



2026:DHC:2852



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

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*Reserved on: 20<sup>st</sup> January, 2026  
Pronounced on: 06<sup>th</sup> April, 2026*

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**RFA 794/2025**

**SH. VAS DEV WADHWA**

S/o Late Shri. Bhagwan Das,  
R/o F-20, Second Floor, Lajpat Nagar-I  
New Delhi-110024

..... Appellant

Through: Mr. Avtar Singh, Adv.

versus

**1. Late Sh. Rattan Lal @ Pinki**

Through his LRs:

- (i) Mrs. Neelam W/o Late Sh. Rattan Lal
- (ii) Ms. Pooja D/o Late Sh. Rattan Lal
- (iii) Ms. Harshita D/o Late Sh. Rattan Lal
- (iv) Mr. Nitin S/o Late Sh. Rattan Lal

All R/o  
A-24, First Floor, Gali No.8  
Pratap Nagar, Mayur Vihar,  
New Delhi

**2. SMT. KALAWANTI**

W/o Late Sh. Kishan Israni

.... Respondents

Through: Mr. Rishi Kant Mishra & Mr. Nishant  
Singh, Advs.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**



1. Regular First Appeal has been filed under Section 96 and Order XLI of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") against the Judgment dated 27.03.25, passed by the learned District Judge, Delhi, whereby the Civil Suit filed by the Appellant/Plaintiff, for *Mandatory Injunction, Recovery of*Rs. 5,19,000/- along with *pendente lite* and future interest @18% per annum and unauthorized occupation charges @Rs.15,000/- per month, with effect from 11.11.2017, **was partly decreed.**

2. The Plaintiff/Appellant filed a **Suit bearing No.161/2018** for *Mandatory Injunction and Recovery of Rs. 5,19,000/- along with Mesne Profits*. The *facts as briefly stated* in the plaint, are that the Appellant/Plaintiff, Sh. Vasdev Wadhwa, and the Respondents/Defendants are family members. Respondent No.1, Sh. Rattan Lal @ Pinki (since deceased)and Respondent No.2, Smt. Kalawanti are the brother and sister of the Plaintiff, respectively.

3. The Appellant/Plaintiff submitted that originally *Late Sh. Kishan Lal Israni*, the deceased husband of Defendant no. 2, Smt. Kalawanti had purchased the plot from the erstwhile owners and raised construction up to the second floor. In year of 1990, Late Sh. Kishan Lal Israni sold the first floor of the property to Defendant no. 1. Thereafter, he sold the second floor, i.e. the suit property, to Padma Devi @ Ganga Devi w/o Plaintiff, which was subsequently sold to the Plaintiff, in the year 2000.

4. The Plaintiff thus, claimed that he is the absolute owner of the second floor of property bearing no. A-24, Gali No. 8, Pratap Nagar, Mayur Vihar, Phase-I, Delhi (hereinafter referred to as '*Suit Property*'), which had one room, a kitchen and an open veranda, as shown in the Site Plan Ex. PW1/1. The Plaintiff and his family resided there for some time



and later shifted to Lajpat Nagar. However, the Plaintiff and his family continued to occasionally visit the Suit Property.

5. The Plaintiff further submitted that on 10.11.2005, Defendant no. 1 agreed to purchase the suit property for a consideration of Rs. 2,50,000/-, out of which he paid Rs. 1,00,000/- as partpayment, and agreed to pay the balance of Rs. 1,50,000/- on 15.12.2005, *upon which possession was to be handed over to Defendant No.1.* However, Defendant No.1 failed to pay the remaining amount on 15.12.2005 and thus, the Plaintiff forfeited the earnest money and **treated the Agreement, as nullified.**

6. Thereafter, **Defendant No.1 instituted a Suit for Specific Performance on 01.11.2009**, which was decided in favour of the Defendant No.1 *vide* Judgment dated 10.01.2012 Ex.PW1/B, by CCJ/ARC, Delhi.

7. *An Appeal was filed by the Appellant/Plaintiff, before the learned ADJ-01 (East), Delhi, which was allowed* in the favour of the Appellant/Plaintiff, where in the first *Appellate Court set aside the decree for Specific performance, but directed the Plaintiff to return Rs. 1,00,000/- to the Defendant No.1 along with interest @ 6% per annum* from the date of institution of the Suit till realization, *vide* Judgment dated 09.06.2014 Ex.PW1/C.

