



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

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Reserved on: 19th May, 2026

Pronounced on: 3rd June, 2026

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RFA 246/2022, CM APPL. 25908/2022 & 16255/2026

1. KAILASH CHAND

S/o Shri Tejpal Singh
J-64/G-1 (Ground Floor)
Right Hand Side, Gali No. 4,
Laxmi Nagar, Delhi.

2. TEJPAL SINGH

J-64/G-1 (Ground Floor)
Right Hand Side, Gali No. 4,
Laxmi Nagar, Delhi.

.....Appellants

Through: Mr. Kaushal Kishore Lal Gautam,
Ms. Vaishali Nariyala, Mr. Rajbeer
Singh, Mr. Sumit and Ms. Siddhi
Shaiwal, Advocates.

versus

SHRI ADESH KUMAR BARUA

S/o Late Sh. K.L. Barua
R/o House No. 27-28, Band Lines,
Raika Bagh, Jodhpur, Rajasthan.

.....Respondent

Through: Mr. Amit Nahata, Adv.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed on behalf of the Appellants, against Judgment dated 07.05.2022,



whereby the Suit of the Plaintiff/Respondent for decree of Possession against the Defendants/Appellants, *was decreed under Order XII Rule 6 CPC.*

2. The Plaintiff/Respondent had filed Civil Suit No.125/2018 for Possession/Ejectment, Recovery of Rent, *Mesne Profit* and Damages.

3. The **facts, in brief**, are that Plaintiff stated himself to be the owner/landlord of the Property bearing No. J-64/G-1, (Ground Floor), Right Hand Side, Gali No. 4, Laxmi Nagar, Delhi-110092 (*hereinafter referred to as 'the Suit Property'*), consisting of three bedrooms, one drawing-cum-dining room, kitchen, toilet/bathroom *vide* registered partition Deed dated 01.01.2010. The Defendant, Mr. Kailash Chand was inducted as a tenant in the Suit Property *vide* registered Lease Deed dated 15.04.2010 for a period of 11 months w.e.f. 11.04.2010, at a monthly rent of Rs.12,000/- per month. The Lease Deed was executed between the Defendant and the Attorney of the Plaintiff.

4. The Defendant was claimed to be a chronic defaulter in payment of rent and failed to pay rent since 10.04.2011, despite repeated requests. The Plaintiff thus, issued a *Legal Notice* since the Defendant neither vacated the premises on expiry of the Lease Deed nor paid the rent w.e.f. 01.04.2011.

5. Thereafter, a *Suit for Possession, Arrears of Rent and Damages*, was filed by the Plaintiff.

6. The *Defendant/Appellant*, Mr. Kailash Chand in his **Written Statement**, took the *preliminary objection* that the Plaintiff had entered into an Agreement to Sell dated 03.08.2011 with Mr. Tejpal Singh, father of the Defendant and thereafter, had received rent regularly from Mr. Tejpal Singh



as agreed under the Agreement, which is evident from the Legal Notices issued by the Plaintiff to the defendant No.2 Tejpal, father of the Defendant no.1, Kailash Chand, claiming balance payment under the Agreement to Sell dated 03.08.2011 wherein the Plaintiff has not made a whisper about the balance rent. The Suit has been filed only to pressurise the Defendant and his mother, to extort more money.

7. The Suit was bad for *non-joinder of the proper parties*. The cause of action arose on 10.04.2011, while the Suit had been filed in the year 2018 and was liable to be dismissed. *No cause of action* was disclosed in the Plaint as the Plaintiff had already entered into an Agreement to Sell with Mr. Tejpal Singh, father of the Defendant.

8. **On merits**, the averments made in the Plaint, were denied. It was admitted that the Defendant, Kailash Chand was the tenant of the Plaintiff till 03.08.2011 when the Plaintiff entered into an Agreement to Sell with Tejpal Singh, father of the Defendant. The sale consideration was agreed as Rs.35,00,000/-, though the Plaintiff failed to execute the Sale Deed in favour of Mr. Tejpal Singh.

9. Due to some financial crunch, Mr. Tejpal Singh failed to make the payment in time and the execution of the Sale Deed was extended by the Plaintiff from time to time, under the threat of forfeiture of earnest money. The Plaintiff against the total sale consideration of Rs.35,00,000/-, received Rs.40,00,000/- from Mr. Tejpal Singh though, on one pretext or the other, he kept avoiding the execution of the Sale Deed.

