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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 197/2025, CM APPL. 74762/2025, CM APPL. 74763/2025
AJIT YADAV & ORS.Appellants

Through: Mr. Adit S. Pujari, Mr. Vikramaditya Singh, Mr. Chaitanay Sundriyal, Mr. Kshitij Maheshwari and Ms. Perna Mukherjee, Advocates.

versus

UNION OF INDIA & ORS.Respondents
Through: Ms. Puja S. Kalra, Advocate for R-1 to 3.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **28.11.2025**

CM APPL. 74763/2025 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed-of.

RSA 197/2025

CM APPL. 74762/2025 (stay)

By way of the present second appeal filed under section 100 read with Orders XLII and XLI of the Code of Civil Procedure 1908 ('CPC'), the appellants impugn judgment and decree dated 18.11.2025 passed by the learned ACJM, South-East District, Saket District Courts, New Delhi in appeal bearing RCA SCJ No.26/2016 whereby the learned First Appellate Court has dismissed the appellants' first appeal against judgment dated 02.05.2016 passed by the learned CCJ-cum-ARC-1 (Central), Tis Hazari Courts, Delhi in suit bearing No. 244/09/05.



2. *Vide* judgment dated 02.05.2016, the learned trial court had dismissed the appellants' suit seeking permanent injunction seeking to restrain the respondents from interfering in the appellants' enjoyment of the suit property, being a road which connects Village Todapur to the main road.
3. Mr. Adit Pujari, learned counsel appearing for the appellants submits, that the learned trial court dismissed the suit essentially on 02 the grounds: *first*, that the suit was bad for non-joinder of the Municipal Corporation of Delhi as a necessary party; and *second*, that the 05 plaintiffs, 04 of whom were/are residents of Village Todapur, New Delhi had failed to show that the suit had been filed in the interests of all the village residents; or that the plaintiffs were holding any authorisation from the other village residents to file the suit.
4. Mr. Pujari argues, that the essence of the dispute between the parties is the threatened discontinuance of the easement rights of the village residents to access to the suit property, which is a road that belongs to respondent No.1 (Ministry of Defence), and which has been available for use by the village residents for the last more than 30 years.
5. It is further argued, that even when in 1988 and 1998 respondent No.1 had undertaken demolition of certain portions of the village to reclaim the land claimed to be falling under respondent No. 1's ownership, they had left the road open for use by the village residents.
6. It is submitted, that though the land abutting the road is certainly part of a defence establishment, on point of fact, that land is being used as a polo ground by the Indian Army.



7. To explain the position Mr. Pujari has handed-up a map of the village area alongwith the suit property (*i.e.*, the road) and the defence land. The map is taken on record.
8. In this backdrop, Mr. Pujari has drawn attention to section 15 of the Indian Easement Act, 1882, to submit that the *right of access* to the road *i.e.*, the suit property, which was been peacefully and openly enjoyed by the village residents for more than 30 years is protected under section 15 and cannot now be discontinued.
9. It is submitted that the first ground for dismissal of the suit, *viz.*, that the suit was bad for non-joinder of the MCD as a defendant is misconceived, inasmuch, the land on which the road runs does not belong to the MCD but to the Ministry of Defence. _Insofar as the second ground for dismissal of the suit is concerned, *viz.*, that the plaintiffs did not have authorization to file the suit from other village residents, it is argued that regardless of the fact that all village residents were not joined as parties to the suit, the 04 plaintiffs in the suit were/are residents of the village and are therefore also personally aggrieved.
10. In this backdrop, counsel has drawn attention to the proposed questions of law set-out in para-3 ii, iii, iv, vi, vii, viii and xi of the memo of appeal.
11. Issue notice.
12. Learned counsel appears on behalf of respondents on advance copy; accepts notice; and seeks time to file reply to CM APPL. No. 74762/2025.



13. On a *prima-facie* view of the matter, based on the submissions made by learned counsel for the appellant, as considered in light of the documents on record, and the proposed questions of law set-out in the memo of appeal, the following questions of law appear to arise in the matter:

(1) What constitutes the requirement of claiming easement “as of right” under Section 15 of the Indian Easement Act, 1882, and whether the said words need to be expressly pleaded in the plaint?

(2) Whether the easement of necessity in the present case is intrinsically connected to the appellants’ fundamental right to health, sanitation, and access to basic facilities?

(3) Whether the claim of easement made by the appellants over the road allowing access to ambulances/heavy vehicles falls within the meaning of section 15 and/or section 18 of the Easement Act?

(4) Whether the appellants were required to obtain authorization from all residents of the village for instituting a suit for easementary rights over a pathway to the village notwithstanding that the appellants are themselves residents of the village, and are therefore direct beneficiaries of the pathway?

(5) Whether the appellants could maintain a suit in their individual capacity for enforcement of their easementary rights which would also benefit other inhabitants of the area?

(6) Whether Enquiry and Field Inspection Reports prepared by Revenue Officials and Sub-Divisional Magistrates in the course of their duty, which are public documents, and are not disputed per se, can be rejected as being “personal opinion” of such officials?



14. Let reply to the application be filed within 04 weeks of service; rejoinder thereto, if any, be filed within 03 weeks thereafter; with copy to the opposing counsel.
15. No reply is called-for in the regular second appeal.
16. Re-notify on 22nd January 2026.
17. In view of the above, based on the submissions made and the record available before the court, the effect and operation of the judgment and decree dated 02.05.2016 by the learned CCJ-cum-ARC-1 (Central), Tis Hazari Courts, Delhi in suit bearing No. 244/09/05, as upheld by way of impugned judgment dated 18.11.2025 passed by the learned ACJM, South-East District, Saket District Courts, New Delhi in appeal bearing RCA SCJ No.26/2016, shall remain *stayed* till the next date of hearing before this court.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 28, 2025

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