8. Then, Defendant No.1 filed a **Regular Second Appeal, RSA No. 219/2014** in this Court, against the Judgment dated 09.06.2014, which was dismissed *vide* Judgment dated 20.02.2015 Ex. PW1/D. Thereafter, Defendant No.1 filed *Special Leave to Appeal SLP(C) No. 12653/2015* in the Supreme Court. However, it was dismissed on merits, *vide* Order dated 16.07.2015 Ex.PW1/E.



9. The Plaintiff further asserted that the Plaintiff and his wife used to visit the suit property, on different occasions. Whenever the Plaintiff and his wife visited the Suit property, Defendant no. 1 and his family behaved with them in a very hostile and unruly manner and for this reason, they never stayed at the suit property for a long period of time.

10. The Plaintiff further averred that on 28.07.2015, at about 3pm, when the Plaintiff visited the suit property, Defendant No.1 did not open the main entrance gate on the ground floor, and there is only one common stair to reach the second floor of the premises. The Plaintiff requested the Defendant No.1 to open the gate and allow him to go to the suit property. However, instead of opening the gate, he started abusing and intimidating the Plaintiff and his family. Defendant no.1 has no right to stop the Plaintiff from accessing and entering into his own property. Consequently, a Complaint was lodged by the Plaintiff in P.S. Pandav Nagar, Delhi on 04.08.2015 Ex.Mark A.

11. The Plaintiff, then filed a ***Suit No. 8540/16 for Permanent and Mandatory Injunction*** against Defendant no. 1 along with an Application under Order XXXIX Rule 1 & 2 CPC, before Ld. CJ, Delhi. The Application was decided in favour of the Plaintiff *vide* Order dated 05.05.2016 EX. PW1/G, *whereby Defendant no. 1 was restrained from creating any obstruction/hindrance to the Plaintiff in accessing the suit property.*

12. This Order was challenged by Defendant no.1 *vide* MCA No. 43/16, but it was dismissed *vide* Order dated 29.11.16 Ex. PW1/H, by Ld. DSJ, Delhi.

13. Thereafter, **in terms of the Order dated 05.05.16 permitting him access to his property**, the Plaintiff visited the suit property, but Defendant



no.1 again obstructed him and neither opened the main entrance nor allowed the Plaintiff to reach the suit property. Consequently, the Plaintiff filed an Application under Order XXXIX Rule 2A CPC before Ld. Senior Civil Judge for taking necessary action against Defendant no.1 for defying the order dated 05.05.2016 passed by Ld. CJ, Delhi.

**14.** The Plaintiff claimed that he is *entitled for damages* on account of mental torture and agony caused to him by the conduct of the Defendant no.1. Accordingly, the Plaintiff sent a *Legal Notice dated 14.09.2017* Ex. PW-1/K (Colly) and demanded to pay a sum of Rs 16,50,000/- from Defendant no.1, calculated as Rs.10,00,000/- towards mental torture, and Rs. 6,50,000/- for damages, which is quantified as Rs. 25,000/- per month, since 28.07.2015.

**15.** Meanwhile, the Plaintiff moved an Application before Ld. SCJ, Delhi for grant of police aid and order for breaking open of locks, qua the execution of warrant. Ld. SCJ issued directions to the SHO, P.S. Pandav Nagar, Mayur Vihar, Phase-I, Delhi, directing him to provide adequate police aid, for the proper execution of warrant of free access.

**16.** In compliance of the Order dated 03.11.2017, the Plaintiff along with the Bailiff, visited the suit property, but again the Defendant no.1 and his family did not open the main gate for reaching the suit property. Finding no other alternative, gates upto second floor were removed by the bailiff. However, when Plaintiff got access to the suit property, he found that Defendant no. 1 had illegally kept his belongings in the room and the kitchen of the suit property. Defendant no. 1 was requested to remove his belongings, but he refused all the requests made by the Plaintiff and he further warned the Plaintiff to file another case, to get these belongings removed from the room and kitchen.



**17.** As the Orders of the Court were with regard to free access and removal of obstruction/hindrane, hence the goods of the Defendant no.1 which were illegally kept by him in the room and kitchen, were not removed, but only the doors of the ground floor and first floor, were removed by the bailiff.

