



2026:DHC:5054



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

% **Reserved on: 06th April, 2026**
Pronounced on: 3rd June, 2026

+ **RFA 101/2026, CM APPL. 6161/2026**

BIJENDER SINGH
S/o Sh. Chander Bhan
R/o First Floor, E-87,
Dharampal Colony,
Aali Vihar, Sarita Vihar,
New Delhi-110076.

....Appellant

Through: Mr. Vikas Jain & Mr. Gargi
Vashishta, Advocates.

Versus

CHANDER BHAN
S/o Late Chhuttan Ram
R/o E-87, Dharampal Colony,
Aali Vihar, Sarita Vihar,
New Delhi-110076.

.....Respondent

Through: Respondent in person.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. **Regular First Appeal** under *Section 96 of the Code of Civil Procedure, 1908* (hereinafter referred to as 'CPC') has been filed on behalf of the Appellant/Plaintiff against the Judgment and Decree dated 25.10.2025 whereby the Suit of the Plaintiff/Respondent for **Mandatory Injunction** for



directing the Appellant/Defendant and his family to remove their belongings from the Suit property and for ***Permanent Injunction*** for restraining the Defendant/Appellant from creating any third party right in the Suit property, has been decreed by the learned District Judge.

2. The Plaintiff had filed a ***Civil Suit No. CS DJ 807/2019 for Mandatory and Permanent Injunction*** for removing the Defendant from the Suit property and for Permanent Injunction from creating third party rights in the Suit property.

3. The ***facts in brief***, are that the Plaintiff had acquired property bearing No. E-87, Dharampal Colony, Aali Vihar, Sarita Vihar, New Delhi (*hereinafter referred to as suit property*), on the basis of GPA/Agreement to Sell and Affidavit dated 12.04.1994 from the erstwhile owner, Dharam Vir Singh. He is in possession since the said date i.e. 12.04.1994 and exercising exclusive rights of ownership in the Suit property.

4. The Plaintiff demolished and reconstructed the property, in the year 2004. The Defendant Bijender Singh, being the son of the Plaintiff, was allowed to reside in the front portion of the First Floor of the Suit premises, purely on the ***permissive basis***. The area in occupation of the Defendant admeasured 75 sq. yards. The relations between the Plaintiff and Defendant over a period of time, became strained due to acts and omission of the Defendant.

5. It was claimed that the Defendant made the life of the Plaintiff living hell with constant harassment, embarrassment and agony to the Plaintiff and his family members. He, therefore did not wish to keep the Defendant in the Suit premises and requested him in August, 2019 to vacate the property, but



the Defendant failed to remove himself and refused to abide by the request of the Plaintiff; rather he threatened to part with the possession of the Suit property to create a third party rights in the Suit property.

6. The Plaintiff asserted that the Defendant who is continuing in the Suit premises, is liable to pay profit/damages @ Rs.10,000/- per month, which is the prevailing market rate of rent of the Suit premises.

7. He thus, filed a Suit seeking **Mandatory Injunction** for directing the Defendant to vacate the premises and **Permanent Injunction** for restraining him from creating third party rights. The Plaintiff also sought pendent lite and future decree @ Rs.10,000/- per month, towards unauthorized occupation of the Defendant in the Suit premises.

8. The Defendant/Appellant in his **Written Statement** took the *preliminary objection* that the Suit property had fallen to the share of the Defendant, by way of Oral Family Settlement. Not only this, he had invested his whole life savings in construction of the entire property bearing No. E-87, Dharmpal Colony, New Delhi. The Plaintiff now with a dishonest intention, intends to usurp the property.

9. It is claimed that the Plaintiff is guilty of fraud and misfeasance and has concealed true facts from the Court. *The simplicitor Suit for Injunction is not maintainable, without the consequential relief.* In fact, by way of Mandatory Injunction, the Plaintiff is seeking the relief of possession of the Suit property in which the Defendant is in exclusive occupation, since 2004. *The Suit is barred by limitation.* The Plaintiff has no right, title, interest in the Suit property and has *no locus standi to file the Suit.*

10. **On merits**, it is asserted that the Agreement to Sell does not confer



any right, title, interest in the Suit property and thus, the claim of the Plaintiff of having proprietary rights in the Suit property, is fallacious. Consequently, his claim for possession, is grossly mis-conceived. It is claimed that the Defendant out of his own funds had raised the construction of the property in question and is in possession of the First Floor of the property in question. It is further contended that it is the Plaintiff who had been residing with the Defendant, in the Suit property.

