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

Reserved on: 21st August, 2026
Pronounced on: 20th November, 2026

\# **CNR No. DLHC011879242014**

\+ RFA 488/2014 & CM APPL.17876/2026

SH. MAHINDER SINGH SINCE DECEASED THROUGH LR'S

.....Appellant

Through: Mr. Arvind K. Nigam & Mr. Rajesh Yadav, Sr. Advs. with Mr. Neeraj Yadav & Mr. Dhananjay Mehlawat, Advs.

Versus

SH. PRATAP SINGH .....Respondent

Through: Mr. Uttam Datt & Ms. Malvika Trivedi, Sr. Advs. with Mr. Charan S. Verma, Mr. Bharat Deepak, Mr. Shailendra Slaria, Ms. Sonakshi Singh, Mr. Ajay Avinashi & Mr. Naman Kumar, Advs.

\# **CNR No. DLHC012119262014**

\+ RFA 615/2014, CM APPL. 3196/2026 & CM APPL. 4366/2026

MR. PRATAP SINGH .....Appellant

Through: Mr. Uttam Datt & Ms. Malvika Trivedi, Sr. Advs. with Mr. Charan S. Verma, Mr. Bharat Deepak, Mr. Shailendra Slaria, Ms. Sonakshi Singh, Mr. Ajay Avinashi & Mr. Naman Kumar, Advs.

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versus

MR. MAHINDER SINGH THR LRS .....Respondent

Through: Mr. Arvind K. Nigam & Mr. Rajesh Yadav, Sr. Advs. with Mr. Neeraj Yadav & Mr. Dhananjay Mehlawat, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present cross-appeals arise out of the judgment and decree dated 11.09.2014[1], passed by the learned ADJ-12, Central District, Tis Hazari Courts, Delhi[2], in CS No. 53/11/98, titled as "Pratap Singh v. Mahinder Singh and Ors."[3], whereby the suit instituted by the original Plaintiff, *i.e.*, Mr. Pratap Singh[4], against the original Defendants, *i.e.*, late Mr. Mahinder Singh[5], was partly decreed with costs. Aggrieved by the impugned judgment, both the parties have preferred the present appeals. RFA No. 488/2014 has been preferred by the original Defendant, whereas RFA No. 615/2014 has been preferred by the original Plaintiff.

2. The Plaintiff had initially instituted a suit seeking a decree of permanent injunction in respect of property bearing Municipal No. RZ-33B/1,

[1] Impugned Judgment
[2] Learned ADJ/Learned Trial Court
[3] Subject Suit
[4] Plaintiff
[5] Defendant

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Kishangarh, Mehrauli, Delhi[6]. The case of the Plaintiff was that he was the owner and in possession of the suit property, and that the Defendant was interfering with his possession and obstructing the construction being carried out by him. The Defendant had contested the subject suit and, *inter alia*, disputed the Plaintiff's claim with respect to the suit property, asserting that the suit property was in his possession and it was bearing Municipal No. RZ-33B/7 and not RZ-33B/1, and that the same had fallen to the Defendant's share pursuant to a family arrangement/partition amongst the four sons of late Shri Prabhu, *i.e.*, father of the parties.

3. During the pendency of the subject suit, a Local Commissioner was appointed by the learned ADJ, who inspected the suit property on 03.06.1998. The report of the Local Commissioner dated 03.06.1998 recorded that while conducting the commission, the gates of the suit property were opened by the Defendant and that no electricity meter was found installed at the suit property. Subsequently, the plaint was amended by the Plaintiff on 13.03.2006 and a claim for possession was incorporated, alleging that the Plaintiff had been forcibly dispossessed from the property by the Defendant on 14.02.2006. The Plaintiff had also pleaded ownership of the suit property by contending that the said property was transferred to him out of love and affection by late Shri Hari Singh, *i.e.*, the younger brother of his grandfather.

4. The learned ADJ, after considering the pleadings and evidence led by the parties, had framed the following issues for consideration: -

[6] Suit Property

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"1) Whether the suit is bad for non-joinder of necessary party? OPP

2) Whether the plaintiff is owner and in possession of suit property? OPP

3) Whether the plaintiff is entitled for relief as claimed? OPP

4) Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPP

5) Whether the plaintiff has been dispossessed forcibly by the defendant during the pendency of case on 14.02.2006? OPP

6) Whether the plaintiff is entitled for recovery of possession, as claimed? OPP

7) Relief."

Vide the impugned judgment and decree dated 11.09.2014, the subject suit was partly decreed by the learned ADJ while holding that the suit property would be deemed to be jointly held by the Plaintiff, the Defendant and other family members of late Shri Prabhu. Hence, the present cross-appeals.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

5. At the outset, learned Senior Counsels for the Defendant submitted that the learned ADJ had passed the impugned judgment in the nature of a declaration, when neither the relief sought by the Plaintiff, nor the foundation for entitlement to such relief had been sought in the pleading by the Plaintiff, or in the evidence. In support of the said submission, learned Senior Counsels placed reliance upon the judgment passed by the Hon'ble Supreme Court in

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Bachhaj Nahar v. Nilima Mandan & Anr.[7] and particularly upon paragraphs 10, 11, 12 & 13 thereof.

6. Learned Senior Counsels had further submitted that the relief granted by the learned ADJ *vide* the impugned judgment was never pleaded in the pleadings by the Plaintiff, and rather a *suo moto* relief was granted. It was further submitted that the Plaintiff had set up an independent claim *qua* the suit property on the basis of a right derived from late Shri Hari Singh, *i.e.*, younger brother of his grandfather, and the said fact could not be proved by the Plaintiff. In support of the said contention, reliance was placed on the judgment passed by the Hon'ble Supreme Court in **Kalyan Singh Chouhan v. C.P. Joshi**[8] and particularly upon paragraph 19.

7. Learned Senior Counsels had further submitted that the Plaintiff failed to prove his title and previous possession of the suit property, and the learned ADJ, while rendering the impugned judgment had observed that the parties could not prove their respective claims *qua* the suit property.

8. Learned Senior Counsels for the Defendant drew attention of this Court to the Report of the Local Commissioner dated 03.06.1998 to contend that the said report made it abundantly clear that the Plaintiff was not in possession of the suit property as on 03.06.1998. It was further submitted that on account of the same, the relief of injunction, as claimed by the Plaintiff in the subject suit, was not maintainable.

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[7] (2008) 17 SCC 491
[8] (2011) 11 SCC 786

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9. Learned Senior Counsels had further submitted that finding of the learned ADJ that the suit property constituted a joint holding and that there had been no partition between the parties was erroneous and the same was arrived at under the influence of an incorrect Memo of Parties filed by the Plaintiff. It was further submitted that the material on record demonstrated that the father of the parties, during his lifetime, had orally partitioned his properties amongst his four sons, and the said partition was equitable and was acted upon by the parties, and subsequently, the same was reduced into writing through various registered documents.

10. Learned Senior Counsels had further submitted that the learned ADJ had wrongly discarded the documents relied upon by the Defendant, merely because the said documents were disputed by the Plaintiff. It was further submitted that the documents in question were registered documents, and the same were duly proved in accordance with law. Learned Senior Counsels had further submitted that the relevant records had been summoned from the Office of the Sub-Registrar, and the attesting witness had also been examined during the course of trial, thereby satisfying the requirements of Section 68 of the Indian Evidence Act, 1872. It was further contended that once the documents have been duly proved, the evidentiary burden shifted upon the Plaintiff to disprove the said documents, which burden the Plaintiff failed to discharge. In support of the same, learned Senior Counsels placed reliance upon the judgment passed by the Hon'ble Supreme Court in **Prem Singh & Ors. v. Birbal & Ors.**[9]

[9] (2006) 5 SCC 353

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11. Learned Senior Counsels had further submitted that the learned ADJ had failed to appreciate the fact that the Plaintiff had been beneficiary of the family arrangement/partition relied upon by the Defendant. It was further contended that the Plaintiff, after having derived benefits from the said partition, could not turn around and challenge the same for the purposes of maintaining the subject suit.

12. Learned Senior Counsels further drew attention of this Court to Criminal Writ Petition No. 892/1998, filed by the Plaintiff before this Court, aggrieved by the alleged removal of the electricity meter from the suit property by the Defendant. It was submitted by the learned Senior Counsels that the reply affidavit filed in the said proceedings by Mr. P.K. Bharadwaj, Deputy Commissioner of Police, South-West District, Delhi, materially contradicted the case set up by the Plaintiff before the learned ADJ. It was further contended that the contents of the said affidavit demonstrated falsity and inconsistency in the Plaintiff's claim *qua* his possession and entitlement in respect of the suit property.

13. Learned Senior Counsels had further submitted that in view of the reply affidavit filed by the DCP, the Criminal Writ Petition filed by the Plaintiff was dismissed *vide* order dated 20.07.1999, which had attained finality, as the said order was never challenged by the Plaintiff.

14. Learned Senior Counsels had further submitted that the Plaintiff was required to succeed on the strength of his own case, and he could not derive any advantage merely from an alleged weakness in the Defendant's case. It

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was further contended that the suit had been instituted by the Plaintiff on the basis of an alleged title to the suit property, and therefore, the primary burden was upon him to establish the same by placing sufficient evidence on record. It was further contended that the learned ADJ, having itself observed that the parties had not been able to establish their respective claims, could not have proceeded to partly decree the subject suit, merely on the basis of the alleged failure of the Defendant to establish the title set up by him. In support of the same, reliance was placed upon the judgment passed by the Hon'ble Supreme Court in **Ramchandra Sakharam Mahajan v. Damodar Trimbak Tanksale (Dead) & Ors.**[10]**,** particularly upon paragraph 13, and the judgment passed by this Court in **Harish Mansukhani v. Ashok Jain**[11]**,** particularly upon paragraphs 18, 22 & 23.

15. Learned Senior Counsels for the Defendant had further submitted that there was a cloud over the Plaintiff's title over the suit property on account of the competing claim raised by the Defendant, and therefore, the Plaintiff could not have maintained a suit for possession/injunction without seeking declaration of title. In this regard, learned Senior Counsels had placed reliance upon the judgment passed by the Hon'ble Supreme Court in **Anathula Sudhakar v. P. Buchi Reddy (D) By LRs & Ors.**[12]**,** and particularly upon paragraphs 13.3, 14, 21 & 29.

16. Learned Senior Counsels had further submitted that the learned ADJ had failed to appreciate the legal effect of the family arrangement relied upon

[10] (2007) 6 SCC 737
[11] 2009 (2) AD (Delhi) 30 Lawpack
[12] (2008) 4 SCC 594

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by the Defendant. It was further submitted that a family arrangement could be entered into orally and in support of the same, reliance was placed upon the judgment passed by the Hon'ble Supreme Court in **Kale v. Dy. Director of Consolidation**[13]**,** and particularly upon paragraph 10.

17. Learned Senior Counsels had further submitted that family arrangements are governed by a special equity principle and it is the duty of Courts to uphold and give full effect to a family agreement. In this regard, reliance was placed on the judgment passed by the Hon'ble Supreme Court in **Hari Shankar Singhania v. Gaur Hari Singhania**[14]**,** and particularly upon paragraphs 42 to 58. It was further submitted that the said judgment was not taken into consideration by the learned ADJ while passing the impugned judgment.

18. Learned Senior Counsels for the Defendant had further submitted that the Plaintiff had taken inconsistent and contradictory pleas at different stages of the proceedings. It was further contended that there were material variations between the case set up in the original plaint, the amended plaint, the affidavits of evidence filed by the Plaintiff and his deposition during the cross-examination. It was further submitted that the Plaintiff had repeatedly shifted his stand *qua* the source of his alleged title, his possession over the suit property and the circumstances in which he claimed entitlement thereto.

[13] (1976) 3 SCC 119
[14] (2006) 4 SCC 658

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19. Learned Senior Counsels had further submitted that the Plaintiff could not be permitted to approbate and reprobate by taking inconsistent stands according to the stage of the suit proceedings. In support of the same, reliance was placed upon the judgments passed by the Hon'ble Supreme Court in **Garre Mallikharjuna Rao & Ors. v. Nalabothu Punniah**[15], and particularly upon paragraphs 6, 9 & 15 and **Devasahayam (dead) by LRs v. P. Savithramma & Ors.**[16]**,** and particularly upon paragraphs 29 and 33**.**

20. Learned Senior Counsels for the Defendant further submitted that the amended plaint, as filed by the Plaintiff, was a suit for possession based on title, with relief of permanent injunction. Attention of this Court was drawn to Issue No. 2 framed in the subject suit. The said issue reads as under: -

"Whether the plaintiff is owner and in possession of suit property? OPP"

In view of the above, learned Senior Counsels submitted that the Plaintiff led evidence on the issue as framed without seeking any amendment and striking out the said issue. It was further submitted that it was imperative for the Plaintiff to prove his ownership/title in respect of the suit property, in order to succeed, as the burden of proof was on him by virtue of Sections 104, 105 & 109 of the Indian Evidence Act, 1872.