**18.** It is further averred in his plaint, that Defendant no.1 moved an Application for the fixation of doors before Ld. Senior Civil Judge, Delhi. The Application was allowed *vide* Order dated 19.01.2018 and Plaintiff was directed to fix the doors at his own cost, and further directed to put interlocks in the doors and directed the Plaintiff to give one key to Defendant no. 1 and the resident of ground floor. The Plaintiff duly complied with the Order of the Ld. Senior Civil Judge on 21.01.2018 and put the interlocks on the doors of the ground floor and first floor and further, gave one key to Defendant no. 1.

**19.** The Plaintiff further averred that on 21.01.2018, he found the locks of the Defendant no.1 on the kitchen door and room of the suit property. Defendant no.1, without having any right and title over the room and kitchen of the suit property, illegally kept his belongings and further put his locks and hence, committed the offence of trespassing.

**20.** The Plaintiff further claimed that an illegal structure was also raised over and above the room of the suit property of the Plaintiff by Defendant no.2, which was being used with the help of an iron ladder. Defendant no. 2 had no right to raise any kind of construction over and above the room on the suit property. Defendant no. 2, by illegally erecting the room over and above the room of the suit property, has damaged and weakened the property of the Plaintiff, to a great extent.



21. Therefore, the Plaintiff sought the *relief of the Mandatory Injunction for removal/demolishing of the illegal portion raised over and above the room of the suit property.*

22. The Plaintiff in his Complaint has also averred that Defendant No. 1 is liable to pay Rs. 6,75,000/- *to the Plaintiff, for not allowing him to use the suit property, along with interest at the rate of Rs. 25,000/- with effect from 28.07.2015 till 10.11.2017.*

23. Hence, after adjusting, the forfeited earnest money of Rs. 1,00,000/- along with interest @6% per annum, which *comes around Rs. 1,56,000/-*, which the Plaintiff had to refund as per the directions of Ld. ADJ *vide Judgment dated 09.06.2014, the amount which is recoverable from Defendant no. 1 is Rs.5,19,000/-.*

24. The Plaintiff has also prayed *for recovery of unauthorized occupation charges for illegally occupying the room and kitchen of the Plaintiff, from 11.11.2017 @ Rs. 15,000/- per month till Defendant No. 1 removes his belongings and locks from the suit property.*

25. Hence, the Plaintiff filed the present suit for **Mandatory Injunction, Recovery** of Rs. 5,19,000/- along with *pendente-lite* and future interest at the rate 18% per annum and **unauthorized occupation charges @ Rs. 15,000/- per month w.e.f. 11.11.2017**, against the defendants.

26. The **Defendants in their Written Statement** submitted that Defendant No. 1 had been put in possession of the suit property by the Plaintiff in November, 2005, pursuant to an *Agreement to Sell* executed between the parties. Defendant No. 1 has been in peaceful possession of the property since then and as such, he cannot be ousted from the suit property. The possession of Defendant no. 1 is protected under Section



53A of the Transfer of Property Act, 1882 and the Suit is not maintainable and is liable to be dismissed. The Suit is also barred under Section 41 of the Specific Relief Act, 1963.

**27.** The Defendants have further averred that Defendant No. 1 and his family members have been in possession of the suit property, since November, 2005. The belongings of Defendant No. 1 and his family members are lying in the suit property and the same is under the lock and key of Defendant No. 1, and neither the Plaintiff nor his wife has ever come or entered the suit property. The alleged incident dated 28.07.2015, did not happen and is merely a figment of imagination of the Plaintiff.

**28.** The Defendants have asserted that the present Suit is not maintainable as the *same is barred under the provisions of Section 11, Section 12, and Order II Rule 2 CPC.* The Plaintiff is claiming damages amounting to Rs. 6,75,000/-, from Defendant No. 1, for allegedly not allowing him to use the suit premises since 28.07.2015. However, the Plaintiff had instituted the previous Suit in August, 2015 and the said relief could have been sought by the Plaintiff in the said Suit, which was between the same parties, for the same property and on the same cause of action.