11. The Defendant has further asserted that he has been in possession of the Suit property since 1996-97, without any interference from any quarter. It is the first time that the Plaintiff has sought to disturb the possession of the Defendant, by way of the present Suit.

12. It is further asserted that the Plaintiff had in fact, purchased the Suit property from the funds received from sale of ancestral property in Tugalkabad Extn. and that he and the Plaintiff, had been residing jointly since 1995. In view of the *Family Settlement* between the parties arrived in the year 2004, the First Floor came to his share and he is in possession of the property in his own right. The Defendant raised the construction and has, since then been in occupation of the First Floor.

13. The Defendant thus, submitted that there was no merit in the Suit of the Plaintiff, which is liable to be dismissed.

14. The **Issues on the pleadings were framed on 23.03.2021** as under:

(i) *Whether plaintiff is entitled for mandatory injunction as prayed for? OPP*

(ii) *Whether plaintiff is entitled for permanent injunction as prayed for? OPP*



- (iii) *Whether plaintiff is entitled for damages/means profit as prayed for? OPP*
- (iv) *Whether the suit is bad for non joinder of property and necessary parties? OPP*
- (v) *Whether the suit of the plaintiff is without any cause of action? OPD*
- (vi) *Relief.*

15. The **Plaintiff Chander Bhan** examined himself as **PW1** and tendered his Affidavit of Evidence Ex.PW1/A. The Agreement to Sell/GPA/Affidavit and Receipt etc. dated 12.04.1994 are Ex.PW1/1.

16. The **Defendant Bijender Singh** examined himself as **DW1** and tendered his Affidavit of Evidence Ex.DW1/A.

17. **DW2 Harish Chander** tendered his Affidavit of Evidence as Ex.DW2/A.

18. **DW3 Kailash Rani**, tendered her Affidavit of Evidence as Ex.DW3/A.

19. The **learned District Judge** considered the evidence of the parties and observed that the Plaintiff had a proprietary right in the Suit property on the basis of Agreement to Sell, etc. dated 12.04.1994 Ex.PW1/1. Moreover, his testimony had been corroborated, by DW2 and DW3 as well.

20. The Defendant took a plea of the Suit property having been purchased after selling the ancestral property belonging to the grandfather. However, it was held that *firstly*, there was no evidence to prove that there was any property existing in the name of grandfather. Moreover, even if it is



accepted that the proceeds of purchase of the Suit property came from the sale of the ancestral property, then too, in terms of Section 8 Hindu Succession Act, the property devolved upon the Plaintiff by way of succession, under Section 8 Hindu Succession Act. Therefore, the claim of the Defendant that he had an interest in the Suit property, was held to be not tenable.

21. It was further observed that since the Defendant was in permissive occupation of the Suit property, the Suit for Mandatory Injunction was maintainable against him, for being directed to vacate the property. Furthermore, it was held that the Plaintiff is entitled to Mesne Profits @ Rs.5,000/- per month from the date of filing of the Suit i.e. 18.09.2019 till the date of realization. The Suit was accordingly decreed.

22. Aggrieved by the said Judgment, the ***Regular First Appeal*** has been preferred under Section 96 CPC against the Judgment dated 25.10.2025.

23. The ***grounds of challenge*** are that the Plaintiff does not have any valid title over the Suit property. It is not disputed that un-registered Agreement to Sell, GPA, etc. dated 12.04.1994 never materialised into Sale Deed and Conveyance Deed and the Plaintiff could not be held as an owner, on the basis of these inchoate documents. Reliance is placed on *Suraj Lamps vs. State of Haryana, Ghanshyam vs. Yogendra Rathi* (Appeal Nos. 7527-7528 of 2012).

24. The Appellant has further contended that the Suit for Mandatory Injunction simplicitor, was not maintainable without seeking Declaration of ownership.

25. The Appellant is the son of the Respondent, who has been residing in



the Suit property since 2004 in his own right, pursuant to oral Family Settlement of 2004, in which the First Floor came to his share. He is not a licensee or in permissive user, as has been claimed by the Plaintiff. Reliance is placed on Anathula Sudhakar vs. P. Buchi Reddy (2008) 4 SCC 594.

