



2025:DHC:11744-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 16.12.2025*  
*Judgment pronounced on: 23.12.2025*  
*Judgment uploaded on: 23.12.2025*

+ RFA(OS) 20/2010, CM APPL. 10645/2024, CM APPL. 47279/2024, CM APPL. 52908/2025, CM APPL. 53109/2025, CM APPL. 10645/2024, CM APPL. 70682/2025, CM APPL. 70684/2025

HARJIT SINGH

.....Appellant

Through: Mr. Mukesh Kumar, Ms. Nazia Khanam and Mr. A.K. Dubey, Advs. with Appellant in-person.

versus

SARDAR RAWEL SINGH DEAD THR LRS & ORS

.....Respondents

Through: Mr. Kirti Uppal, Sr. Adv. along with Mr. Aditya Sharma and Mr. Vedic Thukral, Advs. for R-3 with R-3 in-person.  
Mr. Sanjay Kumar, Adv. for R-6.

+ RFA(OS) 26/2010, CM APPL. 27503/2018, CM APPL. 43474/2022, CM APPL. 29651/2023, CM APPL. 70681/2025, CM APPL. 79229/2025, CM APPL. 79230/2025, CM APPL. 79231/2025

NARENDER SINGH

.....Appellant

Through: Mr. Sanjay Kumar, Adv.

versus

RAJINDER KAUR & ORS

.....Respondents

Through: Mr. Kirti Uppal, Sr. Adv. along with Mr. Aditya Sharma and Mr. Vedic Thukral, Advs. for R-3 with R-3 in-person.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR**



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## **J U D G M E N T**

### **ANIL KSHETARPAL, J.**

1. With the consent of learned counsel appearing for the parties, these two connected Regular First Appeals, assailing the correctness of an order passed on 11.09.2009 [hereinafter referred to as 'Impugned Order'] by the learned Single Judge in CS (OS) No. 690/2005, are taken up for final disposal by this common judgment.

2. Since both Appeals arise from the same suit, involve identical facts, and challenge the same Impugned Order, they are being disposed of together to avoid multiplicity of judgments and inconsistent findings.

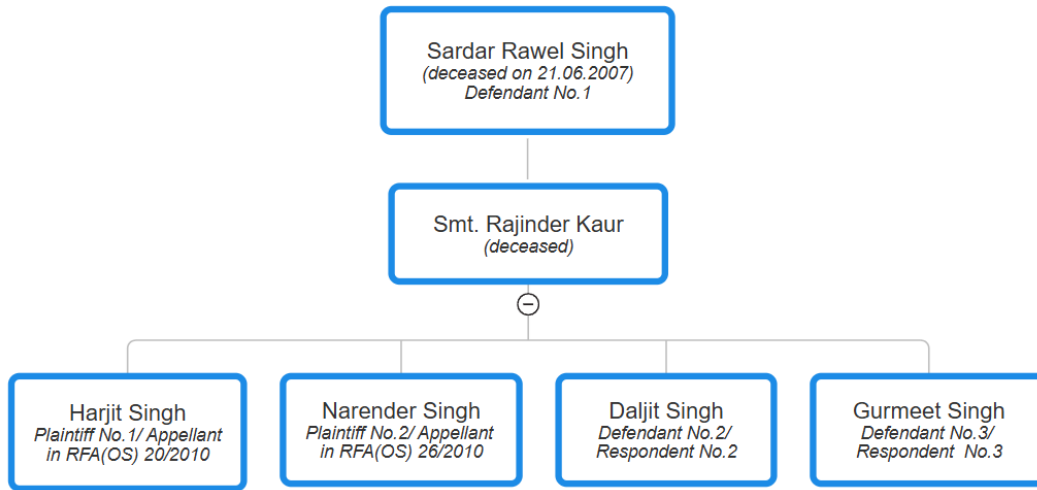
3. The principal issue which arises for consideration in the present Appeals is whether, in the facts and circumstances of the case, the learned Single Judge was justified in dismissing the suit on the ground of concealment of material facts and alleged violation of an undertaking, without permitting the parties to lead evidence and have the controversies adjudicated on merits?

