



2026:DHC:5022



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

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Reserved on: 25th February, 2026

Pronounced on: 01st June, 2026

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RFA 136/2009

KULDEEP SINGH

S/o Sh. Partap Singh,
R/o 249, First Floor, Vivekanand Puri,
Near Sarai Rohilla, Delhi.

.....Appellant

Through: Mr. Pawanjit Singh Bindra,
Sr.Advocate with Mr. Abhishek
Agarwal and Ms. Vinita Sasidharan,
Advocates.

versus

1. DEVENDER SINGH

S/o Sh. Partap Singh,
R/o 249, First Floor, Vivekanand Puri,
Near Sarai Rohilla, Delhi.

2. RAJEEV KHATTAR

S/o Sh. H. C. Khattar,
R/o 248, Vivekanand Puri,
Near Sarai Rohilla, Delhi.

....Respondents

Through: Mr. Prag Chawla, Advocate.

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RFA 323/2009

DEVENDER SINGH

S/o Sh. Partap Singh,
R/o 249, First Floor, Vivekanand Puri,
Near Sarai Rohilla, Delhi.

.....Appellant

Through: Mr. Prag Chawla, Advocate.

versus

1. KULDEEP SINGH



S/o Sh. Partap Singh,
R/o 249, First Floor, Vivekanand Puri,
Near Sarai Rohilla, Delhi.

2. PARTAP SINGH

S/o Sh. S. Harwand Singh
R/o A-67, Subadara Colony,
Near Sarai Rohilla, Delhi.

3. DELHI DEVELOPMENT AUTHORITY

Through its Vice Chairman
Vikas Sadan, I.N.A Market,
New Delhi

....Respondents

Through: Mr. Pawanjit Singh Bindra, Senior
Advocate with Mr. Abhishek
Agarwal and Ms. Vinita Sasidharan,
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Aforesaid two Regular First Appeals under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 ('C.P.C.') have been preferred on behalf of the *Appellants Mr. Kuldeep Singh and Mr. Devender Singh* (brothers) respectively, against the common *Judgment and Decree dated 18.10.2008*, whereby *Civil Suit No.18/2004 preferred by Mr. Kuldeep Singh against Mr. Devender Singh and Mr. Rajeev Khattar, for Possession, Mesne Profits and Permanent and Mandatory Injunction, has been dismissed*. Likewise, *Civil Suit No.19/2004 preferred by Mr. Devender Singh for cancellation of Conveyance Deed dated 01.03.1995*, has also been dismissed.



2. The Plaintiff, Mr. Kuldeep Singh in his Civil Suit No.18/2004, for Possession and Injunction, had claimed that Plot No.249, admeasuring 160 sq. yards, situated in Vivekanand Puri, Sarai Rohilla, Delhi (*hereinafter referred to as 'Suit Property'*), was part of plots owned by Lakshmi Cooperative House Building Society Limited, which was allotted to Mr. R. C. Dhingra s/o Sh. A. N. Dhingra and was registered in his name *vide* Registered Lease Deed dated 10.01.1978.

3. Mr. R. C. Dhingra and Mr. Kuldeep Singh entered into an Agreement to Sell dated 06.07.1981, in respect of plot, for a valuable consideration. The possession of the plot was handed over to Mr. Kuldeep Singh on the date of execution of the Agreement to Sell. All other necessary documents of the Suit Property, were also transferred and executed in the name of Mr. Kuldeep Singh. *Thus, he became the owner of the Suit Property.* Thereafter, he got the site plan sanctioned and raised super-structure over the Plot of land. He also got the Suit Property mutated in his name, in the Municipal Record. The property, so constructed, comprised of Basement, mezzanine floor, Ground Floor, First Floor and Second Floor.

4. Thereafter, regular *Conveyance Deed dated 01.03.1995* had been executed in favor of Mr. Kuldeep Singh, and was registered in the Office of Sub-Registrar on 02.03.1995, to the knowledge of the Defendants. The suit property had been converted to freehold property and the entire conversion charges, were paid by the Plaintiff.

5. Defendant No.1 Mr. Devender Singh was younger brother of Mr. Kuldeep Singh, and at the time of construction of the building in the Suit Property, Mr. Devender Singh was residing as tenant in front of Gurudwara Nanak Piao, Near Rana Pratap Bagh, Delhi.



6. In November, 1987, Mr. Devender Singh had a dispute with his landlord, in respect of the tenanted premises, who insisted that he should vacate his property. He then approached Mr. Kuldeep Singh and requested him to let him and his family occupy the Ground Floor and Basement (*hereinafter referred to as suit property*) of the property in-question. He stated that he needed the help only for a short period of time and assured that he would arrange for an alternate residential accommodation and would shift out of the Suit Property.

7. The premises at that time was complete and finished from inside, though the exterior / outer part of the portion of the Property, was yet to be plastered. The Plaintiff accepting the request of Mr. Devender Singh and he out of love, affection and their relationship, permitted him to use and *occupy the suit property, i.e. two bedrooms, drawing, dining, two bathrooms, a kitchen on the Ground Floor and entire basement, of the Property in-question.*

8. However, Defendant No.1 Mr. Devender Singh did not take steps to arrange for any alternate residential accommodation and continued to live in the Premises of the Plaintiff, as a licensee. The Plaintiff Mr. Kuldeep Singh along his family has been residing in the Upper Floor of the Property in-question. Kuldeep Singh installed an electric motor in the Mezzanine Floor for booting the water supply to the upper floors, but Mr. Devender Singh started interfering with his rights for using the motor and started obstructing the rights of the plaintiff.

9. Mr. Kuldeep Singh, plaintiff orally terminated the license of Mr. Devender Singh and finally sent a Legal Notice dated 13.09.1993 to vacate the Suit Premises, which was duly served upon Mr. Devender Singh. After



the termination of the licence, the possession of Defendant No.1 in the Suit Property has become illegal, unauthorized and impermissible under the law. Thereafter, Defendant No.1 forcibly entered into the Mezzanine Floor, removed the motor of the Plaintiff and occupied the same on 25.06.1994, even though he had no right, title or interest.

10. Furthermore, Defendant No.1 illegally and without the consent of the plaintiff, handed *over the possession of the entire Basement to Defendant No.2 Mr. Rajeev Khattar on 24.11.1995*, for which he charged a monthly rent of Rs.20,000/-.

