

Civ DJ 238/18

SUBHASH DIWAN Vs. SUNIL DIWAN AND ANR

13.05.2025

Present: Sh. Gurjeet Singh, Ld counsel for plaintiff.

Sh. Harsh Kumar, Ld counsel for defendant.

In this matter, one application u/o 1 Rule 10 r/w Section 151 CPC was moved on behalf of one Sh. Pradeep Goel on 09.05.2025 and arguments were advanced on the maintainability of the same by ld counsel Sh. S. C. Aggarwal (ld counsel for applicant Pradeep Goel), however, due to typographical omission, same is not reflected in the order dated 09.05.2025.

In said application, it is submitted on behalf of applicant Pradeep Goel that he is decree holder in case titled “M/S Devraha Communication Ltd Vs. Subhash Diwan” (CS (Comm) 1688/2020). It is submitted that in said case, judgment and decree was passed vide 14.12.2021 for a sum of Rs.8,30,098/- alongwith interest in favour of applicant and against Sh. Subhash Diwan (plaintiff in present suit). It is submitted that execution of said decree is pending before concerned Court and concerned Court vide order dated 17.01.2025 has attached the 1/3rd share of plaintiff in suit property of the present suit. It is submitted that in view of the same, applicant steps into the shoes of plaintiff in present suit in respect of his share in the suit property in the present suit. Prayer has been made to implead the applicant as a necessary party in the present suit.

This Court is of the considered view that perusal of record shows that preliminary decree was passed in this matter vide order dated 05.10.2021 and thereby it was held that plaintiff is entitled to 1/3rd share in the suit property. This Court is of the considered view that perusal of record also

shows that final decree has not been passed so far in the present suit and share of parties in the suit property has not been decided by metes and bounds. This Court is of the further view that as per the case of applicant, share of plaintiff in the suit property has already been attached by concerned executing Court. So in view of this Court that after decision of the share of plaintiff by metes and bounds, applicant can approach the concerned executing Court for sale of said share and in view of this Court, applicant has no locus-standi before this Court. Accordingly, present application is dismissed as same is without any merits.

Perusal of record also shows that one application u/s 151 CPC moved by defendant no. 1 is also pending in the present suit. In said application, defendant no. 1 has submitted that vide order dated 27.07.2021, Court permitted the plaintiff to install a sub-meter in his portion and defendant was directed to provide electricity through his electric connection to said sub-meter and in terms of said directions, defendant no. 1 provided the electricity to said sub-meter, however, plaintiff has not paid the electricity bill regarding the electricity consumed through the same. It is submitted that certain amount is due and payable by plaintiff. Prayer has been made to direct the plaintiff to clear the said dues.

This Court is of the considered view that the allegations are regarding non-compliance of order of the Court. In these circumstances, defendant no. 1 is directed to move application u/o 39 Rule 2A CPC in this regard and present application is disposed off as not maintainable. In case application u/o 39 Rule 2A CPC is moved by defendant no. 1, same be registered separately.

Perusal of record shows that preliminary decree has already been

passed in this matter on 05.10.2021 and valuation of the suit property has been filed on record. Certain clarifications are required regarding mode of partition of suit property, so put up for further submission regarding the same on next date i.e. 15.05.2025.

**Announced in the open Court
on this 13th day of May, 2025.**

**(Dharmender Singh)
District Judge-01, (West)
Tis Hazari Courts, Delhi**