



2026:DHC:2014



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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

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CS (OS) 960/2024

1. SMT. SAIRA BANU KHAN
WIDOW OF LATE SH. YUSUF KHAN @ DILIP KUMAR

2. SHRI RAIHAN AHMED
S/O LATE SH. SULTAN AHMAD

3. MS. SHAHEEN AHMED
D/O LATE SH. SULTAN AHMAD

ALL RESIDENTS OF:- SOLITAIRE APARTMENT,
34-B, PALI HILL, NARGIS DUTT ROAD,
BANDRA (WEST), MUMBAI - 400050

ALSO AT:-

HOUSE NO. 259/5-B AUROBINDO MARG,
MEHRAULI, NEW DELHI-110030

.....PLAINTIFFS

*(Through: Mr. Rakesh Munjal, Sr. Adv with Mr. Rakesh Kumar, Mr. Sunil
and Mr. Lokesh Kumar, Advs.*

VERSUS

1. MOHAMMAD SALEEM
S/O LATE SHRI SHABBIR AHMED

2. MS. QAISAR SULTANA
W/O. SH. MOHAMMAD SALEEM



2026:DHC:2014



3.MS. LARABA SALIM
D/O SH. MOHAMMAD. SALEEM

ALL ARE PRESENTING STAYING AT:-
5B WHICH IS PART OF 259/5-B,
AUROBINDO MARG, MEHRAULI,
NEW DELHI-110030.

.....DEFENDANTS

(Through: Mr. Mir Akhtar Hussain, Mr. Rakesh Pant and Ms. Sonia Goswami, Advs. with D-1 & 2 in person.)

% Reserved on: 12.12.2025
Pronounced on: 09.03.2026

JUDGMENT

I.A.-47370/2024 (BY THE PLAINTIFF No.2 UNDER ORDER XV-A READ WITH SECTION 151 OF CODE OF CIVIL PROCEDURE, 1908 ("CPC"))

The present application has been filed by Plaintiff No. 2 on behalf of all Plaintiffs under Order XVA read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "**CPC**"), seeking directions for payment/deposit of mesne profits, damages, and/or use and occupation charges by Defendant Nos. 1 to 3 in respect of the suit property bearing No. 259/5-B, Aurobindo Marg, Mehrauli, New Delhi - 110030, comprising land and built-up structures in Khasra Nos. 670/27, 28, and 29, Village Lado Sarai, Tehsil Mehrauli, New Delhi, admeasuring 9 bigha and 1 biswa (hereinafter "**the Suit Property**").



2. The instant suit has been filed seeking possession, mesne profits/damages, mandatory and permanent injunction.

Brief facts

3. The plaintiffs are stated to be the absolute co-owners of the suit property, which is asserted to be the self-acquired property of their predecessor-in-title, late Ms. Roshan Ara Begum (hereinafter the “**Deceased Owner**”). It is alleged that the Deceased Owner had purchased the suit property in her own name through a duly registered sale deed and had exclusive ownership thereof during her lifetime.

4. The plaintiffs trace their title to the suit property through the Deceased Owner. The Deceased Owner was married to Mr. Mohammad Ehsan, also known as Ehsan-ul-Haq, son of Mr. Khan Bahadur Mohammad Solaiman, Executive Engineer. From the wedlock, Mr. Sultan Ahmad was born on 16.02.1939 at Delhi, and Ms. Saira Banu Khan, i.e Plaintiff no. 1 was born on 23.08.1944 at Mussoorie.

5. Mr. Sultan Ahmad left for his heavenly abode on 15.01.2016, leaving behind his legal heirs, namely his son Mr. Raihan Ahmed, i.e., plaintiff no.2 and his daughter Ms. Shaheen Ahmad, i.e., plaintiff no. 3. Plaintiff No. 3 is stated to be acting through plaintiff No. 2 by virtue of a Power of Attorney dated 11.11.2024.

6. It is stated that defendant No. 1 was granted temporary and limited accommodation in a small portion of the suit property, namely an outhouse, allegedly in his capacity as a caretaker and without the creation of any right, title, or interest in his favour. It is further alleged that such permission was subsequently extended to allow use of the garage portion of the property for



operating a showroom-cum-shop. Defendant No. 1 is stated to have been occupying the said portions along with defendant No. 2, his wife and defendant No. 3, his daughter.

