



2025:DHC:932



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

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Judgment reserved on: 12.02.2025
Judgment pronounced on: 14.02.2025

+ **RFA 126/2025, CM APPL. 8277/2025 & CM APPL. 8278/2025**

SHAGUN BAGAI AND ANRAppellants

Through: Mr. Sandeep Kapoor and Mr. Amrit
Rai Gupta, Advocate

versus

VEENA LUTHRA AND ORSRespondents

Through: None

**CORAM:
JUSTICE GIRISH KATHPALIA****J U D G M E N T****GIRISH KATHPALIA, J.:**

1. By way of this appeal brought under Section 96 read with Order XLI of the Civil Procedure Code, the appellants have assailed judgment and decree dated 07.01.2025, whereby the suit filed by the present respondents for recovery of possession and mesne profits was partly decreed under Order XII Rule 6 CPC to the extent of recovery of possession. On 12.02.2025, in the pre-lunch session, I heard learned counsel for appellants but could not find any merit to even issue notice of the appeal, but due to pending heavy board, after hearing the arguments, matter was passed over till end of the



day for orders. However, till late evening on 12.02.2025, order could not be passed, so matter was adjourned for orders to this day.

2. At the outset, it would be apposite to extract the order passed in pre-lunch session on 12.02.2025, wherein arguments advanced on behalf of the appellants were recorded. The same is as follows:

“2. The appellants have assailed judgment and decree under Order XII Rule 6 CPC for recovery of possession of the subject property. In the impugned order, the learned Trial Court after traversing through rival pleadings and documents found it to be the admitted case of the appellants that their predecessor in interest was allowed only to occupy the subject property and after his death, the license was terminated through a quit notice. On behalf of appellants it is contended that the General Power of Attorney executed by the owner of the subject property created a right in favour of the predecessor of the appellants, though admittedly no consideration was paid. Paragraphs 17-19 of the impugned judgment bear crux of the dispute.

3. Further, it also appears that in their written statement, the appellants pleaded that they were ready to restore possession of the subject property to the respondent provided that they are allowed construction of staircase on eastern side of the property. In this regard, learned counsel for appellants submits that the appellants agreed to vacate the subject property provided they were allowed to construct the staircase, so it is not a case of unambiguous admissions.

4. Learned counsel for appellants also argued that the predecessor in interest was allowed to occupy the subject property across past 50 years, which shows that the property was “given” to predecessor of the appellants out of love and affection.

5. In view of above circumstances, it is contended on behalf of appellant that there are triable issues, so decree under Order XII Rule 6 CPC could not be passed.

6. Recall at 04:30 pm for orders.”

3. The suit, from which the impugned judgment and decree arose was originally filed by the present respondents against Shri Anand Prakash



Bagai, the now deceased father of the appellants. Briefly stated, the factual matrix set up by the present respondents in their suit for recovery of possession of the subject property (*ground floor shop admeasuring 18.75 sq meter constructed on 1/4th portion towards north-west side of plot admeasuring 75 sq meter bearing No. 60A, Central Market, Lajpat Nagar, New Delhi*) was as follows. Shri Ved Prakash Bagai, the now deceased predecessor of respondents, was allotted a plot of land bearing No. 60A in Central Market, Lajpat Nagar, New Delhi through registered lease deed dated 02.03.1962 and during his lifetime, he constructed shops on the said plot of land. During his lifetime, Shri Ved Prakash Bagai executed two registered Wills dated 05.12.1977 by which he bequeathed 1/4th portion on south-east side of the said land alongwith shop built thereon in favour of his elder brother Shri Om Prakash Bagai and by separate Will dated 05.12.1977 he bequeathed another 1/4th portion on south-west side of the said land alongwith shop built thereon in favour of his other brother Shri Anand Prakash Bagai and put them in respective possession of the said properties. In the shop bequeathed to him, Shri Anand Prakash Bagai started running his electronic items repair business under the name and style M/s Bagai Razio. Since Shri Anand Prakash Bagai required some more space to stock the new and repairable electronic items, he requested Shri Ved Prakash Bagai, so the latter allowed him to use the north-west portion (*the subject property*) for storage out of love and affection without any consideration. Upon death of Shri Ved Prakash Bagai, the present respondents inherited the



north-east and the north-west portions of the above said property No. 60A, Central Market, Lajpat Nagar, New Delhi, but Shri Anand Prakash Bagai continued to be in possession of the subject property as a licensee without any consideration. When the present respondents fell in need of the subject property for their own use and occupation, they requested Shri Anand Prakash Bagai to vacate, but he did not oblige. So, the present respondents jointly issued quit notice dated 25.01.2017 thereby terminating the license granted to Shri Anand Prakash Bagai in respect of the subject property and called him upon to restore possession thereof to them within 15 days, failing which he would be liable to pay damages at the rate of Rs. 1,00,000/- per month. Since Shri Anand Prakash Bagai failed to vacate the subject property, the present respondents filed against him civil suit for recovery of possession and mesne profits. Shri Anand Prakash Bagai, who was the suit defendant passed away, leaving behind the present appellants as his legal representatives, who have filed the present appeal.