### **FACTUAL MATRIX**

4. In order to appreciate the controversy involved in the present Appeals, it is necessary to briefly notice the relevant facts. For the sake of convenience, the parties shall be referred to as they were arrayed before the learned Single Judge.



5. The genealogy of the parties is as under:



6. The Plaintiffs instituted CS (OS) No. 690/2005 seeking partition of the property bearing No. 9/56, Kirti Nagar Industrial Area, New Delhi [hereinafter referred to as 'suit property'] along with consequential reliefs, including a decree of permanent injunction. The suit property originally belonged to Late Sardar Rawel Singh. The Plaintiffs and Defendants are members of the same family and claim their respective rights and shares in the suit property on the basis that it constitutes joint family/HUF property. The rival claims of the parties form the foundation of the suit for partition.

7. Along with the suit, an application for interim injunction was also filed seeking restraint against the Defendants from alienating or creating third-party interests in the suit property, which was allowed on 27.07.2005. Subsequently, the Defendants filed an application seeking vacation of the interim injunction granted on 27.07.2005. It was contended that during the pendency of the suit, portions of the suit property had been dealt with and that third-party interests had intervened, necessitating reconsideration of the interim protection.



8. Simultaneously, an application was moved for impleadment of Smt. Jaspal Kaur on the premise that certain rights in respect of the suit property had been transferred in her favour. The said application came to be considered by the learned Single Judge along with other pending applications. By an order dated 04.05.2006, the learned Single Judge allowed the application for impleadment and directed that Smt. Jaspal Kaur be arrayed as a party to the suit. While passing the said order, the learned Single Judge recorded that although possession of a part of the suit property had been parted with, no document transferring title had been executed and that the title of the Plaintiffs subsisted in the suit property.

9. On the same date, the learned Single Judge also dealt with an application filed by Plaintiff No.1 under Order XXIII Rule 1 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] seeking withdrawal of the suit. Subsequently, on request of Plaintiff No.1, he was permitted to withdraw the said application on the statement that its filing was a mistake and that no transfer of title in respect of the suit property had taken place.

10. In view of the developments noticed and the statements made before the Court, the interim injunction earlier granted on 27.07.2005 was vacated by the learned Single Judge. Thereafter, it emerged on record that Plaintiff No.1 had entered into four agreements in respect of a portion of the suit property and had received a sum of Rs.26 lakhs. It was alleged that pursuant thereto, possession of the concerned portion had been handed over to Smt. Jaspal Kaur.



11. The aforesaid developments were considered by the learned Single Judge in an order dated 03.01.2007, wherein it was observed that the execution of the four agreements and receipt of consideration had not been disclosed earlier. During the hearing on that date, counsel appearing for Plaintiff No.1 agreed to deposit the amount of Rs.26 lakhs received under the said agreements, which amount was accordingly directed to be deposited in Court.

12. Subsequently, Plaintiff No.2 filed applications, *inter alia*, seeking appointment of a Receiver in respect of the suit property and seeking transposition of Plaintiff No.1 as a Defendant, contending that Plaintiff No.1 was acting contrary to his interests and that he desired to prosecute the suit independently.

13. Plaintiff No.1 also filed an application under Order VI Rule 17 of the CPC seeking amendment of the suit. While considering the application for amendment of the suit and the objections raised on behalf of the Defendants, the learned Single Judge proceeded to examine the question of maintainability of the suit itself.

14. By the Impugned Order dated 11.09.2009, the learned Single Judge dismissed the application under Order VI Rule 17 of the CPC, dismissed the applications filed by Plaintiff No.2, and ultimately dismissed the suit itself. The dismissal of the suit was founded on the conclusions that the Plaintiffs were guilty of concealment of material facts, that Plaintiff No.1 had wilfully violated an undertaking given to a Court of competent jurisdiction, and that the conduct of the Plaintiffs disentitled them from prosecuting the suit.