7. The outhouse and garage, excluding Shop No. 26/3 admeasuring approximately 20'7" × 22'3", are alleged to collectively constitute the suit property. It is further alleged that on 18.03.1979, defendant No. 1 executed a written undertaking in favour of Mr. Sultan Ahmad, son of the Deceased Owner, wherein he acknowledged his status as a caretaker, undertook to ensure that no encroachment was caused on any part of the suit property, and allegedly agreed to vacate the premises forthwith upon demand, without raising any claim, objection, or assertion of ownership. The said position was allegedly reiterated by defendant No. 1 in his letter dated 15.10.1991. It is also alleged that the Deceased Owner subsequently executed a General Power of Attorney dated 21.07.1992 in favour of Defendant No. 1 solely for the purposes of management and upkeep of the suit property, which did not confer any ownership or proprietary rights upon him.

8. It is further alleged that upon the demise of the Deceased Owner on 18.06.2002, and, thereafter, upon the demise of her son Sh. Sultan Ahmad on 15.01.2016, defendant No. 1 continued to remain in occupation of portions of the suit property only in his capacity as a caretaker. Such occupation is stated to have been governed by successive caretaker arrangements, including agreements dated 05.07.2011 and 24.10.2019. It is alleged that the Caretaker Agreement dated 24.10.2019 was executed at the Plaintiffs' residence in Mumbai in the presence of four witnesses and that the proceedings were video-recorded. Under the said agreement, Defendant No. 1 was permitted to occupy only the portion marked in red in the annexed



2026:DHC:2014



site plan, and the arrangement was expressly stated to be terminable without notice in the event of breach. It is further alleged that upon termination, defendant No. 1 was obliged to vacate the premises and cancel all government-issued documents reflecting the address of the suit property. Defendant No. 1 is stated to have purportedly received a consolidated remuneration of ₹25,000/- per month for caretaker services in respect of the suit property as well as another property in Delhi, in addition to reimbursement of expenses, and that such payments were made until September 2023.

Submissions

9. Mr. Rakesh Munjal, learned senior counsel for the Plaintiffs, submitted that the Caretaker Agreement dated 24.10.2019 stood terminated *vide* notice dated 19.12.2022 owing to repeated breaches committed by defendant No.1, including unauthorised induction of third parties into the suit property and extortionate monetary demands. It was submitted that although a limited extension was granted purely as a matter of indulgence, the same, however, had expired in August 2023, yet defendant No.1 failed to vacate. Instead, defendant No.1 continued in unauthorised occupation, falsely projecting himself as the owner and attempting to create third-party rights. It is submitted that in blatant breach of the caretaker arrangement, defendant No.1 executed a Rent Deed dated 22.08.2023, purportedly with retrospective effect from 01.08.2023, in respect of approximately 1,450 sq. ft. of the suit property in favour of M/s Tailor Tele Productions Pvt. Ltd., claiming rent of ₹2,10,000/- per month with effect from 01.08.2024, while simultaneously carrying out unauthorised constructions. It was further submitted that, following disputes with the said tenant, defendant No.1



2026:DHC:2014



himself issued a legal notice dated 12.02.2024 claiming rent at the same rate, thereby clearly demonstrating the prevailing market value of the premises. On this basis, it was contended that the larger suit property reasonably warranted mesne profits at the rate of ₹4,00,000/- per month.

10. It was further submitted that the defendants had embarked upon a pattern of vexatious litigation by filing frivolous police complaints, civil suits, and writ petitions, including WP(C) No. 11395/2024, asserting inconsistent and demonstrably false claims of ownership, without producing a single document of title. In order to restrain further illegal acts, including unauthorised alterations to the outhouse in 2024, the plaintiffs issued a legal notice dated 22.08.2024, categorically terminating all permissions and calling upon the defendants to vacate the suit property within one month, i.e., by approximately 25.09.2024, failing which mesne profits at the rate of ₹4,00,000/- per month along with interest at 18% per annum were claimed. It was submitted that the said notice was duly served through multiple modes, remained not replied to, and its receipt has not been denied by defendant Nos. 1 and 2 in their rejoinder filed in WP(C) No. 11395/2024.

11. Learned senior counsel submitted that upon expiry of the notice period, the defendants, having no lawful right, title or interest in the suit property, were reduced to the status of trespassers and encroachers. Learned senior counsel for the plaintiffs further submitted that the alleged claim of title by way of an oral gift set up by Defendant No. 1, *arguendo*, is hit by Section 4 of the Delhi Land (Restriction on Transfer) Act, 1972 (hereinafter '**the Act of 1972**'). It was contended that any transfer of the suit property during the subsistence of acquisition proceedings was statutorily prohibited, void and unenforceable in law. On this basis, learned senior counsel



submitted that no right, title or interest could have been legally conveyed in favour of the defendants, and their continued occupation of the suit property is unauthorised.