4. Shri Anand Prakash Bagai, the suit defendant filed written statement during his lifetime, pleading *inter alia* that on the same day (05.12.1977) when Shri Ved Prakash Bagai executed Will, Shri Ved Prakash Bagai also executed and got registered a General Power of Attorney authorizing Shri Anand Prakash Bagai to engage an Architect for construction of floors above the shops in the entire premises No. 60A, Central Market, Lajpat Nagar, New Delhi for which the stairs would be from front/side i.e., from



eastern side in between the walls of portion occupied by Shri Ved Prakash Bagai and Shri Om Prakash Bagai; that additionally, Shri Naveen Bagai (*now deceased husband of respondent no. 3*), son of Shri Ved Prakash Bagai also testified through affidavit the said stipulation of the Will regarding construction of the floors above the said shops in the said premises; and that by way of the present suit, the plaintiffs intended to encroach upon rights of Shri Anand Prakash Bagai to construct floors above the said shops. It would be significant to note that in paragraph 3 of preliminary objections in his written statement itself, Shri Anand Prakash Bagai pleaded that “..... *it is specifically stated here that the defendant is ready to handover possession of the subject property provided the plaintiffs allow him to raise/construct the stairs so that the defendant could also construct the building on the roof of the entire building*”. Further in the written statement, Shri Anand Prakash Bagai pleaded that he had not been inducted in the subject property as licensee, but “*the suit property was, infact, handed over to the defendant by late Ved Prakash on account of love and affection...*”.

5. As reflected from records, at the stage of trial, the defendant Shri Anand Prakash Bagai passed away and was substituted with his legal representatives, who are the present appellants.

6. The learned Trial Court after hearing both sides on the application under Order XII Rule 6 CPC passed the impugned judgment and decree on



admissions qua possession of the subject property on the basis of unequivocal and unambiguous admissions in the written statement.

7. As mentioned above, in the present appeal after hearing learned counsel for appellants (*successors of the suit defendant*) I found it not a fit case to even issue notice to the other side.

8. To recapitulate, the case set up by the present respondents is that their predecessor was allotted a plot of land bearing No. 60A, Central Market, Lajpat Nagar, New Delhi, on which he constructed four shops on ground floor, out of which he bequeathed one shop to his brother Om Prakash Bagai and one shop to his brother Anand Prakash Bagai and at the same time, also allowed Anand Prakash Bagai to use the third shop (*the subject property*) for storage of electronic goods; and that the present respondents duly served on Anand Prakash Bagai a notice to quit, which he ignored. On the other hand, the case set up by Anand Prakash Bagai was that the subject property had been given to him out of love and affection by the predecessor of the present respondents, so he is not liable to vacate the same, unless permitted to construct staircase and floors above the said shops.

9. It is nobody's case that Shri Anand Prakash Bagai purchased the subject property or that the subject property was bequeathed to him or that he was inducted as a tenant in the subject property. What was bequeathed to



Shri Anand Prakash Bagai was the shop in south-west portion of the premises No. 60A, Central Market, Lajpat Nagar, New Delhi, whereas the subject property is the shop in north-west portion of the said premises.

10. The plea taken by Shri Anand Prakash Bagai in the written statement that the subject property was “*given to him out of love and affection*” by his brother is inconsequential. It cannot be treated to be a gift, obviously because it is nobody’s case that the subject property was transferred to Shri Anand Prakash Bagai by Shri Ved Prakash Bagai through a valid, registered Gift Deed. As is clear, Shri Anand Prakash Bagai was only a permissive user without any consideration as regards the subject property and had no right, title or interest to retain the same.

11. So far as the General Power of Attorney is concerned, the same authorized Shri Anand Prakash Bagai to ensure construction of staircase and floors above the said four shops. The said General Power of Attorney did not and could not transfer the subject property to Shri Anand Prakash Bagai. Even in his written statement, Shri Anand Prakash Bagai specifically pleaded that he was ready to vacate the subject property if allowed construction on the floors above those shops. In the overall conspectus as described above, the consent or opposition of the present respondents to construction of staircase and/or floors above those shops cannot be a valid reason for the appellants to resist vacation of the subject property and insist



2025:DHC:932



to continue what was only permissive user allowed to their predecessor.

12. As further reflected from record, the appellants have already instituted a civil suit against the present respondents, agitating their right to construct the staircase.

13. In the above factual matrix pleaded in the rival pleadings, it would be futile to compel the parties to undergo rigmaroles of trial since so far as possession of the subject property is concerned, there is no issue that can be framed. There is no triable issue at all *qua* possession of the subject property.

14. I find no infirmity in the impugned judgment and decree, so the same are upheld. The appeal and the accompanying applications are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

FEBRUARY 14, 2025/as