



2026:DHC:7432



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: 08th July, 2026**
Pronounced on: 02nd September, 2026

CNR No. : DLHC010051842026

+ **RSA 34/2026, CM APPL. 9846-9847/2026**

SH. AJAY KUMAR VYAS

S/o Late Sh. Devki Nandan Shastri
R/o 19/54-B, First Floor, Tilak Nagar,
New Delhi.

.....Appellant

Through: Appearance not given.

versus

1. **SHREE SANATAN DHARAM SABHA, (REGD.)**

(Regn. No.1214) Under the Societies
Registration Act 1860
Through its President/Secretary
Tilak Nagar, New Delhi-110018.

2. **SH. SURESH MALIK**

S/o Sh. Ram Chander
R/o C-3/94, Janakpuri,
New Delhi-110058.
(Chairman of Sanatan Dharam Sabha, (Regd.)
Tilak Nagar, New Delhi-110018.

3. **SH. GULSHAN MAKEN**

S/o Late Sh. Man Mohan Maken
R/o C/o Shop No.12
New Tilak Nagar, Market, Tilak Nagar,
New Delhi-110018.
(President of Sanatan Dharam Sabha, (Regd.)
Tilak Nagar, New Delhi-110018.

4. **SH. KAMAL SHARMA**

S/o Sh. Dev Raj Dogra
R/o 16/16-A, Tilak Nagar, New Delhi-110018.



(Gen. Sec. of Sanatan Dharam Sabha, (Regd.)
Tilak Nagar, New Delhi-110018.

5. **SH. SITARAM SOI**
R/o WZ-73, Gali No.6, Krishna Puri,
New Delhi-110018.
(Treasurer of Sanatan Dharam Sabha, (Regd.)
Tilak Nagar, New Delhi-110018.

6. **SH. LOKNATH LUTHRA**
S/o Late Sh. J.N. Luthra,
R/o 10/7, Ashok Nagar,
New Dlehi-110018.

.....Respondents

Through: Mr. Sanjeev Mahajan and Ms. Simran
Rao, Advocates

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular Second Appeal under Section 100 read with Section 151 CPC has been filed on behalf of the Petitioners/Appellants against the Judgment dated 03.11.2025 whereby the learned District Judge, Delhi, in the Regular First Appeal No.61231/2016, has affirmed the Judgment and Decree dated 22.09.2016 of Id. Civil Judge **dismissing the Suit No. CS/611637/2016** of the Plaintiff/Appellant, *for Possession and Mandatory Injunction and Recovery of Compensation of Rs.10,000/- and Cancellation of Rent Deed and NOC and Injunction against creating third party rights, in the suit property.*

2. The **facts in brief** are that Late Shri Devi Nandan Shastri was associated with renovation of Sanathan Dharam Mandir situated at Late Shri



Devki Nandan Shastri Marg, Tilak Nagar, New Delhi and Sanatan Dharam Shopping Complex, which was developed in early 1970's and completed in or about 1974. He was the President of Defendant No.1 Shri Sanatan Dharam Sabha, during his lifetime having been elected as a Member of the Sabha. The members of the Sabha and devotees of the area, had installed a statue of Late Shri Devki Nandan Shastri in the Mandir Complex, as an expression of their gratitude to the departed soul. Moreover, in recognition of his contribution in the construction/renovation of the Mandir and the development of the area and society, the road was named as "*Shri Devki Nandan Shastri Marg*".

3. The Plaintiff Ajay Kumar Vyas, son of Late Shri Devki Nandan Shastri stated that the area was hardly habituated, in those days. It was agreed that in order to earn more revenue, some shops may also be constructed around the Mandir and one corner space was given to Shri Devki Nandan Shastri, who later on constructed a shop from his own pocket. It was later numbered as B-21 and Shri Devki Nandan Shastri was accepted as a tenant in the shop.

4. He started paying rent to Sanatan Dharam Sabha,/Defendant No.1 and his elder son Sh. Vijay Shastri started his business under the name and style of '*Vijay Corner*' and also '*Vijay Flour Mill*' from the said shop, which had been in the possession of Shri Devi Nandan Shastri and their family since 1974.

5. With passage of time, this shop was subdivided into four portions privately marked as A, B, C and D. Later, with the concurrence of Defendant No.1, Portion marked as private No.A and B were occupied by other tenants of Defendant No.1 and Shri Devki Nandan Shastri and his



family surrendered their tenancy rights in respect of these two Portions, while they retained Portions C and D of the shop.

6. On the demise of Shri Devki Nandan Shastri, his wife Smt. Raj Dulari was accepted as a tenant in Portion C and D of shop No.B-21 and rent receipts for different periods in her name, were annexed along with the Plaint. The Plaintiff asserted that Smt. Raj Dulari continued to pay the rent in respect of these two Portion @ Rs.15/- per month to Defendant No.1, which stands paid upto March, 2010 by Shri Devki Nandan Shastri and thereafter, by Smt. Raj Dulari, who used to pay the rent in advance.

7. On the demise of Smt. Raj Dulari on 27.02.2007, her legal heir succeeded to the tenancy rights. During her lifetime, Smt. Raj Dulari had permitted the legal heirs of her elder son Late Shri Vijay Kumar Shastri, to carry on business activities from portion C of the suit shop, while Portion D was retained by her from where she was running a Dhaba. For this purpose, she had made an arrangement with *Defendant No.6 Shri Lok Nath Luthra, who was permitted as a Licensee to look after the day-to-day affairs of the Dhaba and to share the income with Smt. Raj Dulari, as per the arrangement between them.*

8. Smt. Raj Dulari by virtue of a Will dt. 30.11.2002, bequeathed the tenancy rights and the business, in favour of the Plaintiff. It was mutually agreed amongst the family that the legal heirs of Late Shri Vijay Kumar Shastri, elder brother of the Plaintiff would continue to carry on their business activities in Portion C, *while Portion D would fall to the share of the Plaintiff.* A Representation on the basis of Will of Smt. Raj Dulari, was sent to Defendant No.1, by the Plaintiff and a request was made to issue the



rent receipts in the name of Plaintiff. However, Defendants No.1 to 5 did not pay any heed to the Representation of the Plaintiff, for a long time.