12. Learned senior counsel has accordingly sought arrears of mesne profits for the period from 25.09.2024 at the rate of ₹4,00,000/- per month, with continuation from 25.10.2024 along with a 10% annual increment until the date of judgment or delivery of possession, whichever is earlier, besides *pendente lite* and future interest at the rate of 18% per annum. It was contended that denial of interim relief would result in grave and irreparable loss to the plaintiffs. Reliance was placed on the decisions in *Bashir Mohammed v. Mohammed Saeed & Ors.*,¹ *Meera Sahni v. Lt. Governor of Delhi*², *Anisa Singh & Ors. v. Sir Sobha Singh Public Charitable Trust & Ors.*,³ *S.P. Chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs*,⁴ and *Maria Margarida Sequeria Fernandes & Ors. v. Erasmo Jack de Sequeria (Dead) through LRs*,⁵.

13. *Per contra*, Mr. Mir Akhtar, learned counsel for the defendants, argued that the application filed by the Plaintiffs under Order XV-A is wholly misconceived. The application proceeds on the incorrect assumption that the defendants are unauthorised occupants of the suit property. It was emphasised that the pendency of a civil dispute or a challenge to title does not, by itself, render long-standing possession unlawful. Defendant No.1 has been in open, peaceful, continuous and uninterrupted possession of the suit property since 16.01.1980, i.e., for more than four decades. In such

¹ 2024:CGHC:41124

² (2008) 9 SCC 177

³ 2024:DHC:2966

⁴ (1994) 1 SCC 1

⁵ (2012) 5 SCC 370



circumstances, according to Mr. Akhtar, the provisions of Order XV-A CPC, which contemplate a situation of unauthorised occupation, are not attracted.

14. It was further contended that defendant No.1's possession originates from a valid oral gift, i.e. *Hibba*, under the Mohammedan Law made on 16.01.1980 by the deceased owner. It is submitted that the gift was declared in the presence of Muslim witnesses, and affidavits of such witnesses have been placed on record. According to learned counsel, all essential requirements of a valid *Hibba* under Mohammedan Law, namely, declaration, acceptance, and delivery of possession, stand satisfied. According to learned counsel, pursuant to the gift, defendant No.1 has remained in exclusive possession of the property and has exercised all incidents of ownership for over 44 years. He submitted that the plaintiffs do not dispute defendant No.1's possession, nor have they challenged the gift on any ground recognised under Mohammedan Law.

15. Learned counsel also submitted that after the gift, and with the consent of the original owner, defendant No.1 and his father raised permanent residential and commercial constructions over approximately 450 sq. yards of the property. It was stated that over the years, defendant No.1 let out portions of the property as landlord, ran commercial establishments under the name "New Cottage Handicrafts", and obtained electricity, telephone and other statutory connections. Learned counsel submitted that the plaintiffs and their predecessors remained silent for over four decades and never objected to either the possession or the constructions. This prolonged silence, it was argued, amounted to clear acquiescence. Allegations based on alleged caretaker undertakings dated 18.03.1979,



15.10.1991, 05.07.2011 and 24.10.2019 were denied as forged and fabricated, and it was asserted that no caretaker arrangement ever existed.

16. Addressing the plaintiffs' reliance on Section 4 of the Act of 1972, learned counsel argued that such reliance is misplaced. Even assuming the gift was made during the period of acquisition, any invalidity would operate only vis-à-vis the State and not between private parties. The acquisition proceedings were withdrawn in 2007 by a notification under Section 48 of the Land Acquisition Act, 1894 and it is undisputed that neither possession was taken nor compensation was paid. Upon such withdrawal, the statutory restriction ceased to operate. In the alternative, it was argued that the defendants' possession is protected under Sections 52 and 60(b) of the Easements Act, 1882, as permanent constructions were raised with the knowledge and acquiescence of the plaintiffs, rendering any licence irrevocable. Consequently, it is submitted that the defendants cannot be treated as unauthorised occupants, and therefore, no mesne profits or occupation charges are payable, and the application under Order XV-A CPC is liable to be dismissed. Reliance has been placed by the respondents on the decisions of various Courts in *Sharan Appa Shabadi & Ors. v. Syeda Arifa Parveen*⁶, *Meera Sahni v. Left. Governor of Delhi*⁷, *Shiv Kumar & Anr. v. Union of India*⁸, *Ram Sarup Gupta v. Bishun Naraian Iyer-College & Ors.*⁹, *Chairman, State Bank of India & Anr. v. M.J. James*¹⁰, *J. Narayan Rao v. Y.G. Basavarayappa and Ors.*¹¹, *Venkataswami Naidu v. Muniappa*

⁶ 2025 INSC 1187.