## **CONTENTIONS OF THE PARTIES**

### **15. Appellant/Plaintiff No.1- Harjit Singh (RFA(OS) 20/2010)**

15.1 Learned counsel appearing on behalf of Harjit Singh contended that the dismissal of the suit by the learned Single Judge was wholly premature and improper, as the Plaintiffs were not permitted to lead evidence in support of their claims. It was contended that the dismissal of the suit on the basis of alleged concealment of material facts, or on the ground that Plaintiff No.1 had purportedly violated an undertaking given to a competent Court, did not entitle the learned Single Judge to decline trial.

15.2 It was submitted that Plaintiff No.1 had never divested ownership of the suit property in favour of Smt. Jaspal Kaur under the four agreements. These agreements, it was contended, are yet to be proved, and their legal effect, particularly regarding the requirement of registration, can only be determined after evidence is led.

15.3 It was emphasized that procedural safeguards under the Code of Civil Procedure, 1908, require that a Plaintiff be allowed to prove his case, and that allegations of concealment of facts or wilful violation of undertakings could not, by themselves, justify summary dismissal.

15.4 It was further submitted that Plaintiff No.1 had acted in good faith in filing the application for withdrawal under Order XXIII Rule 1 of the CPC, and the subsequent stand taken before the Court did not amount to concealment justifying dismissal.



16. Appellant/Plaintiff No.2- Narender Singh (RFA(OS) 26/2010)

16.1 Learned counsel appearing on behalf of Narender Singh contended that the Plaintiff No.2 should be permitted to continue the suit as the sole Plaintiff in the suit, and that Plaintiff No.1 may be transposed as Defendant No.6.

16.2 It was argued that Plaintiff No.2 had a rightful share in the suit property as a member of the joint family and was entitled to prosecute the suit independently, particularly in light of the developments relating to the four agreements executed by Plaintiff No.1 in favour of Smt. Jaspal Kaur.

16.3 Learned counsel submitted that Plaintiff No.2 had not received any monetary consideration from Plaintiff No.1 or the Defendants, and was not acting in collusion with Plaintiff No.1, thereby entitling him to continue the proceedings in the interest of justice.

16.4. It was further submitted that the Plaintiffs' applications, including the request for appointment of a Receiver, were filed *bona fide* to protect the interests of Plaintiff No.2, and the dismissal of these applications and the suit itself was incorrect.

17. Respondents –

17.1 Learned counsel appearing for the Respondents contended that both Plaintiffs had engaged in concealment of material facts regarding the execution of four agreements in favour of Smt. Jaspal Kaur and the receipt of Rs.26 lakhs thereunder.

17.2 It was submitted that Plaintiff No.1 wilfully violated the undertaking given before a competent Court on 23.01.1998, by parting



with possession of the suit property without consent of other family members, including late Smt. Rajinder Kaur, and that Plaintiff No.2 was fully aware of the developments, having been represented by the same counsel, and could not now act independently.

17.3 It was further contended that both Plaintiffs had created forged and fabricated documents to demonstrate purported subletting in favour of Delhi Uttaranchal Transport Co. and in respect of other tenants, thereby causing prejudice to the rights of the Defendants.

17.4 Reliance was placed upon the following judgments of the Supreme Court and High Courts to support the proposition that concealment of material facts and abuse of court process can justify dismissal.

- i. ***S P Chengalvarava Naidu [dead] by L.Rs. v. Jagannath [dead] by L.Rs and Others<sup>1</sup>***;
- ii. ***A.V. Papayya Sastry and Others & Ors v. Govt. of A.P. and Others<sup>2</sup>***;
- iii. ***A. Anuradha and Others v. Canara Bank rep. by its Chief Manager, M.G. Road Branch, Secunderabad<sup>3</sup>***; and
- iv. ***Satish Khosla v. Eli Lilly Ranbaxv Ltd.<sup>4</sup>***;

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<sup>1</sup> (1994) 1 SCC 1

<sup>2</sup> (2007) 4 SCC 221

<sup>3</sup> (2006) SCC OnLine AP 84

<sup>4</sup> (1998) 44 DRJ (DB)





## **ANALYSIS & FINDINGS**

18. This Court has heard learned counsel representing the parties and, with their able assistance, carefully perused the material on record. The central issue which arises for consideration in the present Appeals is whether, having regard to the facts as recorded by the learned Single Judge, the suit could have been dismissed at that stage on the ground of concealment of material facts, alleged violation of an undertaking, and conduct of the Plaintiffs, without proceeding to adjudicate the substantive claims raised in the suit on merits.

