

Civ DJ 11817/16

P SURESH RAO Vs. P RAJESH RAO

14.07.2025

Present: Sh. Manish Kumar and Ms. Gunjan Sharma, Id counsels
for plaintiff alongwith plaintiff.

Sh. Lakshya Yash Khanna, Id counsel for defendant.

ORDER

1. Vide this order, this Court shall decide the application under Order 12 Rule 6 read with Section 151 CPC moved on behalf of plaintiff.
2. Arguments have already been heard on the same. Record perused.
3. Brief facts of the case relevant for deciding the present application are that as per case of plaintiff, parties to the suit are children of Sh. P.K. Rao. It is submitted that Sh. P.K. Rao was blessed with three children (two sons i.e. plaintiff and defendant and one daughter). It is submitted that plaintiff is the younger son of Sh. P.K. Rao and was working in the DESU and defendant is the elder son, who was working in Meteorological Department, Govt. of India.
4. It is submitted that in 1969, father of parties became member of 'Low Income Group Govt Servant Co-operative House Building Society', which was formed for the purpose of

providing housing plot for low income group employee. It is submitted that father of parties remained member of the same till 1973, however, due to his low monthly pension and his inability to arrange funds for building the house and to pay the cost of the plot and other development charges, he expressed his willingness to transfer the above membership in favour of plaintiff after discussion with other family member.

5. It is submitted that after that father of parties wrote a letter dated 16.12.1972 to above stated society regarding transfer his share and membership in society in favour of plaintiff and society vide letter dated 08.08.1973, transferred the same in favour of plaintiff. It is submitted that after that on 28.02.1973, land was allotted to society in the area of Sayed Village Nangloi and after land development activities, society got approved the plan from DDA and in 1976, plaintiff was allotted plot no.6/212 in colony named as Sunder Vihar. It is submitted that all the requisite charges were paid by plaintiff in respect of above plot and on 10.01.1978, perpetual lease was executed in favour of plaintiff by Delhi Administration.

6. It is submitted that construction of the ground floor on above property was completed in 1982 and entire cost of the same was incurred by plaintiff by taking a loan from his department and plaintiff shifted in the said property. It is submitted that after that plaintiff got converted the said property from leasehold to freehold. It is submitted that defendant was

transferred to Vishakhapatnum in 1982 and father of parties had passed away in 1978.

7. It is submitted that in 1986, defendant was transferred back in Delhi and he sought shelter from plaintiff in the above stated property and plaintiff and his family allowed him to do the same. It is submitted that as the accommodation was not sufficient as above property was constructed only on ground floor, so defendant suggested the plaintiff to construct first floor on the property, so that family of defendant can shift to first floor. It is submitted that it was decided between the parties that they both will share the cost of construction of first floor and a joint bank account was opened regarding the same and first floor was constructed by utilizing money of said account.
8. It is submitted that construction of the first floor of the above stated property was completed in 1987 and defendant shifted in the same. It is submitted that as children of plaintiff had grown up and they need separate accommodation, so plaintiff asked the defendant to vacate the first floor, however, defendant did not do the same. Feeling aggrieved, present suit has been filed by plaintiff against defendant seeking the relief of mandatory injunction, permanent injunction and recovery of mesne profits.
9. Defendant filed the written statement in respect of the plaint.
10. In the present application, it is submitted that in para no.4

& 12 of the reply on merits of written statement, defendant has admitted the case of plaintiff. It is submitted that in para no.4, defendant has admitted the factum of ownership of property in favour of plaintiff. It is submitted that said fact is further admitted in para no.12 also. It is submitted that as defendant is not disputing the ownership of plaintiff with regard to property in question and defendant has no right, title or interest in the same, so prayer has been made to pass a decree under Order 12 Rule 6 CPC.

11. This Court is of the considered view that perusal of written statement shows that although defendant is admitting that suit property is in the name of plaintiff, however, he has taken the plea that he is co-owner of the same. It is denied that plaintiff contributed in the cost of the plot. It is also denied that cost of construction on ground floor was incurred only by the plaintiff. It is submitted that a sum of Rs.2 Lakhs was deposited in the bank account of father of parties, *qua* which succession certificate was received in favour of all the LRs and said amount was given to plaintiff for construction of ground floor.

12. In written statement, it is submitted that defendant constructed the first floor with his own money and some money was contributed by mother and sister of the parties. Defendant has also taken a plea that he is residing in the suit property since 1986 without any objection or intervention from plaintiff and has acquired right of adverse possession also. This Court is of the

considered view that in view of above pleas taken in written statement, defendant is clearly denying the right of plaintiff to recover the possession. In view of the same, the present application is without any merit and accordingly, same is dismissed.

Matter be put up for PE on **23.09.2025**.

Announced in the open Court
on this 14th day of July, 2025.

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