⁷ (2008) 9 SCC 177.

⁸ AIR 2019 SC 5374.

⁹ 1987 2 SCR 805.

¹⁰ (2022) 2 SCC 301.

¹¹ 1956 SCR 727.



*Mudaliar*¹², *Rafiq Hussain v. Bhayabishnath Prasad*¹³, *Mt. Azmat-Un-Nissa v. Ganesh Pershad*¹⁴, *Lachmi Prasad v. Lachmi Narayan*¹⁵, *B.L Sreedhar v. K.M. Munireddy*¹⁶, *Gopalan Nair v. Thevi Amma*¹⁷, *Fazal Haq v. Data Ram*¹⁸, *Md. Abdul Jameel v. Manzoor Ahmed and Ors.*¹⁹, *Guman Singh v. Pyare Lal and Ors.*²⁰, *B.L Sreedhar v. K.M. Munireddy*²¹, and *Azhar Husain v. Mansab*²².

17. In rejoinder submissions, Mr Munjal submitted that the defendants have taken inconsistent, shifting stands at different stages of the proceedings, rendering their claims unreliable. It is submitted that in the rejoinder dated 18.04.1992 filed in W.P.(C) No. 701/1981, defendant No. 1 expressly disclaimed any ownership over the land and stated that ownership vested with the Deceased Owner. Learned senior counsel further submits that in information furnished to the MCD in 2011 and 2012, defendant No. 1 again disclaimed ownership and described himself merely as an “ultimate user”, a stand which was allegedly abandoned in later proceedings.

18. It is further submitted that in the criminal complaint dated 05.11.2023 and the application under Section 156(3) of the Code of Criminal Procedure, 1973, dated 16.11.2023, defendant No. 1 limited his claim to an outer constructed portion admeasuring about 450 square yards, without seeking any declaration or pleading any case of gift or *Hibba*. However, in the same

¹² AIR 37 1950 MAD. 53.

¹³ AIR 1925 OUDH 258.

¹⁴ AIR 1925 OUDH 262.

¹⁵ AIR 1928 ALL 41.

¹⁶ AIR 2003 SC 578.

¹⁷ AIR 1969 KER 23(V 56 C7).

¹⁸ AIR 1975 ALL 373.

¹⁹ AIR 1932 ALL 572.

²⁰ AIR 1929 NAGPUR 141.

²¹ AIR 2003 SC 578.

²² AIR 1940 ALL 324.



pleadings, he allegedly introduced a contradictory claim of a 25% share in the main farmhouse on the basis of unproduced undertakings. Mr. Munjal also submitted a note pointing out various other allegedly inconsistent stands taken by the defendants.

19. I have heard learned counsel appearing for the parties and have perused the record.

Analysis

20. As noted hereinabove, the present application has been preferred under Order XV-A read with Section 151 of the CPC seeking a direction to the Defendants to deposit mesne profits/use and occupation charges during the pendency of the suit.

21. In exercise of powers under Section 122 of CPC, this Court, by Notification No. 324/Rules/DHC dated 12.11.2008, has introduced Order XV-A of CPC, applicable to this Court and its subordinate courts within its territorial jurisdiction. The provision authorises the Court, in a suit by an owner or lessor for eviction of an unauthorised occupant or for recovery of rent and mesne profits, to direct the defendant to deposit arrears and to continue making monthly deposits of such rent or use and occupation charges as the Court may determine during the pendency of the suit, and, upon default and after due notice, to strike off the defence, without prejudice to the rights and contentions of the parties or the merits of the suit. The material extract of the aforementioned notification is reproduced as under:-

*“ORDER XV-A STRIKING OFF DEFENCE IN A SUIT BY A LESSOR
(A) “In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the court may direct on account of arrears upto the date of the order (within such time as the court may fix) and thereafter continue to deposit in each*



succeeding month the rent claimed in the suit as the court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed. In the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence. (2) Before passing an order for striking off the defence, the court shall serve notice on the defendant or his Advocate to show cause as to why the defence should not be struck off, and the Court shall consider any such cause, if shown in order to decide as to whether the defendant should be relieved from an order striking off the defence. (3) The amount deposited under this rule shall be paid to the plaintiff owner/lessor or his Advocate and the receipt of such amount shall not have the effect of prejudicing the claim of the plaintiff and it would not also be treated as a waiver of notice of termination.”