**29.** On the basis of statement of the Plaintiff that he has got free passage to go to the second floor and has got one key each of the gate leading to first floor from ground floor |and to second floor from first floor, the Plaintiff not only withdrew his Application under Order XXXIX Rule 2A CPC, but also the Suit along with all his relief(s), which he had claimed.

**30.** The Defendants further agitated that the present Suit filed by Plaintiff, is not maintainable as the *Plaintiff is claiming an exorbitant amount from Defendant No. 1, without any basis, reasoning or justification.*



The plot on which the suit property is situated, measures 50 sq. yards only. There is only one room, one kitchen, and an open veranda on the second floor of the suit property, which is in possession of Defendant No. 1. *The total rental value of this portion in the said area, is not more than Rs. 3,000/- to Rs. 4,000/- per month.*

**31.** The claim of the Plaintiff against Defendant no. 1 of Rs. 25,000/- per month on account of not allowing him to use his property and also claim of Rs. 15,000/- per month from 11.11.2017 for unauthorized occupation till defendant no. 1 removes his belongings from the suit property, on account of unauthorized charges, is unjustified, exorbitant and without any basis.

**32.** The Defendants further asserts that the Plaintiff has alleged that Defendant no. 1 has been in unauthorized occupation of the property, from 11.11.2017. However, in the earlier Suit withdrawn by the Plaintiff in January, 2018, the Plaintiff did not allege or intimate this fact at any point of time, before the said Court, during the pendency of the Suit.

**33.** The Plaintiff has alleged Defendant no. 1 to be in illegal and unauthorized occupation of the suit property. However, *the Plaintiff has not sought relief of possession in the present Suit*; the only relief which the Plaintiff has claimed, is a relief of *Mandatory Injunction* for removal of locks and belongings from the room and kitchen of the second floor. The Plaintiff, as a matter of fact and law, is liable to claim relief of possession; he cannot claim relief of *Mandatory Injunction*, against Defendant No. 1.

**34.** Further, as regards the *second floor*, it is claimed that the Plaintiff has now lost any right, title, and interest in the same, by virtue of section 27 of the Limitation Act and Defendant no. 1 has become the absolute owner of the same.



**35.** The Defendants further agitated that Defendant No. 1, besides the suit property, is **the absolute owner of the portion above i.e. third floor**, wherein he has already constructed a room. Defendant No. 2 was the absolute owner of the said portion and *she has sold* it to Defendant no. 1 *vide* Gift Deed dated 18.04.2019 Ex. DW-1/P-1. The possession of the said portion was also handed over by her to Defendant No. 1, simultaneously to the execution of said documents. In view of the same, the Plaintiff cannot claim any relief, of any nature whatsoever in respect of the said portion.

**36.** **The Defendants in their Written Statement on merits, denied the averments made in the Plaint**, and averred that the execution of the Agreement to Sell dated 10.11.2005 is an admitted fact on record. According to Respondent No. 1, he made part payment of the sale consideration, i.e. Rs. 1,00,000/- out of Rs. 2,50,000/-, and was always ready and willing to pay the remaining amount to the Plaintiff. *Further, he averred that the Plaintiff handed over vacant and peaceful possession of the suit property to him in 10.11.2005, and that he is in possession since then.*

**37.** The **Defendant No.1, Smt. Neelam Wadhwa, has also** averred that the present *Suit is bad for misjoinder of parties*, as *Defendant no. 2 is neither necessary nor a proper party to the present suit*. She has also claimed that a property measuring 50 sq. yards with one room, one kitchen and veranda, on the second floor, without any basic amenities, would not fetch more than Rs. 3,000/- to Rs. 4,000/- per month in that locality.

**38.** The **Plaintiff in the Replication asserted** that the question pertaining to the possession is undisputed, as it was directed by ADJ-02, Delhi, to Defendant No.1 to remove his locks and belongings from the Suit property, *vide* Order dated 22.11.2018. Further, the ***possession of the suit***



*property was never handed over to Defendant no. 1*, because as per the Agreement, the possession was only required to be handed over after receiving the entire sale consideration by the Plaintiff and this issue had already been dealt with in the judgment dated 20.02.2015.