21. Learned Senior Counsels had further submitted that during the course of oral hearing in the subject suit, the Plaintiff had laid stress on the fact that an electricity meter was installed in the suit property and to buttress the said

[15] (2013) 4 SCC 546
[16] (2005) 7 SCC 653

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plea, the Plaintiff had sought to rely upon a certificate issued by DESU, photograph of the electricity meter and electricity bills pertaining to the months of January and March, 1998. It was further submitted that the said documents were not proved as per law, since no witness from the erstwhile DESU, DVB or BSES Rajdhani was examined by the Plaintiff. It was further submitted that if the witnesses were not appearing despite summons, as was contended by the Plaintiff, then recourse ought to have been taken to Order XVI Rule 12 of the CPC, to compel appearance of the said witnesses. It was further submitted by the learned Senior Counsels that the said documents, do not, in any manner, demonstrate that an electricity meter was installed in the property bearing No. RZ-33B/7.

22. Learned Senior Counsels further drew attention to the Report of the Local Commissioner dated 03.06.1998, to contend that even the said report found that no electricity meter was installed at the suit property. It was further submitted that mere observation of the Local Commissioner to the effect that there was a board and an electrical wire hanging in the air in no manner proves that there existed an electricity meter belonging to the Plaintiff.

23. Learned Senior Counsels further drew attention of the Court to the affidavit filed by the Mr. P.K. Bharadwaj, Deputy Commissioner of Police, South-West District, Delhi, wherein it was clearly stated that the place of occurrence of the incident was RZ-33B/7, and as per the report received and inquiries made by the DESU authorities, no electricity meter was installed at the said premises, and therefore, the question of its theft did not and could not arise. It was further submitted that the said affidavit stated that when the

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police officers arrived at the suit property, the Defendant opened the door and stated that he was in possession and occupation of the said house and no incident of breaking of locks or any quarrel took place there. It was further stated in the said affidavit that the Plaintiff was asked to accompany the Police Officer to the place of occurrence, but he refused to do so by stating that he wanted to lodge the report, which he had lodged. It was further stated in the said affidavit that the Plaintiff did not co-operate with the Police and no cognizable offence was found to have been committed, and thus, the DD was filed. Learned Senior Counsels had contended that the only intention of the Plaintiff was to create false evidence and cause of action to file the present suit, and no rejoinder to the reply affidavit of the DCP was filed by the Plaintiff, and therefore, the facts stated in the said affidavit were admitted by the Plaintiff.

24. Learned Senior Counsels had further submitted that the reliance placed by the Plaintiff upon an Inspection Report for property tax of the year 1983, assessment order dated 01.04.1997 and payment of House Tax receipts of the years 1996, 1997 and 1998, issued in respect of property bearing No. RZ-33B/1, is misplaced, as the same do not pertain to the suit property. Learned Senior Counsels had submitted that the suit property bears the Municipal No. RZ-33B/7. It was further submitted that PW1/2A, Shri Bhagwan, UDC from MCD, Najafgarh had brought the summoned records pertaining to the House Tax Assessment file in respect of House Nos. 33B/1, 33B/3 to 33B/11. It was further submitted that in his cross-examination, the said witness had stated that he does not personally know about which property the assessment record of EX.PW2A/1 to PW2A/20 pertain to. It was further submitted that the said

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witness admitted that there were no ownership documents in the mentioned files of EX.PW2A/1 to PW2A/20. It was further submitted that the said witness had deposed that he cannot say as to who was the owner and who was in possession of the mentioned properties, as he was deposing on the basis of record.

25. Learned Senior Counsels further drew attention of this Court to EX.PW2A/16, *i.e.*, the inspection form of property No. RZ-33B/7, Kishangarh, and the name of the assessee therein had been mentioned as "Mohinder Singh son of Prabhu", *i.e.*, the Defendant. It was submitted that the date of inspection in the said form was mentioned as 27.03.1986, and the said document was duly proved by the Plaintiff. It was, therefore, submitted that the suit property was bearing No. RZ-33B/7 and the same belonged to the Defendant, and the said fact demolishes the case of the Plaintiff.

26. Learned Senior Counsels had further submitted that the Defendant had also proved the House Tax Records of the suit property, *i.e.*, Municipal No. RZ-33B/7, as EX.DW1/5 (Colly), which are dated 27.03.1986, 30.03.1986 and 10.11.2003, and thus, it was evident that the Defendant had deposited the property tax of the suit property, even after the year 1998. It was further submitted that the property tax documents pertaining to property No. RZ-33B/1, which the Plaintiff allegedly claims to be the suit property, were of the period prior to March, 1998.

27. Learned Senior Counsels had further submitted that EX. PW2/A had been wrongly described by the Plaintiff to be an Assessment Report dated

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16.03.2006; however, the date 16.03.2006, appearing on top of EX. PW-2A/1 to EX. PW-2A/6, is the date on which these documents were provided under the RTI Act, and not the date of the documents. In view of the same, it was contended that it is clear that after March 1998, no property tax was paid/deposited by the Plaintiff, even in respect of property No. RZ-33B/1.

28. Learned Senior Counsels had submitted that it is settled law that municipal revenue records, electricity bills, house tax receipts etc. do not establish title over a property. In support of the said contention, reliance was placed upon the following judgments: -

i. Neelam Kapoor & Ors. v. Bhag Chand & Ors.[17], paragraph 10 (i);
ii. Jai Singh Thr. Lrs. V. Harbans Singh Thr. Lrs.[18], paragraph 29;
iii. Re-M/s. JVG Finance Ltd.[19], paragraph 14.

29. Learned Senior Counsels had further submitted that the Plaintiff had relied upon the complaints filed on 14.02.2006, and the said complaints are self-serving, as the same were filed with a view to create a false cause of action for amending the plaint. It was further submitted that the Defendant had always been in possession of the suit property, and the said fact had been duly noted by the Local Commissioner in his Report, as well as by the Deputy Commissioner of Police in his affidavit in the year 1998. It was further submitted that the Plaintiff in his cross-examination dated 01.03.2005, had himself admitted that at the time of visit of the Local Commissioner, the lock of the Defendant was in the suit property, and the same was opened by the

[17] 2017 SCC OnLine Del 10262
[18] 2016 SCC OnLine Del 3898
[19] 2016 SCC OnLine Del 3898

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Defendant, which fact proves possession of the Defendant over the suit premises, and therefore, the contention of the Plaintiff that he was dispossessed from the suit property on 14.02.2006 is misconceived.

30. *Qua* the testimony of Mr. B.P. Singh, Civil Engineer, PW-3, it was submitted by the learned Senior Counsels that the said witness failed to produce any engagement letter or proof of payment by the Plaintiff. It was further submitted that the said witness failed to show any documentary evidence that he had raised any construction on the suit property. It was further argued that the said witness failed to identify the suit property from the photographs exhibited by the Plaintiff as EX.PW1/72 to EX.PW1/88, as it was deposed by him that he had not constructed anything in property No. RZ33-B9/7, Kishan Garh Mehrauli. It was further submitted that the said witness had stated that neither will he see the photographs nor he will speak anything about the said photographs.

31. *Qua* the testimony of Mr. Dharmendra Singh, PW-2 and Mr. Sunil Kumar, PW-3, it was submitted by the learned Senior Counsels that both the said witnesses had filed verbatim similar affidavits, and both the witnesses admitted having been present at the time of the visit of the Local Commissioner in the year 1998, and have further admitted that locks of the suit property were opened by the Defendant, yet they have falsely deposed that the possession of the suit property was taken by the Defendant forcibly in the year 2006.

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32. Learned Senior Counsels had further submitted that the argument of the Plaintiff that since the Defendant could not show a better title than the Plaintiff, the learned Trial Court ought to have decreed the suit in the Plaintiff's favour is misconceived, as the present suit for possession was based on title and the onus was on the Plaintiff to prove his title and not *vice-versa*. It was further submitted that the Plaintiff had failed to prove his prior possession of the suit property and had failed to place on record any cogent evidence to establish the same.

33. Learned Senior Counsels further drew attention of this Court to the following portion of the impugned judgment, and the same is reproduced as under: -

> *"**13 Issue No. 2. Whether the plaintiff is owner and in possession of suit property? OPP and Issue No. 3. Whether the plaintiff is entitled for relief as claimed? OPP and Issue No. 5. Whether the plaintiff has been dispossessed forcibly by the defendant during the pendency of case on 14.02.2006? OPP and Issue No. 6 Whether the plaintiff is entitled for recovery of possession, as claimed? OPP:-*** All these issues are taken up together as they are inter-connected. Under these issues, the plaintiff was required to prove that he is owner and was in possession of suit property at the time of filing of suit and thereafter was dispossessed and was entitled to the relief of possession and injunction. The plaintiff has averred that he was in possession of suit property on the date of filing the suit which is denied by defendant on the strength of' various documents filed on record. Defendant No. 1 is mainly contesting the suit and has taken the stand that plaintiff has not been able to prove the ownership but simultaneously has taken the plea that father of the plaintiff and defendant has been given their separate share alongwith the other brothers and plaintiff is enjoying said share in property as per site plan and GPA etc. executed by father of parties. He has further taken members stand that property of plaintiff bears no. C, C-1 and C-2 and property of other family members bears other no. Though plaintiff has firstly put the claim on the basis of plea that suit land was part of property of Sh. Hari Singh who is brother of Prabhu but said chunk of

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property is sought to be proved by defendant as part of property of Late Prabhu father of parties. Daughter of Sh. Hari Singh rather stated that suit land belongs to Late Prabhu. In a way if defendant No. 1 has admitted that property belonged to father of parties and was orally partitioned and later on reduced to writing then the onus shifts upon defendant and if he is not able to prove the same then property would be deemed to be joint property and all the Lrs of Prabhu will be co-sharer in the same. The main thrust is that as to whether defendant has been able to prove the partition or not and if not then what are consequences. Number of documents produced are placed on record. Ex, PW-1/D2, Ex. PW-l/Dl and Ex. DW-1/2 main documents put forward by defendant have not been proved as per Indian Evidence Act. The plaintiff has denied the signatures on all the documents and in these circumstances, the defendant should have proved the same. Though documents were sought to be sent to CFSL but more signatures and admitted signatures were sought by CFSL so it cannot be stated that CFSL report is favourable to anybody and rather it is inconclusive. No other evidence has come on record which can prove that signatures of plaintiff are available on these documents. Wife of late Prabhu and another son Gajinder are witness to Will, undertaking and GPA but wife of late Prabhu has died and otherwise also being defendant the other signatories are interested parties. No independent witness has signed the same. Another witness B. S. Chauhan could have been produced by defendant to prove the document but he has also not come to depose so in these circumstances, these documents have not been proved as per Indian Evidence Act and self-serving statement of defendants have no relevancy. Once these documents have not been proved, facts contained in these documents stands discarded and cannot be taken into account. The partition as per undertaking is of no value for want of prove. The will in these circumstances, once taken as defence also stands discarded. Both the parties have not been able to prove their contention as stated aforesaid and rather joint holding of Late Prabhu and Hari Singh will be-deemed to be existing in the wake of absence of clear cut partition of the property between predecessor in interest of the parties. The same is fortified by the evidence on record. DW-1 has stated that he has no knowledge regarding areas of khasra No. He has no knowledge as to how much share his grand-father individually owned. He has rather stated that DDA has acquired the land but possession has not been taken, so the suit property in question has already been acquired as admitted but possession is still either with plaintiff or with defendant which will be adjudicated upon in the later part of reasoning. This witness has also

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admitted that no municipal no. has been given to the suit land. On asking whether any electricity meter is installed in the name of his father or family member, to which he has stated that he is not aware. From the evidence produced on record, it has not been even made out that how much area was inherited by father of plaintiff and defendant No. 1 and 2 and in what manner. It is also not made out that khewat is still shamlat not and whether any partition has been taken place between father of the plaintiff and defendant No. 1 and 2 and his other brothers, pw-2 Smt. Premwati has stated that suit land belonged to late Prabhu and both the plaintiff and defendants are son of Late Prabhu and it was in possession of late Prabhu. She nowhere has also talked about the partition between parties. DW-3 Gajender in his chief examination has stated that late Prabhu father of plaintiff and defendants was having ownership of many properties and it was transferred by way of registered deeds to avoid any dispute and the properties were amicably partitioned by all the parties. On the contrary, the defendant has based his claim only on the basis of GPA, undertaking and Will stated above and there are no separate registered deeds. He has stated that fadier of parties has mutually partitioned the said land even prior to execution of above said documents but as stated above, same, are not proved as these documents can be created when plaintiff has denied his signatures. Statement of DW-2 Gajender otherwise cannot be taken into consideration as he has denied his signatures in some other court though they were signed in open court so extra care has to be applied while reading his statement. In totality of the circumstances, it is crystal clear that there is no dispute regarding holding of property once upon time by Late' Prabhu (which even may be as co-shares alongwith his other siblings) but subsequent transfer by oral partition to different LRs was to be proved by defendants which they have failed, it is also crystal clear that plaintiff has also not come to the court with clean hands and both the parties are lying after coming to the court. But crux of the above observation is that when defendant has failed to prove the oral partition, the land is deemed to be joint and all the persons i.e. plaintiff and defendants No. 1 and 2 and other LRs of Late Prabhu are deemed to be co-sharers in equal shares and it cannot be held that property was exclusively hold by defendant. It cannot be held that property solely owned by plaintiff and being cosharer, both the parties are deemed to be owner and in possession till partition by metes and bounds. In these circumstances, the question of exclusive possession either with plaintiff and defendant losses its significance because one party will be deemed to be having possession with other co-sharer also, though otherwise defendants have failed to prove their exclusive

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> possession thus in these circumstances, issue No. 2 is decided accordingly and plaintiff is deemed to be co-sharers of the suit property and issue No, 5 becomes redundant. As far as issue no. 6 is concerned, exclusive possession cannot be given to any of the party and suit for partition by metes and bounds is required to be filed by parties. The issue No. 6 is answered accordingly. As far as issue No. 3 is concerned, it is clear that when all the parties are co-sharers then every co-sharer can use every piece of land and then defendant cannot restrain the plaintiff from using any part and parcel of land, The plea of exclusive possession of defendant is not accepted and so the plaintiff has every right to enter into the suit land and all of them will hold the possession or will do whatever they want in whole of the suit land subject to condition that same will be equally for the benefit of all the parties and no specific share can be given to any of the parties and all the share holders shall enjoy the property jointly accordingly All the issues are decided accordingly in above terms.
>
> 14. Relief:- In view of the above finding, the suit of the plaintiff stands partly decreed with costs as aforesaid. Decree sheet be prepared accordingly and file be consigned to Record Room."