22. Thus, Order XV-A of CPC confers jurisdiction upon the Court, in a suit instituted by a person asserting to be an owner or lessor, to direct the defendant to deposit such amount as appears reasonable where the defendant continues to remain in occupation after termination of authority or permission.

23. The scope of the words “owner/lessor” was slightly expanded by the Division Bench of this Court in ***Raghubir Rai v. Prem Lata & ors***²³, wherein the words “owner/lessor”, in addition to their ordinary meaning, were also held to cover cases wherein the plaintiff claims a better right to possession of the suit property. It was held that in a suit by an owner or person claiming a better right to possession against a defendant, who continues to occupy the property after termination of permission or authority, the Court is empowered under Order XV-A of CPC to direct the defendant to deposit reasonable use and occupation charges or mesne profits during the pendency of the suit. The Court clarified that this power is independent of Order XXXIX Rule 10 of CPC and is not confined to directing the deposit of

²³ 2014 SCC OnLine Del 3045



admitted amounts only. Even where the defendant disputes the plaintiff's title or denies liability, the Court may, on a preponderance of probabilities and on the basis of material on record, direct deposit of such amount as appears reasonable. The Court also clarified that the scope of Order XV-A of CPC is not confined to cases of subsisting tenancies, but extends equally to persons who continue in possession as unauthorized occupants or trespassers after cessation or termination of their right to occupy the property. The provision is intended to shield the owner or person asserting a better and lawful right to possession from prolonged deprivation of compensation during the pendency of litigation, and to prevent misuse of the judicial process by defendants who, by setting up false, inconsistent, or legally untenable defences, continue to enjoy possession without making any payment. The provision, therefore, is also intended to be a shield against procedural malpractices and abuse of judicial process, and is meant to ensure that a rightful claimant is met with a just and expedient response. Having said that, the Court has also sounded a note of caution that the discretion vested under Order XV-A, though wide, is neither unbridled nor mechanical.

24. The power must be exercised judiciously and on the basis of cogent material on record, such as prior contractual arrangements, past conduct of the parties, prevailing market indicators, or surrounding circumstances. Any amount directed to be deposited under Order XV-A is provisional in nature and remains subject to final determination, adjustment, and restitution upon adjudication of the suit on merits. The relevant extract of the aforementioned decision is reproduced as under:-



“22. Though Order XVA is titled as “Striking Off defence in a suit by a lessor” but the same is not confined to striking off of defence only. The same, independently of Order XXXIX Rule 10 CPC, vests in the Court the power for issuing a direction for deposit. While so empowering the Court, as rightly held by the learned Single Judge, a departure was made from the language of Order XXXIX Rule 10 CPC. While under Order XXXIX Rule 10 CPC, a direction could be issued only for deposit/payment of admitted amount, the word ‘admitted’ is conspicuous by its absence in Order XV-A of the CPC. A discretion has been vested in the Court to issue direction for deposit of “such amount” as the Court may direct. Such departure from language of an earlier existing provision is a tool of interpretation. There is abundant authority to the effect that when the situation has been differently expressed, the legislature must be taken to have intended to express a different intention. The Supreme Court in *The Western India Theatres Ltd. v. Municipal Corporation of the City of Poona* AIR 1959 SC 586 held that the legislature having substituted the word “reduced”, earlier existing, with the word “modify”, this change must have been made with some purpose and the purpose could only be to use an expression of wider connotation so as to include not only reduction but also other kinds of alteration; accordingly, the contention to interpret “modify” as “reduce”, because in the marginal note the word “reduce” remained, was rejected. Reference may also be made to *Khatri Hotels Pvt. Ltd. v. Union of India* (2011) 9 SCC 126, where, finding the legislature to have designedly made a departure from the language of Article 120 of the Limitation Act, 1908, in enacting Article 58 of the 1963 Act, by introduction of the word “first” between the words “sue” and “accrued”, it was held that if the suit is based on multiple causes of action, the period of limitation will begin to run from the date when the cause of action first accrued.

23. We are therefore unable to agree with the contention of the counsel for the appellant/defendant that the Court, in exercise of powers under Order XV-A of the CPC, is incapacitated from directing deposit at a rate higher than that admitted by the defendant.