11. Further, Defendant No.1 Devender Singh has been exclusively enjoying the electricity from the electric meter installed on the ground floor. He stopped paying the electricity charges and the meter had been disconnected in 1995. After the disconnection of electricity connection, there was no supply electricity supplied to the premises in occupation of Devender Singh and Defendant No.2 Mr. Rajeev Khattar. However, Mr. Rajeev Khattar had been illegally supplying the electricity to Mr. Devender Singh, through the meter installed in Property No.248, Vivekanand Puri, Sarai Rohilla, Delhi.

12. The Plaintiff has further asserted that Devender Singh *is liable to pay a sum of Rs.35,000/- per month for illegal use and occupation of the Suit Property and Defendant No.2 Mr. Rajeev Khattar is also liable to pay Rs.20,000/- per month for use and occupation of the Basement of the Suit Property, which is being used by him for commercial purposes*. He is storing plastic and other inflammable articles, which are hazardous to the persons living in the building and those who are in the vicinity.



13. The Plaintiff submitted that Devender Singh had instituted *Civil Suit No.21/1992 for Injunction against him*, but realizing that there was no case, it was dismissed by learned Civil Judge, Delhi on 18.08.1997.

14. The Plaintiff further asserted that *vide mala fide* and ulterior motives, Defendants have displayed a *Board in front of the Property in question*, declaring it to be the disputed property, against which there is a stay by the Court. These acts of the Defendants were detrimental to the interest of the Plaintiff, as it lowered the value of the suit property, in the eyes of general public. The Plaintiff, Kuldeep Singh requested the Defendants to remove the Board, but to no avail.

15. The Plaintiff asserted that his sons and daughters have grown, with the passage of time. The stairs on the ground floor leading to the upper floors do not have railing and are unsafe. The outer front portion of the suit property is still not plastered. The Plaintiff intends to fix iron railings on the staircase and also get the house plastered. He had brought mason and other workers, to carry out the necessary work, on 20.12.1999. However, they were intimidated by Devender Singh and Rajeev Khattar, and the mason and the workers were pushed out of the Property.

16. Hence, the *Plaintiff filed the Suit for Possession of the Suit Property and Decree in the sum of Rs.2,40,000/- as mesne profits for user and occupation charges of the suit property i.e. Basement, Mezzanine Floor and the Ground Floor of Property in question at the rate of Rs.20,000/- per month for the period 24.12.1998 to 24.12.1999 and sought further mesne profits till the possession of the Suit Property is handed over to the Plaintiff.*

17. *Plaintiff also sought relief of Permanent Injunction for restraining the Defendants from interfering the rights of the Plaintiff to carry out the repairs*



and also for *Mandatory Injunction* to remove the Board from the front portion of the Ground Floor of the Suit Property.

18. The defendant, Devender Singh in his *Written Statement*, took the preliminary objection that he has filed *Suit No.1445/2000* against the Mr. Pratap Singh (father of Mr. Kuldeep Singh and Mr. Devender Singh) as well as DDA, for Declaration and Cancellation of Conveyance Deed dated 01.03.1995, on the basis of which, Mr. Kuldeep Singh, plaintiff is claiming title in the Suit Property. In view of pendency of this Suit, the present Suit filed by Mr. Kuldeep Singh, *is liable to be stayed.*

19. Defendant No.1, Devender Singh has submitted that he is in possession of Ground Floor and Basement i.e. the suit property, since 27.11.1987. The Suit has been filed on January, 2000 and therefore, *is barred by limitation.* Moreover, he is in lawful use and possession of the Suit Property for a period of more than 12 years and his *possession is hostile and uninterrupted*, due to which he had become the owner of the property in his possession. He also claimed that the property had *not been valued properly for the purpose of court fee and jurisdiction.*

20. **On merits**, it is admitted that the Plaintiff Mr. Kuldeep Singh, Defendant No.1 Mr. Devender Singh and their father Mr. Pratap Singh and other family members, constituted *three partnership firms-* (1) *M/s Hind Express Transport Company* (2) *Hind Express Transport Service* (3) *M/s Blue Roadways*. All these were being run under three Partnership Deeds, but the same were in joint family businesses and all partners had contributed the funds, for the running of the business.

21. The business was mainly of transport and the parties had purchased number of trucks. They acquired various movable and immovable



properties. One of the said property so acquired, was the property in question. The Plot underneath *was purchased from the joint funds*, earned through the partnership business of all the three partners, in the year 1981. *Similarly, Plot No. AG-18, Sanjay Gandhi Transport Nagar, Delhi, was allotted to the Firm M/s Hind Express Transport Company, by MCD.*

22. After purchasing the property in question, Plaintiff, Defendant No.1 and their father Mr. Pratap Singh, raised the construction on the Plot, from their joint funds from the partnership businesses. Devender Singh, defendant also made some contribution. The construction was completed in November 1987, after which Mr. Devender Singh shifted to the Ground Floor and the Basement, while the Plaintiff started residing in the upper portion.

23. Later, due to unavoidable circumstances, parties could not continue their businesses for long. Consequently, Mr. Pratap Singh, their father, suggested for a Family Settlement, for which purpose he deputed Mr. Pritpal Singh and Mr. Jagdish Chand Vasudeva, as to mediators.

24. In consultation with these two mediators, Mr. Pratap Singh settled all the disputes between Plaintiff and Defendant No.1, ***vide Settlement dated 31.08.1990***, which was duly signed and executed on 16.11.1990. By virtue of this Settlement, Defendant No.1 Mr. Devender Singh got Office along with the Buildings at Meerut, Bareilly, Shahzanpur and Dabar and some of the Trucks. Besides this, he also got half share in the plot in Sanjay Gandhi Transport Nagar, as well as the Basement and Ground Floor of the Property in question and thus, he became its sole owner.

25. Later, in the year 1992, Plaintiff Mr. Kuldeep Singh, in collusion with their father Mr. Partap Singh, tried to dispossess Mr. Devender Singh from the properties, which came to his share. *A Suit for Injunction bearing Suit*



No. 21/1992 was filed by the Defendant. In the Written Statement filed in that Suit, plaintiff and father denied the execution of Family Settlement. However, during the pendency of the Suit, Plaintiff and Mr. Partap Singh executed the Agreement to Sell, General Power of Attorney, Special Power of Attorney, etc., on 09.07.1993, in respect of the suit property.

26. Since the Property was purchased and constructed out of family business and as mentioned above, in the said documents, name of Plaintiff was mentioned, on account of love and affection. These circumstances clearly reflect that Defendant, Mr. Devender Singh is in possession of the Suit Property in his own right, title and interest and is not a licensee, as falsely claimed by the plaintiff, Mr. Kuldeep Singh.