9. The Plaintiff intended to wind up the Dhaba business running from Portion D of the shop and intimated Defendant No.6 accordingly, who expressed his readiness to close the Dhaba, but requested for some time to make alternate arrangement. However, on account of other pre-occupation and on the request of Defendant No.6, Plaintiff did not take any action immediately for the closing of Dhaba and merely intimated him that he may continue for some more time, while rendering the accounts and making payments, as he was doing during the lifetime of Smt. Raj Dulari i.e. pay 40% of the profits of the business, which came to an average of Rs.3500/- to Rs.4,000/- per month to his share.

10. In or around the third week of July, 2009, the Plaintiff noticed a new electricity meter installed in Portion D of Shop No.B-21. Since the supply to all the Portions of B-21 from beginning, was through one meter and there was no separate meter for the different Portions of the shop B-21, the Plaintiff made enquiries from Defendant No.6 who was unable to give any satisfactory reply, except that the electricity meter had been installed by him with the permission of Defendant No.2.

11. Consequently, on getting suspicious of the motive, Plaintiff made further enquiries and found that Defendant No.2 who was representing himself to be the Chairman of Defendant No.1 Sabha, had evidently issued a “*No Objection Certificate*” on behalf of Defendant No.1, falsely stating that Defendant No.6 was the tenant under Defendant No.1 and had *No Objection* to the installation of the electricity meter by the concerned Authority.



12. On further enquiry, the Plaintiff came to know that rent receipt dated 20.04.2009 had also been mischievously issued in favour of Defendant No.6 by the official of Defendant No.1, under the signatures of Defendant No.5 Shri Sitaram Soi.

13. The Plaintiff claimed that there was no such post as Chairman of Sanatan Dharam Sabha, to the knowledge of the Plaintiff and his father was the President, during his lifetime. He intended to know how and from where this new post of Chairman came up. When he received no satisfactory reply from the Defendants as to how and when the post of Chairman of Defendant No.1 came into existence, he applied to Registrar of Societies under RTI Act, to enquire if any amendment and addition to the post of President as is usually the case in Societies, has been made and whether any other post designated as Chairman, has been created and whether it was sanctioned and approved by Registrar of Societies, and if so, under what rules of law were such post created.

14. The Plaintiff further came to know from these enquiries that Defendant No.2 is a usurper and a person of dubious character in the locality and in collusion and conspiracy with office bearers without any sanction of law, started representing himself as a Chairman. The Defendants No.3, 4 and 5 on confrontation were not able to give any explanation in regard to the new illegal post of Chairman except that the people wanted another post of Chairman, because he was an influential person in the locality.

15. Defendant No.2 after taking huge amounts of Pagdi from Defendant No.6, had wrongfully and illegally issued a *No Objection Certificate*, ostensibly accepting Defendant No.6 as a tenant. The Plaintiff claimed that it appears that President/ Defendant No.3, General Secretary/ Defendant No.4



and Treasurer/ Defendant No.5 were hand in glove with Defendant No.2 and 6. It is also claimed that the huge *Pagdi* was obviously shared amongst Defendants No.3 to 5.

16. The Treasurer had issued a Rent Receipt in favour of Defendant No.6 for Rs.1,000/- for the month of May and June, 2009 @ Rs.500/- per month. On the basis of this illegal and mischievous Receipt, it was represented to the electricity supplying Authority that Defendant No.6 was a tenant in respect of Shop No.B-21 and was successful in getting an independent electricity connection.

17. It is claimed that such act of the Defendants tantamount to illegal dispossession of the Plaintiff from the suit premises, at the instance of the landlord/ Defendant No.1. The Plaintiff informed the Defendants about taking a legal action both Civil and Criminal against the Office Bearers and Defendant No.6.

18. The Plaintiff being a successive tenant in Portion C and D of Shop B-21, claimed collusion between the Defendants to act contrary to the rights of the Plaintiff and to rob him of his valuable tenancy rights in the suit shop, both under Section 6 Specific Relief Act and also on the basis of his title as lawful tenant of the premises.

19. The Plaintiff further claimed that Defendant No.6 has been avoiding to pay the share of profit from the business of running Dhaba, ever since the death of Smt. Raj Dulari in February, 2007 and is liable to render the accounts for the period up to July, 2009 when the Plaintiff discovered wrongful dispossession from the shop by Defendant No.6 in collusion with other Defendants. The Plaintiff claimed damages @ Rs.5,000/- per month for the period of July-August, 2009 for use and occupation of the suit



property. He also claimed Damages, *Mesne Profits*, Compensation from the Defendant No.6 @ Rs.5,000/- per month till the realization of the Suit property.

20. Therefore, the Plaintiff, filed a Suit *for Recovery of Possession, Declaration of Rent Receipts* issued in favour of Defendant No.6 as null and void; for Rendition of Accounts by Defendant No. 6 around February, 2007 till July, 2009; *User and Occupation Charges* @ Rs.5,000/- per month and for restraining the Defendants from creating third party rights in the Suit property.