24. We are of the view that the Court, in exercise of powers under Order XV-A of the CPC is empowered to direct deposit at such rate as the erstwhile tenant/defendant may on the basis of material on record be found to have agreed to pay to the landlord for the said period even if the tenant before the Court may not have admitted the same or disputed/controverted the same. Similarly, in a suit between the owner of immovable property and an unauthorized occupant, Order XV-A empowers the Court to direct the defendant who though may not be liable to be ejected/dispossessed immediately without trial but who, on preponderance of probabilities may not be found to have a right to continue in possession of the property, to deposit during the pendency



of the suit such amount as may appear to be reasonable, to safeguard the right of the owner of the property and to ensure that such owner is compensated at least for the time taken in adjudication of a false defence taken up by the defendant in unauthorized occupation. This, in our view is necessary to avoid the process of the Court being abused by unscrupulous litigants and to curb the growing tendency of using the process of litigation as a tool of oppression.”

25. In ***Madho Singh Chauhan v. Smriti and Others***²⁴, this Court opined that the application of the principles underlying Order XV-A of CPC, especially in determining the quantum of payable amount, varies depending on whether the defendant is a tenant or an alleged unauthorised occupant. It was held that Order XV-A CPC vests complete discretion in the Court while determining the amount payable thereunder. However, as a guiding factor, it was observed that in case of a tenant, the Court may be guided by the pre-determined rent or rental in the surrounding area, and in case of an unauthorized occupant, who was not inducted as a tenant, the rental values in neighbouring areas may not be of much relevance. The relevant extract of the aforementioned decision is culled out as under :-

“20. A bare reading of sub-para (F), (G) and (H) of para 9 of the report in Raghuvir Rai, vis-à-vis the earlier sub-paras (A) to (E) thereof, clearly indicate that the principle that applies, under Order XV-A, to unauthorised occupants who are not tenants, and that which applies to tenants, are completely distinct. Where the defendants are the tenants in the suit property, there may be substance in the contention that the payment directed under Order XV-A(1) ought to be commensurate to the rent charged with respect to premises in the vicinity. Where, however, the defendants are not tenants, as in the present case, where they are the divorced wife and children of the petitioner who, according to him, are continuing in unauthorised occupation of the suit property, the discretion of the court, in fixing the amount payable under Order XV-A(1) is not constrained or constricted in any manner by the consideration of the rent chargeable with respect to premises in the vicinity/”

²⁴2022 SCC OnLine Del 1059



26. Furthermore, in *Smt. Swaran Makkar v. M/s Dayal Chand Kishori Lal*²⁵, the Court held that an order under Order XXXIX Rule 10 of CPC and/or Order XV-A of CPC is an interim measure intended to safeguard the interests of the plaintiff/owner. Such interim protection must be granted with due care, and the provisions ought to be interpreted liberally to protect a party asserting ownership and alleging unauthorized occupation.

27. In the present case, the plaintiffs have placed on record documents evidencing that the suit property was purchased by their predecessor-in-title, through a registered sale deed. The factum of ownership of the Deceased Owner is not in dispute. In fact, the defendants' right also flows from the same owner. The plaintiffs claim succession through the admitted owner and thus, *prima facie* demonstrate a better right of ownership over the defendants.

28. The defendants, on the other hand, assert title on the basis of an alleged oral gift, i.e., *Hibba* purportedly made in January 1980. While the validity of such a claim is a matter of trial, for the limited purposes of the present application, the Court cannot be oblivious to the surrounding circumstances which at the outset undermine the defendants' assertion. Material placed on record indicates that defendant No.1, at various points in time and before different fora, expressly disclaimed ownership and acknowledged the title of the Deceased Owner. Such conduct is inconsistent with the plea of absolute ownership by way of a gift. The different stands taken by the defendants have been brought on record by the plaintiffs in the following table:-

²⁵2023: DHC : 1893



<u>S.NO</u>	<u>DEFENDANTS' DOCUMENTS WITH DIFFERENT STANDS</u>	<u>BASIS OF CLAIM/AVERMENTS OF DEFENDANT NO. 1</u>	<u>AREA OF LAND/PROPERTY INVOLVED</u>
1.	PDF 57,64 (Plaintiffs Documents) Rejoinder Dated 18.04.1992 in WPC 701/1981 Additional Affidavit Dt. 21.04.1992	No Ownership claimed. Land of Petitioner not acquired. Admits land of petitioner was also included in acquisition notifications.	Entire land measuring 9 Bigha 1 Biswa
2.	PDF 266 (Plaintiffs Documents) Information to MCD in 2011 PDF 271 Information to MCD in 2012	Claims himself as Ultimate User. No ownership or co-ownership or joint ownership claimed	NILL
3.	PDF 228 (Plaintiffs Documents) Complaint Dated 05.11.2023	No undertaking, document of declaration or Hibba mentioned.	Outer portion of property constructed on a plot of land measuring about 450 sq. yards. Consisting of 3 commercial shops and residential portion consisting of one drawing-dining, two bedrooms, two bathrooms, one store, one kitchen.
4.	PDF 235 (Plaintiffs Documents) Para 3 of Criminal Complaint u/s 156(3) dt. 16.11.2023	UNDERTAKINGS of Smt. Roshan Aara Begum Admits that there was no Undertaking of Smt. Roshan Aara Begum.	Outer portion of the said property, constructed on a plot of land measuring about 450 sq. yds. 25% of share from main farm house measuring 9 bighas