**39.** The Ld. District Judge framed the following issues, on 13.07.2022:

1. *“Whether the plaintiff is entitled for a decree of Rs. 5,19,000/- against the defendants along with pendente lite interest and future interest @ 18% p.a. as damages? OPP.*
2. *Whether the plaintiff is entitled for unauthorized occupation charges @ Rs. 15,000/- per month against the defendants w.e.f. 11.11.2017 along with interest if any and if yes at what rate? OPP.*
3. *Relief.”*

**40.** However, after the conclusion of the *Final Arguments*, an Application under **Order XIV Rule 5** read with section 151 of CPC was moved on behalf of the Plaintiff, **for framing of additional issues, which** was allowed *vide* Order dated 03.02.2025.

**41.** **Additional issue** was framed as under:

3. *“Whether the plaintiff is entitled to the decree of mandatory injunction directing the defendants to remove/demolish the room along with iron stairs which was constructed over and above the room of the second floor of the plaintiff? OPP.”*

**42.** The Plaintiff Vasdev appeared as PW1 in support of his case and deposed about the contents of Plaintiff and proved the relevant documents.



43. The Defendant No. 1, Rattan Lal died and his LR's were impleaded as a party, *vide* Order dated 18.11.2023.

44. **DW1 Smt. Neelam Wadhwa (Defendant No.1)** examined herself in support of her defence and tendered her Affidavit of Evidence Ex. DW1/A. She detailed the defence as taken in the Written Statement. She deposed that she is the owner of the room over and above the second floor by virtue of a Gift Deed dated 12.04.2019, Ex. DW-1/P-1(OSR) executed by Defendant no. 2 in her favour during the pendency of the present suit.

45. The **Ld. District Judge, after appreciating the evidence, decreed the Suit and held** that the Plaintiff was entitled to recovery of the Damages/Mesne Profits for **illegal occupation charges, at the rate of Rs.10,000/- per month, from 28.07.2015 till 22.11.2018 along with a simple interest @8% from 23.11.2018 till the date of decree and a simple interest @6% from the date of decree till realization of the amount.**

46. **However, the relief sought by Plaintiff/Appellant, for the recovery of Rs. 5,19,000/- along with pendente lite and future interest @ 18% per annum till its realisation, was rejected.**

47. Further, it was held that **Plaintiff was not entitled to the relief of Mandatory Injunction directing defendants for removal** and demolition of the room and iron stairs constructed over and above the room of the second floor.

48. **Aggrieved by the Impugned Judgment dated 27.03.2025, present Appeal has been preferred by the Appellant/Plaintiff to challenge the dismissal of the relief of Mandatory Injunction and Recovery of Rs. 5,19,000/- alongwith pendente-lite and future interest at the rate 18% per annum and to decree the Suit of the Plaintiff for damages at the rate of Rs.25,000/- per month along with interest @ 15%per month.** The



Appellant also sought the **modification of the *Judgement for enhancement of unauthorized occupation charges*** to @ Rs. 15,000/- per month instead of Rs.10,000/- with effect from 11.11.2017. He *further claimed to allow Mandatory Injunction to direct the Respondents to remove/demolish the room alongwith iron stairs, which was constructed over and above the suit property.*

**49. The Appellant/Plaintiff has assailed the impugned judgment, primarily on the ground** that the Ld. Trial Court has not appreciated that in the year 1990, the building was constructed upto first floor and on the second floor there was only one room, one kitchen and one bathroom and around 50% of the total area was open, being used as a veranda and there was no staircase to reach to the roof of the room on the Second Floor. Once the entire second floor has been sold to the Appellant, the question of any terrace rights doesnot arise.

**50.** It is further asserted that the Ld. Trial Court failed to appreciate that the Defendants in collusion with each other, first illegally constructed a katcha room above the room of second floor, during the period from year 2015 to 2016, and further erected iron stairs in the middle of the veranda, whereby destroying the open space/veranda of second floor of the Appellant.

**51.** The Defendants did not take any permission from Plaintiff/Appellant or MCD for raising construction over the second floor. Moreover, the consent of Plaintiff was necessary for raising any construction over his floor.