21. **The Defendants No.1 to 5 in their Written Statement**, asserted that the Suit was liable to be dismissed as it was not supported with an Affidavit, as per Section 26 CPC. *No proper Court Fee* has been paid on the value of the subject matter of the Suit,*for the purpose of jurisdiction*. Moreover, there are no specific averments in the Plaint,*in regard to Court Fee*. The Plaintiff has valued the relief of Possession at Rs.180/- i.e. aggregate of one year rent while as per Section 7 (XI) Court Fees Act, one year rent is to be calculated only in respect of the Suit filed by the landlord against the tenant. However, in the present case, the Plaintiff does not accept the Defendant No.6 as his tenant and the *Court Fee has to be paid on the value of the property*.

22. Furthermore, the Plaintiff had relied upon a **Will dated 05.09.2000** executed in his favour by his mother, while *no Probate Certificate* has been filed by the Plaintiff, in support thereof establishing that the Will is a forged document.

23. **On merits**, all the averments made in the Plaint are denied. It was denied that one corner shop bearing B-21 had been given to Shri Devki



Nandan Shastri, which was later constructed by him from his own pocket or that it was divided into four portions.

24. It is further denied that Portion C and D were retained by Shri Devki Nandan Shastri or that he has continued to occupy them as a tenant or that after his demise, the tenancy rights devolved on his wife Smt. Raj Dulari and thereafter, on the Plaintiff.

25. It was denied that the Rent Receipts dated 20.04.2009 were false or had been issued mischievously in favour of Defendant No. 6 by Defendant No. 1 under the signatures of Defendant No. 5. *It was stated that Defendant No. 6 got a separate electricity meter installed, because earlier the meter which was used jointly was disconnected by the supplying Authority.*

26. It was further explained that on the main Notice/ Display Board in the Sanatan Dharam Sabha, Tilak Nagar, Delhi, all the names and posts of the members of the Sabha were clearly mentioned with the consent of Members of Defendant No.1 and it is with the consent of the members of Defendant No. 1 that Defendant No. 2 is holding the post of Chairman.

27. It is further explained that Sh. Devki Nandan Shastri, during his lifetime, had surrendered his tenancy rights in favour of Defendant No.6 and it was never objected to by his wife. In fact, Smt. Raj Dulari mother of the Plaintiff, had approached Defendant No.1 for transfer/ completing the formality for releasing the suit shop in favour of Defendant No.6, as per the wish of her husband and then it came to the knowledge of Defendant No.1 about the creation of tenancy rights in favour of Defendant No.6.

28. Defendants No.1 to 5 denied that a huge Pagdi amount was taken from Defendant No.6 and shared amongst the other Defendants. It is asserted that Defendant No.5 as Treasurer of the Sabha, had issued the Rent Receipt in



favour of Defendant No.6 for Rs.1,000/- @ Rs.500/- for the month of May and June, 2009. It was denied that there was any misrepresentation of Defendant No.6 as a tenant, in the electricity supplying Authority to get a separate meter installed in B-21- D.

29. Further, it is asserted that the Plaintiff has no right over the Suit property, for the reasons explained herein above. It was denied that any illegal act of dispossession of the Plaintiff from the suit property has been committed. *In fact, the tenancy rights were surrendered by the Sh. Devki Nandan Shastri during his lifetime, in the year 1977.*

30. It is further explained that the post of Chairman, had been created *vide* Resolution and the same was duly intimated to the Registrar of Societies. *It was thus, submitted that the Suit of the Plaintiff was liable to be dismissed.*

31. **The Defendant No.6 submitted his Written Statement**, wherein he had taken similar preliminary objections, as taken by Defendant Nos.1 to 5 in their Written Statements, in regard to Court Fee and maintainability of the Suit.

32. It was further asserted that Defendant No.6 has been in exclusive possession of the suit property, which had been handed over to him by Sh. Devki Nandan Shastri, Plaintiff's father, thereby surrendering their tenancy rights in respect of the suit property in the year 1976 and since then, Defendant No.6 has been solely running the business from premises, without any interference or hindrance from the Plaintiff's mother.

33. Defendant No. 6 claimed that Sh. Devki Nandan Shastri had surrendered his tenancy, in favour of Defendant No.6 in the year 1977, a fact which has been acknowledged by children of Sh. Devki Nandan Shastri and



Smt. Raj Dulari, for which reason they have never interfered with the peaceful possession of Defendant No.6.

34. It was denied that by succession, on the demise of Sh. Devki Nandan Shastri, his wife Smt. Raj Dulari, was accepted as a tenant of Shop No.B-21, Portions C & D. The rent receipts were annexed in regard to the Portion occupied by the brother of the Plaintiff, i.e. Portion C of Shop No.21. It was specifically denied that Smt. Raj Dulari continued to pay rent at the rate of Rs.15/- per month for Portions 21/C & 21/D, to Defendant No.1. It was claimed that she was paying rent only in respect of one Portion C, which was in their possession.

35. It was further denied that the rent receipt dated 20.04.2009 was false and mischievously issued in favour of Defendant No.1 by the officials of Defendant No.3 under the signature of Defendant No.5. It was further denied that there was no post of Chairman in Sanatan Dharam Sabha, Tilak Nagar, Delhi to the knowledge of the Plaintiff. It was claimed that the names and posts of all the members of the Sanatan Dharam Sabha, Tilak Nagar, Delhi, are clearly written in its main Notice Board.

36. It was denied that portion D of the Shop, was retained by Smt. Raj Dulari or she was running a Dhaba therein, for her benefit. The alleged arrangement with Defendant No.6 as a licensee to look after the day to day affairs of the Dhaba and to share the income with Smt. Raj Dulari, was specifically denied. It was submitted that no such arrangement was ever entered into between Smt. Raj Dulari and Defendant No.6 or that the profits were to be shared in the ratio of 40-60, between them.

37. It was further denied that Defendant No.6 agreed to close down the Dhaba on the request of Smt. Raj Dulari or that he sought some time to



make an alternate arrangement. It was asserted that Plaintiff or his mother, had not given any Notice regarding closing the business of Dhaba and the entire pleadings to this effect, are false and imaginary.