	<p>PDF 378 (PLEADINGS) Para 39 of Written Statement</p>		<p>1 biswa.</p>
5.	<p>PDF 244-245 (Plaintiffs Documents) Reply dt. 18.03.2024 to IO</p>	<p>Land was acquired and Smt. Roshanara Begum had no right and title over the property.</p> <p>WRITING by late Smt. Roshan Ara Begum duly witnessed by late Shri Yusuf Khan @ Dileep Kumar and Late Shri Sultan Ahmed.</p> <p>Documents of my 25% ownership in inner farm house are in power and possession of Plaintiffs.</p> <p>Denies the Defenadnt Nos. 1 and 2 gave false statement before IO.</p>	<p>Owner of house property and 3 shops.</p> <p>25% Share in the inner farm house.</p>
	<p>PDF 380 (PLEADINGS) Para 43 of Written Statement</p>		
6.	<p>PDF 213 (Plaintiffs Documents) Para 3 of WP (C) No. 5548/2024 Dt. 18.04.2024</p> <p>PDF 372 (PLEADINGS) Para 34 of WS</p> <p>PDF 217-218 (Plaintiffs</p>	<p>Claims Shri Hussain Baksh and late Smt. Shamshad Begum were siblings.</p> <p>Admits that Sh. Hussain Baksh and not Smt. Shamshad Begum were not Siblings</p> <p>Claims DOCUMENTS executed in the presence of Sh. Yusuf Khan @ Dileep Kumar, late Sh. Sagar Suri, late Sh. Sultan Ahmed</p>	<p>Admits Shabbir Ahmed and Salim were maintaining the properties.</p> <p>450 sq. yards. Constructed area and 1/3rd share in the remaining land.</p>



	<p><i>Documents)</i> <i>Para 17 of WP (C)</i> <i>No. 5548/2024 dt.</i> <i>18.04.2024</i></p> <p><i>PDF 375</i> <i>(PLEADINGS)</i> <i>Para 36 of WS</i></p>	<p><i>whereby the property allegedly constructed by the Defendant No.1 was DELARED as his property and also that Defendant No. 1 would have 1/3rd share in remaining property.</i></p> <p><i>Reiterates Para 17 of WP (C) 5548/2024, meaning thereby maintains that there was some document of delaration.</i></p>	
7.	<p><i>PDF 218</i> <i>(Plaintiffs</i> <i>Documents) In</i> <i>Para 18 of WP (C)</i> <i>No. 5548/2024</i></p> <p><i>PDF 261</i> <i>(Plaintiffs</i> <i>Documents)</i> <i>Para 37 of WP (C)</i> <i>No. 11395/2024</i></p> <p><i>PDF 435</i> <i>(PLEADINGS)</i> <i>Para 56 (xxi) of</i> <i>WS</i></p>	<p><i>Admits after death of Smt. Roshanara Begum, the property devolved upon Smt. Saira Banu and Sh. Sultan Ahmad.</i></p> <p><i>After the death of Smt. Roshanara Begum, the property devolved upon Md. Salim, Smt. Saira Banu and Sh. Sultan Ahmad.</i></p> <p><i>Reiterates para 24 and 37 of WP (C) 11395/2024 as true and correct.</i></p>	
8.	<p><i>PDF 257</i> <i>(Plaintiffs</i></p>		<p><i>Claims to be in possession of portion</i></p>