10. It was further submitted that the Defendant, Kailash Chand had handed over the possession of the Property to the Plaintiff on 03.08.2011 at



the time of execution of the Agreement to Sell and he ceased to be a tenant, thereafter. There is not a single document to show that the Defendant Kailash Chand continued to be a tenant of the Plaintiff, after execution of the Agreement to Sell. It was denied that the Defendant under liability to pay the rent since 01.04.2011 till 31.01.2018 @Rs.12,000/- per month. It is claimed that there was no liability to pay the rent after the possession was handed over by the Defendant to the Plaintiff. It was thus, submitted that the Suit was liable to be dismissed.

11. On an Application filed by Mr. Tejpal Singh, he was impleaded as a Defendant No. 2 on 05.02.2019 in the Suit.

12. A **Joint Written Statement dated 20.05.2019**, was filed by both the Defendants taking the same defence as was taken by Mr. Kailash Chand, in his Written Statement.

13. Tejpal Singh, defendant No.2 also filed a **Counter-Claim** in the Civil Suit, seeking a prayer for cancellation of the Cancellation Notice dated 19.03.2018 and for directing the Plaintiff to perform his part of the obligation under the Agreement to Sell; to refund Rs.29.5 Lakhs along with the interest @18% p.a. and to restrain the Plaintiff from creating third party rights in the Suit Property.

14. Mr. Tejpal Singh in his Counter-Claim, asserted that under the Agreement to Sell dated 03.08.2011 executed by the Plaintiff in his favour, he had paid Rs.5,00,000/- at the time of signing of the Agreement to Sell. As per the terms of the Agreement, the balance amount was payable on or before 31.01.2012 on which, the Plaintiff was to execute the Sale Deed in his favour. Mr. Tejpal Singh claimed that he made payments on various



dates and paid a total sum of Rs.40,00,000/-, though only payment of Rs.29.50 Lakhs was admitted by the Plaintiff. It is because of the financial crunch that he found it difficult to make the payment on time, in terms of the Agreement to Sell and the Sale Deed could not be executed.

15. Thereafter, Adesh Kumar Barua, the landlord admitted in the Legal Notice dated 13.05.2014 about having received Rs.28,00,000/- but threatened with the forfeiture of earnest money of Rs.5,00,000/-. In this Legal Notice dated 13.05.2014, there was no whisper about the alleged rent, as was claimed in the Civil Suit.

16. Mr. Tejpal Singh further claimed that after receipt of Notice, further payment of Rs.1.5 Lakhs had been made to the Plaintiff, which was also admitted by him. Mr. Tejpal Singh had thus, paid Rs.29.5 Lakhs as admitted by the Plaintiff, Adesh Kumar Barua. However, the Plaintiff sent a Legal Notice dated 19.03.2018 arbitrarily cancelling the Agreement to Sell dated 03.08.2011 and further, threatened to forfeit the earnest money.

17. Several meetings took place between the parties and it was agreed that Mr. Tejpal Singh would pay the balance amount after which, the Sale Deed shall be executed in his favour. However, Adesh Kumar Barua with a *mala fide* intention instituted the Civil Suit No. 125/2018 against Kailash Chand, son of Mr. Tejpal Singh, claiming the possession of the Suit Property, on the allegation of he being inducted as a tenant.

18. It was, therefore, submitted in the Counter-Claim that the Cancellation Notice dated 19.03.2018 of the Agreement to Sell, be cancelled and the sum of Rs.29.5 Lakhs along with the interest, be refunded to Mr. Tejpal Singh.



19. An Application under OXII Rule VI CPC, was filed on behalf of the Plaintiff. The learned District Judge, in view of the admissions made in the Written Statement, decreed the Suit of the Plaintiff, Mr. Adesh Kumar Barua, under Order 12 Rule 6 CPC.

20. Aggrieved by the said Judgment, **First Regular Appeal** has been preferred by the Appellants/Defendants.

21. The *grounds of challenge* are that it is a specific case that the Appellant No. 2, Mr. Tejpal Singh is in possession of the Suit Property after the execution of the Agreement to Sell dated 03.08.2011, whereby Mr. Adesh Kumar Barua, plaintiff had agreed to sell him the Suit Property for a sale consideration of Rs.35,00,000/-. The Appellant No. 2, Mr. Tejpal Singh on account of financial crunch, was unable to make the entire payment for the execution of the Sale Deed in time. He claimed that he has paid Rs.40,00,000/- as against the sale consideration of Rs.35,00,000/- though, the Plaintiff had admitted only payment of Rs.29.5 Lakhs.

22. It is claimed that after the execution of the Agreement to Sell dated 03.08.2011, the Appellant No. 1, Mr. Kailash Chand had handed over the possession to the Plaintiff and the Defendants, therefore, the appellants had no liability to pay the rent as claimed by the Plaintiff, Mr. Adesh Kumar Barua.