It was submitted that the said portion pertained to findings on Issues Nos. 2, 3, 5 and 6, and it was observed by the learned ADJ that under the said issues, the Plaintiff was required to prove that he was the owner and was in possession of the suit property at the time of filing the suit, and thereafter, he was dispossessed and was entitled to the relief of possession and injunction; however, while rendering the impugned judgment, the said observation was completely ignored by the learned ADJ.

34. It was further submitted by the learned Senior Counsels that the Plaintiff had further contended that the documents, *i.e.*, Will and GPA have not been proved by the Defendant as per law. In view of the same it was submitted that the Defendant had produced the attesting witness Mr. Gajender Singh, DW-3, who had not only deposed in his affidavit of evidence, that he

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can identify the signatures of his brothers, but also the fact that they had signed in each other's presence. It was further stated that the said witness in his cross-examination had stated that his father had affixed his thumb impression on all the documents in his presence, and therefore, the execution and registration of the said documents were duly proved in accordance with the law.

35. Learned Senior Counsels had further submitted that the contention of the Plaintiff that the Will of late Shri Prabhu had not been proved as per the provisions of Section 63(c) of the Indian Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872, is baseless, inasmuch as not only one of the attesting witnesses, Mr. Gajender Singh was examined to prove the execution of documents, but also the witness from the Office of the Registrar, *i.e.*, DW-7, was examined to prove the registration.

36. Learned Senior Counsels for the Defendant had further submitted that the argument of the Plaintiff that the statement of Smt. Prem Wati, DW-2, in her cross-examination dated 07.02.2014 was self-serving, was misconceived. It was further submitted that Smt. Prem Wati being the daughter of late Shri Hari Singh was the most important witness who demolished the whole basis of the case of the Plaintiff. It was further submitted that Smt. Prem Wati had clearly stated in her cross-examination that late Shri Hari Singh was not the owner of the suit property, rather the same was owned by late Shri Prabhu. It was further submitted that Smt. Prem Wati had produced and proved the Will of her father, which proved that he had bequeathed his entire estate in favour of his daughters, and not even an inch of land had been given to the Plaintiff.

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Relevant portion of the cross-examination dated 07.02.2014 is reproduced as under: -

> "Q. I put it to you that the possession of suit land was given by Hari Singh to Pratap Singh?
> Ans. The land belonged to Prabhu and both the plaintiff and defendant are son of Prabhu.
> It is incorrect to suggest that the suit property was in possession of Sh. Hari Singh. (Vol. It was always in possession of Prabhu).
> I do not know regarding khasra girdawari i.e. Mark B to D. (Vol. Any land belonging to Hari Singh is owned by us).
> It is incorrect to suggest that the suit property was not in possession of Mahender Singh. I am not a summoned witness.
> Q. On whose instance are you deposing?
> Ans. I was asked by Atul Gandas to depose. (Vol. He informed me that his uncle Sh. Pratap Singh had filed a false case on the basis of the fact that Sh. Hari Singh my father had given some land to him). I told him that no immovable or movable property had been given to Pratap Singh by my father.
> It is correct that I attend marriages and functions hosted by Atul Gandas. I am not on visiting terms with Pratap Singh. It is incorrect to suggest that we have no visiting terms with Pratap Singh as my father had given possession of suit property to him. (Vol. My father has not given possession of any property either to Pratap Singh or to Mahender Singh. It is incorrect to suggest that I am deposing falsely at the instance of Atul Gandas. It is incorrect to suggest that I am deposing falsely."

37. Learned Senior Counsels for the Defendant had further submitted that the reliance as placed by the Plaintiff on Section 3 of the Delhi Lands (Restriction on Transfer) Act, 1972, in order to contend that since the land in dispute had been acquired, then late Shri. Prabhu could not have executed the GPA or Will, is misplaced, as the same did not constitute any transfer which would have been prohibited under Section 4 of the said Act. It was further submitted that it was not a transfer of property within the meaning of Section 5 of the Transfer of Property Act, 1882. Learned Senior Counsels had further

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stated that admittedly, the possession of land was not taken by the Government.

38. Learned Senior Counsels for the Defendant had further submitted that the separate GPAs executed and registered by late Shri Prabhu in favour of his four sons were in the nature of reducing the oral family settlement/partition into writing, and therefore, the contention of the Plaintiff that the GPA came to an end with the death of late Shri Prabhu was erroneous. It was submitted that late Shri Prabhu, during his lifetime, had mutually partitioned the subject land amongst his sons, even prior to the execution of the Powers of Attorney and Wills in their favour, in respect of their respective portions, and the respective sons had been in possession of their shares pursuant to the said oral partition. It was further submitted that the registered Powers of Attorney and Wills were executed in favour of the sons in respect of their respective shares to obviate any dispute regarding the division of the land. Learned Senior Counsels further submitted that the undertaking and site plan were also signed by the brothers and the site plan was duly registered. The aforesaid position, according to the learned Senior Counsels, was duly affirmed by Mr. Gajender Singh and Mr. Manjeet Singh, who had stated that they had been in possession of their respective shares even prior to the execution of the said documents.

39. Learned Senior Counsels had further submitted that the documents executed by late Shri Prabhu in favour of the four sons also included documents in favour of the Plaintiff and his two other brothers, namely, Mr. Ishwar Singh and Mr. Gajender Singh. It was submitted that the Plaintiff had

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received the property which had fallen to his share pursuant to the oral partition, which was subsequently recorded in the aforesaid documents. It was further contended that the Plaintiff had not only received and enjoyed the property which had fallen to his share under the said arrangement, but had also dealt with the same without any objection from any of his brothers.

40. Learned Senior Counsels had further submitted that all the documents executed in favour of the four brothers had been produced and proved in the subject suit and had been duly acted upon. It was contended that the objection of the Plaintiff that the documents, including the GPAs, Wills, site plan and undertaking, merely bore internal numbers such as A, A-1, B, B-1, C, C-1 and D, D-1, instead of municipal numbers, was misconceived. It was submitted that the relevant *Khasra* numbers had been duly mentioned in the said documents, and therefore, the non-mentioning of municipal numbers could not, in any manner, invalidate the said documents. Learned Senior Counsels further submitted that, having taken benefit under the said documents, it did not lie in the mouth of the Plaintiff to dispute the documents executed in favour of the Defendant.

41. Learned Senior Counsels further drew attention of this Court to paragraph 13(b) of the amended plaint filed by the Plaintiff, wherein the Plaintiff had specifically pleaded that he was the actual owner of the suit property, having obtained the same from late Shri Hari Singh, who was stated to be the real younger brother of the grandfather of the Plaintiff. It was submitted that the said pleading was directly contrary to the submission advanced on behalf of the Plaintiff that ownership of the suit property had not

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been claimed by him. Learned Senior Counsels further submitted that the contention that late Shri Hari Singh had put the Plaintiff in possession of the land was also contrary to the case pleaded by the Plaintiff himself.

42. Learned Senior Counsels had further submitted that the reliance placed by the Plaintiff upon the judgment dated 28.10.2025, whereby the suit filed by the Defendant seeking declaration in respect of the undertaking, GPA and site plan was dismissed under Order VII Rules 11(a) and (d) of the CPC, was misplaced. It was submitted that the Defendant had already preferred RFA Nos.1053/2025 and 1054/2025, titled **Shri Mahinder Singh (since deceased) through his Legal Heirs v. Shri Partap Singh & Ors.**, against the said judgment. It was further submitted that this Court, *vide* order dated 19.11.2025, had issued notice in the said appeals, and in the meantime, had stayed the effect and operation of the judgment and decree dated 28.10.2025. Learned Senior Counsels therefore submitted that reliance placed by the Plaintiff upon the said judgment was misplaced, particularly when the interim order passed by this Court was continuing.

43. Learned Senior Counsels had further submitted that the contention advanced on behalf of the Plaintiff that, since the impugned judgment had been assailed by both parties, the matter ought to be remanded to the learned Trial Court for fresh adjudication, was also misconceived. It was submitted that the power of remand under Order XLI Rules 23, 23-A and 25 of the CPC was circumscribed and the present case did not fall within the parameters thereof.

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44. Learned Senior Counsels further submitted that there was no allegation on behalf of the Plaintiff that the trial before the learned ADJ had been conducted in an unsatisfactory manner. It was contended that the appeals could effectively be decided on the basis of the material already available on record, and therefore, no occasion arose for remanding the matter to the learned Trial Court. Learned Senior Counsels further submitted that the Plaintiff had failed to bring his case within the ambit of Order XLI Rules 23, 23-A or 25 of the CPC. In support of the said contention reliance was placed upon the judgment of the Hon'ble Supreme Court in **Sirajudheen v. Zeenath & Ors**.[20], and particularly upon paragraphs 16, 17, 23, 24 and 28 to 32.

45. In view of the aforesaid submissions, learned Senior Counsels for the Defendant prayed that RFA No.488/2014, preferred by the Defendant, be allowed and RFA No.615/2014, preferred by the Plaintiff, be dismissed. It was further prayed that the impugned judgment and decree dated 11.09.2014 passed by the learned ADJ be set aside and the suit instituted by the Respondent/Plaintiff be dismissed.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

46. *Per contra,* learned Senior Counsels for the Plaintiff had submitted that the appeal filed by the Defendant is liable to be dismissed. It was further submitted that the Plaintiff had initially filed a suit for permanent injunction *qua* the property bearing municipal No. RZ-33 B/1, Kishangarh, Mehrauli, New Delhi, and had specifically pleaded that he was in possession of the said property since 1983. It was further submitted that the Plaintiff had proved his

[20] 2023 SCC OnLine SC 196

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possession through MCD assessment records, electricity connection and bills, and the oral evidence led by him.

47. Learned Senior Counsels for the Plaintiff had submitted that in the subject suit, the Plaintiff had claimed that there existed tin sheds at the suit property in the year 1983, as well as the remaining vacant land was being used for agricultural purposes. It was further submitted that the MCD had inspected the site during their survey for the assessment of house tax, and it was found that the suit property fell in Mehrauli. It was further submitted that post assessment, the suit property was assessed to property tax in the name of the Plaintiff and the said fact had been duly proved by the Plaintiff in his evidence as PW-1, and through the officials of MCD.

48. Learned Senior Counsels had further submitted that in the year 1985, the Plaintiff had applied for an electricity meter connection with DESU, and an electricity meter bearing No. 3149577 was installed at the suit property in his name. It was further submitted that the said fact stood duly proved through the original certificate issued by DESU, as well as through the electricity bills placed in record during the course of trial.

49. Learned Senior Counsels had further submitted that in the year 1997, the Plaintiff had undertaken a large-scale renovation and alteration in the suit property through a civil engineer, Mr. B.P. Singh, and the existing tin sheds were replaced by *pucca* structures. It was further submitted that although the construction could not be completed on account of financial constraints, the said renovation resulted in proceedings before the MCD and revision of the rateable value of the suit property. In support of the same, learned Senior

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Counsels had placed reliance upon the following documents: -

i. MCD assessment order, *i.e.*, EX. PW2A/11(1);

ii. Hearing Proceedings before MCD, *i.e.*, EX. PW2A/11(2),

iii. Letter addressed to the Assistant Assessor and Collector, Najafgarh, New Delhi dated 11.03.1998;

iv. Cross-examination dated 02.09.2009 of PW3, Mr. B.P. Singh, who had deposed that he had undertaken the construction work as a contract appointed by the Plaintiff.

50. Learned Senior Counsels had further submitted that on 18.05.1998, when the Plaintiff visited the suit property along with his workmen to complete the unfinished construction, he was confronted by the Defendant and was prevented from allowing his workmen to commence the construction. In support of the same, reliance was placed upon the Report of the Local Commissioner dated 03.06.1998.

51. Learned Senior Counsels had further submitted that the Local Commissioner, in his Report, had recorded that force was used for breaking the locks and the electricity meter was also removed from the suit property and photographs of the suit property had also been placed on record during the course of trial. It was further submitted that the said report of the Local Commissioner constituted legal evidence under Order XXVI Rule 10(2) of the CPC. In support of the same, reliance was placed upon the judgment passed by this Court in **New Multan Timber Store & Ors. v. Rattan Chand Sood**[21]**.**

[21] MANU/DE/1253/1997

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52. Learned Senior Counsels had further placed reliance upon the cross examination dated 03.04.2010 of PW4, Mr. Bal Kishan to submit that the said witness had proved the site plan of the suit property and he had further deposed that he had visited the spot on 19.05.1998 and found that the Plaintiff was in possession of the suit property. It was further submitted that the said deposition further establishes the Plaintiff's possession over the suit property prior to the dispossession by the Defendant.