**52.** It is further asserted that the Ld. Trial court has totally ignored the Receipt dated 10.11.2005, in which nothing has been mentioned qua the terrace/roof rights. If the Defendant no. 2 was having any right on the



terrace, then the Defendant no. 1 definitely would have mentioned in the Receipt as '*with*' or '*without roof rights.*' It is asserted that the Defendants were conscious qua the right of Appellant for which reason, nothing has been mentioned in the Receipt, except second floor. It is further submitted that in the earlier proceedings also, nothing has been mentioned qua the terrace rights by the Defendant no.1. Therefore, it is quite clear that complete second floor alongwith terrace, was agreed to be sold by the Appellant to the Defendant No.1, *vide* Agreement/Receipt dated 10.11.2005.

**53.** It is submitted that the Ld. District Judge failed to consider that there was no access/ ladder to reach the roof of the room of the second floor; once there was no access to the roof of the room of the second floor, the question of roof rights/ terrace does not arise.

**54.** It is further submitted that the Ld. Trial court failed to appreciate that after selling the complete second floor to the Appellant, neither Late Sh. Kishan Israni nor his legal heirs, asserted any rights from the year 1990 till 2019, and hence, the execution of any document has no relevance.

**55.** It is further submitted that DW-1 Ms. Neelam had produced the *Gift Deed dated 18.04.2019*, for the first time during her cross examination, but had not stated anything qua the Gift Deed in her Written Statement or in the examination-in-chief, nor had she amended the Written Statement. It is evident that the Defendants during the pendency of present Suit, have tried to create the right on terrace, by executing the fabricated Gift Deed dated 18.04.2019, which is barred by the doctrine of *Lis Pendens*.



56. The Ld. Trial court also has not given any finding qua the *Gift Deed dated 18.04.2019*, which was produced during the cross examination of DW1.

57. Since the entire second floor was sold to the Appellant by Late Sh. Kishan Issrani, hence the Defendant no.2 i.e., Smt. Kalwati w/o Late Sh. Kishan Israni, was left with no right to deal with the property. *Therefore, the Gift Deed dated 18.04.19, has no value in the eyes of law.*

58. Moreover, in the Gift Deed dated 18.04.2019, '*Third Floor with roof and terrace rights*' has been mentioned, whereas in actuality there is no third floor and there is only one katcha room which was constructed over and above the room of Second Floor. Hence, it is proved that the Gift Deed has been created during the pendency of the present Suit, only to defeat the rights of Plaintiff.

59. The Ld. Trial court has wrongly held that the Plaintiff was required to seek Declaration, qua his roof rights. It is submitted that once the complete floor in the year 1990, was sold to the Plaintiff by Late sh. Kishan Israni, the question of seeking Declaration qua the roof rights, does not arise.

60. It is further submitted that the Appellant had duly discharged the onus with regard to illegal construction, *whereas no finding has been given qua illegal construction*; on the contrary, it has been held that the Appellant has not sought Declaration qua the terrace.

61. That the Ld. Trial Court instead of awarding damages to the tune of Rs.25,000/- per month, only awarded Rs.10,000/-p.m. Further, interest @ 8% per annum was granted w.e.f. 23.11.2018, whereas as per the *Ld. Trial Court gave a finding that the Defendant no.1 has been in unauthorized occupation since 28.07.2015 till 20.02.2019. After the dismissal of RFA*



**no.156/2019, Defendant no.1 handed over the key of the second floor to the Plaintiff/Appellant, before the Ld. Trial Court, only on 20.02.2019.**Hence, interest must be awarded from 28.07.2015, instead of 23.11.2018. Moreover, interest @15% per annum should have been awarded to the Plaintiff/Appellant.

**62. No reply to the Appeal,** has been filed by the Respondents.

**Submissions heard and record perused.**

**63.** The *undisputed facts* are that late Sh. Kishan Lal Israni, erstwhile owner of the Suit property, sold the first floor of the Suit property to Respondent no. 1, in 1990. The second floor of the Suit property stood conveyed in 1990 by Late Sh. Kishan Lal Israni, to *Smt. Padma @ Ganga Devi*, wife of the Appellant, and was thereafter, in 2000, transferred to the Appellant, who along with his family, resided there and continued to visit the premises, even after shifting to Lajpat Nagar.