26. The mutual Family Settlement and the long residence of the Appellant in the Suit property and that he himself had constructed his portion by spending his hard earned which has not been disputed by the Respondent, have not been considered in the right perspective.

27. It is further contended that the Plaintiff failed to adduce any evidence in regard to his source of the money, for purchase of the Suit property. The corroborative testimony of the Appellant's brother and sister i.e. DW2 and DW3 who have supported the Appellant's long continuous and settled possession in the property as well as the family settlement, has been brushed aside without any reasons, rendering the findings perverse. Reliance is placed on Santosh Hazari vs. Purushottam Tiwari (2001) 3 SCC 179 and Madhukar vs. Sangram (2001) 4 SCC 756.

28. . Moreover, permissive possession or license cannot be presumed but has to be proved by cogent evidence along with the proof of revocation of the license prior to institution of Suit for which reliance is placed on Associated Hotels of India Ltd. vs. R.N. Kapoor AIR 1959 SC 1262 and Ram Sarup Gupta vs. Bishun Narain Inter College (1987) 2 SCC 555.

29. Furthermore, a Family Settlement does not require registration, if it is oral and has already been acted upon, as has been held in the case of Kale & Ors. vs. Deputy Director of Consolidation (1976) 3 SCC 119 and S. Shanmugam Pillai vs. K. Shanmugam Pillai (1973) 2 SCC 312.



30. It has also not been considered that the Suit property was purchased from the sale proceeds of the ancestral property and the Plaintiff cannot be its exclusive owner.

31. The finding that the Defendant is a licensee is perverse, arbitrary and unsustainable in law. There is not even an iota of evidence to show revocation or termination of the alleged License, prior to the institution of the Suit. The long settled possession cannot be treated as permissive or reduced to a mere licensee, by bald assertions, in the absence of cogent proof. Reliance is placed on Rame Gowda vs. M. Varadapa Naidu (2004) 1 SCC 769 and Munshi Ram vs. Delhi Administration (1968) 2 SCR 455.

32. It is further claimed that the *Mesne Profits* have been awarded at an arbitrary rate of Rs.5,000/- per month, without any documentary evidence of prevailing market rent, without placing on record any document, like comparable Lease Deeds or rental instances and without conducting the mandatory enquiry under Order 22 Rule 12 CPC.

33. Reliance is placed on Fateh Chand vs. Balkishan Dass AIR 1963 SC 1405, R.S. Maddanappa vs. Chandramma AIR 1965 SCC 1812 and Smt. M. Ms. Meenakshi Dahiya vs. Metadin Agarwal (2006) 7 SCC 470 which state the absence of any inquiry or evidentiary basis, makes the award of mesne profits as illegal, perverse and are liable to be set aside.

34. The impugned Judgment is, therefore, liable to be set aside.

Submissions heard and record perused.

35. It is an unfortunate case filed by the father against his son, for recovery of the possession of the Suit property, where he had permitted his son to reside since the year 1995-96. Unfortunate is the circumstances



where according to the Plaintiff because of the unruly behaviour and conduct of his son i.e. the Defendant, he has been compelled to file the Suit for recovery of Possession by way of Mandatory Injunction.

36. The Plaintiff had acquired ownership in the property in question by virtue of Agreement to Sell, GPA, Receipt etc. dated 12.04.1994 Ex.PW1/1; a fact which has neither been denied by the Defendant/appellant or by DW2 and DW3, siblings of the Defendant.

37. There is also no denial that Defendant was living with his father in the property in question, since 1995-96. It is nowhere his claim that he is the exclusive owner of the property in question. However, he has tried to defend his Possession by claiming that the purchase document i.e. GPA, Agreement to Sell, etc do not create any absolute ownership in the Suit property for which reliance is placed on Suraj Lamps (supra).

38. Though, it is correct that these documents are not the conventional document of sale, but here is a case where the Defendant is deriving his Possession and rights in the Suit property, from the Plaintiff himself. Therefore, there is no basis for him to question the title of the Plaintiff. It is a specious argument raised by the Defendant, as a desperate attempt to somehow create a right in his favour, which is outrightly liable to be rejected.