38. It was claimed that Smt. Raj Dulari had approached Defendant No.1 for completion of formalities for release of suit property in her favour, as per the wish of her husband. Defendant No.1 also took note of it and requested her to approach on some other day due to his busy schedule, but thereafter, Plaintiff's mother did not turn up. Defendant No.6, being a lawful tenant in the suit property, had agreed to install the Electricity Meter, to which Defendant No.1 had no objection.

39. It was further denied that Defendant No.2 had taken huge amounts of *pagri* from Defendant No.6, wrongfully and illegally issued a *No Objection Certificate*, ostensibly accepting Defendant No.6 as tenant. It was reiterated that he had lawful tenancy rights after Sh. Devki Nandan Shastri surrendered the same in his favour.

40. All the other averments made in the Plaint were denied and it was asserted that the Suit of the Plaintiff was liable to be dismissed.

41. **Plaintiff in the Replication** to the respective Written Statements, reaffirmed the assertions made in the Plaint and denied the contentions raised therein.

42. The **Issues on the pleadings**, were framed on 21.03.2011, as under:

“1. *Whether appropriate court fees has been affixed or not? OPD*

2. *Whether the suit has not been properly valued? OPD*



3. *Whether the suit is barred by period of limitation? OPD*
4. *Whether the plaintiff is entitled to the decree of possession as prayed for? OPP*
5. *Whether the plaintiff is entitled to the decree of declaration as prayed for? OPP*
6. *Whether the plaintiff is entitled to the decree for rendition of accounts? OPP*
7. *Whether the plaintiff is entitled to the mesne profits/damages as prayed for, if yes, at what rate and for which period? OPP*
8. *Relief.”*

43. Defendant Nos.1 to 5 were proceeded ex-parte on 13.03.2013.

44. Plaintiff examined himself as **PW-1** and tendered his evidence by way of Affidavit. He proved the documents, i.e. Death Certificate of Sh. Devki Nandan Shastri, photocopy of the rent receipts and other documents as Ex.PW-1/1 to 1/27 and other documents were Marked from ‘A’ to ‘E’.

45. PW-2ASI Sh. Surender Kumar, Office of Commissioner of Police, Delhi Police Headquarters (PHQ) produced the Register in regard to Complaint dated 13.05.2011 and stated that there was no Complaint was lodged by Shri Ajay Kumar Vyas, on the said date.

46. PW-3 was Shri Mokhtar Mehto, Record Keeper, the Office of Sub-Register-II, Basai Darapur, brought the record pertaining to registered Will dated 30.11.2002 Ex.PW-1/19.

47. PW-4 Sh. Raj Bahadur, Grade-II Inspector from Commissioner of Industry (Firm and Society), 419 Patpar Ganj Industrial Area, Delhi



produced the Summoned record pertaining to Letter dated 02.09.2009 and 18.09.2009 Ex.PW-1/21 and Ex.PW-1/22.

48. PW-5 Sh. O. P. Jhingan, Advocate, deposed that Will Ex.PW-1/19 was drafted by him and it bears his signatures and also Smt. Raj Dulari had signed the Will, in his presence.

49. PW-6 Constable Sh. Kulwant Singh, Tilak Nagar, West District, New Delhi, produced the Letter dated 14.12.2011, DD No.33B, P.S. Tilak Nagar and Complaint Dated 08.12.2011, P.S.: Tilak Nagar, which were already exhibited as Ex.PW-1/26 and Ex.PW-1/27.

50. PW-7 Sh. Kcwal Sharma, Supervisor from Shri Sanatan Dharam Sabha (Regd.), Tilak Nagar, New Delhi, produced the Record of rent of the Sabha from April, 2009. The Documents were exhibited as Ex.PW-7/1 to 7/15.

51. Defendant No.6 examined himself as DW-6 (sic) and deposed on similar lines as his Written Statement by way of Affidavit, Ex.DW-6/X. Documents proved by him in support of his defence are Ex.DW-6/1 to 6/27.

52. DW-7 Sh. Affak Ahmad, Record Keeper, Sub-Registrar-IIB, Janakpuri, New Delhi, (sic) deposed that Summoned Record was not traceable and Letter to this effect is Ex.DW-7/1.

53. DW-8 Sh. Vinod Kumar, UDA from A&C Department, Ashok Nagar, Tilak Nagar, MCD, also deposed that summoned Record was not traceable and had no knowledge of the document already Ex.DW-6/14.

54. DW-9 Ravinder Pratap Singh,(sic) deposed that he knew Defendant No.6 for the last 35 years, as Defendant No.6 is running a tea stall since 1980, in Shop No.21.



55. Learned Civil Judge, on appreciation of the evidence, held that rent receipts Ex.PW-1/4, PW-1/5 and PW-1/9 to PW-1/15 had not been issued regularly for a continuous period. Also, the rent receipts were issued in the name of Smt. Raj Dulari and not in the name of Sh. Devki Nandan Shastri, but it was nowhere indicated that those rent receipts pertained to Portion 21/D and thus, it could not be held that she had been paying the rent in respect of the suit Shop.

56. It was further held that there was no documents produced to show that Smt. Raj Dulari had been running the Dhaba or that Defendant No.6 was inducted as licensee by her. It was further observed that Plaintiff had relied upon Will Ex.PW-1/19 and had examined PW-3 and PW-5 to prove the Will, whereby Plaintiff asserted that he had been bequeathed Portions 21/C and 21/D of the suit shop No.21.

57. However, it was held that transfer of tenancy by tenant through testamentary disposition, is not a valid transfer and tenancy rights could not have been transferred. The MCD Challans Ex.DW-6/14 to 6/16 and Receipts Ex.DW-6/14 and 6/15 were all in the name of Defendant No.6, which again corroborated that he has been in possession since long.