53. Learned Senior Counsels had further submitted that during the pendency of the subject suit, on the night of 14.02.2006, the Defendant had broken the lock placed by the Plaintiff on the suit property and illegally dispossessed him from the suit property. It was further submitted that thereafter, the Defendant stacked building material at the suit property and demolished a portion thereof, and raised construction. It was further submitted that the Plaintiff had called the PCR and also lodged a written compliance with the Police on the following morning, and in view of the same, the amendment was carried out in the plaint, seeking a relief of possession.

54. Learned Senior Counsels had further placed reliance upon the evidence by way of affidavit of Mr. Dharmender and Mr. Sunil Kumar to submit that the case of the Plaintiff regarding his possession prior to 14.02.2006 and his subsequent dispossession by the Defendant was supported by the said witnesses. It was further submitted that both the said witnesses had deposed that the Plaintiff was retaining possession and occupying the suit property prior to 14.02.2006, and thereafter, the Defendant had demolished a portion of

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the suit property and raised construction thereon. It was further submitted that the said witnesses had also deposed that after the Defendant took forcible possession of the suit property, the same was subsequently demolished by the Government Authorities for removal of the illegal construction.

55. Learned Senior Counsels had further submitted that the Defendant had claimed ownership and possession of a different property bearing Municipal No. RZ-33 B/7, and had based his claim upon a GPA executed by his father, and an undertaking bearing the signature of the Plaintiff. It was submitted that the Defendant had specifically pleaded that he came into possession of the suit property in the year 1996, *i.e.*, pursuant to an oral partition amongst the brothers. It was further submitted that the case of the Defendant was itself that he came into possession only in the year 1995-1996, whereas, the Plaintiff had established his possession since the year 1983.

56. Learned Senior Counsels had further submitted that the Defendant had never pleaded or set up the Will in his written statement, and the said Will was only introduced for the first time during the course of evidence. It was further submitted that none of the attesting witnesses to the said Will had been examined, and therefore, the Will had not been proved in accordance with the law. In support of the said submission, reliance was placed by the learned Senior Counsels upon the judgment passed by the Hon'ble Supreme Court in **Bachhaj Nahar v. Nilima Mandal & Ors**[22]. Reliance was further placed by the learned Senior Counsels upon the judgment passed by this Court in **Shri**

[22] AIR 2009 SC 1103

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Bharat Gupta v. State & Ors.[23], to contend that the said Will had not been proved in terms of Section 63 of the Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872.

57. Learned Senior Counsels for the Plaintiff had further submitted that the map, as relied upon by the Defendant, in support of the oral partition did not bear the dimensions of the plots and the same had not been proved by its maker, *i.e.*, Mr. V.K. Sangwan. Learned Senior Counsels had further submitted that the said witness had not appeared in the witness box, and therefore, an adverse inference ought to be drawn against the Defendant under Section 114(g) of the Indian Evidence Act, 1872. It was further submitted that the said map does not reflect the *Khasra* numbers mentioned in the Will and the GPA, and that DW1, Mr. Atul Singh Gandas, *i.e.*, son of the Defendant, was unable to identify the spot bearing Municipal No. RZ-33-B/1 from the said map.

58. Learned Senior Counsels had further submitted that the Defendant had also failed to prove the GPA executed by his father in accordance with the law. It was further submitted that the Plaintiff had denied execution of the said GPA in his presence, and had also denied the alleged signature appearing thereon. It was further submitted that the matter had been sent to the FSL for verification, but no authentic result had been produced. Learned Senior Counsels had further submitted that since late Shri Prabhu had expired in the year 2000, the GPA, being without consideration, came to an end, and in any event, the Defendant had failed to prove the Will in terms of Section 68 of the

[23] 2023 LawPack (Del) 92558

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Indian Evidence Act, 1872 and Section 63 of the Indian Succession Act, 1925.

59. It was further submitted by the learned Senior Counsels for the Plaintiff that in view of the provisions of Section 81 of the Indian Evidence Act, 1872, a presumption ought to be raised in respect of the original electricity bills placed on record. It was further submitted that the said document was required to be taken into consideration while adjudicating the Plaintiff's claim with respect to the suit property.

60. Learned Senior Counsels had further submitted that the Defendant had taken false and inconsistent pleas *qua* the electricity connection existing at the suit property. It was submitted that the Defendant had claimed to have an electricity connection in the suit property through his old house property bearing No. 25/2, Kishangarh, Mehrauli; however, the Defendant had deposed that the said property was 300 meters away from the suit property, with many buildings in between. It was further submitted that the Defendant had shown ignorance when asked if there was an electricity meter installed at property No. 25/2, as he had denied the existence of property No. 25/2, and thereafter, replaced the same with property No. 25/9, and while doing so, the Defendant had failed to produce any material to substantiate the existence of an electricity meter at either property. It was further submitted that DW-1 had admitted in his cross-examination dated 20.01.2014 that the suit property bearing No. RZ-33 B/7 formed part of *Khasra* No. 1240, whereas, the said *Khasra* number was not mentioned in the GPA, and the *Khatoni* placed on record pertained to the Central Government land in possession of the DDA.

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61. Learned Senior Counsels had further submitted that the Plaintiff had been in possession of property bearing No. RZ-33 B/1 since the year 1983, whereas, the Defendant had claimed to have come into possession only in 1995-1996, pursuant to the alleged partition. It was, therefore, submitted that the Plaintiff was admittedly in prior possession of the suit property.

62. Learned Senior Counsels had further submitted that the testimony of DW-3, Mr. Gajender Singh, materially contradicted the case set up by the Defendant as the said witness had categorically stated that late Shri Prabhu did not have any right or title in the suit property, in respect of which he had executed the GPA and the Will in favour of his sons. Learned Senior Counsels had further submitted that the said statement was contrary to the very root of the Defendant's case, as the same was based upon the document allegedly executed by late Shri Prabhu, and therefore, the testimony of DW-3 could not be relied upon.

63. Learned Senior Counsels further drew attention of this Court to the assessment record *qua* the properties, with effect from 01.04.1983 to submit that all four brothers were having different properties, bearing Nos. RZ-33 B/1, RZ-33 B/2, RZ-33 B/3, RZ-33 B/4, RZ-33 B/9, RZ-33 B/10 and RZ-33 B/11, and the said properties were distinct, separate and independent, and were assessed to property tax right from 01.04.1983. It was further submitted that the Defendant had two properties, *i.e.*, RZ-33 B/2 and RZ-33 B/7, whereas, the Plaintiff also owned and possessed two properties, *i.e.*, RZ-33 B/1 and RZ-33 B/11.

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64. Learned Senior Counsels had submitted that the claim of the Defendant relates to a different property, other than the suit property. It was further submitted that the plot numbers mentioned in the alleged partition did not match with the official records, and the Defendant had failed to explain as to why different plot numbers were mentioned in the alleged oral partition in the year 1995-1996, when the properties had already been identified in the municipal records.

65. Learned Senior Counsels had further submitted that the witnesses produced by the Defendant during the course of trial were related to him, and had admitted their inimical relationship with the Plaintiff, and therefore, the deposition of such witnesses cannot be relied upon.

66. Learned Senior Counsels had further relied upon the judgment passed by the Hon'ble Supreme Court in **Shivshankar & Anr. v. H.P. Vedavyasa Char**[24], to contend that when both the parties fail to establish their title, the question of who had prior possession becomes crucial. It was further submitted that in the said case, the Hon'ble Supreme Court had noted that the right to possession is based on actual possession, and the party who could prove prior possession would be entitled to remain in possession of the property.

[24] 2023 (5) SCALE 218

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67. Reliance was further placed on the judgment passed by this Court in **Saleem & Ors. v. Wahid Malik**[25], to contend that in a suit for possession or a suit for injunction against dispossession, the Plaintiff is not required to establish title or ownership, but a better right to remain in possession of the suit property, as compared to the right of the defendant.

68. Learned Senior Counsels had further placed reliance upon the judgment passed by the Hon'ble Supreme Court in **Rame Gowda (Dead) by LRs v. M. Varadappa Naidu (Dead) by LRs & Anr.**[26], to contend that in the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title, and when the Defendant failed to prove his title to the suit and land, the Plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the Defendant who dispossessed him.

69. Learned Senior Counsels had further submitted that the reliance placed by the Defendant upon the judgment in **Anathula (*Supra*)** was misplaced, as the said judgment itself recognised that in a suit for injunction, the question of title would ordinarily not be directly and substantially in issue, and the relief would be decided with reference to possession. It was further submitted that the said judgment was distinguishable on facts, as in the said case, the Defendant was able to establish a better title over the property, whereas in the present case the Defendant had failed to establish better title over the suit property.

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[25] 2022 (295) DLT 8
[26] 2004 1 SCC 769

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70. Learned Senior Counsels for the Plaintiff had further submitted that the suit property had admittedly been acquired by the DDA, and consequently, late Shri Prabhu had no authority to execute the GPA and Will *qua* the suit property. It was further submitted that the execution of the said documents was in violation of Section 3 of the Delhi Lands (Restriction on Transfer) Act, 1972. In support of the said submission, reliance was placed upon the judgments in **AD Overseas v. Sneh Lata Sharma & Anr.**[27] and **Meera Sahni & Anr. v. Lt. Governor of Delhi & Ors**[28].

71. Learned Senior Counsels had further submitted that the learned ADJ had failed to adjudicate the material dispute regarding the identification of the suit property. It was submitted that while the Plaintiff had consistently identified the suit property as bearing Municipal No. RZ-33 B/1, the Defendant had claimed the suit property to be bearing Municipal No. RZ-33 B/7. It was further submitted that the Local Commissioner had identified the venue of the site as property bearing No. RZ-33-B/1. Learned Senior Counsels therefore submitted that despite noticing the rival submissions of the parties on the issue of identification, the learned ADJ had failed to return any finding thereon.

72. On the basis of the aforesaid submissions, learned Senior Counsels for the Plaintiff had submitted that the latter had established his settled possession over the suit property, whereas the Defendant had failed to establish any title, whatsoever, over the same, and thus, the present appeal preferred by the

[27] 2012 SCC OnLine Del 5256
[28] (2008) 9 SCC 177

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Defendant is liable to be dismissed and the appeal filed by the Plaintiff be allowed.

ANALYSIS AND FINDING

73. Heard the learned Senior Counsels for the parties, and perused the record.

74. Learned Senior Counsels for the Defendant had submitted that the learned ADJ, after holding that the Defendant had failed to prove the oral family partition, proceeded to hold that the suit property was jointly held by the Plaintiff, the Defendant and the other legal representatives of late Shri Prabhu, and that they were co-sharers in the same, despite neither party having set up such a case. It was further submitted that in a suit for possession and injunction, the learned Trial Court could not have granted a relief of declaration with respect to the ownership of the suit property, when no such relief had been sought by the Plaintiff. In support of the said submission, reliance was placed upon the judgments passed by the Hon'ble Supreme Court in **Bachhaj Nahar (*Supra*)** and **Kalyan Singh Chouhan (*Supra*)**. Reliance was further placed upon the judgment in **Anathula Sudhakar (*Supra*)**, to contend that in the presence of a cloud over the Plaintiff's title, the Plaintiff could not have maintained a suit for possession and injunction without seeking a declaration of the title. *Per contra*, learned Senior Counsels for the Plaintiff had submitted that the Plaintiff had established his prior possession over the suit property and that the Defendant had failed to establish better title thereto. It was further submitted that the judgment in

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Anathula Sudhakar (*Supra*) was distinguishable on facts. Reliance was placed upon the judgments in **Shivshankar & Anr. (*Supra*)**, **Saleem & Ors. (*Supra*)** and **Rame Gowda (Dead) by LRs (*Supra*)**, to contend that where neither party establishes title, prior possession assumes significance in determining the entitlement to possession. Learned Senior Counsels for the Plaintiff had also relied upon **Bachhaj Nahar (*Supra*)** to contend that any evidence beyond pleading is impermissible to be looked into.

75. In the backdrop of the said position, this Court will now examine the material on record with regard to the title and possession of the Plaintiff in the suit property.

76. The Plaintiff, in the suit filed before the learned Trial Court, had stated that he is the owner of the suit property, bearing No. RZ-33 B/1, and he was carrying large scale alterations and additions in the suit property. It was further stated that on 18.05.1998, the Plaintiff along with the workmen had entered the suit property and was confronted by the Defendant and that the Defendant had asked the Plaintiff to stop the construction work. It was further stated that the Defendant had no right in the suit property and the Plaintiff was the absolute owner of the same, and in view thereof, the Plaintiff had filed the original plaint seeking the following reliefs: -

> "(i) a decree for permanent injunction restraining the defendant, his associates and other family members not to interfere in the peaceful possession, enjoyment, occupation and user of the plaintiff over his house bearing No. RZ-33B/1, Kishan Garh, Mehrauli, New Delhi, in any manner whatsoever.