19. A perusal of the Impugned Order shows that the learned Single Judge dismissed the suit primarily on the ground that Plaintiff No.1 had concealed material facts from the Court and had violated an undertaking given before a competent Court. In paragraph 33 of the Impugned Order, the learned Single Judge catalogued the circumstances which weighed with the Court while arriving at the said conclusion. For facility of reference, paragraph 33 of the Impugned Order has been extracted as under:-

*“33. The following are the main factors which are to be taken into account before passing any order in this matter:-*

*i) That when the matter was listed before the court on 4th May, 2006 the application under Order 23 Rule 1 for withdrawal of suit i.e. I.A. No.6722/03 was also listed for disposal. The said application is admittedly signed by plaintiff No.1. The said application was withdrawn by plaintiff No.1 on the ground that it was a mistake. The plaintiff No.1 has specifically made a statement before the court that although the plaintiff has parted with the possession of his claim share in the suit property but he has actually not executed any document by which the title can be said to have been transferred. On his statement, the application was allowed to be withdrawn.*

*ii) In the replication, the plaintiff No.1 has not disclosed that he has already parted with the possession of the tenanted premises to Smt. Jaspal Kaur by virtue of the four agreements. The said fact has only been admitted by the plaintiffs before this court on 3rd January, 2007.*



iii) *The plaintiff No.1 has also not denied the statement given by him in case bearing No. 370/01 (Old No.51/97) titled as Smt. Rajinder Kaur vs. Harjit Singh in the court of Mr.Navin Arora, Sub Judge, Delhi to the effect that he will not part with or transfer the suit property.*

iv) *In the application under Order 23 Rule 1, the plaintiff No.1 in Para 4 of the application has mentioned that he has settled all his claims outside the court with Smt. Rajinder Kaur (wife of late defendant No.1 herein) and no longer wishes to continue with the suit against the defendant and wishes to withdraw the claim in the present suit and the same may be dismissed as having satisfied on behalf of Plaintiff No.1.*

v) *It appears from the conduct of plaintiff No.1 that he had not disclosed the true facts before the court on 4th May, 2006 regarding the handing over of the possession of the suit property against the execution of four agreements, rather the statement was made that he has not actually executed any document. Had he made the correct statement, the court might not have allowed him to withdraw his application and the suit ought to have been dismissed on that date itself.*

vi) *In the plaint, the plaintiffs have also not disclosed the factum of the undertaking given by plaintiff No.1 on 23rd January, 1998 wherein a specific statement has been made that he shall not part with or transfer or resell the red colour portion as shown in the site plan.*

vii) *The plaintiff No.1 has not denied the fact of handing over the possession of suit property to Smt. Jaspal Kaur, even no consent was taken by him from Smt. Rajinder Kaur who is one of the partner of the firm."*

20. From a careful reading of paragraph 33, it is evident that the learned Single Judge placed emphasis, *inter alia*, on:

- i. the filing and subsequent withdrawal of the application under Order XXIII Rule 1 CPC by Plaintiff No.1;
- ii. non-disclosure, in the plaint and replication, of the four agreements executed in favour of Smt. Jaspal Kaur and the parting of possession pursuant thereto;
- iii. the existence of an earlier undertaking dated 23.01.1998 given by Plaintiff No.1; and



iv. the view that, had the correct factual position been disclosed at the relevant time, the suit may not have been permitted to continue.