23. It is further asserted that a Memorandum of Understanding dated 15.02.2016 had been executed between Mr. Tejpal Singh and the Plaintiff, in regard to extension of time for payment of balance amount of Rs.1,60,000/- including penalty and interest, after adjusting the payments made by Mr. Tejpal Singh.



24. It was, therefore, submitted that the impugned Judgment is liable to be set-aside.

Submissions heard and the record perused.

25. It is an admitted case that Plaintiff, Mr. Adesh Kumar Barua is the owner of Property in question. It is also not in dispute that initially Plaintiff, Mr. Adesh Kumar Barua entered into a registered Lease Deed dated 15.04.2010 with Mr. Kailash Chand, defendant No.1, in respect of the Suit Premises, for a period of 11 months w.e.f. 11.04.2010, on the rent of Rs.12,000/- per month. In terms of the said Lease Deed, Mr. Kailash Chand was required to hand over possession of the property to the Plaintiff, on 10.03.2011.

26. It is further not in dispute that by mutual settlement, Lease Deed dated 15.04.2010 was extended *vide* second Lease Deed dated 03.08.2011, w.e.f. 11.03.2011 till 30.01.2012.

27. In this context, it is pertinent to mention that admittedly, during the subsistence of tenancy, Plaintiff Mr. Adesh Kumar Barua entered into Agreement to Sell dated 03.08.2011 with Mr. Tejpal Singh / Appellant No.2 (Father of Mr. Kailash Chand / Appellant No.1), wherein Mr. Tejpal Singh agreed to purchase the Suit Property for sale consideration of Rs.35,00,000/- and the Sale Deed was agreed to be executed by end of January, 2012. Under this Agreement to Sell, Rs.5,00,000/- were paid by Mr. Tejpal Singh / Appellant No.2 to the Plaintiff / Respondent Mr. Adesh Kumar Barua, while balance amount of Rs.30,00,000/- were to be paid in three equal instalments of Rs.10,00,000/- each, payable on 15.09.2011, 30.11.2011 and 15.01.2012.



28. Significantly, *operative part and Paragraph No.7 of Agreement to Sell*, read as under:

“That as the first party for his legal needs and requirement has agreed to sell the above mentioned property/flat for a sum of Rs.35,00,000/- (Rupees Thirty Five Lac Only) to the second party who is already residing as a Tenant in the aforesaid flat since last eleven months as per the Rent Agreement. Both parties i.e. First party and second party have agreed to sale/purchase of said property on the following terms and conditions of this agreement.

xxx

xxx

xxx

*7. That as the Second Party has already been staying as tenant in the above said flat and intends to continue his/her family members stay in the same flat **therefore, Rent of flat, bills of Water and Electricity shall be paid by the Tenant/ Second party as usual as per the Rent Agreement between Land Lord and Tenant dated 03 Aug 2011 till the time of execution of proper transfer/registration of the aforesaid property. However, the up to date House Tax shall be paid or borne by the First party and thereafter, the same shall be paid by the second Party.**”*

29. From the comprehensive reading of Lease Deed dated 15.04.2010 along with this Agreement to Sell dated 03.08.2011, it emerges that though first tenancy was created in the name of defendant No.1, Mr. Kailash Chand, but subsequently, Agreement to sell dated 03.08.2011 was executed with defendant No.2, wherein it was specifically agreed *that Mr. Tejpal Singh shall continue to be the tenant and pay the monthly rent till such time Agreement to Sell materialises into the Sale documents.*



30. It is therefore, evident from this Agreement to Sell dated 03.08.2011 that on this date Mr. Tejpal Singh had been recognized as a tenant with right to continue to reside in the Suit Premises along with his family members.

31. ***The relationship of landlord and tenant between Mr. Tejpal Singh / Appellant No.2 to the Plaintiff / Respondent Mr. Adesh Kumar Barua, is thus fully established and in fact, is not under challenge by either party.***

Though, initially the tenancy was created in favour of Mr. Kailash Chand / Appellant No.1 (Son of Mr. Tejpal Singh / Appellant No.2), but subsequently, it got transferred to Mr. Tejpal Singh. ***Therefore, relationship of landlord-tenant is admitted and rate of rent was Rs.12,000/- per month.***

32. It is further not disputed that *Notice of forfeiture / termination dated 19.03.2018, was duly served upon the two Appellants.*

33. It has also been asserted by the Respondent that Appellants are in arrears of rent from 10.04.2011 to 31.01.2018, to which, there is no denial. Though, Respondent has admitted having received Rs.29,50,000/- under Agreement to Sell dated 03.08.2011, but that is an aspect for consideration in the Suit for Specific Performance and not in the Suit for Possession, on the basis of relationship of landlord-tenant.