39. The Defendant in his endeavour to create a right to the property, has asserted that the Suit property was purchased by the father by sale of ancestral property bearing No. C-II/85, Madangir, New Delhi. This has been explained by DW2 Shri Harish Chander, brother of the Plaintiff, who had explained that late Chuttan Ram, his father and of the Plaintiff had three



children namely Chander Bhan (Plaintiff), Harish Chander (DW2) and Kailash Rani (DW3). Shri Chuttan Ram owned two properties i.e. one in Kalkaji and other in Madangir. The Kalkaji property was given by Shri Chuttan Ram to DW2 Harish Chander, while the Madangir property was given to the Chander Bhan, the Plaintiff.

40. DW-2 further deposed that Madangir property was sold in the year 1991 by the Plaintiff and from the sale proceeds, he purchased the property in question. He further explained that their parents had two shops at Garhi and from the income of these shops, the construction was raised in the Suit property. Thus, the Suit property was purchased from the sale of the parent's property and construction was also raised from the income from the business of the family. He further deposed that the Defendant/Appellant had developed the Suit property out of his own funds. Later, after the marriage of his brother, the two mutually decided to separate; and in a Family Settlement, Ground Floor of the property went to the brother of the Defendant, *while the Defendant got the First Floor of the Suit property in which he is in exclusive possession.*

41. DW-2 in his cross-examination, has explained that the property in Madangir given to the Plaintiff by the father, was sold by him in the year 1991. It was denied by him that the Madangir property had not been given to the Plaintiff and he was given the Kalkaji property by the parents. He admitted that he had not given the details of the shops at Garhi. He also admitted that he had not stated the nature of business carried out from the two shops. He was also unable to give the quantum of income generated from the said shops. He admitted that he had also not given the names of the



proprietor of the business being carried out from the shops. He was not aware of the income raised from the sale of parent's property and income from the business of the family, which was expended for purchase of Suit property.

42. Another important aspect was the Family Settlement which allegedly took place between the Defendant and his brother in the year 2004. However, the DW2 in his cross-examination was unable to give the day, date, time of the Family Settlement and was unable to state who all were present at the time of Family Settlement, though he volunteered that he, his mother, bhabhi and sister were present.

43. The **DW3 Kailash Rani**, sister of the Plaintiff also deposed on similar lines and asserted that the Suit property was purchased from ancestral funds and that the Defendant was in possession of the property since 1996-97. She in her cross-examination, denied that the Suit property had been purchased from the sale proceeds of alleged ancestral property located in Madangir.

44. The **DW1 Defendant/Appellant** in his cross-examination also admitted that he had not given the details/ description and Municipal Number of the ancestral property, which he stated in his cross-examination as C-II/85, Madangir, New Delhi, which he claimed to have been allotted to the grandfather prior to his birth. He further deposed that he was studying in class First or Second in the school, since when they started residing in the property. He further admitted that he did not give the details of when the alleged ancestral property was sold and what was the consideration received. He volunteered that it was sold somewhere in 1992-93. The grandfather had expired between 1988-1990. He further admitted that till the time



grandfather was alive, the property stood in his name and he was the sole owner of the property. He denied that this property, was not ancestral property. The Defendant denied that the property had been purchased by the Plaintiff from his own funds and it was self acquired property.

45. From the evidence as led by the parties, it is established that the Suit property was purchased by the Plaintiff from his own funds. Though it was asserted that the funds had been raised from the sale of the ancestral property in Madangir, but it has emerged that this Madangir property was exclusively owned by the grandfather who in a family Settlement had given this property to the Plaintiff ,while the other property in Kalkaji owned by the parents was given to DW2 Harish Chander.

46. From the evidence it emerges that the Chuttan Ram, the grandfather was the exclusive owner of the Madangir property which he, in his life time, had given away to the Plaintiff. By no interpretation of law can the property at Madangir, be termed as ancestral property.

47. Furthermore, even if it is accepted that the property in Madangir was ancestral property, there is no evidence, whatsoever, to show what were the sale proceeds from the sale of Madangir property or that the funds so realized by the Plaintiff, had been utilized for purchase of the Suit property in the year 1994. *Admittedly, the property stands exclusively in the name of the Plaintiff.*

48. The Defendant admitted that the Suit property was demolished and reconstructed in 2004 and thereafter, he has been in occupation of the First Floor of the Suit property. The Defendant admitted that the Suit property was purchased in the name of the Plaintiff in 1994 and till date, stands in his



name.

