

# Devi Singh (Deceased Thr Lrs) & Ors vs Mahesh Chand (Deceased Thr Lrs) & Ors on 25 November, 2021

**Author: Prathiba M. Singh**

**Bench: Prathiba M. Singh**

Signature Not Verified  
Digitally Signed By:Devanshu  
Signing Date:29.11.2021  
23:03:04

\$~1&2  
\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ RSA 28/2017 & CM APPL. 2840/2017 & 44773/2018  
DEVI SINGH (DECEASED THR LRS) & ORS ..... Appellants  
Through: Mr. Ravi Gupta, Sr. Advocate with  
Mr. Yogendra Kumar, Ms. Minal  
Sehgal & Mr. Sachin Jain, Advocates  
(M: 9810198484)  
versus  
MAHESH CHAND (DECEASED THR LRS) & ORS.... Respondents  
Through: Ms. Manmeet Arora, Mr. Siddharth  
Aggarwal, Mr. Tarang Gupta & Ms.  
Shambhavi Kala, Advocates for R-  
1A,2,3 (M: 9818668876)  
2 AND  
+ RSA 47/2017 & CM APPL. 4846/2017  
DEVI SINGH (DECEASED THR LRS) & ORS ..... Appellants  
Through: Mr. Ravi Gupta, Sr. Advocate with  
Mr. Yogendra Kumar, Ms. Minal  
Sehgal & Mr. Sachin Jain, Advocates  
(M: 9810198484)  
versus  
ASHARFI DEVI (DECEASED THR LRS ) & ORS. .... Respondents  
Through: Ms. Manmeet Arora, Mr. Siddharth  
Agarwal, Mr. Tarang Gupta & Ms.  
Shambhavi Kala, Advocates for R-  
4A,5,6 (M: 9818668876)  
CORAM:  
JUSTICE PRATHIBA M. SINGH  
ORDER

% 25.11.2021

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. A suit for possession and recovery of amounts being Suit No. 331/79 titled Smt. Ashraf Devi & Ors. v. Sh Devi Singh was filed by three of the legal representatives of Late Pandit Shiv Charan i.e., Smt. Ashrafi Devi, Sh. Ramesh Chand, and Sh. Suresh Kumar/Respondent Nos. 7 to 9 in RSA 28 of 2017/Respondent Nos. 1 to 3 in RSA 47 of 2017/ Plaintiffs (hereinafter "Respondent Nos. 7 to 9 in RSA 28/17") against Sh. Devi Singh/Defendant /Appellants herein (hereinafter "Appellants") concerning plots bearing no. F-256, 257 and 258 situated in Khasra No 51/20, Block F, Laxmi Nagar, Shahdara, Delhi, measuring a total of 520 sq yards (hereinafter "suit property"). Though the suit was dismissed by the Trial Court, the first Appellate Court allowed it, post which the Appellants challenged the same in second appeal before the High Court. The said matter was remanded to the Trial Court for consideration of certain issues vide order of the High Court dated 19th August, 1998. Post remand, this suit being Suit No. 1625/2008 titled Smt. Ashraf Devi & Ors. v. Sh. Devi Singh was decided in favour of the Plaintiffs therein/ Respondent Nos. 7 to 9 in RSA 28/17, vide order dated 24th April, 2009. The Appellate Court also upheld this decision vide order dated 28th July, 2016 in RCA No. 142/2016/10, holding that the Appellants could not prove their possession in the suit property before 1976.