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(ii) restraining the defendant from obstructing the plaintiff and creating hurdle of any type whatsoever in raising construction for completion of his semi-finished house bearing municipal No. RZ 33B/1 (Mehrauli) Kishan Garh, New Delhi which has teen shown more clearly in the site plan annexed with the plaint.

Cost at the suit or any other relief that this Hon. Court deems fit and proper in the circumstances of the case be also granted."

77. Thereafter, on 02.06.1998, the Plaintiff had made a PCR call stating that the Defendant is breaking open the locks in the suit property. Further, on the said date, an application under Order XXVI Rule 9 of the CPC for appointment of a Local Commissioner was also moved by the Plaintiff before the learned Trial Court, and the said application was allowed, and accordingly, a Local Commissioner was appointed by the learned Trial Court. The Local Commissioner was asked to prepare a report on the following queries: -

"(1) Whether site plan filed by the plaintiff is correct as per site?

(2) The details and extent of construction raised at the spot be given.

(3) Whether there is electricity metre installed in the suit property, if so the details of its number and other particulars be given?

(4) Weather building is complete or not?"

78. Subsequently, on 03.06.1998, the Local Commissioner had visited the suit property to carry out the commission in accordance with the order dated 02.06.1998 passed by the learned Trial Court. The report of the Local Commissioner reads as under: -

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Anupam Dhingra
ADVOCATE
DISTRICTS & DELHI HIGH COURT

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DISTRICT COURTS, TIS HAZARI, DELHI-110054
PHONE : 230326
RESIDENCE : (MAILING ADDRESS)
3/41 SUBHASH NAGAR NEW DELH-110027
PHONE : 5136008

Ex. PW2/1 (Colly)
(S) Delhi
5/11/98

IN THE COURT OF SH.A.K.SARPAL, CIVIL JUDGE, DELHI

IN RE.:

PARTAP SINGH.....PLAINTIFF

Ex PW 3/1 Colly

VERSUS

MAHENDER SINGH.....DEFENDANT 14-05 Delhi

DATE OF HEARING : June 5, 1998 23. 8. 13.

REPORT OF LOCAL COMMISSIONER

Date	3.6.1998
Time	8:45 a.m. to 10:00 a.m.
Persons Present	Sh. Partap Singh, Plaintiff Sh. Mahender Singh, Defendant Sh. Ramesh (Defendant's driver) Sh. Shanker(Defendant's servant)
Venue	Property No.RZ-33/B/1, Kishan Garh, Mehrauli, New Delhi.

In compliance to the orders dated 2.6.1998, of this Hon'ble Court whereby the undersigned was directed

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ADVOCATE
DISTRICTS & DELHI HIGH COURT

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DISTRICT COURTS, TIS HAZARI, DELHI-110054
PHONE : 230326
RESIDENCE : (MAILING ADDRESS)
3/49 SUBHASH NAGAR NEW DELH-110027
PHONE : [redacted] 536005

to visit the property No.RZ-33/B/1, Kishan Garh, Mehrauli, New Delhi and to carry out the commission as per the directions of this Hon'ble Court vide order dated 2.6.1998. The notices of the Local Commission were given to the parties on 2.6.1998 by courier. The undersigned reached the suit property on 3.6.1998 at around 8:15 a.m. Parties had not yet received the notice of commission sent through courier. Therefore, a fresh notice was served upon both the parties on the spot itself, receipt whereof was acknowledged by both the parties. With the consent of both the parties the commission was started at 8:45 a.m. The gates were opened by the defendant. At the gates marked 'A' and 'B', as shown in the photographs, it appears that some force had been applied at some point of time. The photographs of the gates were also taken from a closer range. (Photographs no. 1 To 26)

There was no address plate or number on the suit property but the same was identified by both the parties as well as from the site plan provided to the undersigned by the plaintiff. The photographs

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DISTRICT COURTS, TIS HAZARI, DELHI-110054
PHONE : 230328
RESIDENCE : (MAILING ADDRESS)
3/49 SUBHASH NAGAR NEW DELH-110027
PHONE : [redacted] 5136008

of the suit property were also taken on the spot. A rough site plan was also prepared on the spot. The photographs alongwith negatives and receipt of photographer, copy of notices sent to the parties, courier receipts, proceeding sheet prepared at the spot and a rough site plan are annexed herewith for the kind perusal of this Hon'ble Court.

My report as per the directions of this Hon'ble Court is as under :

Direction No.1 :

Whether site plan filed by the plaintiff is correct as per site ?

X1

The site plan provided to me by the plaintiff was found to be in accordance with the site except some minor changes. There are two gates, one small and one big gate at points 'X' and 'Y' respectively shown in the rough site plan, whereas in the site plan provided to me by the plaintiff, there is only one gate shown. In the constructed portion, the portion shown as room at point marked 'Z' is open

Point 'C'

Anupam Dhingra Adv

Point 'C'

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Anupam Dhingra
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PHONE : 230326
RESIDENCE : (MAILING ADDRESS)
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PHONE : 5136008

space as there is no forth wall giving it a shape of room and the same is open to the courtyard. Rest of the portion was found to be in accordance with the site plan provided by the plaintiff. Rough site plan prepared at site is filed alongwith the report.

Direction No.2 :

The details and extent of construction raised at the spot be given.

The property subject matter of the commission is a partly constructed and a partly open area, wherein cultivation to some extent is being carried out. There are trees as shown in the site plan filed on the court record. There are motors, water tank, pits, gates, etc. as shown in the site plan filed by the plaintiff. The constructed portion is raised above the ground level and there are two to three steps on three sides of it. There are six rooms with attached baths/W.C.s. The portion shown and marked as point 'Z' in the rough site plan is open to the courtyard and the same is adjacent to the kitchen. There are stairs leading to the first floor. The construction is as per the site plan

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and is a pucca construction. The suit property is a single storeyed building. The constructed portion is having open verandah on all the four sides. Wooden Chokhats are installed on all the windows and doors, although windows and doors have not been installed. There is no flooring in whole of the constructed portion. There are no tiles in the kitchen or in the bathrooms/W.C.s. No washbasins were to be found. Although electricity and water pipes are there, but at the time of commission, there was no wiring in the electricity pipes or water supply. Sanitary pipes have been installed. There is no whitewashing or distempering. There are no railings on the stairs. In the kitchen only one shelf is laid. Provisions necessary for making the building habitable are made available but the accessories have yet to be installed. There is no woodwork in the entire building except the wooden chowkats. The constructed portion is on or about 1/3rd of the entire plot which is a subject matter of the suit property, in the rest of the portion, there is either some cultivation carried out or trees are

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Anupam Dhingra
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PHONE : 233328
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3/49 SUBHASH NAGAR NEW DELHI-110027
PHONE : [redacted] 5136008

there. Building material in small quantities was also lying there at the time of commission. In brief it can be said that the basic structure of the building is complete but is not yet ready for occupation.

Direction No.3 :

Whether there is electricity meter installed in the suit property ? If so details of its number and other particulars be given ?

At the time of commission, a board was found to be installed at the one of the walls of the constructed portion. Adjacent to it there were some marks showing that something have been forcibly taken out from it. Photographs of that portion had been taken from the close range. The portion is clearly depicted in the photographs marked C27/C to C36/C. An electricity wire was also found to be hanging in the open air. No electricity meter was found to be installed in the suit property at the time of commission. Campaw

Direction No.4 :

Whether the building is complete or not ?

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Anupam Dhingra
ADVOCATE
DISTRICTS & DELHI HIGH COURT

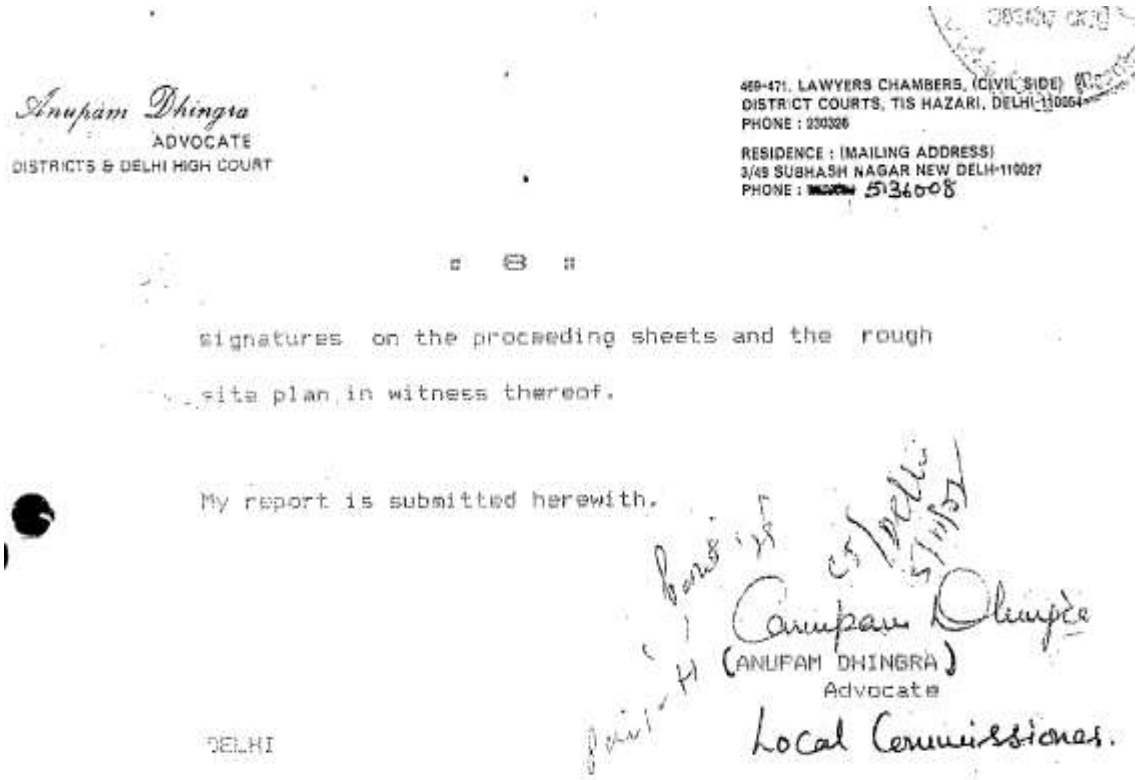
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PHONE : 230326
RESIDENCE : (MAILING ADDRESS)
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PHONE : [redacted] 5136008

The super structure of the building is complete as far as the construction is concerned. The building is however, not yet ready for human habitation for the reasons that though electricity, water and sanitary pipes have been installed, there is no electricity supply or water supply. There are no tilee in the kitchen, bathrooms, W.C.s. No flooring has been done in the entire constructed portion. No doors or windows have been installed in their respective wooden chokhats. There are no grills in the windows. No railings are there on the staircase. Plastering of the walls is also incomplete and there is no whitewashing or distempering of the entire constructed portion. The situation as existing on the site is more clearly shown in the photographs annexed herewith, as numbers '37' to '75'. The contents of reply given to direction no.2 may kindly be also read as part and parcel of this para and the same has not been repeated for the sake of brevity.

I concluded my commission at around 10:00 a.m. in the presence of the parties who have put their

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Anupam Dhingra
ADVOCATE
DISTRICTS & DELHI HIGH COURT

469-471, LAWYERS CHAMBERS, (CIVIL SIDE)
DISTRICT COURTS, TIS HAZARI, DELHI-110054
PHONE : 230326
RESIDENCE : (MAILING ADDRESS)
3/49 SUBHASH NAGAR NEW DELHI-110027
PHONE : [redacted] 536008

- 8 -

signatures on the proceeding sheets and the rough site plan in witness thereof.

My report is submitted herewith.

(ANUPAM DHINGRA)
Advocate
Local Commissioner.