**64.** The Appellant Vasudev Wadhwa and Defendant No.1, admittedly, entered into an Agreement to Sell dated 10.11.2005 for purchase of the second floor for Rs. 2,50,000/-, in respect of which Rs. 1,00,000/- was paid as part-consideration, which led to a *Suit for Specific Performance by Respondent No.1*. It was initially decreed in favour of Respondent no. 1 *vide* decree dated 10.01.2012 PW1/B, by the Ld. Civil Judge. *However, the decree was reversed in Appeal*, filed by the Appellant/Plaintiff; the Appellant was directed only to refund Rs. 1,00,000/- with 6% interest. The Respondent No.1 challenged the Decree by way of *Regular Second Appeal*, before this Hon'ble Court and the *Special Leave Petition* before the Hon'ble Supreme Court, but did not meet any success. Thus, **the Appellant's title to the second floor stands affirmed, though he was**



*directed to return Rs. 1,00,000/- taken by him from Respondent No.1, in part performance of the Agreement To Sell.*

**65.** In the face of this concluded litigation, the plea of Respondent no. 1 that by virtue of Section 27 of the Limitation Act, 1963, he has become the owner of the second floor, is plainly misconceived. His possession, to the extent it subsisted after the failure of the Agreement to Sell, and thereafter, in repeated defiance of court Orders, could at best *be that of an unauthorized occupant*; it could not ripen into ownership when the contractual claim has been finally negated and the Appellant's title has been recognized by all courts, up to the Supreme Court.

**66.** It is also admitted that the Appellant obtained an order of Injunction restraining Respondent no. 1 from obstructing his ingress and egress to the second floor, *vide* Order dated 05.05.2016 Ex. PW1/G. Nevertheless, the Plaintiff was denied access by the Defendant No.1 and his family, on 28.07.2015.

**67.** Thereafter, it led to a Police Complaint dated 04.08.2015 Ex. PW1/F, to the SHO, P.S. Pandav Nagar, Mayur Vihar Phase-I, Delhi. *An Application under Order XXXIX Rule 2A CPC was filed.* Ultimately, Order dated 03.11.2017 Ex. PW1/M, was passed by the Ld.SCJ, Delhi, directing police aid and breaking-open of the doors, to secure free access to the Plaintiff to the suit property i.e. the second floor.

**68.** The ordeal of the Plaintiff did not end as while with great efforts in the Execution proceedings, he was able to get the access to his second floor, but the second floor was found to be in possession of Defendant No.1, leading to further litigation, which finally resulted in the Appellant getting the possession of the second floor, **on 20.02.2019.**



***Mandatory injunction for Demolition of 'Third Floor':***

Thereafter, commenced the next phase of litigation, for much to the chagrin of the Plaintiff/ Appellant, on entering into his second floor premises, he found that while the Defendant was in possession of the second-floor premises under the Agreement to Sell, he found that one room on the roof of the second-floor premises had been constructed by the Respondents and to gain access, an iron staircase had been erected in the veranda portion of the Plaintiff/Appellant. He thus, sought directions to be issued to the Respondents for removal of the said katcha room constructed on the roof of the room on the second floor, by way of Mandatory Injunction. **This relief was declined by the learned District Judge by observing that there was an independent right in respect of the room constructed on the third floor.**

**69.** The question before this Court is whether the Appellant is entitled to the Mandatory Injunction for directing the Respondents to remove the katcha room constructed over the roof of the room on the second floor.

**70.** The Respondents have tried to assert that it was only the second floor which had been sold to the Appellant and the third floor continued to be in the power and possession of the earlier owner, i.e. Kalawati. Therefore, the Appellant has no ground or basis to take possession for this room on the third floor.

**71.** It is pertinent to observe that when the second floor was purchased by the Appellant in 1990, there existed only the ground floor, first floor and the second floor and there was no floor above. One room, kitchen and latrine had been constructed in about 25 sq. yards, while the remaining 25 sq. yards is for an open veranda, as per the plan Ex. PW1/A, on the second floor. It also confirms that there was nothing beyond the second floor.



Also, neither was it in the common use of any of the occupants/owners of ground floor and first floor, nor was there any access/staircase leading to the roof of the room on second Floor. This second floor had no terrace and there was never ever any rights reserved in respect of the roof above the second floor.