27. Mr. Devender Singh denied that he had any dispute with his erstwhile owner and claimed that he had voluntarily vacated the earlier tenanted premises. It is denied that he shifted into the premises on the permission of the Plaintiff, but alleged that he had occupied the Property in his own right and title. He denied that he ever gave any assurance to the Plaintiff to vacate the premises, at any point of time. He also denied that his licence got terminated, *vide* Notice dated 13.09.1993. It is claimed that the Notice was duly replied by him, though the same has not been intentionally disclosed.

28. It is further denied that he forcibly occupied the Mezzanine Floor, as alleged by the Plaintiff. It was asserted that in fact, there was no Mezzanine Floor in the Property, but it is a part of the Basement. He further asserted that the motor was out of order and Plaintiff himself removed it, to get another motor installed in his portion.

29. He further denied that he had sublet any portion of the Basement to Defendant No.2 Mr. Rajeev Khattar, on 24.11.1995, or that he was charging



Rs.20,000/- per month as rent from him. He claimed that the entire Basement and the Ground Floor continue to be in his exclusive use and possession and no part has been sublet to anyone, including Defendant No.2.

30. Defendant No.1 Mr. Devender Singh further asserted that he has filed *Suit No.1445/2000 for Cancellation of Convenience Dated 01.03.1995* in favour of the Plaintiff. He denied that he had been exclusively enjoying the Electricity Meter from Connection K. No.1352733 or that there was no supply of electricity to his portion. In fact, he claimed that Plaintiff, in order to force him to vacate the premises, did not deposit the electricity charges, after receiving the share from him and made misrepresentation and succeeded in getting the electricity connection, which was in his name, disconnected.

31. Defendant No.1 has obtained a separate Electricity Connection in his name. It is denied that Defendant No.2 has been illegally supplying electricity to Defendant No.1 through his meter. Defendant No.1 further claimed that because he is occupying the Suit Property in his own right, he is not liable to pay any *mesne* profits to the Plaintiff. Furthermore, Defendant No.2 is not in possession of any part of the Suit Property.

32. It is further stated that the House Tax Bills are being issued in the name of Mr. R. C. Dhingra, who was the Original Allottee. Defendant No.1 claimed that he was always ready and willing to pay his share of the House Tax, but on account of non-payment of share by the Plaintiff, substantial House Tax arrears have accumulated. The Conveyance Deed is absolutely false and is a *result of fraud* played by the Plaintiff on Defendant No.1.

33. It is denied that the market rate of rent of the premises located in similar vicinity on the Ground Floor, can fetch about Rs.15,000/- per month



or that the Basement can get Rs.20,000/- per month. It is denied that he is liable to pay Rs.35,000/- per month, for user and occupation charges of the Suit Property.

34. He further denied that he was using the Basement for commercial purposes, for storing articles allegedly hazardous to the life of the people living in the basement of the property in question. It is claimed that the Plaintiff has no Right to make any additions or alterations in the portion owned by him. No Mason or worker was ever brought by the Plaintiff on 20.12.1999, and there was no question of the labor being pushed out on 20.12.1999. The Plaintiff cannot be allowed to invade the rights of Defendant No.1, under the garb of alleged repair work intended to be carried out by him. It is submitted that *the Suit is mala fide and is liable to be dismissed.*

35. The Defendant also filed *Suit No.1445/2000 (re-numbered as Suit No.19/2004) for cancellation of the Conveyance Deed dated 01.03.1995* before the High Court, which got transferred to the District Court, on the change of pecuniary jurisdiction.

36. The Defendant in his independent Suit, reiterated the averments as disclosed in the Written Statement and about the Settlement dated 31.08.1990. He also claimed about the execution of Agreement to Sell, G.P.A., etc. dated 09.07.1993 executed in favour of the Plaintiff by Defendant No.2, in respect of the suit property, which are in his possession. It is claimed that the Suit Property was purchased from the family business and pursuant to the Settlement, the Suit Property had come to his share. He sought cancellation of the Conveyance Deed dated 01.03.1995 in favour of



the Plaintiff, in respect of the Property in question and a ***Declaration that he be declared as the owner of the Property in question.***

37. The Plaintiff *Mr. Kuldeep Singh and Defendant No.2 Mr. Rajeev Khattarin* their Replication as well as the Written Statements filed in Suit No.1445/2000 repelled the contentions of the Defendant Mr. Devender Singh. It was explained that Mr. R.C. Dhingra entered into an Agreement to Sell dated 06.07.1981 with Mr. Kuldeep Singh. The possession of the plot was handed over to Mr. Kuldeep Singh, on the date of the execution of the Agreement.

38. He reaffirmed his assertions that Mr. Devender Singh had merely been given a permissive use of the Suit property.

39. Plaintiff also took to the objection that the Suit filed by Mr. Devender Singh challenging the Conveyance Deed was barred by limitation and under Order II Rule 2 of CPC. It was also barred under Order XXIII Rule 1(4) of CPC as an earlier *Suit No.21/1992* filed by Mr. Devender Singh claiming title to the Property in question, had been withdrawn by him unconditionally, by claiming that there was a Settlement *inter-se* the properties. The objection has also been taken that the Suit was barred by *Benami Transaction (Prohibition) Act*.

40. On merit, the Plaintiff re-affirmed his assertions as taken in the *Plaint*.

41. Issues in *Suit No.18/2004* filed by *Mr. Kuldeep Singh*, were framed as under:

1. Whether this court has pecuniary jurisdiction to try and entertain the present suit? (OPD)



2. *Whether the suit is liable to be stayed in view of the preliminary objection no. 2 of the written statement?(OPD)*
3. *Whether the defendant no. 1 has become the owner of the suit premises by way of adverse possession as so alleged in preliminary objection no. 4 of the written statement?(OPD)*
4. *Whether the suit has not been properly valued for the purposes of court fees and jurisdiction as so alleged in preliminary objection no. 5 of the written statement?(OPD)*
5. *Whether the suit is barred by limitation as so alleged in preliminary objection no. 4 of the written statement?(OPD)*
6. *Whether the plaintiff has got no cause of action to file the present suit? (OPD)*
7. *Whether the plaintiff is the owner of the suit property? (OPP)*
8. *Whether the plaintiff is entitled to a decree of possession of the suit property? (OPP)*
9. *Whether the plaintiff is entitled to a decree in the suit of Rs.2,40,000/- as mesne profits for the period 24.12.1998 to 24.12.1999? (OPP)*
10. *Whether the plaintiff is entitled for the pendente lite and future mesne profits at the rate of Rs.35,000/- per month as so prayed in the prayer clause of the suit? (OPP)*
11. *Whether the plaintiff is entitled for the permanent injunction against the defendants as so prayed? (OPP)*



