of the present suit. Record reveals that the present suit was filed on 22.03.2013 and the aforesaid application was filed on 16.01.2024 i.e. about 11 years after filing of the present suit. The present suit was at the stage of cross examination of PW1 when the aforesaid application has been filed.

6. Defendant No.1 has specifically denied factum of existence of HUF in the family, in his written statement. He further pleads that the suit property has been transferred by his father during his lifetime in favour of D-1.

7. Sh. Suresh Khurana, brother of D-1 is not party to the agreement to sell dated 15.12.2008 and therefore, as per plaint, there is no privity of contract between plaintiffs and Sh. Suresh Khurana. This Court is unable to understand as to how Sh. Suresh Khurana is a necessary party to the present suit and a

decree of specific performance can be passed against him in respect to agreement to sell dated 15.12.2008 particularly when he is not the party/signatory of the agreement to sell dated 15.12.2008. Even if, Sh. Suresh Khurana is impleaded as party to the present suit then also a decree of specific performance cannot be passed against him in respect to the agreement of which he is not a party. The presence of Sh. Suresh Khurana in the present matter is not necessary for just, proper and complete adjudication of the present case and an effective decree can be passed in the present suit in the absence of Sh. Suresh Khurana.

8. **Considering the facts and circumstances of the case, material on record and above observations, the present application under Order I Rule 10 r/w Section 151 CPC filed by plaintiffs stand dismissed being meritless.**

Application is accordingly disposed of.

In view of the reasons cited in case bearing No.257/24, the dates of hearing 25.03.2025, 26.03.2025 and 28.03.2025 stand cancelled.

Put up for cross examination of PW1 on 14.05.2025, 16.05.2025 and 19.05.2025.

(Deepanker Mohan)
District Judge-04
Shahdara District/KKD Courts/Delhi
24.03.2025