

15 CS DJ ADJ 261/24 RAMESH KUMAR Vs. M/S PP INFRA PVT. LTD. AND
ORS

07.08.2025

Present: Sh. Arjun Malik, Ld. Counsel for plaintiff along with plaintiff.
Ms. Geeta Rani and Ms. Mehroon Nisha, Ld. Counsel for defendant
No. 1 and 2.
Sh. Manoj Kumar, Ld. Counsel for defendant No. 3 to 5 and 7 to 9.
None for defendant No. 6.

1. Fresh Vakalatnama filed on behalf of defendant No. 1 and 2. Same is
taken on record.

2. Application under Order XIV Rule 5 CPC as filed on behalf of
defendant No. 3 to 5 and 7 to 9 and application under Order XXXIX Rule 10 CPC
as filed on behalf of plaintiff is pending for disposal.

3. Submissions heard. Record perused.

4. Briefly stated, suit for eviction, possession, mesne profit, damages
and permanent injunction filed on behalf of the plaintiff w.r.t. Entire Upper Ground
Floor comprising of Pvt. Flat No. 101-3BHK Front Side, Flat No. 102-2BHK Back
Side, Flat No. 103-2BHK Back Side and Roof Rights with Pvt. Flat No. 402-
2BHK Back Side, Flat No. 403-2BHK Back Side at Third Floor of Plot bearing
No. 29, measuring 200 sqy, Out of Khasra No. 13/24 and 16/4 situated in Village
Kakraula, abadi known as Bajaj Enclave, Block-A, New Delhi (hereinafter
referred as the “*suit property*”).

5. It is the case of plaintiff that, he was absolute owner of entire plot upon which above suit floors are constructed and on 22.06.2022 he entered into an agreement to sell with defendant no. 1 through defendant no. 2 qua the suit property for sale consideration of Rs. 1,65,00,000/- out of which Rs. 16,50,000/- was paid to plaintiff as earnest money while balance amount of Rs. 1,48,50,000/- was to be paid on or before 20.12.2022 and possession was to be given on receipt of entire amount. It is further contended that, despite the fact that, time was essence of contract, defendant no. 1 and 2 paid only Rs. 49,50,000/- including the earnest money and defaulted in remaining payment. It is further contended that, defendant no. 1 and 2 created third party interest with defendant no. 3 to 9 and trespassed the property. Hence, present suit is filed.

6. Perusal of the record reveals that, after completion of pleadings, following issues were framed by this court vide order dt. 27.01.2025.

1. *Whether plaintiff is entitled for decree of possession qua the property i.e. Entire Upper Ground Floor comprising of Pvt. Flat No. 101-3BHK Front Side, Flat No. 102 - 2BHK Back Side, Flat No. 103-2BHK Back Side and Roof Rights with Pvt. Flat No. 402-2BHK Back Side, Flat No. 403-2BHK Back Side at Third Floor of Plot bearing No. 29, measuring 200 sqy. Out of Khasra No. 13/24 and 16/4 situated in Village Kakraula, abadi known as Bajaj Enclave, Block-A, New Delhi (hereinafter referred as the "suit properties") as prayed for ? **OPP***
2. *Whether plaintiff is entitled for decree of permanent injunction qua the suit properties as prayed for ? **OPP***
3. *Whether plaintiff is entitled for decree of mesne profit qua the suit property @Rs. 35,000/- per month for per flat/unit w.e.f. 01.09.2023 till date of filing of the present suit amounting to Rs. 2,45,000/- per flat/unit and @Rs. 45,000/- per month for per flat/unit till date of possession? **OPP***
4. *If issue no. 3 is in affirmative, whether plaintiff is entitled for pendente lite and future interest on decretal amount, if any and at what rate of interest? **OPP***

5. *Whether plaintiff is entitled for the cost of the suit? **OPP***
6. *Relief.*

7. By way of application u/o XIV Rule 5 r/w Sec. 151 CPC, defendant no. 3 to 5 and 7 to 9 seeking framing of additional issues. It is contended that, there is no privity of contract between them and the plaintiff and as such, no cause of action arisen in favour of plaintiff. It is further contended that, plaintiff has concealed the material facts and is in collusion with defendant no. 1 and 2. It is further contended that, suit is barred u/s 6 and 34 of Specific Relief Act.