34. The complexity in the case of arises from admitted Agreement to Sell dated 03.08.2011, executed in favour of Mr. Tejpal Singh / Appellant No.2. **The question, which arises, is whether the Appellants can resist decree of Possession, on the basis of Agreement to Sell.**

35. This aspect was considered in the case of *Jiwan Das vs. Narain Das*, AIR 1981 Delhi 291, wherein after making reference to *Govinda Chandra vs. Provabati Ghose*, AIR 1956 CAL 147 and *S. Ramalinga Pillai vs. G.R.*



Jagadammal Alias Jagadamba Ammal, AIR 1957 AP 960, it was held that Section 54 of Transfer of Property Act provides that a contract for sale does not, of itself, create any interest in or charge on such property. Such contract is merely a document creating a right to obtain another document, in the form of registered sale deed, in accordance with law. In other words, a contract for sale is a right created *in personam* and not in estate; no privity in estate can be deduced therefrom, which can bind estate, as is the position in cases of mortgage, charge or lease. Till a Decree for Specific Performance is obtained, the vendor/seller is entitled to full enjoyment of the Property. Even if Decree for Specific Performance of Agreement to Sell is obtained, but no Sale Deed is executed, it cannot be said that the interest in the Property, has passed to the purchaser.

36. In the present case, as has been rightly noted by learned District Judge, the alleged Agreement to Sell, under which the Appellants are claiming their right and title, was initially executed on 03.08.2011, but it could not be honoured. Eventually, parties arrived at an MoU dated 15.02.2016, wherein the time payment of balance amount of Rs.16,00,000/-, which included penalties and interest, was granted till 30.05.2017. However, Agreement to Sell, till date, has not fructified into Sale Deed. In fact, Plaintiff / Respondent has served Notice of Forfeiture / Termination to the Appellants on 19.03.2018, which was duly received by them.

37. As has been observed in the case of Jiwan Das (*supra*), Appellant No.2 Mr. Tejpal Singh may have acquired a right to get the Sale Deed executed, but till such time, he continues to be a tenant; more so, as has been specifically provided in the Agreement to Sell dated 03.08.2011. His



status as a tenant would cease only after the execution of Sale Deed. Therefore, merely because of execution of Agreement to Sell, Appellants cannot seek protection of their possession.

38. In this context, it is also pertinent to mention that after introduction of Section 17(1)(A) of Registration Act, 1908, inserted on 24.09.2001, by Amendment Act, 2001, the documents containing contracts to transfer any immovable property for consideration, for the purpose of Section 53-A of the Transfer of Property Act, 1882, it shall be registered, if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001. If such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said Section 53-A.

39. Therefore, it is evident that Appellants cannot claim even a right of protection of their possession under Section 53A of Transfer of Property Act, 1882, under Agreement to Sell dated 03.08.2011, being an un-registered document.

40. In the case of *Pawandeep Singh & Anr vs. Gurdeep Singh Virdi*, 2019 (7) AD (Del) 506, it was held that un-registered Agreement to Sell cannot be used as a shield to protect the claimant's possession under Section 53A of Transfer of Property Act, 1882.

41. Likewise, in the case of *Parveen Saini vs. Reetu Kapur & Anr.*, 2018 (168) DRJ 121, it was reiterated that once Agreement to Sell is not registered, the prospective buyer, who has no right of seeking protection of his possession, especially when he was inducted in the property as a tenant, by virtue of a lease agreement.



42. Therefore, learned District Judge rightly referred to Section 17(1)(A) of Registration Act, 1908, to observe that the protection under Section 53A of Transfer of Property Act, 1882, was not available to the Appellants. Till such time the Agreement to Sell is decreed and a Sale Deed is executed in their favour, their status as tenants, which was specifically provided in the Agreement to Sell dated 03.08.2011, cannot be overlooked and ignored. They continued to be in relationship as landlord-tenant between the Plaintiff / Respondent and Appellant No.2 Mr. Tejpal Singh. Admittedly, Appellant No.1 Mr. Kailash Chand (son of Appellant No.2 Mr. Tejpal Singh) had been residing in the Suit Property, as family member of Mr. Tejpal Singh.

43. The three ingredients for Decree of Possession, under Order XII Rule 6 of CPC, namely Relationship of landlord-tenant; termination of tenancy and rent being more than Rs.3,500/-; are fully satisfied in this case.

44. Therefore, learned District Judge has rightly Decreed the Suit of the Plaintiff / Respondent against the Defendants / Appellants for Possession under Order XII Rule 6 of CPC.

45. There is no infirmity in the impugned Judgment dated 07.05.2022.

46. There is no merit in the Appeal, which is hereby, **dismissed** along with pending Applications.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 3, 2026/RS/R