	<p>Documents) Para 23,24 of WP (C) 11395/2024</p> <p>Plan @ PDF 43</p> <p>PDF 435 (PLEADINGS) Para 56 (xxi) of WS</p>	<p>Reiterates para 24 and 37 of WP (C) 11395/2024 as true and correct</p>	<p>marked red in plan. Claims to be the co-owner to the extent of 25% in the Released property. (Contrary to Claim of Hibba)</p>
9.	<p>PDF 278-279 (Plaintiffs Documents) Para 2 (1) of Rejoinder dt. 30.08.2024 filed on 30.09.2024</p>	<p>First Time claimed HIBBA on 16.01.1980.</p>	<p>Claimed Oral Gift of Property measuring 2300 sq. yds. along with small structure and 25% Co-owner of the remaining property. No particulars of witness disclosed. No demarcation of property claimed.</p>
10.	<p>PDF 287-288 (PLEADINGS) Para 3 of Written Statement dt. 15.02.2025</p>	<p>Again claims HIBBA on 16.01.1980 Now for the first time numbers and names of alleged Witness are introduced.</p> <p>But no allegations of any demarcation of 2300 Sq. Yds. in the property or at least 25% share in remaining land.</p>	<p>Claimed Oral Gift of Property measuring 2300 sq. yds. along with small structure and, 25% Co-owner of the remaining property on the basis of HIBBA.</p>
11.	<p>PDF 743,746,749 (DEFENDANTS DOCUMENTS) Affidavits dt. 15/17. 02.2025 of Witness set up by Defendants.</p>	<p>Claim demarcation by alleging "In our presence Donor demarcated the Gifted Property being the roadside portion of her property and handed over the possession of Gifted property to the Donee."</p>	<p>Two Days after signing of witness statement dt. 15.02.2025, alleged Witness went on to claim demarcation of alleged GIFTED PROPERTY, which was not even claimed by Defendants.</p>



29. From the aforesaid, it is apparent that the defendants are indeed indulging in an act of approbation and reprobation on this aspect. Further, the plaintiffs have relied upon written undertakings, caretaker arrangements and agreements, as well as admitted receipt of remuneration by Defendant No.1 for caretaker services. Though these documents are disputed, they may constitute relevant material at this interlocutory stage and indicate permissive occupation.

30. The contention of the defendants that long-standing possession, by itself, excludes the application of Order XV-A of CPC is also untenable. Mere continuity or longevity of possession does not legalise occupation once the authority or permission to occupy stands terminated. Order XV-A of CPC expressly contemplates situations where a defendant continues in occupation after cessation of lawful title, irrespective of the duration of prior possession.

31. Moreover, the contention of the defendants that the invalidity of the gift under Section 4 of the Act of 1972 would operate only against the State, does not advance their case at this stage. The said statutory provision casts a serious cloud on the legality of any alleged transfer during the subsistence of acquisition proceedings. Whether such a transfer is void, voidable or unenforceable *inter se* the parties is a matter to be adjudicated at trial. However, for the purposes of the present application, the defendants have failed to *prima facie* establish a lawful right to continue in occupation.

32. As regards the determination of a reasonable amount towards mesne profits/use and occupation charges, the plaintiffs have relied upon the rent deed executed by defendant No.1 himself in respect of a portion of the suit



property, reflecting a monthly average rent of ₹2,10,000/-. The said document, emanating from the defendants' own conduct, constitutes a relevant indicator of the prevailing market value. Having regards to the location, extent and potential of the suit property, and bearing in mind that any direction under Order XV-A of CPC is provisional and subject to final outcome of the instant suit, this Court is of the view that the plaintiffs have made out a *prima facie* case for deposit of use and occupation charges.

33. In view of the foregoing discussion, this Court is satisfied that the plaintiffs have established a *prima facie* right of ownership and the defendants' continued occupation of the suit property, after termination of permission, attracts the provisions of Order XV-A of CPC. Failure to direct deposit of use and occupation charges would result in unjust enrichment of the defendants and would cause irreparable prejudice to the plaintiffs.

34. The application under Order XV-A CPC is allowed. Defendant Nos. 1 to 3 are directed to deposit mesne profits/use and occupation charges at the rate of ₹2,10,000/- per month with effect from 25.09.2024 till 31.03.2026, before the Registrar General of this Court.

35. The arrears calculated up to the date of this order shall be deposited within a period of 6 weeks. The defendants shall continue to deposit the said amount on or before the 10th day of each month during the pendency of the suit.

36. The amount so deposited shall remain subject to final adjudication, and the outcome of the suit. Nothing contained herein shall be construed as an expression of opinion on the merits of the instant case.

C.S (O.S) NO. 960 /2024, CC 15/2025, I.A. 46873/2024, and I.A. 15624/2025



2026:DHC:2014



37. List on 10.04.2026, before the Joint Registrar for taking up further necessary steps, in accordance with the extant rules
38. Thereafter, list before the Court on the date to be assigned by the Joint Registrar.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MARCH 09, 2026
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