DELHI

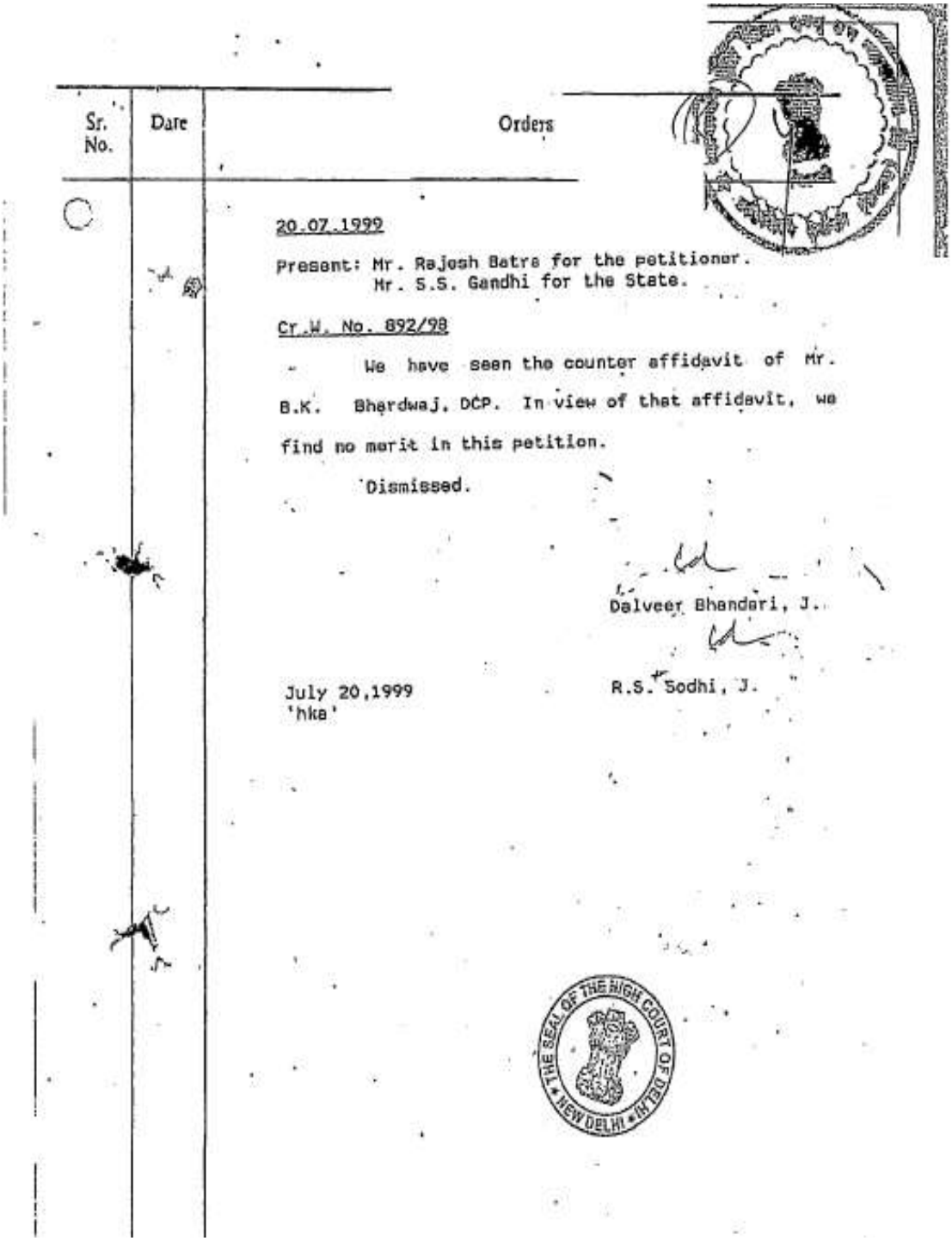
DATED : June 4, 1998

Encl. : Proceeding sheet.
Rough site plan.
Copies of notices sent to parties.
Courier receipts.
Receipt of photographer.
Photographs alongwith Negatives.

79. It is further pertinent to note that the Plaintiff had filed a Criminal Writ Petition before this Court being Criminal Writ Petition No. 892/1998, aggrieved by the breaking open of locks and alleged removal of the electricity meter from the suit property by the Defendant. The said writ petition was dismissed by the learned Division Bench of this Court *vide* order dated

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20.07.1999, basis the affidavit filed by the DCP. The said order of dismissal dated 20.07.1999 and the affidavit filed by the DCP are reproduced as under: -



Sr. No.	Date	Orders
		20.07.1999 Present: Mr. Rajesh Batra for the petitioner. Mr. S.S. Gandhi for the State. Cr.W. No. 892/98 We have seen the counter affidavit of Mr. B.K. Bhardwaj, DCP. In view of that affidavit, we find no merit in this petition. Dismissed. Dalveer Bhandari, J. R.S. Sodhi, J. July 20,1999 'hka'

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05.03.14

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRIMINAL WRIT NO. 892 OF 1998

Partap Singh ... Petitioner

Vs.

State & Ors. ... Respondents

REPLY AFFIDAVIT ON BEHALF OF THE RESPONDENTS

I, P.K. Bhardwaj Deputy Commissioner of Police South West Distt., New Delhi do hereby solemnly affirm and declare as under:-

That I am posted as above. I have gone through thecontents of the writ petition, statements of facts contained therein ~~which~~ which are not thematters of record and which are not specifically admitted herein belwo are wrong and denied. On the basis of the record produced before me by the S.H.O P.S. Vasant Kunj the deponen humbly submits the following brief affidavit in reply.

1. That on 2.6.98 an information was received from the PCR to the effect that RZ-338/1 his brother was breaking open the locks which was recorded vide D.D. No. 93-B and was entrusted to S.I. A.P. Singh for enquiry who upon receipt of the same proceeded to the spot.

2. That at the spot it was revealed that the incident had taken place at RZ-338 -7/9 Kishan Garh Delhi and when the police officer reached at the said house and knocked at the door of the said house one Mahinder Singh opened the dooor and stated that he was in possession and occupation of the said house and no incident of breaking of locks etc. or any quarrel took place there. The enquiries were also made at the spot but nothing was found to show that locks ver. broken. He further stated that this false report has b en lodged by his brother with whom hehas dispute over the said house and cigil litigation between the parties is pending at Tis Hazari Court.

3. That thereafter the enquiry officer when to the house of the petitioner i.e. 33-A/9 and met the petitioner who stated ~~at~~ that a abou 8.45 p.m. ~~hashad~~ his younger brother Mahinder Singh entered into his house No. 33-B/1 alonguith one welder and welding machine after scaling over the wall and he broke open the locks of the door he further stated that civil suit is pending between him and his brother at Tis Hazari and the Local Commissioner appointed by the Civil Court is to vist the site site tomorrow i.e. on 3.6.98 and and it was in this context that his brother Mahinder Singh got removed the locks and he informed the PCR.

4. That the petitioner was asked to point outthe wall from where the welding machine and welder alonguith his brother scaled the wall and

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to point out the doors from where the locks were broken and he also asked to accompany the police officer to the place of occurence but he refused to do so by stating that he wanted to lodged the report which he has lodged. All these facts were recorded by S.I. A.P. Singh on his return to the police station vide D.D. No. dated 2.6.98 and the same will be produced before the Hon'ble Court at the time of the hearing of the case.

4. That as no cognizable offence was found to have been committed the D.D. was filed and no action was taken on the same.

5. That thereafter the petitioner made complaints to higher authorities including the DCP Vigilance and the replies to the said complaints were sent giving the aforesaid facts and the same were filed.

6. That as the allegations made by the petitioner could not be substantiated and the petitioner did not cooperate with the police and no cognizable offence was found to have been committed the D.D. was filed.

7. That the allegations made by the petitioner in the writ petition that hsi brother removed the electricty meter from are absolutely wrong and are denied. It is submitted that as per the report received/enquiries made from the DESU authorities no meter was installed at the said premises and so the question of its theft did not and could not arise.

In view of the submissions made above the writ petition is without merits and the same appears to have been filed with some ulterior motives and hence the same is liable to be dismissed. It is prayed accoridngly.

DEPONENT

VERIFICATION

Verified at New Delhi on this 23rd day of March, 1999 that the contents of the above affidavit are true and correct.

DEPONENT

CERTIFIED THAT THE [illegible] Sh./Smt./Km. O.K. Bhardwaj [illegible] Addl. Commr. of Police identified by Sh. T.S. Mehrotra, A-24 has solemnly affirmed before me at Delhi on 23/3/99 at Sl. No. 31 that the contents of his Affidavit which have been read & explained to him are true and correct to his knowledge.

Smt. SUNITA RAMESAN
Oath Commissioner, Delhi
23/3/99

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It is further pertinent to note that the aforesaid order dated 20.07.1999 passed in Criminal Writ Petition No. 892/1998, as well as the affidavit filed by the DCP had been proved by Mr. Mukesh Batra, Judicial Assistant, Criminal Branch, Delhi High Court, in his cross examination dated 05.03.2014.

80. The affidavit filed by the DCP clearly records that the place of occurrence was property bearing No. RZ-33B/7. It was further stated that, as per the report received from DESU, no electricity meter was installed at the said property, and therefore, the question of theft of any such meter did not arise. The affidavit further records that when the Police Officer reached the said property, the Defendant opened the door and stated that he was in possession and occupation thereof. No incident of breaking open of locks or any quarrel was found to have taken place. It was also stated that the Plaintiff was asked to accompany the Police Officer to the place of occurrence; however, he refused to do so, by stating that he only wished to lodge a report. The Plaintiff did not cooperate with the Police Officer, and as no cognizable offence was found to have been committed, the DD entry was filed.

81. It is further pertinent to note that the trial of the subject suit was kept pending for the purposes of evidence from the institution of the suit in the year 1998 till the year 2006. Thereafter, on the night of 14.02.2006, the Plaintiff had again called the PCR stating that the Defendant had broken the lock of the suit property and had forcibly dispossessed the Plaintiff therefrom, and after breaking open the locks, the Defendant had dumped building material over the suit property and had stocked several truckloads of bricks,

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stone dust, steel bars and marble stones, in order to change the nature of the suit property. A written complaint with respect to the alleged incident had also been lodged by the Plaintiff with the Police in the morning of 15.02.2006. In view of the same, the Plaintiff had sought to move an application under Order VI Rule 17 of the CPC, seeking amendment of the Plaint. The said application was also allowed by the learned Trial Court *vide* order dated 13.03.2006, and thereafter, the Plaint was amended by the Plaintiff.

82. The following issues were framed by the learned Trial Court before the amendment of the plaint: -

> "1) Whether the suit is bad for non-joinder of necessary party? OPP
>
> 2) Whether the plaintiff is owner and in possession of suit property? OPP
>
> 3) Whether the plaintiff is entitled for relief as claimed? OPP
>
> 4) Whether the suit has not been properly valued for the purposes of court fee and jurisdiction? OPP"

83. In view of the amendment in the plaint, the learned Trial Court *vide* order dated 18.04.2007 had framed the following fresh issues for consideration: -

> "1. Whether the plaintiff has been dispossessed forcibly by the defendant during the pendency of the case on 14.02.2006? OPP.
>
> 2. Whether the plaintiff is entitled for recovery of possession, as claimed? OPP."

84. It is pertinent to note that the Plaintiff had initially sought the relief of

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injunction on the basis of claim of ownership over the suit property; however, subsequent to the alleged dispossession of the Plaintiff on 14.02.2006, the plaint was amended to incorporate the relief of recovery of possession. Therefore, the Plaintiff was required to establish his entitlement to the reliefs claimed on the basis of the pleadings and the evidence led by him.

85. The claim of the Plaintiff was that the suit property was given to him by late Shri Hari Singh, *i.e.*, uncle of his grandfather, out of love and affection; however, no document was placed on record *qua* the alleged transfer of the suit property, nor was any other supporting evidence produced to substantiate the said claim. The Plaintiff, in the plaint, had relied upon certain documents to show his possession and right over the suit property. The said documents are as under: -

i. Copy of the inspection report carried out by the Deputy Assessor and Collector, MCD dated 01.04.1983;

ii. House tax payment receipts for the year 1996, 1997 and 1998, Ex. PW-1/2, PW-1/3 and PW-1/4;

iii. Original bills for the year 1996, 1997 and 1998, Ex/ PW-1/5, PW-1/6 and PW-1/7;

iv. Original certificate issued by DESU, bearing Serial No. 535133, Ex. PW-1/8;

v. Electricity bills for January 1998 and March 1998, Ex. PW-1/9 and PW-1/10;

vi. Certificate dated 09.09.1997 issued by Mr. BP Singh, Civil Engineer, Mark-A;

vii. Site plan, Ex. PW-1/11;

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viii. Original assessment order dated 16.03.1998, Ex. PW-1/12;

ix. Photographs and Negatives as Ex. PW-1/13 to PW-1/16.

The aforesaid documents relate to property bearing No. RZ-33B/1; however, whether the same was the suit property or not, was not an issue framed by the learned Trial Court, nor any finding had been given thereupon.

86. The Plaintiff, apart from the above, had also relied upon the testimony of Mr. B.P. Singh, Civil Engineer, PW-3, who had deposed in his cross examination dated 02.09.2009 that he constructed the suit property in the year 1997, having been engaged by the Plaintiff; however, in the said cross-examination he had further stated that he had not seen the documents of ownership pertaining to the suit property. Relevant portion of the said cross examination reads as under: -

> "I constructed the building for Sh. Pratap Singh, plaintiff. In the year 1997 the construction were continued for about 5-6 months. There was no written contract between myself and the plaintiff. I work as a contractor and engineer for the plaintiff. I visited tile spot personally at that time however cannot tell how many times I visited the property of the plaintiff. **I have not seen the documents of ownership of the property, as I have no concerned with the documents**."

Further, Mr. B.P. Singh, in his cross examination dated 03.11.2009 had deposed that he had carried out construction in property bearing No. RZ 33-B/1, Kishan Garh, Mehrauli, and he had not carried out any construction in property bearing No. RZ 33B-9/7, Kishan Garh, Meharauli. The relevant portion of the said cross examination is reproduced as under: -

"**I have construed the property bearing no. RZ 33B/1 Kishan Garh**

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> **Mehaurli, Delhi. It is correct to suggest that I have not constructed or had any construction with regard to the property bearing no. RZ 33B-9/7 Kishan Garh, Mehaurali, i.e. the property of Sh. Mahinder Singh**. I have never visited the property which I got constructed in the year 1997 i.e. from March to September 1997 since the day of its completion."

Mr. B.P. Singh, in his cross examination dated 31.10.2013 had deposed that he had not been provided any record to show that the suit property bears No. RZ 33B/1, Kishan Garh, Mehrauli. The relevant portion of the said cross examination reads as under: -

> "I cannot tell now as to whose property is situated at west, north, east, south sides of suit property. **I have not been provided with any record to show that property bears No. RZ-33B/1, Kishan Garh, New Delhi**."