3. Another suit for possession and recovery of amounts was also filed in the year 1988 by three other legal representatives of Late Pandit Shiv Charan i.e., his three sons namely, Sh. Mahesh Chand, Sh. Rakesh Kumar, & Sh. Anil Kumar /Respondent Nos. 7 to 9 in RSA 47 of 2017/Respondent Nos. 1 to 3 in RSA 28 of 2017/ Plaintiffs (hereinafter "Respondent Nos. 1 to 3 in RSA 28 of 2017") against the Appellants. In this second suit, the other legal heirs of Sh. Shiv Charan, namely, the wife, three daughters and two other sons (i.e., the Plaintiffs in the prior suit being Suit No. 1625/2008) were also impleaded as defendants, claiming to be co-owners. The reliefs sought in this suit were as under:

"16. That it is, therefore, prayed that:

(a) A Decree for possession in respect of land being No. F 256 to F 258, situated at School Block, Guru Angad Nagar, Laxmi Nagar, Delhi measuring 520 sq. yds more specifically shown in red in the annexed plan after removing the super structure except boundary wall may be passed in favour of the plaintiffs against the defendant No.1.

AND

(b) A Decree for recovery of Rs. 10,800/-

together with interest @ 18% p.m. being the bank rate from the date of suit till realisation may be passed in favour of the plaintiff against the defendant No.1.

AND

(c) Costs of the suit may also be awarded to the plaintiffs.

AND

(d) Any other relief that this Hon'ble court deems fit may also be granted to the plaintiffs."

4. The said suit was decreed by the Trial Court vide judgment/decreed dated 25th April, 2009. By the said decree, the Trial Court had granted a decree of delivery of possession of the suit property in the following terms:

"34. In view of my findings on aforesaid issue, the suit is decreed in favour of plaintiffs and against defendant no.1 for delivery of possession of suit property i.e. F-256, 257, 258 Laxmi Nagar, Delhi. The legal heirs of defendant no.1 are directed to remove the superstructure over the suit property within a period of two months from today and to hand over vacant possession of suit property to the plaintiffs. If legal heirs of defendant fail to remove the construction over the suit property, plaintiffs shall be entitled to take possession of suit property alongwith construction over it, after two months from today."

5. Apart from the above decree, the Trial Court had also awarded a sum of Rs. 2500/- per month as damages for unauthorized use of the property, from the date of filing of the suit till the date of delivery of the suit property to the Plaintiffs in the said suit/ Respondent Nos. 1 to 3 in RSA 28 of 2017.

"I have perused these case laws. There remains no confusion that the court can award mesne profit keeping in view the peculiar facts of the case. In the present case the litigation has continued for a long period of eleven years. The plaintiffs, who have been found entitled for possession of suit property, were made-devoid of enjoyment of the suit property for so long period, therefore, I do find that justice demands proper compensation in favour of plaintiffs in the form of pendente-lite and future damages. Therefore, legal heirs of defendant no.1 are directed to pay pendente-lite and future damages for unauthorized use of suit property to the plaintiffs at an average rate of Rs.2500/- per month from the date of filing of the suit till the date of delivery of the suit property to the plaintiffs."

6. The said decree was challenged by a first appeal before the Appellate Court, which also upheld the same vide judgment dated 28th July, 2016 in RCA No.151/16/10 titled Sh. Mahesh Chand & Ors. v. Sh. Devi Singh through her LRs.

7. The effect of these two decisions by the Appellate Court was a decree for possession and recovery in favour of the Plaintiffs in these suits and against the Appellants. The present second appeals were preferred in January, 2017, against the judgments of the Appellate Court both dated 28th July, 2016, in RCA No.142/2016/10 challenged in RSA 47/17 and RCA No.151/16/10 challenged in RSA 28/17. In RSA 28/17, vide order dated 26th October, 2018, the execution proceedings in Execution 46022/2016 for the second suit were stayed.

8. As of today, it is not in dispute that the Appellants are in possession of the suit property. Notably, the Appellants have not been paying market rent for occupying the suit property, during the period of operation of such stay. The Respondent Nos. 4 to 9 in RSA 28/17 have not appeared in these appeals for the last several hearings.

9. In this background, vide the last order dated 16th November, 2021, parties were directed to make submissions as to what should be the conditions on which stay should be continued in view of the decision of the Supreme Court in M/s Atma Ram Properties (P) Ltd. v. M/s Federal Motors Pvt. Ltd., (2005) 1 SCC 705.