8. It is settled law that, in civil proceedings plaintiff is dominus litus and suit is adjudicated as per the relief claimed by the plaintiff thus, considering the facts and circumstances of the present case, following additional issues are framed:

Additional issue No. 1: *Whether present suit is liable to be dismissed in absence of any privity of contract and cause of action w.r.t. defendant no. 3 to 5 and 7 to 9? **OPDs***

Additional issue No. 2: *Whether present suit is liable to be dismissed as plaintiff has concealed material facts? **OPDs***

9. It is clarified that, so far as legal objections are concerned, defendants can raise the same at the time of final adjudication.

10. Additional issues shall be the issue no. 1 and 2 and for clarification all issues are reproduced here-in-below:

- i. *Whether present suit is liable to be dismissed in absence of any privity of contract and cause of action w.r.t. defendant no. 3 to 5 and 7 to 9? **OPDs***
- ii. *Whether present suit is liable to be dismissed as plaintiff has concealed material facts? **OPDs***

- iii. *Whether plaintiff is entitled for decree of possession qua the property i.e. Entire Upper Ground Floor comprising of Pvt. Flat No. 101-3BHK Front Side, Flat No. 102 - 2BHK Back Side, Flat No. 103-2BHK Back Side and Roof Rights with Pvt. Flat No. 402-2BHK Back Side, Flat No. 403-2BHK Back Side at Third Floor of Plot bearing No. 29, measuring 200 sqy. Out of Khasra No. 13/24 and 16/4 situated in Village Kakraula, abadi known as Bajaj Enclave, Block-A, New Delhi (hereinafter referred as the “suit properties”) as prayed for ? **OPP***
- iv. *Whether plaintiff is entitled for decree of permanent injunction qua the suit properties as prayed for ? **OPP***
- v. *Whether plaintiff is entitled for decree of mesne profit qua the suit property @Rs. 35,000/- per month for per flat/unit w.e.f. 01.09.2023 till date of filing of the present suit amounting to Rs. 2,45,000/- per flat/unit and @Rs. 45,000/- per month for per flat/unit till date of possession? **OPP***
- vi. *If issue no. 3 is in affirmative, whether plaintiff is entitled for pendente lite and future interest on decretal amount, if any and at what rate of interest? **OPP***
- vii. *Whether plaintiff is entitled for the cost of the suit? **OPP**.*
- viii. *Relief.*

11. Reader is directed to make endorsement in this regard, in the ordersheet dt. 27.01.2025.

12. Further, in application u/o XXXIX Rule 10 CPC, plaintiff is seeking direction to defendant no. 1 to 9 to jointly and severally pay the rent @Rs.35,000/- per month per unit w.e.f. 01.09.2023 till pendency of the present suit. It is submitted that, plaintiff has filed his title documents and defendant no. 1 and 2 admitted that, they are not having any documents relating to the possession while possession of defendant no. 3 to 9 flowed from defendant no. 1 and 2 thus, relief may be granted.

13. However, considering the facts and circumstances of the present case and the submissions made by the parties, this court is not inclined with the submissions made by the plaintiff.

14. It is settled that, provision of Order XXXIX Rule 10 CPC, is applicable where subject matter of suit is money or some other thing capable of delivery and any party thereto admits that, he holds such money or other thing as a trustee for another party, or that, it belongs or is due to another party, the court may order deposit or delivery but, in the present matter, basic ingredients of Order XXXIX Rule 10 CPC is missing rather, defendant no. 3 to 9 are claiming ownership of the suit property as well as possession thereof by the virtue of title documents purportedly executed by defendant no. 2 and whether defendant no. 2 nor having any right, title or interest or not is subject matter of trial and cannot be adjudicated at this stage.

15. In view thereof, **application u/o XXXIX Rule 10 CPC stands dismissed.**

16. PW1 is examined and his cross-examination deferred at the request of Ld. Counsel for defendants.

17. Put up for further cross-examination of PW1 on **14.11.2025.**

(SHILPI M JAIN)
DJ-05 (SW)/Dwarka Courts
New Delhi: **07.08.2025** (sr)