12. *Whether the plaintiff is entitled for the mandatory injunction against the defendants as so prayed in the suit?*
(OPP)

13. *Relief.”*

42. *Issues framed in the Suit No.19/2004 filed by Mr. Devender Singh, are as under:*

“1. *Whether the suit is barred by limitation?* (OPD)

2. *Whether the present suit is barred under order 2 Rule 2 CPC and under Order 23 Rule 1 (4) (b) of the CPC in view of suit no. 21/92 instituted by the plaintiff in the court of Senior Civil Judge, Delhi titled as Devender Singh Vs. Kuldeep Singh and Ors?* (OPD)

3. *Whether defendants no. 1 and 2 are not owners of the suit property and the plaintiff was in occupation only on license basis?* (OPP)

4. *Whether by virtue of family settlement dated 30.8.1990, the plaintiff became owner of basement and ground floor in the suit property No. 249, Vivekanand puri, Sarai Rohilla, Delhi?*

5. *Whether the suit is hit by provisions of Benami Transaction (Prohibition) Act?*

(Onus of proof on the parties)

6. *Whether the plaintiff is entitled to the relief of declaration?* (OPP)”

43. *These two Suits were consolidated by the learned Trial Court, vide Order dated 21.07.2004 and the Suit No.18/2004 was taken as the lead case and the common evidence was recorded in both cases.*

44. *Mr. Kuldeep Singh examined himself as PW-1 and proved the Perpetual Lease Deed as Ex.PW-1/1; Agreement to Sell as Ex.PW-1/2: Will*



dated 06.07.1981, as Ex.PW-1/3;certified copy of Mutation as Ex.PW-1/4;Legal Notice dated 13.09.1993 as Ex.PW-1/5; Reply to the Notice as Ex.PW-1/6; certified copy of Suit No.21/1992 and Order dated 18.09.1997 were collectively exhibited as Ex.PW-1/7; certified copy of Civil Suit No.1145/2000 as Ex.PW-1/8; certified copy of Registered cancellation of

45. GPA dated 24.08.1993 as Ex.PW-1/9; certified copy of Registered cancellation of Willas Ex.PW-1/10; and certified copy of the Affidavit of Mr. R. C. Dhingra as Ex.PW-1/11.

46. Mr. Kuldeep Singh also examined **PW-2Mr. Pratap Singh**, father of Plaintiff and Defendant No.1, who corroborated the testimony of Mr. Kuldeep Singh *in toto*.

47. *Devender Singh examined himself as DW-1* and deposed about the defence taken by him in his Suit / Written Statement. The copy of Agreement to Sell, was Ex.PW-1/D1 (Ex.DW-1/1).

48. He also examined *DW-2Mr. Jagdish Chander Vasudev; DW-3Mr. Surjeet Singh* and *DW-4Mr. Seva Singh*, who are the signatories to Family Settlement Ex.DW-1/1.They corroborated the testimony of Devender Singh.

49. **Learned Additional District Judge** ,on consideration of the evidence of the parties, observed that admittedly Plaintiff Mr. Kuldeep Singh, Defendant No.1 Mr. Devender Singh and their father Mr. Partap Singh, were having three partnership businesses.

50. The Plaintiff had claimed that he had paid a sum of Rs.1,00,000/- to the original owner Mr. R. C. Dhingra, but had explained that the money was paid from the Account of their father Mr. Partap Singh, though the money belonged to him. This was contradicted by PW-2 Mr. Pratap Singh, who in



his cross-examination stated that Plaintiff Mr. Kuldeep Singh had paid only Rs.20,000/-, and Rs.80,000/- had been arranged by him, from a financier.

51. It was also noted that Defendant No.1, Devender Singh was in possession of the suit property, since 27.11.1987. Admittedly, there was Family Settlement Ex.PW-1/D1 (Ex.DW-1/1), where Mr. Pratap Singh had executed GPA, in favour of Mr. Devender Singh in respect of the suit property, which was duly registered. Also, Will was executed by Mr. Kuldeep Singh, pursuant to Agreement Ex.PW-1/D1 (Ex.DW-1/1). The plaintiff, got cancelled the GPA, Will on 24.08.1993, *vide* registered documents, on account of unavoidable circumstances and reasons.

52. Further, PW-2 Mr. Partap Singh (father) had admitted in his testimony that he along with his brothers and cousins, had tried to resolve the dispute between the Plaintiff and Defendant No.1. According to him, Mr. Devender Singh, at the time of Settlement, had agreed to pay the price of suit property, though no price was fixed by the *biradari*, but later he backed out.

53. Lastly, it was held that the only evidence to show that Defendant No.1 had inducted Defendant No.2 as a sub-tenant, was only oral and not supported by any document and did not find any corroboration from any independent source.

54. It was **thus, held** that the Plaintiff Mr. Kuldeep Singh was unable to produce any cogent and convincing evidence to show that the Property in question, which was registered in his name, had been purchased out of his personal funds or that he had the right to enjoy the Property, to the exclusion of others including Defendant No.1 Mr. Devender Singh.



55. It was *further held* that the Plaintiff was unable to prove that the Basement in question, had been let out by Defendant No.1 Mr. Devender Singh to Defendant No.2, for consideration entitling him to the damages. Accordingly, by observing that *the plaintiff had failed to prove the source of funds from where the property in question had been purchased*, the **Suit of the Plaintiff Mr. Kuldeep Singh was dismissed.**

56. Likewise, in the *Suit No.19/2004 filed by Mr. Devender Singh for Cancellation of the Conveyance Deed dated 01.03.1995 in the name of the Plaintiff*, it was **held** that registered documents of title Ex.PW-1/2 and 3 had been executed in favour of Mr. Kuldeep Singh and Mr. Partap Singh, who were held to be the owners of the Property in question, though it was clarified that the Suit No.18/2004, *the relief had been denied to the Plaintiff Mr. Kuldeep Singh, because he had failed to prove the source of funds from where the property in question had been purchased.*

57. The Family Settlement dated 31.08.1990 was not-registered and therefore, it was held that it did not create any right in favour of Mr. Devender Singh. It was held that Mr. Devender Singh cannot be held to be the owner of the property in question, by virtue of Family Settlement dated 31.08.1990. It may be looked into for collateral purposes, which reflected that Mr. Devender Singh was in settled possession of the suit property, a fact not denied by Mr. Kuldeep Singh and Mr. Pratap Singh.