In view of the aforesaid, while Mr. B.P. Singh claimed to have carried out construction at the instance of the Plaintiff, his testimony does not establish that the said construction was carried out on the very property which forms the subject matter of the present suit. Further, he had not produced any record to establish the municipal number of the property where the construction was carried out by him. In view of the discrepancy in the description of the properties, the testimony of Mr. B.P. Singh does not establish the Plaintiff's claim with respect to the suit property.

87. Similarly, PW-4, Mr. Bal Kishan had also deposed in his cross-examination dated 03.04.2010 that he had prepared the site plan after visiting the suit property, and it was the Plaintiff who was in possession of the suit property, as the locks were opened by him. He had further deposed that he did

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not see any title documents pertaining to the suit property, but only an electricity bill was shown to him. Relevant portion of the said cross examination reads as under: -

> "I cannot tell as to how many rooms and other construction were existing when I visited the suit property in 1998. It is incorrect to suggest that in the property Sh. Mahender Singh residing at the time of my visit. **Vol. It was Pratap Singh who was residing therein. I ascertain from the fact that Pratap Singh had opened the lock of the gate in my presence however nobody was residing as the property was under construction at that time. It is wrong to suggest that the suit property was in possession of Sh. Mahender Singh. The Municipal number of the suit property is RZ33B/1, Kishan Garh, Delhi. It is correct to suggest that I have not visited the property RZ33B-9/7 Kishan Garh Mehrauli Delhi nor I have drawn the site plan of the said property. I had enquired from 2/3 persons who were present at that time as to who was the owner of the property shown in the site plan. They had disclosed to me that the property belonged to Sh. Pratap Singh. I did not see any title documents of the property but an electricity bill was shown to me. I cannot show the said electricity bill nor the same has been placed on record by me. It is wrong to suggest that no electricity bill was seen by me**."

Further, Mr. Bal Kishan, in his cross-examination dated 31.10.2013, had clarified that the electricity bill shown to him did not mention the site of the property. The relevant portion of his cross-examination is reproduced as under: -

> "The site plan bears the property number. **I do not remember whether property number was written anywhere. (Vol. I have seen the electricity bill with regard to suit property). I do not have the copy of said electricity bill. It is correct that there is no mention of site of property in electricity bill. I myself of my own do not see the electricity bill while preparing the site plan but I see the same if it is shown to me. I do not mention about the electricity bill etc. while preparing the site plan.**"

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The aforesaid testimony of Mr. Bal Kishan does not establish the Plaintiff's possession over the suit property. While it was stated that the Plaintiff had opened the lock of the property in his presence, he also admitted that he had not seen any title documents pertaining to the suit property and that the electricity bill shown to him did not mention the site of the property. Further, the site plan was prepared on the basis of his visit to the property and the information provided by persons present at the spot. In view of the same, the testimony of Mr. Bal Kishan does not establish that the property inspected by him was the same property which forms the subject matter of the present suit or that the Plaintiff was in possession thereof.

88. The Plaintiff had also relied upon the evidence of Mr. Dharmendra Singh, PW-2, resident of Village Kishan Garh, Mehrauli, who had stated in his cross examination dated 18.08.2012 that the Plaintiff was in possession of the suit property. However, Mr. Dharmendra Singh, in his cross examination dated 15.02.2013 had deposed that he has not seen any documents showing that the Plaintiff was the owner of the suit property, as was pleaded by him in his evidence by way of affidavit, and he had only seen the house tax receipts of the suit property. The relevant portion of the cross examination dated 15.02.2013 is reproduced as under: -

> "**I have not seen any document to show that plaintiff is owner in pleaded by me in para 2 of my affidavit. (Vol. I have seen him in possession). I have seen house tax receipt in favour of plaintiff with regard to suit property. I have not seen any other document except house tax receipt.** I do not know how the property is assessed to MCD. I have no document to show that construction was carried out in 1997 by

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plaintiff but I used to see that. I am not in position to show the demolition and construction. I have been brought to give evidence on behalf of plaintiff."

The aforesaid testimony of Mr. Dharmendra Singh shows that he had not seen any document establishing the Plaintiff's ownership over the suit property, except for the house tax receipts. Further, although he had claimed that the Plaintiff was in possession of the suit property, he admitted that he had no document to show that the construction therein had been carried out by the Plaintiff in the year 1997. Therefore, the testimony of Mr. Dharmendra Singh, while supporting the Plaintiff's claim of possession, does not establish his ownership over the suit property.

89. The Plaintiff, had further relied upon the testimony of Mr. Sunil Kumar, PW-3, *i.e.*, who was residing in Mehrauli, Delhi, and in his cross-examination dated 15.02.2015 he had stated that he had seen the Plaintiff in possession of the suit property. The relevant portion of the said cross-examination reads as under: -

"**I have not seen any document to show that plaintiff is owner in pleaded by me in para 2 of my affidavit (Vol. I have seen him in possession). I have seen house tax receipt in favour of plaintiff with regard to suit property. I have not seen any other document except house tax receipt.** I do not know how the property is assessed to MCD. I have no document to show that the construction was carried out in 1997 by plaintiff but I used to see that. I am not in position to show the demolition and construction. I have been brought to give evidence on behalf of plaintiff."

A perusal of the aforesaid testimony would demonstrate that it is identical to that of PW-2, Mr. Dharmendra Singh, and therefore, as discussed

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hereinbefore, it could not be of any assistance to prove the Plaintiff's case.

90. Learned Senior Counsels for the Plaintiff had submitted that the Local Commissioner, in his report dated 04.06.1998 had identified the suit property as RZ-33 B/1, and therefore, the claim of the Defendant that the suit property bears a different municipal number is devoid of merit. However, it would be apposite to refer to the cross-examination dated 05.11.2008 of Mr. Anupam Dhingra, PW-2, *i.e.*, Local Commissioner, wherein he had deposed as under: -

> "**I cannot tell whether the number on the property is RZ-33-B/7, Ward No. 9, Kishan Garh, Delhi as there was no number plate on any part in the property but the same was identified by both the parties**…
>
> …I was not supposed to ascertain the ownership of the suit property including the building material or the goods lying in the suit property."

In view of the said testimony, it is evident that the Local Commissioner had not verified the municipal number of the suit property and had identified the same on the basis of the identification of the suit property by the parties, and therefore, the report of the Local Commissioner, by itself, does not establish that the suit property was bearing Municipal No. RZ-33 B/1.

91. On the other hand, the Defendant had claimed ownership over the suit property on the basis of an alleged oral family partition amongst the sons of late Shri Prabhu, and had relied upon the following documents in support of his claim: -

i. Undertaking executed by the Plaintiff, Defendant and two of their brothers, namely Mr. Gajender Singh and Mr. Ishwar Singh, *i.e.*, sons of late

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Shri Prabhu, Ex. PW-1/D1;

ii. General Power of Attorney executed by late Shri Prabhi in favour of the Defendant, dated 11.09.1995, Ex. PW-1/D2;

iii. Will dated 30.08.1995 executed by late Shri Prabhu in favour of the Defendant, Ex. DW-1/2;

iv. Site plan depicting the portions of land allegedly allotted to the respective brothers pursuant to the said partition, Ex. DW-1/4;

v. General Power of Attorney executed by late Shri Prabhu in favour of Mr. Ishwar Singh, *i.e.*, brother of parties, Mark D2/1;

vi. Will dated 30.08.1995, registered on 09.11.1995 executed by late Shri Prabhu in favour of Mr. Ishwar Singh, Ex. DW-7/1;

vii. Will of late Shri Hari Singh, Mark A;

viii. General Power of Attorney dated 11.09.1995 registered on 09.11.1995, in favour of Mr. Gajender Singh, with site plan, Ex. DW-3/1;

ix. Will dated 30.08.1995, registered on 09.11.1995 in favour of Gajender Singh, Ex. DW-3/2;

x. General Power of Attorney in favour of the Plaintiff, Ex. DW-7/2;

xi. Will in favour of the Plaintiff, Ex. DW-7/3;

xii. Orders passed in Criminal Writ Petition No. 892/1998, Ex. DW-4/1; and

xiii. Affidavit filed by the DCP in Criminal Writ Petition No. 892/1998; Mark A.

92. Learned Trial Court, while adjudicating the aforementioned issues, had given a completely contrary finding, and the same reads as under: -

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"13. …In totality of the circumstances, it is crystal clear that there is no dispute regarding holding of property once upon time by Late Prabhu (which even may be as co-shares alongwith his other siblings) but subsequent transfer by oral partition to different LRs was to be proved by defendants which they have failed, it is also crystal clear that plaintiff has also not come to the court with clean hands and both the parties are lying after coming to the court. But crux of the above observation is that when defendant has failed to prove the oral partition, the land is deemed to be joint and all the persons i.e. plaintiff and defendants No. 1 and 2 and other LRs of Late Prabhu are deemed to be co-sharers in equal shares and it cannot be held that property was exclusively hold by defendant. It cannot be held that property solely owned by plaintiff and being cosharer, both the parties are deemed to be owner and in possession till partition by metes and bounds. In these circumstances, the question of exclusive possession either with plaintiff and defendant losses its significance because one party will be deemed to be having possession with other co-sharer also, though otherwise defendants have failed to prove their exclusive possession thus in these circumstances, issue No. 2 is decided accordingly and plaintiff is deemed to be co-sharers of the suit property and issue No. 5 becomes redundant. As far as issue no. 6 is concerned, exclusive possession cannot be given to any of the party and suit for partition by metes and bounds is required to be filed by parties. The issue No. 6 is answered accordingly. As far as issue No. 3 is concerned, it is clear that when all the parties are co-sharers then every co-sharer can use every piece of land and then defendant cannot restrain the plaintiff from using any part and parcel of land. The plea of exclusive possession of defendant is not accepted and so the plaintiff has every right to enter into the suit land and all of them will hold the possession or will do whatever they want in whole of the suit land subject to condition that same will be equally for the benefit of all the parties and no specific share can be given to any of the parties and all the share holders shall enjoy the property jointly accordingly All the issues are decided accordingly in above terms.

14. Relief:- In view of the above finding, the suit of the plaintiff stands partly decreed with costs as aforesaid. Decree sheet be prepared accordingly and file be consigned to Record Room."

Thus, the learned Trial Court, while disbelieving the documents placed on record by the Defendant *qua* the oral partition, concluded that although

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there was no dispute with regard to the property having been held by late Shri Prabhu, *i.e.*, the father of the parties, the subsequent partition of the property amongst his legal representatives had not been proved by the Defendant. The learned Trial Court had further observed that even the Plaintiff had not approached the Court with clean hands. However, on the basis of the Defendant's failure to prove the alleged partition, the learned Trial Court proceeded to hold that the suit property would be deemed to be jointly held by the Plaintiff, the Defendants and the other legal representatives of late Shri Prabhu, who were consequently treated as co-sharers therein. The learned Trial Court concluded that the suit property could not be held to be in the exclusive possession of the Defendant. The aforesaid finding rendered by the learned Trial Court is contrary to the pleadings of the parties. Neither the Plaintiff nor the Defendant had set up a case that the suit property was jointly held by the Plaintiff, the Defendant and the other legal representatives of late Shri Prabhu. Rather, both the parties had asserted their respective claims over the suit property. Therefore, the learned Trial Court, merely on account of the Defendant's failure to prove the oral partition, could not have proceeded to hold that the suit property was jointly held by the parties and the other legal representatives of late Shri Prabhu, thereby treating them as co-sharers in the suit property.

93. Even otherwise, the impugned judgment passed by learned ADJ suffers from a fundamental error, as no issue was framed *qua* the aforesaid findings. It is pertinent to note that the aforesaid finding has been challenged by both the Plaintiff and the Defendant by way of the present appeals, as this was not the case pleaded or step-up by either of them. Once the learned ADJ had

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come to the conclusion that the land was jointly owned by both Plaintiff and Defendant along with other members of the family, he ought to have decided as to who was in possession of the same at the time of the institution of suit in the year 1998. It has been rightly argued by learned Senior Counsels for the Defendant that serious infirmity had crept in the judgment while relying upon the wrong memo of parties of some other suit. The learned Trial Court, therefore, erred while returning the aforesaid finding.

94. Be that as it may, this Court will now proceed to examine the Plaintiff's claim for the relief of injunction and possession on the basis of his alleged prior possession in suit property.

95. So far as the question of ownership is concerned, no document has been placed on record by the Plaintiff to substantiate his claim of ownership over the suit property. On the contrary, Smt. Premwati, *i.e.*, daughter of late Shri Hari Singh, had deposed before the learned Trial Court that no land had been transferred to the Plaintiff by late Shri Hari Singh. The relevant portion of her cross examination dated 07.02.2014 is reproduced as under: -

> "…My father had bequeathed his entire movable and immovable property to me and my sister. My father had never gifted any property or portion thereof to Pratap Singh. He had no occasion to deal with Pratap Singh and as such to give any property or any portion thereof to him."