21. The learned Single Judge thereafter recorded a categorical finding in paragraph 38 of the Impugned Order that the conduct of Plaintiff No.1 amounted not only to concealment of material facts but also to contempt of the Court's proceedings. The dismissal of the suit was ultimately ordered in paragraph 49, holding that the suit was not maintainable on account of suppression of material facts, violation of undertaking, and the Plaintiffs being out of possession.

22. Having carefully examined the reasoning adopted in the Impugned Order, this Court notes that the learned Single Judge relied upon pleadings, admitted documents, prior judicial orders dated 04.05.2006 and 03.01.2007, and the conduct of the Plaintiffs as emerging from the record. At the same time, it is equally apparent that the dismissal of the suit resulted in foreclosure of adjudication of the substantive civil claims raised by the Plaintiffs, including their assertion of ownership and entitlement to partition, without framing issues or recording evidence.

23. While the Code of Civil Procedure, 1908 empowers courts to prevent abuse of process and to decline relief in cases of fraud or deliberate suppression, dismissal of a civil suit without a full trial on merits is an extreme measure, and is ordinarily not warranted solely on the basis of alleged concealment or misstatements, without examination of their impact on the maintainability of the suit unless such conduct strikes at the very root of the proceedings or amounts to a proven fraud on the Court. Procedurally, a civil suit is intended to



adjudicate substantive rights after consideration of pleadings and evidence. The power to dismiss a suit without trial must therefore be exercised sparingly and with circumspection. In the present case, dismissal of the suit without permitting the parties to lead evidence, despite the existence of triable issues, precluded adjudication of the Plaintiffs' claims, including partition and permanent injunction, and was disproportionate and legally unsustainable.

24. The existence of the four agreements in favour of Smt. Jaspal Kaur, receipt of consideration by Plaintiff No.1, and handing over of possession were treated by the learned Single Judge as established facts for the purposes of examining the conduct of the Plaintiffs. However, the legal consequences flowing from such transactions, particularly whether they resulted in divestment of title, the extent of rights created thereby, and their impact on the Plaintiffs' claim for partition, are matters which ordinarily require adjudication on evidence in a regular civil trial.

25. Similarly, the filing of the application under Order XXIII Rule 1 of the CPC by Plaintiff No.1 and its subsequent withdrawal by a judicial order dated 04.05.2006, and the legal effect of such withdrawal on the maintainability of the suit is a matter that required careful consideration in the context of the substantive reliefs claimed in the suit.

26. As regards the observation in paragraph 38 of the Impugned Order that the conduct of Plaintiff No.1 amounted to contempt of Court, this Court notes that the said finding was recorded in the course of examining maintainability of the suit and entitlement to



discretionary relief. While the learned Single Judge was justified in taking note of conduct which, in his assessment, undermined the sanctity of judicial proceedings, the question whether such conduct, by itself, warranted dismissal of the civil suit without adjudication of substantive rights on merits required a more calibrated examination.

27. The learned Single Judge also proceeded to reject the applications filed by Plaintiff No.2, recording adverse observations regarding his conduct, including delay and silence in the context of Plaintiff No.1's actions. Nevertheless, it is material to note that the primary acts of concealment, execution of agreements, receipt of consideration, and violation of undertaking were attributable to Plaintiff No.1. In the considered view of this Court, the alleged acts of concealment and violation of undertaking, even if assumed, cannot ipso facto disentitle Plaintiff No.2 from seeking adjudication of his independent and substantive rights in a suit for partition

28. The suit before the learned Single Judge was one for partition and permanent injunction, raising issues of title, nature of property, and extent of shares. While conduct of parties is relevant, dismissal of a civil suit without trial is an exceptional course, to be adopted where continuation of proceedings itself would amount to abuse of process or where the defect strikes at the very root of maintainability. Whether the facts as found in the Impugned Order reached that threshold is the core question arising in these Appeals.

29. The alleged concealment of material facts, including the execution of four agreements, cannot be considered in isolation without assessing the evidence. Even if the agreements exist,



questions regarding their validity, registration, legal effect, and impact on ownership can only be determined after trial. *Prima facie* possession does not equate to ownership, and a claim for partition cannot be precluded solely on the basis of alleged transfer of possession. Delivery of possession or receipt of consideration, by itself, does not conclusively determine title. Whether such agreements were legally effective, and what impact they may have on ownership rights, are matters that require adjudication on evidence and cannot be conclusively answered at the threshold stage so as to warrant dismissal of the suit.