49. The Appellant has claimed that he had raised the construction from his own funds, but has not been able to adduce an iota of evidence in support thereof. His only claim that he was working in DTC since 2002 and was giving his entire earnings to his father. Admittedly, he has not been able to specify the amount spent on construction or the amount contributed by him in raising the construction. He was even unable to quantify the amount he had given to his father. He also admitted not furnishing any details of the amounts given by him, to the father.

50. Thus, while the defendant claimed that he had contributed in the construction of suit property, he has miserably failed to support his assertion, by any cogent evidence. From the admissions of the Defendant in the cross-examination, the best case which gets established in favour of the Appellant is that being a family member, he had been giving his salary to the father, but that in itself is not sufficient to establish that the construction was raised by him or that he occupied the property in the capacity of an owner.

51. The learned District Judge has, therefore, rightly held that the property in question is the exclusive property of the Plaintiff.

52. The Defendant had further asserted that there was a *Family Settlement* in the year 2004, whereby he was permitted to occupy the First Floor. The Defendant in his cross-examination, was however, unable to state the details of the participants, in the said oral Family Settlement.

53. There may have been a Family Arrangement where the Defendant may have been permitted to occupy the front portion of the First Floor, but that in itself does not in any manner, create any ownership rights in his



favour. From the evidence of the Defendant himself, it emerges that his occupation was permissive, as he had been allowed to stay there by the Plaintiff, his father.

54. The Appellant has contended that he has been residing in the Suit property since 1994-95 which is quite understandable. He was a student of Class First or Second in the school and being a son of the Plaintiff he would naturally be living in the Suit property. It is not as if he had been occupying the Suit property since 1994-95 in his own independent individual right but he was barely a child who lived in the property along with the Plaintiff, is father.

55. The learned District Judge has, therefore, rightly held that the Possession of the Defendant/Appellant was permissive and he had no ownership rights to the exclusion of the Plaintiff. **Therefore, the Mandatory Injunction has been rightly decreed in favour of the Plaintiff/Respondent with directions to the Appellant to remove himself from the Suit property.**

56. *The learned District Judge has also granted Mesne Profits/Occupation Charges @ Rs.5,000/- per month.* The first contention of the Appellant is that there was no termination of the license or the permissive user and therefore, the Defendant is not liable to pay any User/Occupation Charges. However, the Plaintiff has deposed that he had asked the Defendant to vacate the Suit property in August, 2019 which clearly indicates that the Plaintiff had withdrawn his permission for the Defendant to continue to reside in the Suit property. Furthermore, filing of the Suit on 18.09.2019 itself is a Notice to the Defendant to vacate the



premises, as has been held in the case of *M/s Nopany Investments (P) Ltd. vs. Santokh Singh (HUF)* AIR 2008 SC 673.

57. It is well settled that when a person is permitted to reside in the property of another, out of love and affection without payment or any consideration and without any agreement creating a tenancy, such a person is a licensee/permissive user, whose right to continue in the property can be revoked at any time and upon such revocation, his right to continue in the occupation of the property comes to an end.

58. Therefore, the Plaintiff was well within his right to claim the User and Occupation Charges since August, 2019.

59. The next contention raised by the Plaintiff is that there was no enquiry held under Order XX Rule 12 CPC or any evidence adduced, to ascertain the User and Occupation Charges. However, the Defendant in his own testimony, had deposed that the Suit property located on the First Floor can fetch about Rs.5000 to Rs.6000/- per month and denied the suggestion that it can get Rs.10,000/- per month as rent at the time of filing of the Suit in the year 2019.

60. *The learned District Judge has rightly taken cognizance of the admissions of the Defendant himself, to grant the Occupation Charges @ Rs.5,000/- per month.*

Conclusion:

61. The Suit of the Plaintiff for Mandatory Injunction to take the Possession from the Defendant and for User/Occupation Charges @ Rs.5,000/- per month, has been rightly decreed.



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62. There is no merit in the present Appeal, which is hereby **dismissed**. Pending Applications, if any, also stand disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 3, 2026/N