58. It was further held that the Plaintiff, in his entire Affidavit of Evidence, had not stated that he ever came in possession of the suit property or that he ever paid rent to Defendant No.1, in respect to the suit property. In regard to the assertion of the Plaintiff that Defendant No.2 was falsely claiming himself to be the Chairman of Defendant No.1 and had wrongly issued *No Objection Certificate* for installation of Electricity Meter in the name of Defendant No.6, it was held that the documents Ex.PW-7/6 and



Ex.PW-7/7 were addressed to Sh. Suresh Malik, Chairman of the Sabha, Defendant No.2, which proved the contrary stand taken by the Plaintiff.

59. It was held that aside from bald assertion of Defendant No.6 having been inducted as a licensee by late Smt. Raj Dulari, no other cogent evidence was led. Consequently, ***the Suit of the Plaintiff was dismissed by learned Civil Judge vide Order dated 22.09.2016.***

60. Aggrieved by dismissal of his Suit vide Order of learned Civil Judge dated 22.09.2016, Plaintiff / Appellant preferred **RCA No.61231/2016**. However, **the learned District Judge**, on re-appreciation of the evidence, concurred with the findings of the learned Civil Judge and ***dismissed the First Appeal vide order dated 03.11.2025***

61. Aggrieved by Judgement dated 03.11.2025, Appellant **has filed present Regular Second Appeal.**

62. The ***substantial questions of law***, as suggested in the Appeal, are as under:

“i) Whether Ld. Courts below have erred in ignoring that the respondents in spite of admitting Sh. Devki Nandan Shastri was the tenant in shop no. B-21 and has divided the said shop in to four Portions A, 1B C & D have failed to prove that Sh. Devki Nandan Shastri has surrendered the Portion D of the said shop i.e. B-21 to respondent no.1.

ii) Whether the plaintiff has discharged the onus to prove that Smt. Raj Dulari was a tenant in Portion D of the shop no. B-21 under respondent no.1.

iii) Whether the respondents have failed to discharge the onus that respondent no. 6 has been inducted as a tenant by respondent no. 1 in 1977 in Portion D of the said shop.



iv) Whether respondent no. 2 was not entitled to act as Chairman of respondent no.1 and issue NOC dated 15.05.2009 and NOC dated 02.02.2010.

v) Whether the Ld. Courts below have erred in dismissing the suit of the plaintiff even while holding that the respondents have not adduced any cogent evidence to show that the deceased father of the plaintiff has surrendered his tenancy rights in favour respondent no.6.

vi) Whether the Ld. Trial Courts have erred in dismissing the suit of the appellant without conclusive finding that the respondent no. 6 is a tenant in respect of Portion D of the said shop.

vii) Whether the Ld. Trial Court has erred in not drawing adverse inference against the respondents for having not produced the summoned record i.e. the record of the rent of tenants maintained by respondent no. 1 for the period 1995 to 2008.”

63. The grounds of challenge are that though the initial burden and onus of proof was on the Appellant, but in view of the unconditional admissions of Respondent Nos.1 to 5 and 6, the onus of proof had shifted on the Respondents and despite there being admissions, the Suit of the Plaintiff / Appellant has been erroneously dismissed.

64. The Appellant claimed that it was admitted by the Respondents that late Sh. Devki Nandan Shastri was a tenant under Respondent No.1 in respect of Shop No.21, which had been sub-divided into four Portions, privately numbered as A, B, C and D by him.

65. Moreover, it was also admitted by the Respondents that Sh. Devki Nandan Shastri had surrendered Portions ‘A’ and ‘B’, while he had retained the Portions ‘C’ and ‘D’, in respect of which he continued to be a tenant. Sh.



Devki Nandan Shastri, during his lifetime, was carrying on business in the name and style of M/s Vijay Corner and M/s Vijay Floor Mills, and admittedly Respondent No.1 had been receiving the rent from him, till his demise on 09.08.1995.

66. It is further not in dispute that Smt. Raj Dulari, his wife was accepted as a tenant by Respondent No.1, who had paid rent till her death, in 2009. Thereafter, the rent was being received from the Appellant and the rent stood paid till 31.03.2010, for which the rent receipts had been duly issued by Respondent No.1.

67. Respondents had been asserting that Sh. Devki Nandan Shastri had surrendered his tenancy rights in respect of Portion 'D' of the Shop No.21 in the year 1977, after which Defendant No.6 was inducted as a tenant in the Shop, who has been carrying on business since then; the onus heavily lied on the Respondents to prove these facts by leading cogent evidence.

68. It is stated that the learned Trial Court has held that '*Respondents could not adduce any cogent evidence to show that the deceased father of the Plaintiff had surrendered his tenancy rights in his favour*', but thereafter, the learned Trial Court has misdirected the enquiry by postulating that the Plaintiff has to stand on his own feet and establish his right independently, without relying upon the loopholes and deficiency in the defence evidence.

69. It has been ignored that in Civil Litigation, the standard of proof is preponderance of evidence and once the evidence is recorded, the Plaintiff is entitled to prove his case by reference to entire evidence on record, which has to be considered to decide the Suit; the evidence led by the Plaintiff is not to be appreciated in isolation. The admissions made by a party are the best evidence, which has been ignored.



70. Furthermore, it was for Respondent No.6 to prove his independent right as a tenant in the suit premises since 1977, which he has failed to discharge. Respondent No.6 has admitted in his cross-examination that no rent receipt was ever issued in his favour before April, 2009, i.e. after the demise of Smt. Raj Dulari in the year 2007. A conspiracy has been hatched between Respondent No.1, more specifically by Respondent No.2 / Sh. Suresh Malik, the elected Chairman and Respondent No.6, in fabricating documents such as *No Objection Certificate* dated 02.02.2010 for getting the Electricity Connection in the suit premises, in the name of Defendant No.6.