30. As regards the judgments relied upon by the Respondents, this Court finds that the same are clearly distinguishable on facts and do not govern the issues arising for consideration in the present Appeals.

30.1 In ***S.P. Chengalvarava Naidu*** (*supra*), the Supreme Court's decision rested on a categorical and conclusive finding that Jagannath had obtained a preliminary decree by practising fraud upon the Court. It was in those circumstances, and upon such a finding of established fraud, that the Supreme Court set aside the view taken by the High Court.

30.2 In ***A.V. Papayya Sastry*** (*supra*), the Supreme Court found that the earlier order had been procured by the landowners in collusion with officials of the respondent Port Trust and the Government. The report submitted by the Central Bureau of Investigation *prima facie* substantiated the existence of such collusion and fraud. In that factual backdrop, the recall of the earlier order passed by the High Court, directing the authorities to reconsider the matter in accordance with



law, was upheld. Significantly, even in that case, the Supreme Court was not concerned with dismissal of a civil suit at the threshold solely on the ground of alleged concealment of material facts.

30.3 The reliance placed on the judgment of the Division Bench of the Andhra Pradesh High Court in *A. Anuradha* (*supra*) is also misplaced. The said decision arose out of proceedings under Article 226 of the Constitution of India. A writ petition is a discretionary remedy, and it is well settled that a Constitutional Court may decline to exercise such discretion where it finds that material facts have not been disclosed in a full and candid manner. The principles governing the exercise of writ jurisdiction cannot be mechanically extended to the dismissal of a civil suit governed by the Code of Civil Procedure, 1908.

30.4 Similarly, the judgment of a Division Bench of this Court in *Satish Khosla* (*supra*) does not advance the case of the Respondents. In that matter, after refusal of an injunction in an earlier suit for specific performance, a subsequent suit was instituted without disclosure of the pendency of the earlier proceedings and the order passed therein. On those facts, the Division Bench came to the conclusion that the plaintiff had abused the process of the Court. It was in that context that the order was passed.

Accordingly, none of the aforesaid decisions apply to the facts of the present case, where the Plaintiffs have asserted their ownership rights and seek adjudication thereof through a regular civil trial.



## **CONCLUSION**

31. In light of the foregoing, it is evident that the dismissal of the suit by the learned Single Judge was premature, disproportionate, and legally unsustainable. The Plaintiffs were entitled to have their claims adjudicated on the merits, with the opportunity to lead evidence and cross-examine witnesses.

32. Allegations of concealment or misstatement, howsoever serious, are matters that can be addressed through appropriate procedural safeguards, adverse inferences, costs, or tailored reliefs during trial. They do not mandate termination of civil proceedings, unless the Court concludes that no adjudicable rights survive.

## **OPERATIVE ORDER**

33. For the foregoing reasons, this Court finds that the dismissal of the suit by the learned Single Judge, though founded on serious findings regarding conduct, resulted in premature foreclosure of adjudication of civil rights asserted by the Plaintiffs.

34. Consequently, the present Appeals are allowed. The Impugned Order dated 11.09.2009 is hereby set aside. The suit CS (OS) No. 690/2005 shall be restored to its original number and the learned Single Judge (Roster Bench) would afresh examine the Plaintiffs' applications filed under Order VI Rule 17 of the CPC and for transposition of Plaintiff No.1 as Defendant.

35. The parties, along with their respective counsel, shall appear before the learned Single Judge (Roster Bench) on 13.01.2026.





2025:DHC:11744-DB



36. It is clarified that all observations made herein are for the purposes of disposal of the present Appeals and shall not prejudice the rights or contentions of the parties before the learned Single Judge.

37. The present Appeals, along with the pending applications, stand disposed of in the above terms.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**  
**DECEMBER 23, 2025/sp/pal**