58. The defense taken by Mr. Devender Singh of having *become owner by adverse possession*, was also rejected. It was thus, held that since the Conveyance Deed dated 01.03.1995, had been duly executed in the name of Kuldeep Singh, ***Devender Singh was not entitled to any relief or Declaration for Cancellation of the Conveyance Deed.***



59. *Suit No.18/2004 filed by Mr. Kuldeep Singh for Possession and mesne profits was accordingly dismissed. Likewise, Suit No.19/2004 filed by Mr. Devender Singh for challenging the Conveyance Deed in favour of Mr. Kuldeep Singh, was also dismissed.*

RFA No.136/2009: filed by Kuldeep Singh against dismissal of his Suit No.18/2004 for Possession and Permanent and Mandatory Injunction:

60. Kuldeep Singh, aggrieved by the dismissal of his Suit No.18/2004 filed the ***Regular First Appeal bearing No.136/2009.***

61. **The grounds of challenge** are that the learned ADJ erroneously held that Appellant Kuldeep Singh was unable to discharge the onus of proving that the amount for purchasing the Property in question, was from his personal Account, in as much as, the best evidence for proving the title of a person over a property, is the title Document itself.

62. Learned ADJ, despite holding that the Appellant was the owner of the Property in question, has wrongly denied the relief of Possession, only on the ground of *not being able to prove the source of fund, from which the he had purchased the Suit Property.* It has been wrongly observed that the three Partnership Firms were running, at the time of purchase of the Property in question, when admittedly M/s Hind Express Transport Services was formed subsequently, on 01.04.1984.

63. The Conveyance Deed dated 01.03.1995 Ex.PW-1/1; Agreement to Sell Ex.PW-1/2; Will dated is 06.07.1981 Ex.PW-1/3 executed by Mr. R. C. Dhingra in favour of the Plaintiff; along with the Mutation Certificate Ex.PW-1/4; and House Tax Receipt Ex.PW-1/8 were duly accepted by the learned ADJ, despite *which the issue of ownership and possession has been erroneously decided against the Appellant.*



64. Learned ADJ has wrongly observed that the Plaintiff was unable to prove the ownership of the Property in question, even though the requisite documents have been duly proved. It was also noted that the funds for purchase of property in question were taken from the joint funds earned by the three family partnership businesses, even though the onus of proving that the Property was purchased from joint funds, was on Devender Singh and not on the Plaintiff, Kuldeep Singh.

65. Furthermore, learned ADJ failed to observe that alleged Family Settlement dated 31.08.1990 Ex.DW-1/1, allegedly signed on 16.11.1990, was not signed by Kuldeep Singh or his father, Pratap Singh. It is further asserted that it has not been considered that Agreement to Sell dated 09.07.1993 were got signed from Mr. Kuldeep Singh or their father Mr. Pratap Singh, under force and coercion.

66. Learned ADJ got confused in differentiating between the Agreement 09.07.1993 Ex.PW-1/D1 and the alleged Family Settlement dated 31.08.1990 Ex.DW-1/1.

67. Furthermore, the alleged Agreement dated 31.08.1990 and GPA executed by Pratap Singh in favor of Devender Singh and the Will executed by Kuldeep Singh in favor of Devender Singh, *were duly cancelled by them by executing registered cancellation of GPA dated 24.08.1993 Ex.PW-1/9; cancellation of Will Ex.PW-1/10 and Affidavit of Mr. R. C. Dhingra Ex.PW-1/11.*

68. It has not been considered that the license of Devender Singh, was terminated vide Notice dated 13.09.1993 Ex.PW-1/5 and thereafter, he has been in illegal and un-authorized occupation of the Suit Property.



Furthermore, the unregistered Family Settlement dated 31.08.1990, did not create any rights in favour of Mr. Devender Singh.

69. Learned Trial Court wrongly held that the *Suit of Mr. Kuldeep Singh, was barred by limitation*. The impugned Judgment of the learned ADJ was therefore, liable to be set aside.

RFA No.323/2009: filed by Devender Singh against dismissal of his Suit No.19/2004 for Cancellation of Conveyance Deed dated 01.03.1995, in favour of the Plaintiff, Kuldeep:

70. *Mr. Devender Singh has* challenged the impugned Judgment, dismissing his Suit for Cancellation of Conveyance Deed dated 01.03.1995, on the *grounds* that learned ADJ found that the Suit Property had been purchased from the funds of the partnership business, being carried out by the family members and therefore, Mr. Devender Singh ought to have been declared an owner of half share of Property, especially when Mr. Kuldeep Singh, failed to prove the source of income from where the Property was purchased and constructed.

71. Furthermore, learned ADJ had relied upon the Settlement Ex.DW-1/1, but held that the same cannot be relied upon, since it was not a registered Document, but can be considered for collateral purposes. On the basis of the Settlement, Mr. Kuldeep Singh had executed Agreement to Sell Ex.PW-1/D1 and also Will dated 09.07.1993 in favour of the Appellant Devender Singh. Their father had also executed GPA dated 09.07.1993 in favour of Devender Singh. *Therefore, learned ADJ fell in error in not declaring Mr. Devender Singh as the owner of half share of the property in question.*

72. It is asserted that the unregistered, irrevocable Power of Attorney along with Agreement to Sell and Will for consideration, creates right and



title in favour of the parties, in whose favour the documents have been executed. This aspect has not been considered by the learned ADJ. Moreover, in the Agreement to Sell, the consideration had been mentioned *as love and affection*, which clearly indicated that the documents had been executed pursuant to Family Settlement dated 31.08.1990, Ex.PW-1/1. The irrevocable Power of Attorney cannot be cancelled, but was allegedly cancelled by Kuldeep Singh, *vide* documents Ex.PW-1/8 and 9.

73. Despite there being cogent evidence, learned ADJ erred in holding that the Appellant is not the owner, to the extent of half share of the Suit Property, on an assumption though not admitting, that Mr. Devender Singh had agreed to pay the price in the presence of *biradari*, but in that eventuality Mr. Kuldeep Singh could have recovered the money from Mr. Devender Singh, but could not have instituted the Suit for Possession, by claiming Mr. Devender Singhas a licensee.

74. Mr. Kuldeep Singh had asserted that Mr. Devender Singh had been inducted as a licensee and given possession of the Property to live therein, whereas it was mentioned in the Agreement to Sell that he had sold the property for consideration of love and affection. Kuldeep Singh was thus, taking a contrary stand, which should have been decided in favour of the Appellant, by declaring him as half owner and by declaring the Conveyance Deed in favour of Kuldeep Singh, as null and void.