10. Today, submissions were heard in part. Mr. Ravi Gupta Sr. Adv., and Ms. Manmeet Arora Adv., have made their submissions. During the course of the submissions, the parties have settled their disputes on the following terms and conditions:

1. The Appellants, namely, the legal heirs of Sh. Devi Singh (the original Defendant i.e., Appellants 1A to 1F herein, who are in possession of the suit property, with their family members, undertake to handover vacate and peaceful possession of the suit property to Respondent Nos. 1, 2 & 3 in RSA 28/17, on or before 31st May, 2022.

2. The Appellants shall continue to bear all the electricity, water charges and other charges payable to the authorities for their continuous use and occupation during this period.

3. The Appellants further undertake not to cause any damage to the suit property or handover possession or create any third-

party interest or use the property for commercial purposes, during this period.

4. The Respondent Nos. 1, 2 & 3 in RSA 28/17 agree that if the possession is handed over by 31st May, 2022, no use and occupation charges would be demanded by them for the continued use and occupation of the suit premises by the Appellants.

5. The Appellants are stated to have deposited a sum of Rs.

8,75,000/- before the Executing Court in terms of the decree of damages passed by the Trial Court, dated 25th April, 2009. Subject to Appellants vacating the suit premises on or before 31st May, 2022, the Respondent Nos. 1, 2 & 3 in RSA 28/17 are agreeable to the said amount being withdrawn by the Appellants.

6. Subject to adherence to the handing over of vacant and peaceful possession by the due date, the Respondents 1, 2 & 3 agree not to claim any use and occupation charges. However, if there is any violation of the undertaking recorded in paragraph 1 above:

a) the Respondent Nos. 1, 2 & 3 in RSA 28/17 would be entitled to use and occupation charges at the rate of Rs.

25,000/- per month w.e.f. the date of the judgment of the Appellate Court, i.e., 28th July, 2016, till the date of handing over of vacant and peaceful possession to Respondent Nos. 1,2&3;and

b) the Respondent Nos. 1, 2 & 3 in RSA 28/17 would be at liberty to pursue their remedies in accordance with law for obtaining possession of the suit property and/or execution of the impugned judgments.

7. All parties agree that the execution proceedings in Execution 46022/2016 shall be adjourned to June, 2022, subject to continued compliance with these terms and conditions of this settlement, as recorded above.

11. The present settlement has been entered into after discussions between counsels for the parties as also instructions given to the Appellant's counsel, Mr. Yogender Kumar by Mr. Deepak Sharma, Appellant No. 1B.

12. On behalf of the Respondents, the above settlement has been entered into under instructions given by Mr. Rakesh Kumar, Respondent No. 2 in RSA 28/17 to the counsel, Ms. Manmeet Arora. Respondent Nos. 2 and 3 in RSA 28/17 shall file their respective affidavits which shall be accepted by the Registrar. In respect of Respondent No.1 in RSA 28/17, Mr. Mahesh Chand, who is now deceased, his wife Smt. Sadhana shall file the affidavit on her behalf, as also on behalf of her minor children.

13. The undertakings of the Appellants as also Respondents Nos.1, 2 & 3 in RSA 28/17 in the above terms shall be filed by way of affidavits, within 2 weeks.

14. The said affidavits of undertakings shall be presented before the Registrar and the parties shall either appear in-person or through virtual platform for the said undertakings to be recorded.

15. The impugned judgments/decrees dated 24th April, 2009 and 25th April, 2009 are modified to the extent, that the time for handing over possession is extended till 31st May, 2022.

16. It is made clear that Executing Court shall now fix a date in June, 2022 to ensure that vacant and peaceful possession is handed over. If, however, the possession is handed over prior to the said date, upon handing over the possession, the amount deposited in the Executing Court may be withdrawn by the Appellants.

17. List before the Registrar for receiving all the affidavits of the undertakings on 15th December, 2021.

18. Both the appeals are disposed of in the above terms, as settled between the parties.

PRATHIBA M. SINGH, J NOVEMBER 25, 2021/Aman/MS