96. There are two factors in favour of the Defendant being in possession of the suit property, *i.e.*, report of the Local Commissioner, wherein he had stated that the gates were opened by the Defendant and the affidavit filed by the DCP, as noted hereinabove. So far as the address of the suit property is

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concerned, the affidavit filed by the DCP before this Court had clearly identified the property as RZ-33B-7/9. It is further pertinent to note that the Defendant, in his written statement, had specifically disputed the description of the suit property as stated by the Plaintiff in the plaint; however, the learned Trial Court had not framed any issue *qua* the same. The criminal writ petition filed by the Plaintiff was also dismissed by the learned Division Bench of this Court on the basis of the said affidavit of the DCP. It is further pertinent to note that the affidavit filed by the DCP, as well as the order dismissing the writ petition, had never been challenged by the Plaintiff. In view of the same, the discrepancy in the description of the suit property assumes significance while examining the Plaintiff's claim of possession over the suit property. Learned Senior Counsels for the Plaintiff had relied upon the report of Local Commissioner wherein it has been stated that the suit property was RZ-33-B/1. The said reliance is misplaced, inasmuch as the report of the Local Commissioner itself further records that there was no address plate or number on the suit property. It is further noted that this objection with regard to the description of the property had been taken by the Defendant at the very first instance in the written statement filed before the learned Trial Court. However, no such issue was framed by the learned Trial Court nor any finding was given thereupon.

97. It is further pertinent to note that even if the electricity meter had been forcibly removed by the Defendant in the year 1998, nothing has been placed on record to demonstrate that any attempts were made on behalf of the Plaintiff to reinstall the said meter, till his alleged dispossession on 14.02.2006.

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98. The Plaintiff was required to establish his actual possession over the suit property on the basis of the evidence led by him. However, the documents relied upon by the Plaintiff, including the house tax receipts and the electricity bills, do not, in themselves, establish that the Plaintiff was in actual possession of the suit property. It is further pertinent to note that no official from the electricity department was examined to prove the electricity bills as relied upon by the Plaintiff. Further, the affidavit filed by the DCP in Criminal Writ Petition No. 892/1998 refers to the property as RZ-33B/7 and it further records that no electricity meter had been installed therein. The aforesaid circumstances, create a doubt as to whether the documents relied upon by the Plaintiff pertain to the very property in respect of which he has claimed possession in the subject suit. In view of the same, this Court is of the considered opinion that the Plaintiff has failed to establish his possession over the suit property.

99. So far as the issue with regard to the alleged forcible dispossession of the Plaintiff on 14.02.2006 is concerned, it is pertinent to note that the said allegation formed the basis for the subsequent amendment of the plaint, whereby the Plaintiff sought the relief of recovery of possession. Therefore, the Plaintiff was required to establish not only his prior possession over the suit property but also his dispossession by the Defendant. However, in view of the material discussed hereinabove, particularly the discrepancy with regard to the description of the suit property and the failure of the Plaintiff to establish his possession over the property in question, the Plaintiff has failed to establish his entitlement to the relief of recovery of possession.

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100. Reliance was also placed by the learned Senior Counsels for the Plaintiff on Section 81 of the Indian Evidence Act, 1872, to contend that a presumption ought to be raised in respect of the original electricity bill placed on record. However, the said provision would be of no assistance to the Plaintiff, inasmuch as the foundational facts necessary for raising such presumption have not been established. No witness from the Electricity Department was examined to establish whether the said bill had been issued in respect of the suit property. Further, no evidence was led to establish that an electricity meter had ever been installed at the suit property. It is further pertinent to note that the affidavit filed by the DCP records that no electricity meter had been sanctioned for property bearing No. RZ-33B/1, and that the disputed property was identified as RZ-33B/7, in respect of which no electricity meter had been installed.

101. Learned Senior Counsels for the Plaintiff had placed reliance upon the judgment dated 28.10.2025 titled as "**Sh. Mahender Singh (Since Deceased) through LRs vs. Shri Pratap Singh and Ors.**" rendered in **CS DJ-612992-16** wherein the suit for declaration filed on behalf of the Defendant on the basis of documents produced on record in the present suit was dismissed. It is further submitted that the aforesaid finding with regard to title documents of the Defendant would have a bearing in the present case. It was further pointed out by learned Senior Counsels for the Defendant that the aforesaid judgment had been challenged before this Court in **RFA 1053/2025** and connected matter, and the learned Single Judge of this Court *vide* order dated 19.11.2025 had stayed the effect and operation of the judgment dated 28.10.2025. Be that as it may, as noted hereinabove, this Court has examined the issue of

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possession and is not examining the documents claiming ownership produced by the Defendant. As noted hereinabove, the suit of the Plaintiff for injunction would necessarily be maintainable if it is proved on record that the Plaintiff was in possession of suit property.

102. In a suit for injunction, the Plaintiff must establish his right over the suit property and demonstrate that the Defendant has interfered with such rights. Moreover, where the Plaintiff had also sought recovery of possession, he must establish that he was in prior possession of the suit property, and was subsequently dispossessed by the Defendant. However, in the present case, the Plaintiff had failed to establish his ownership over the suit property, or that he was dispossessed by the Defendant. Reliance has been placed by learned Senior Counsels for the Defendant on **Anathula Sudhakar (*Supra*)** and particularly on the following paragraphs: -

> "13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.
>
> 14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser

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without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(*a*) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(*b*) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(*c*) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in *Annaimuthu Thevar* [*Annaimuthu Thevar* v. *Alagammal*, (2005) 6 SCC 202]). Where the

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averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(*d*) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.

29. The High Court, in the absence of pleadings and issues, formulated in a second appeal arising from a suit for bare injunction, questions of law unrelated to the pleadings and issues, presumably because some evidence was led and some arguments were advanced on those aspects. The only averment in the plaint that the plaintiffs were the owners of the suit property having purchased the same under sale deeds dated 9-12-1968, did not enable the court, much less a High Court in second appeal, to hold a roving enquiry into an oral gift and its validity or validation of ostensible title under Section 41 of the TP Act. No amount of evidence or arguments can be looked into or considered in the absence of pleadings and issues, is a proposition that is too well settled."

Learned Senior Counsels for the Plaintiff had tried to distinguish the aforesaid judgment by submitting that in the said case the Defendant therein was able to show a better title than the Plaintiff, as shown in paragraphs 6 and 7, which are reproduced as under: -

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"**6.** There was no dispute that the site purchased by the defendant from Damodar Rao under deed dated 7-11-1977 is the same as the two sites purchased by the plaintiffs from Rukminibai under sale deeds dated 9-12-1968. There is also no dispute that the suit property is a vacant plot and it was originally portion of the backyard of the property bearing Nos. 13/775 and 13/776, belonging to Damodar Rao, and that he was shown as registered owner of the said Properties Nos. 13/775 and 13/776 in the municipal records.

7. The plaintiffs led evidence to the effect that Damadar Rao orally gifted the backyard portion of Nos. 13/775 and 13/776 (separated from the main building by a dividing wall) to his sister Rukminibai in the year 1961, by way of "pasupu kumkumam" (a gift made to a daughter or sister, conferring absolute title, out of love and affection, with a view to provide for her); that Rukminibai sold three portions of the gifted site to PW 3, Plaintiff 1, Plaintiff 2 in the year 1968 and they were in possession ever since 1968; and that an agreement of sale was also entered in regard to another portion with PW 5 as per Ext. X-2. On the other hand, the defendant led evidence denying that the suit property was given to Rukminibai by way of "pasupu kumkumam". His vendor Damodar Rao gave evidence that he was the owner of the suit property and he sold it to the defendant under deed dated 7-11-1977 and put him in possession thereof. While the plaintiffs alleged that plots were mutated in their names after their purchase, the defendant alleged that the suit property purchased by him was a part of Plot No. 13/776 which stood in the name of Damodar Rao in the municipal records. Neither party produced the order of mutation or any certificate from the municipal authorities, certifying or showing mutation to their names. They only produced tax receipts. The tax receipts produced by the plaintiffs showed that they had paid taxes from 1978 onwards, that is, for a period subsequent to the sale by Damodar Rao in favour of the defendant. The plaintiffs did not produce any tax-paid receipt to show that the property stood in the name of Rukminibai. Nor did they produce any tax receipt for the period 9-12-1968 (date of purchase by the plaintiffs) to 7-11-1977 (date of purchase by the defendant). The defendant produced tax receipts to show that the suit property stood in the name of his vendor Damodar Rao till the date of sale in his favour."

However, in the present case the fact remains that the Plaintiff has not

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been able to show any clear title to the suit property, nor the possession was proved in accordance with law, despite the fact that the issue no. 2 was with regard to the ownership and the onus was upon the Plaintiff to prove the same. Although, there is no finding with regard to the same, as noted hereinabove, no documents or sufficient/credible evidence has been placed on record to establish the ownership of the Plaintiff.

103. Learned Senior Counsels for the Plaintiff had further relied upon on **Rame Gowda (Dead) by LRs (*Supra*)** to contend that in the absence of proof of better title, possession or prior peaceful settled possession itself becomes evidence of title. Relevant portion of the said judgment reads as under: -

> **"7.** The thought has prevailed incessantly, till date, the last and latest one in the chain of decisions being *Ramesh Chand Ardawatiya* v. *Anil Panjwani* [(2003) 7 SCC 350] . In between, to quote a few out of several, in *Lallu Yeshwant Singh* v. *Rao Jagdish Singh* [AIR 1968 SC 620 : (1968) 2 SCR 203] this Court has held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the general law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to court and obtain an order for possession before he could eject the lessee. The Court quoted with approval the law as stated by a Full Bench of the Allahabad High Court in *Yar Mohd.* v. *Lakshmi Das* [AIR 1959 All 1 : 1958 All LJ 628 (FB)] (AIR at p. 4):
>
> "Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause." (AIR p. 5, para 13)
>
> In the oft-quoted case of *Nair Service Society Ltd.* v. *K.C. Alexander* [AIR 1968 SC 1165 : (1968) 3 SCR 163] this Court held that a person in

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possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. *When the facts disclose no title in either party, possession alone decides*. The Court quoted Loft's maxim — "*Possessio contra omnes valet praeter eur cui ius sit possessionis* (he that hath possession hath right against all but him that hath the very right)" and said: (AIR p. 1175, para 20)

"A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff's and thus be able to raise a presumption prior in time."

In *M.C. Chockalingam* v. *V. Manickavasagam* [(1974) 1 SCC 48] this Court held that the law forbids forcible dispossession, even with the best of title. In *Krishna Ram Mahale* v. *Shobha Venkat Rao* [(1989) 4 SCC 131] it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In *Nagar Palika, Jind* v. *Jagat Singh* [(1995) 3 SCC 426] this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant.

8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title,

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> possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner."

104. Learned Senior Counsels for the Plaintiff had further relied upon **Shivshankar & Anr. (*Supra*)** to contend that when both the parties fail to establish their title, the question of who had prior possession becomes crucial. The relevant portion of the said judgment reads as under: -

> "30. It is evident that on a careful consideration of the available pleadings of the defendants, the High Court held that they did not disclose their defence in their written statement and at the same time did not even contend therein that they are in possession of the suit property. According to us, in such circumstances, when the facts disclose no title in either party, at the relevant time, prior possession alone decides the right to possession of land in the assumed character of owner against all the world except against the rightful owner. In that context, it is worthy to refer to the maxim 'Possessio contra omnes valet praeter eur cui ius sit possessionis' (he that hath possession hath right against all but him that hath the very right)"."

105. There is no dispute with the proposition of law laid down in the aforesaid judgments. However, in order to seek protection of possession or recovery of possession on the basis of prior possession, the Plaintiff was required to establish that he was in actual possession of the suit property and that the Defendant had interfered with such possession or had dispossessed him therefrom. In the present case, as discussed hereinabove, the Plaintiff has failed to establish that he was in possession of the suit property. Further, the

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evidence led by the Plaintiff does not sufficiently establish that the property in respect of which the documents were relied upon was the same property forming the subject matter of the present suit. In view of the same, the aforesaid judgments do not support the case of the Plaintiff.

106. In view of the aforesaid discussion, this Court is of the considered opinion that the findings returned by the learned ADJ, resulting in a partial decree, cannot be sustained. The Plaintiff has failed to establish his entitlement to the reliefs as claimed in the suit. Accordingly, the impugned judgment and decree dated 11.09.2014 is liable to be set aside.

107. In view of the aforesaid findings, this Court finds merit in the appeal preferred by the Defendant, *i.e.*, **RFA 488/2014**. Accordingly, the appeal preferred by the Defendant is allowed and disposed of and the impugned judgment and decree dated 11.09.2014 is hereby set aside. The subject suit filed by the Plaintiff, *i.e.,* CS No. 53/11/98, stands dismissed.

108. So far as the appeal preferred by the Plaintiff, *i.e.*, **RFA 615/2014**, is concerned, in view of the failure of the Plaintiff to establish his entitlement to the reliefs claimed in the suit, this Court finds no ground to grant any further relief to the Plaintiff. Accordingly, the appeal preferred by the Plaintiff is hereby disposed of in the aforesaid terms.

109. The interim order dated 01.10.2014 passed by the learned Predecessor Bench of this Court, directing the parties to maintain *status quo* with respect to the suit property, stands vacated.

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Signing Date:24.11.2026 14:09:04

110. Pending application(s), if any, also stands disposed of.

111. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
(JUDGE)

NOVEMBER 20 ,2026*/sn/db*

Signature Not Verified
Digitally Signed By:BHASKAR SINGH RAWAT
Signing Date:24.11.2026 14:09:04