75. Hence, the prayer was made that the impugned Judgment, dismissing the Suit of Mr. Devender Singh for cancellation of Conveyance Deed dated 01.03.1995 be set aside.

76. Written Submissions were filed by Mr. Kuldeep Singh as well as by Mr. Devender Singh, in support of their respective Appeals. The grounds



raised were essentially the same, as agitated in the grounds of their respective Appeals.

Submissions heard and record perused.

77. The Plaintiff, Mr. Kuldeep Singh had filed a Suit for Possession, Mesne Profits, Permanent and Mandatory Injunction in respect of the suit property against Mr. Devender Singh, his own brother.

78. The case of the Plaintiff was that he was the owner of the Property. He has explained that the erstwhile owner was Mr. R.C. Dhingra, who had been allotted the Property in question, on 07.11.1977 by Lakshmi Cooperative House Building Society Ltd., *vide* Perpetual Lease Deed 10.01.1978, Ex.PW-1/1. Mr. R.C. Dhingra entered into an Agreement to Sell, General Power of Attorney, Will, Receipt of payment of Rs.1,00,000/- dated 06.07.1981, which are Ex.PW-1/3 (Colly.).

79. The Plaintiff has explained in his cross-examination, that the entire sale consideration was Rs.1,00,000/-, which was acknowledged *vide* Receipt, Ex.PW-1/3. Thereafter, the *registered Conveyance Deed dated 01.03.1995, Ex.PW-1/1, was registered in favour of Mr. Kuldeep Singh, the Plaintiff.*

80. These documents established that the Property in question was purchased by the Plaintiff, Mr. Partap Singh initially under an Agreement to Sell from the erstwhile owner, Mr. R.C. Dhingra and thereafter, a Conveyance Deed dated 01.03.1995, was duly executed in his favour.

81. The Defendant No. 1, Mr. Devender Singh while not questioning the authenticity of these documents, has asserted that the sale consideration of Rs.1,00,000/- had been paid from the funds of the Partnership Firms, and therefore, it was a joint Property. It was explained by him that at the relevant



time, there were three Partnership Firms, namely, M/s Hind Express Transport Company; Hind Express Transport Service and M/s Blue Roadways. The Plaintiff and the Defendant along with the father, mother and other family members, were the partners in the Partnership Firms.

82. While it was not denied that the Partnership Firm-Hind Express Transport Service came into existence in April, 1984 even then, there were Family Partnership Firms were running. It was claimed that the sum of Rs.1,00,000/- as sale consideration was paid from the account of the Partnership Firms. Though the conveyance Deed was registered in the name of Mr. Kuldeep Singh, he was not his exclusive Property.

83. The Plaintiff in his cross-examination, had admitted that the sum of Rs.1,00,000/- had been taken from the account of their father, Mr. Pratap Singh. However, PW-2, Mr. Pratap Singh in his cross-examination, asserted that Rs.20,000/- was paid by Mr. Kuldeep Singh, while balance Rs.80,000/- had been raised by him from a financier.

84. The Plaintiff, Mr. Kuldeep Singh as well PW-2, may have explained that source from where the money was arranged, but merely because the money came from the father or even if it is accepted that it came from the Partnership Firms, though neither admitted nor proved, then too, merely the payment of the money from the funds of father or the Firms, would not make it a Joint Property.

85. Therefore, even if the money had been paid by the father of the Plaintiff, it does not establish that it became the family property. The father may have helped the son and given money to him, but that *per se* is no ground to claim that the Suit Property belonged equally to the Plaintiff and the Defendant.



86. In the case of *Binapani Paul vs. Pratima Ghosh and Others*, (2007) 6 SCC 100, it was held that after referring to various Judgments, the Supreme Court of India concluded that the source of money can never be the sole consideration though, it may be a relevant factor. Likewise, in the case of *Smt. P. Leelawati (D) by LRs vs. Shankarnarayaa Rao (D) by LRs*, AIR 2019 SC 1938 the property had been purchased in the name of the Defendant though, the funds were paid from the joint account. Similar question of the exclusive ownership of the Defendant, arose in respect of the property, which was exclusively owned by him, but the funds had been paid from the Joint Account. The question arose whether it would make the Property *benami* or that the property was not exclusively owned by the Defendant. In this context, the entire law was discussed and it was held that in order to ascertain it was attended to be a joint property, the motive for giving the money and the possession of the parties and the relationship between the claimant and the alleged owner, the custody of the title documents after sale and the conduct of the parties concerned in dealing with the property, would be significant. *It was thus, held that mere source of money being from a Joint Account, would neither make it a Joint Family Property or a benami property purchased for the benefit of the family.*

87. Similar facts have arisen in the present case, wherein the money may have been given by the father, but the fact remains that it was the exclusive property of the Plaintiff, as all the documents i.e. initially the Agreement to Sell and subsequently, the Conveyance Deed was executed in his name on 01.03.1995.

88. In this context, it may be relevant to mention here that admittedly, the Defendant No. 1 came in possession of the Suit Property i.e. in November,



1987 despite which, the Conveyance Deed had been exclusively executed in the name of the Plaintiff, on 01.03.1995. If it was not the individual property of the Plaintiff, there is no reason why the Conveyance Deed would not have been executed in their joint name.

89. Not only this, the Property was mutated in the name of Mr. Kuldeep Singh *vide* Letter dated 22.05.1992 by the MCD, Ex.PW-1/4. Moreover, it is Mr. Kuldeep Singh, who had been admittedly paying the house tax in respect of the property in question.

90. Not only the conduct of the parties, but also the execution of the documents exclusively in favour of the Plaintiff, prove that he was the exclusive owner of the Property in question, the authenticity of which, has not been questioned by the Defendant.

91. The *second pertinent aspect*, which emerges is that it is admitted by the Plaintiff, Kuldeep Singh in his testimony as PW-1, as well as, by PW-2, Pratap Singh, their father that prior to the acquisition of this Property in 1981, they were all residing in the rented premises. The Plaintiff has explained that while the construction was being carried out by him on this plot of land, he ran short of money, while the internal construction had been done, but the plastering and other finishing work was left to be done.

92. However, on the request of Devender Singh, he was allowed to occupy the room on the ground floor in November, 1987, a fact which is admitted by the Defendant in his testimony. Thereafter, the basement and the ground Floor got completed. It is admitted by the Defendant in his Reply dated 10.10.1993, Ex.PW-1/6 that he occupied the Basement and the Ground Floor w.e.f. 01.01.1988.