71. It is asserted that there is no post of Chairman in the Management of Respondent No.1, which is governed by the office bearers, as per Memorandum of Articles and rules and regulations. Respondent No.2 is a person of dubious intentions, who has colluded with some office bearers to allege himself as Chairman and to fabricate the documents, after taking huge amount of money from persons, including Respondent No.6.

72. It has further not been considered that Respondent Nos.1 to 5 have not led any evidence to prove that Sh. Devki Nandan Shastri had surrendered the suit property, i.e. Shop No.21/D, or that the Shop had been allotted by Respondent No.1 to Respondent No.6, as tenant therein.

73. It has further not been considered that DW-7 Sh. Kewal Sharma, Supervisor from the Office of Respondent No.1, had produced the Records from 2009 onwards, but failed to produce the documents from 1995 to 2008, on the pretext that they were not available in the Office.

74. It is claimed that Respondent No.1 is the custodian of the Record, but has failed to produce them and therefore, adverse influence should have been drawn against the Respondents.



75. Furthermore, the Rent Account Register Ex.PW-7/15 from Page No.15 onwards, pertained to Respondent No.6. The perusal of this Register shows that some receipts starting from April 2009; April, May and June, 2014, have been alleged to have been issued to Respondent No.6. However, neither Respondent No.1 nor Respondent No.6 have placed on record any of the receipts for the rent received by them.

76. Strangely, only apart from rent for the month of April, May and June, 2014, rest of the rent is alleged to have been received in cash. The record produced has been fabricated to support Respondent No.6, who had admitted that no rent receipts were issued by Respondent No.1 in his favour, since prior to April, 2009. The conduct of Respondent No.6 is not that of a prudent man, who would not seek the receipts of the rent paid to Respondent No.1 since 1977.

77. Furthermore, it is admitted by Respondent Nos.1 to 5 that they have been receiving rent from late Sh. Devki Nandan Shastri and thereafter, from his wife, Smt. Raj Dulari till April, 2009, while Receipt No.5536 for Rs.180/- had been issued towards the rent for the period April, 2009 till March 2010, Ex.PW-1/15.

78. Respondent Nos.1 to 5 have faced with the situation of having received the rent till April, 2010, made an averment in the Written Statement that the rent was received only in respect of Portion 'C' of Shop No.21; however, no evidence has been led by them in support of their assertions.

79. The evidence of the Plaintiff has remained uncontroverted in respect of Smt. Raj Dulari having been accepted as a tenant of Shop Nos.21/C and 21/D, and she has continued to pay the rent for these two Portions @ Rs.15/-



per month to Respondent No.1, which is also corroborated by the Rent Receipts Ex.PW-1/9 to 1/16.

80. It is further asserted that DW-8 Sh. Vinod Kumar, UDC from A & C Department, Ashok Nagar, Tilak Nagar, MCD, Delhi, could not produce the summoned Record.

81. Respondent No.6 had relied upon documents Ex.DW-6/14 to 6/16, being the Challans issued in the year 1979, 2000 and 2007 by MCD, in his name. However, the official record pertaining to these documents, has not been proved. These documents Ex.DW-6/14 to 6/16 are forged and fabricated documents, which have not been issued by the concerned Department.

82. It is further asserted that Smt. Raj Dulari had executed a Will Ex.PW-1/18 bequeathing Portions 'C' and 'D', to the Plaintiff / Appellant. This Will was proved by Sh. O. P. Jhingan, the attesting witness to the Will, which had been executed much prior to the dispute in the year 2002 and described the portion of the Suit Property bequeathed by her, as Portions 'C' and 'D'. Smt. Raj Dulari had also executed Declaration-cum-Authority Letter dated 17.04.2003 Ex.PW-1/20 addressed to Respondent No.1, to authorise the Appellant to pay the rent and deal with Portions 'C' and 'D' of the Shop No.21.

83. Furthermore, this Letter had been submitted by the Appellant to Respondent No.1 along with the Will, after the demise of Smt. Raj Dulari, for mutation of tenancy in his name. However, Respondent No.1 failed to respond to this Letter. However, these documents clearly establish that Smt. Raj Dulari had a share in Portions 'C' and 'D' of the Shop in question.



84. It has not been considered that Smt. Raj Dulari, after the demise of her husband Sh. Devki Nandan Shastri, started the business of eatery (Dhaba) from Portion 'D' of the Shop and had joined with Respondent No.6, who was permitted as a licensee to run the Dhaba business. Smt. Raj Dulari, throughout, continued to be the tenant and also paid rent till March, 2010.

85. Though Respondent No.6 has alleged to be in possession of the Shop No.21 in his independent right as a tenant under Respondent No.1, but he has failed to establish his right. He is liable to remove himself from Portion 'D' of the suit Shop, as Plaintiff no longer wishes him to continue in the said portion.

86. It is further claimed that electricity supply to Portion 'D' was being taken from the Electricity Meter installed in the name of Smt. Raj Dulari, in Portion 'C'. It is only after her demise that in furtherance of conspiracy between Respondent No.6 and Respondent No.1, a *No Objection Certificate* dated 15.05.2009 was given, enabling Respondent No.6 to get an independent electricity connection in his name for Portion 'D'.

87. Defendant No.6 in his Written Statement, had not disputed that he had been consuming the Electricity for the Portion 'D', from the electricity connection installed in Portion 'C' in the name of Smt. Raj Dulari. However, he has taken contradictory stand as DW-1, as to his contentions in his Written Statement, in his cross-examination, by denying that he was using the electricity from the meter installed in Portion 'C' of Shop No.21. Such a contradictory stand reflects the tenancy of Smt. Raj Dulari in respect of both Portions i.e. 'C' and 'D' of Shop No.21. Respondent No.6 was not a reliable witness and no reliance could be placed on his testimony.