93. The Defendant, therefore, has not been able to establish that his shifting to the premises, was in the capacity of an owner, but his own admissions show that he shifted into the suit property, with the consent and permission of the Plaintiff and *his occupation was in the capacity of a licensee/a permissive user on account of the consent of the Plaintiff.*

94. It has again emerged in the testimony of the parties that their dispute *inter se* started in the year 1987. The Defendant has submitted that thereafter, there was a Family Settlement dated 31.08.1990, Ex.DW-1/1, which was signed on 16.11.1990 by the father, Mr. Pratap Singh, at Point 'A', whereby the suit property was given in the ownership of the Defendant, while the Plaintiff was given the upper floor of the property in question. The other businesses were also divided amongst the two brothers.

95. Pertinently, the Defendant, Mr. Devender Singh had filed a Suit No. 21/1992, claiming title over the Suit Property on the basis of the Family Settlement dated 31.08.1990, but the Suit was withdrawn on 18.09.1997. Once the defendant, Devender Singh himself had abandoned his claim of execution of this alleged Settlement, he cannot again agitate any right title under the said Family Settlement, Ex.DW-1/1.

96. Furthermore, the perusal of the Family Settlement shows that it was a document prepared by Sardar Pratap Singh, their father in the presence of two Mediators, Mr. Pritpal Singh and Mr. Jagdish Chander Vasudev. In the cross-examination, it has been admitted that this document was not signed by either the Plaintiff and the Defendant. The father may be having a say in the matters of the sons on account of his status, but this Agreement, Ex.DW-1/1 was admittedly neither signed by the Plaintiff, Kuldeep Singh nor by Devender Singh.



97. The Settlement may have been an expression of the intention of the father, Mr. Pratap Singh, in order to settle the businesses and the properties *inter se* the two brothers, but it does not have any legal sanctity for the simple reason that it merely expressed their intention, and also, it was indicated that this Settlement was subject to submission of the proper documents concerned. Therefore, this document, Ex.DW-1/1 was not a document which created any right, title and interest in favour of the parties, which could have been done only after execution of the documents of transfer of the Property, which admittedly never happened.

98. Also, the father Pratap Singh had no ownership in the property in question, and therefore his good intention of settling the disputes *inter se* the two brothers, could not have any legal implication. Therefore, the Defendant, Mr. Devender Singh cannot make any claim on the basis of this document, Ex.DW-1/1.

99. The next significant documents relied upon by the Defendant, *are the Agreement to Sell, General Power of Attorney, SPA etc., dated 09.07.1993, Ex.DW-1/1 (colly.)* executed in favour of Devender Singh by Kuldeep Singh. Furthermore, though the General Power of Attorney and the Will were registered documents, but they merely conferred a right on Devender Singh, to get the Sale Deed registered in his favour, on the basis of these documents, but do not *per se* confer any ownership rights on him.

100. The other pertinent fact is that immediately thereafter, the SPA, registered General Power of Attorney and the registered Will dated 09.07.1993, were cancelled by the Plaintiff, *vide* Cancellation Deeds, which are Ex.PW-1/8, Ex.PW-1/9 and Ex.PW-1/10.



101. The Plaintiff in his deposition, has explained that there was a Criminal Complaint made against Kuldeep Singh and father, Pratap Singh and Devender Singh had threatened them to either execute the documents or else he would get them implicated. It was under force and coercion that these Agreement to Sell etc., Ex.PW-1/D1, were executed in favour of Mr. Devender Singh but soon thereafter, were cancelled.

102. In these circumstances, when though an Agreement to Sell, GPA, SPA and Will were executed, but they stand revoked and therefore, the Defendant, Mr. Devender Singh cannot claim any ownership in his favour.

103. Another significant aspect is that he had filed a *Suit No. 21/1992* in the High Court for cancellation of the Conveyance Deed in favour of the Plaintiff, but had subsequently withdrawn the Suit on 18.08.1997. The Defendant has again sought to challenge the Conveyance Deed in favour of the Plaintiff by way of the present Suit No.19/2004, which he cannot do; *firstly*, on the ground that the claim got barred by limitation and *secondly*, that under Order 23 Rule 1 CPC, once the Suit is withdrawn without any permission, the Suit on the same cause of action, cannot be filed. ***His Suit No. 21/1992 was, therefore, rightly dismissed by the learned Additional District Judge.***

104. It is further established from the testimony of the Defendant, who admitted to have come in possession in 1987 and finally occupied the property on 27.11.1987. The documents, which had been relied upon by him i.e. the Settlement, Ex.DW-1/1 and the Agreement to Sell etc., Ex.PW-1/D1, do not confer any right of ownership in favour of Mr. Devender Singh. He also cannot claim any right of continued possession, once the permission has been withdrawn by Mr. Kuldeep Singh, the owner of the Property.



105. Mr. Devender Singh also sought to defend his possession by claiming that his possession was *open, hostile and adverse* to that of the Plaintiff.

106. The legal position regarding the essentials to be established for acquisition of title by adverse possession are well settled by a long line of the decisions of the Supreme Court and the High Courts in the country. Adverse possession it is well settled, implies that it commenced in wrong and is maintained against right. The very concept underlying adverse possession is that the person in possession must claim to be so of right as against the true owner. It must be *nec vi, nec claim, nec precario*. It must be adequate in continuity and publicity to the extent of showing that it is adverse to the competitor. It must be hostile and under a claim or color of title. It must be actual, open, uninterrupted notorious, exclusive and continuous and it must run over the entire statutory period of 12 years. Any person who bases his claim to title by adverse possession should be hostile to the real owner with the attributes of notoriety, exclusivity and continuity over the statutory period.

107. In *S. M. Itarim vs. Mst. Bibi Skina*, AIR 1964 SC 1254, the Hon'ble Supreme Court declared that adverse possession must be adequate in continuity, in publicity and extent and that a plea is required to at least show as to when possession became adverse so that the starting point of limitation against the party affected by the same can be determined.

108. In *Annasaheb Bapusaheb Patil and Others Vs. Balwant @ Balasahet Babusaheb Patil (dead) by LRs & heirs etc.* AIR 7995 Supreme Court 895, their lordships described the meaning of the expression adverse possession and the pre-requisite for proving the same in the following words:



"Article 65 of the Schedule to the Limitation Act, 1963 prescribes that for possession of immovable property or any interest therein based on title, the limitation of 12 years begins to run from the date of the defendant's interest becomes adverse to the plaintiff. Adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of title of the true owner. Under Article 6, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence that possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person constitute adverse possession, regard must be had to the animus of the person doing those acts, which must be ascertained from the facts and circumstances of each case. The person who bases title on the adverse possession, therefore, must show by clear and unequivocal evidence that possession was hostile to the real owner and amounted to a denial of his title to the property claimed".