88. It was, therefore, submitted that the impugned Judgement and Decree dated 03.11.2025 may be set aside and the Suit of the Appellant / Plaintiff be decreed.

Submissions heard and record perused.

89. The certain background and facts are not in dispute. Admittedly, it is not denied that late Shri Devki Nandan Shastri was associated with the construction and renovation of Sanatan Dharam Mandir, now situated at Late Shri Devki Nandan Shastri Marg, Tilak Nagar, New Delhi. The Sanatan Dharam Shopping Complex was developed in early 1970 and completed in or about 1974. Late Shri Devki Nandan Shastri, President was elected by the Members of the Sabha. In fact, the road was named after him as Shri Devki Nandan Shastri Marg and even the statue was installed in the Mandir Complex, as an expression of gratitude to the departed soul, in recognition of the contribution of late Shri Devki Nandan Shastri in construction and renovation of the mandir and development of the area and society.

90. It is further not in dispute that in order to generate revenue, shops were constructed around the Mandir and one corner shop was given to Shri Devki Nandan Shastri, who later on constructed a shop No. B-21 from his own pocket, for which he spent Rs.2,047/-, as reflected in the Receipt Ex.PW-1/3 dated 23.04.1974.

91. It is further not in dispute Shri Devki Nandan Shastri, was inducted as a tenant has been in possession since 1974. His elder son Vijay Shastri started the business from the shop in the name and style of **Vijay Corner** and also **Vijay Flour Mill**. This is also evident from the Rent Receipt dated



02.08.1980 Ex.PW-1/5. The Electricity Bill Ex.PW1/6 was also installed in the name of M/s Vijay Flour Mill, at the shop address.

92. The case of the Plaintiff that Shri Devki Nandan Shastri with due passage of time, sub-divided the shop into four portions and given private marking as A, B, C and D. It is also not in dispute that with concurrence of Defendant No. 1, shop Portions bearing private No. A and B, were occupied by other tenants of Defendant No. 1 and Shri Devki Nandan Shastri and his family surrendered the tenancy rights, in respect of Portions A and B.

93. The Plaintiff/Appellant has contended that the tenancy in respect of other two Portions marked C and D was retained by Shri Devki Nandan Shastri. There is no dispute in Shop No. C, admittedly, Vijay Shastri was doing the business and after his demise, his son is continuing to be in possession of Portion C of the shop.

94. *The dispute had arisen in respect of shop Portion No. D* in which the Defendant No. 6 Lok Nath Luthra has claimed to have been inducted as a tenant in 1977, after the tenancy got surrendered by Shri Devki Nandan Shastri. He consistently states that there was surrender of tenancy of Portion D and that Defendant No. 6 became a tenant of Defendant No. 1, in respect of the said premises.

95. Late Smt. Raj Dulari, wife of Shri Devki Nandan Shastri in her present Suit filed on 31.08.2009, asserted that the tenancy in respect of Portion D was never surrendered and she continued to be in possession of Portion C as well as Portion D. In order to prove that she has been in possession of the suit shop, she had relied upon the Rent Receipts Ex.PW1/4, PW1/5, PW1/9 and PW1/13 dated 04.04.1974, 13.11.1998,



20.04.2005, 20.03.2006, *vide* which she had been paying rent from time to time.

96. On perusal of these rent receipts, it is observed that the Rent Receipts are in the name of Smt. Raj Dulari, wife of late Shri Devki Nandan Shastri and the tenanted premises had been described as the Shop No. B-21, and no specific portion has been mentioned.

97. It is the case of the Plaintiff himself that the shop B-21, had been divided into four Portions and Portions A and B had already been surrendered.

98. The learned Civil Judge had rightly observed that in these Rent Receipts, it was nowhere indicated that the rent was for the portions C and D. The tenanted premises had been only described as Shop No.21, in view of which, it could not be said that the Rent Receipts establish the tenancy of Raj Dulari in respect of both the portions C and D. Admittedly, Vijay Shastri, her elder son has been in occupation of Portion C and it was rightly held by the learned Civil Judge, that there was nothing in the Rent Receipts to indicate that the rent being paid through the Receipts included the suit shop portion D.

99. The main defence taken by the Plaintiff was that his mother Raj Dulari had permitted *Defendant No. 6 Lok Nath Luthra to run a Dhaba from portion D of the shop and he had been inducted by her as a Licensee to look after the affairs of her Dhaba she had setup in the shop.* It was claimed that as per the arrangement, the profits were to be shared in the ratio of 40:60 with 40% of the share coming to Raj Dulari.

100. The Plaintiff in his cross-examination had asserted that this amount used to be around Rs.3,500/- to Rs.4,000/-. While this explanation had been



tendered by the Plaintiff to claim that Defendant No. 6 was a Licensee, but admittedly did not have even a single document to show this arrangement of Licensor and Licensee between his mother Raj Dulari and Defendant No. 6 Lok Nath Luthra. If there was a Licensor-Licensee relationship, it is difficult to accept that there would be not even a single document to establish this claim of the Defendant No. 6 being a Licensee.

101. If there were 40% of share profits coming to Raj Dulari, there would be some account book to reflect the credit of this profit sharing in her accounts. Pertinently, not a single document has been produced by the Plaintiff. Had there been any Dhaba being run by Smt. Raj Dulari, there would have been some license or permits taken by her for running the Dhaba, but no such document had been produced.

102. Moreover, if there was a profit sharing in the ratio of 40-60, then there would have been some bank account or document, to corroborate the receiving of the profit sharing amount, but none has been produced.

103. It has been rightly observed by the learned Civil Judge, as under:-

“However, Plaintiff during his comprehensive cross-examination by opposite counsel, stated that he does not have any document to show that his mother was running a Dhaba a the suit property and he further never adduced any single documentary proof to show that Defendant No. 6 was ever inducted as a licensee by his deceased mother. The Plaintiff also could not produce any document to show any profit sharing between his deceased mother and Defendant No. 6 in respect of running of Dhaba. The Plaintiff could not produce any receipt of bill book or any other relevant document showing that his mother was running a Dhaba in Portion D of property No. B-21. Neither any document was produced to show the payment of any license fees at any point of time by Defendant No. 6 to the Plaintiff.”



104. The Plaintiff had relied on a **Will dated 05.09.200 Ex. PW1/19** to asserted that portion C and D of shop No. 21, had been bequeathed to him. Admittedly, the shop Portion No. C has always been in possession of his elder brother Vijay Shastri. Had the property been willed to plaintiff, there is nothing to reflect that he ever asserted his right of ownership in respect of Shop No. C. Pertinently, the son of the elder brother Vijay Shastri, could have been a material witness, who has not been examined to support the assertions of the Plaintiff.

105. Furthermore, the Will in respect of tenancy rightly in respect of Shop No. D would have been of some consequence, had Raj Dulari been able to show that Shri Devki Nandan Shastri had not surrendered the tenancy in respect of Shop No. D and that he had continued to be a tenant and after his demise, she inherited the tenancy rights. Once, there is nothing to establish that Shop No. D had not been surrendered by Shri Devki Nandan Shastri, the Will could not have conferred a title in respect of Shop portion D, to the Plaintiff.

106. The ***Defendant No. 6 had taken a specific defence*** that the shop had been handed over to him by Shri Devki Nandan Shastri in 1977, on surrendering his tenancy rights. It cannot be overlooked that Shop Portions A&B had been admittedly surrendered by Shri Devki Nandan Shastri and, therefore, the defence of Defendant No. 6 Lok Nath Luthra, in the light of lack of any document to support the continued tenancy in respect of portion D, cannot be brushed aside.

107. Pertinently, there were MCD challans Ex.DW-6/14 to DW-6/16 and Receipts Ex.DW-6/14 and DW-6/15, which are in the name of Defendant



No. 6 in regard to Shop No. B/21D without mention of the portion, which has not been challenged during the cross-examination of DW-6.

108. Hence, the documents as proved by Defendant No. 6 clearly establish his long possession in the suit premises since 1977, while there are no document to support the tenancy right in favour of Raj Dulari and thereafter, to the Plaintiff.

109. It cannot be overlooked that Sh. Devki Nandan Shastri died on 09.08.1995, while the possession of Defendant No.6 is shown to be since 1977, i.e. during his lifetime, which corresponds to the date of surrender of tenancy in respect of certain portions of suit shop.

110. Moreover, this weakens the stand of the plaintiff that defendant No.6 was inducted as a licensee by his mother, to look after the dhaba business that was being run from portion-D. However, this is factually untenable as the possession of defendant no.6 is shown since 1977, i.e. since the lifetime of Sh. Devki Nandan Shastri.

111. *It has been rightly observed by the learned Civil Judge and upheld by the learned District Judge that there is no evidence whatsoever to show the legal or physical possession of the Plaintiff, in the suit shop. The Rent Receipts as already mentioned above, also do not prove that they were in respect of Portion D; rather the defence of the Defendants is that it was only in respect of Portion C in respect of which, admittedly, Raj Dulari was the tenant and her elder son Vijay Shastri is running his business.*

112. Another defence taken by the Plaintiff was that *Defendant No. 1 was claiming himself to be a Chairman of Defendant No. 1*, when in fact, there is no such post in the Sabha. However, it had been explained by Defendant No.1 to 5 that the post of Chairman had been subsequently created by way



of Resolution. This fact was corroborated by the Minutes of the Association of the Sabha dated 30.05.2005 Ex.PW-7/6 and thereafter, in the Minutes dated 12.005.2008 Ex.PW-7/7, 25.02.2010 Ex.PW-7/8.

113. It is also deposed by Defendant No. 6 that the name of the Chairman and the office bearers of the Sabha, are displayed on the Notice Board, to which no objection ever has been taken by the Plaintiff.

114. The Plaintiff had relied upon the reply to RTI Application Ex.PW-1/21 and PW-1/22, but the Reply in RTI merely mentioned that no objection can be given regarding legality of the post of Chairman and that the list of governing members, is not available on record.

115. Hence, from the RTI Reply it cannot be said that there was no post of Chairman or the *No Objections Certificate* given from installation of electricity meter in the name of Defendant No. 6, was illegal. The plea of NOC dated 01.05.2009 Mark-B being forged and fabricated, was held to be not supported by any cogent evidence.

116. The **learned Civil Judge thus, rightly concluded** that bare bald assertions that Defendant No. 6 was the Licensee of Smt. Raj Dulari without any cogent evidence or any particulars about date, month and year, when he was inducted or to prove that the Dhaba being run by Defendant No. 6 was as a Licensee of Smt. Raj Dulari, the Plaintiff could not have sought the relief of mandatory injunction or possession, as sought by him.

117. The learned Civil Judge, on appreciation of evidence, concluded that there was no relationship of Licensor and Licensee between Raj Dulari and Defendant No. 6 and, therefore, the Suit for possession/mandatory injunction has been rightly dismissed.



118. The **learned District Judge** had re-appreciated the entire evidence and upheld the findings of facts and dismissed the Appeal.

Conclusion:

119. The aforesaid discussion clearly reflects that all the challenges were on facts, which had been concurrently held against the plaintiff/Appellant. **There are no substantial questions of law, which have emerged in the present Appeal.**

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

**(NEENA BANSAL KRISHNA)
JUDGE**

SEPTEMBER 02, 2026

va/n