109. In Konda lakshmana Bapuji v. Govt. of A.P. and others, 2002 (3) SCC 258 the apex court declared that onus of proof to establish acquisition of title by prescription lies on the party who makes any such assertion. The court further held that time for the purpose of adverse possession, would start running from the date, both, the actual possession and assertion of title, are shown to exist. The court explained that mere possession of land, however, long it may be, would not ripen into title unless the possessor has *animus possidendi* to hold the land adverse to the title of the true owner and that an assertion of title by adverse to the title of clear and unequivocal through, not necessarily addressed to the real owner. Consequently, where at the



commencement of the possession there is no animus possidendi, the period relevant for the plea of adverse possession commences from the date when both, the actual possession and assertion of title by the possessor, are shown to exist. In the peculiar facts of the case before their lordship it was held that the defendants had pleaded adverse possession for the first time only in the written statement, filed in the suit the court accordingly excluded the period till the date of the filing of the written statement from reckoning on the ground that there was no animus possidendi during the said period nor had the defendant claimed any title to the land in dispute adverse to the Defendant. The following passage is in this connection apposite:

"Mere possession of the land, however long it may be, would not ripen into possessory title unless the possessor has animus possidendi to hold the land adverse to the title of the true owner. It is true that assertion of title to the land in dispute by the possessor would in an appropriate case be sufficient indication of the animus possidendi to hold adverse to the title of the true owner. But such an assertion of title must be clear and unequivocal through it need not be addressed to the real owner. For reckoning the statutory period to perfect title by prescription both the possession as well as the animus possidendi must be shown to exist. Where, however; at the commencement of the possession there is no animus possidendi, the period for the purpose of reckoning adverse possession will commence from the date when both, the actual possession and assertion of title by the possessor are shown to exist".

110. To the same effect is the decision of Supreme Court in Karnataka Board of Wakf v. Government of India and others, 2004 (970) SCC 779 where the court summed up to legal position in the following passage:



"It is well settled principle" that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with the wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Physical fact of exclusive, hostile and the animus possedendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since, he is trying to defeat the rights of the true owner it is for him to clearly plead and establish all facts necessary to establish his adverse possession".

111. In this regard, reliance may also be placed upon the decision of the Apex Court in Ravinder Kaur Grewal & Ors. V. Manjit Kaur & Ors.,(2019) 8 SCC 729, wherein the Court held that a claim of adverse possession can succeed when the claimant establishes the essential ingredients of *nec vi, nec clam and nec precario*, i.e., possession must be continuous, open and notorious, and hostile to the title of the true owner. Further, it was held as under:

"We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest



possessed by the outgoing person/owner as the case may be against whom he has prescribed."

112. However, in the present case, there is nothing to show that the Defendant, Devender Singh ever acquired the ownership rights on the basis of the Agreement to Sell etc., executed in his favour in July, 1993, as no Sale Deed was, admittedly executed in his favour on the basis of Agreement to Sell.

113. Thereafter, the Suit had been filed on 24.12.1999, by the plaintiff claiming possession. Therefore, Mr. Devender Singh has not been able to show that he had started claiming hostile, adverse and open title, for a consistent period of 12 years before filing of the Suit on 24.12.1999, against Mr. Kuldeep Singh. The learned District Judge had rightly held that Mr. Kuldeep Singh was unable to establish his title in the suit Property by way of adverse possession.

114. Once, it was held by the learned ADJ that the Plaintiff, Mr. Kuldeep Singh was the owner and that Mr. Devender Singh had not been able to establish his proprietary rights in the Property, the dismissal of the Suit for possession by merely observing that Mr. Devender Singh was in the settled possession of the Suit Property, is patently incorrect. The said findings are completely erroneous as the long settled possession of the Defendant, was throughout permissive and in the capacity of a licensee and did not confer any proprietary rights. Therefore, the learned ADJ fell in error in dismissing the Suit of the Plaintiff, for Possession.

115. Therefore, the dismissal of the Suit No. 18/2004 filed by the Plaintiff, is hereby, allowed. *The impugned Judgment dated 18.10.2008 is*



set-aside and the decree of possession in respect of the Suit Property, is hereby passed in favour of Mr. Kuldeep Singh and against Mr. Devender Singh. Further, Mr. Devender Singh is also restrained from preventing the Plaintiff in installing the iron railing on the staircase leading from the ground floor, to his portion.

116. The Plaintiff has also sought the user occupation charges @Rs.35,000/- per month, *pendente lite*, from the pendency of the Suit till the possession is handed over by the Defendant. It has been explained by him that the Basement had been rented out by Mr. Devender Singh to the Defendant No. 2, Mr. Rajeev Khattar, for Rs.20,000/- per month though, he was unable to produce any receipt or cogent evidence in respect thereof. Mr. Devender Singh in his testimony, had also denied having rented out the Basement for Rs.20,000/- per month.

117. In view of the aforesaid, the claim of the Plaintiff for Rs.35,000/- per month for user and occupation charges, has not been rebutted by any cogent evidence. Considering the relationship and the long possession of the Defendant, he is directed to pay Rs.5,000/- per month since 1993 till the decree and thereafter, Rs.10,000/- per month, with an interest of 5% p.a. from the date of institution of the Suit, till the handing over of the possession of the suit property to the plaintiff, Kuldeep Singh.

Conclusion:

118. The *RFA No. 136/2009* filed by Mr. Kuldeep Singh is hereby, **allowed and the Suit No. 18/2004** of the Plaintiff for possession, Permanent and Mandatory Injunction as well as mesne profits/user and occupation charge in the sum of Rs.5,000/- per month since 1993 till the decree and thereafter, Rs.10,000/- per month, with an interest of 5% p.a.



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from the date of institution of the Suit, till the handing over of the possession of the suit property to the plaintiff, Kuldeep Singh, **is decreed.**

119. The **RFA No. 323/2009** filed by Mr. Devender Singh, to challenge the dismissal of his Suit No. 19/2004 for cancellation of Conveyance Deed, **is hereby, dismissed.**

120. The Appeals are disposed of accordingly. The pending Applications are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 1, 2026/R/RS