**72.** In fact, most significantly, DW1 in her cross examination, has admitted that the staircase of the house was up to second floor and there was no cemented staircase leading to the third floor. Interestingly, the access to this alleged third room has been created by the Respondents through the veranda of the Appellant Vasdev Wadhwa. It is like encroaching in somebody else's house, to get an access to the roof of his room. It is nothing but a case of sheer encroachment.

**73.** **The next pertinent fact to consider is when this alleged katcha room on the third floor, got constructed.** It has been explained on behalf of the Appellant, that when the Respondent, Smt. Neelam Wadhwa, lost her Appeal in respect of her Suit for *Specific Performance*, she took an advantage of being in possession and constructed this katcha room over the roof of second floor.

**74.** **This contention of the appellant get established from the documents of the defendant,** who had relied upon an electricity bill *vide* Ex. DW1/P-2, which shows the date of energization, as 08.09.2016. The Defendant DW1 has also admitted that there was no water connection to the katcha room, which she has taken subsequently. Significantly, there was admittedly an Agreement to Sell dated 10.11.2005 entered between the parties, in respect of which litigation went upto the Apex Court. In this document as well, there was also no mention of any terrace on the third floor.



75. It is quite evident from the aforesaid circumstances that the Defendant that she had no right, title, interest on the roof of the second floor and that it had been constructed, while she was in possession of the second floor.

76. For the first time, it is only in her cross-examination, that she has tried to justify her claim to the Katcha room on the roof of the second floor by asserting that a Gift Deed dated 15.04.2008 DW1/P1, had been executed in her favor, by Smt. Kalawati. At no point did Smt. Kalawati asserted any right over the roof of the room on the second floor. Pertinently, neither was this Gift Deed ever mentioned in the pleadings or in the Affidavit of Evidence and for the firsttime, it was introduced, on being questioned by the Appellant about her title.

77. Further, this document has been executed while the Suit was pending. It had no existence at the time when this alleged room got constructed. Furthermore, as already discussed there existed no third floor in respect of which Kalawati could have claimed her ownership. When she herself did not claim the ownership, there was no way she could have created any right, title, interest in the said Gift Deed in favour of the Respondent.

78. Another pertinent aspect is that while in the **Written Statement**, it was claimed by the Respondents that she had purchased the third floor from Kalawati, but eventually realizing the lacuna, she in her cross-examination produced this Gift Deed. There is inherent contradiction in her stand for, at one time, she has claimed it to be a property purchased by her and on the other hand, she has claimed it to be gifted to her.

79. While it may be reiterated that Kalawati herself was never an owner of third floor since it did not ever exist, she was the best person to



have proved the genuineness and the authenticity of Gift Deed. Pertinently, she has not even been called in the witness box to depose and prove this document. It cannot be emphasized enough that Kalawati had admittedly sold the second floor in 1990 and never ever had she made any claim to this non-existent third floor till 2019, when she executed the Gift Deed dated 15.04.2008, in favour of the defendant. Clearly, it is a manipulated document created during the pendency of the litigation, only to justify the claim of the Defendant to the third floor.

**80. To conclude,** there was no third floor ever in existence; there was no independent access to this alleged third floor. In fact, what existed was only the second floor which was admittedly sold by Kalawati to the Plaintiff/Appellant. While the Respondents were in possession pursuant to an Agreement to Sell, they took the advantage and constructed this katcha room over thereof of second room and because there was no independent access, constructed a iron staircase through the veranda of the Appellant on the second floor. It is simple case of entering into somebody else's property, to claim an access over the roof of their second floor.

**81.** From the aforesaid discussion, it is overwhelmingly demonstrated that there existed no third floor and that Defendant/Respondents have no ownership in the katcha room constructed over the roof of the second room owned by the Appellant.

**82.** The learned District Judge, therefore, fell in error in denying the Mandatory Injunction. The findings on this issue are hereby, set aside and the Suit of the Appellant for mandatory Injunction is decreed. The *Defendant No. 1 is hereby, directed to remove this katcha room over the roof of second floor within 60 days, failing which the Appellant is at liberty to get the room removed himself for which the expenses may be recovered*



by the Appellant or he may seek the implementation of these directions by way of execution.

**83. The issue is decided accordingly, in favour of the Appellant.**

***Mesne profits / damages for unauthorized Occupation of Second Floor - quantum and period:***

**84.** The primary challenge on behalf of the Appellant is to the quantification of damages/mesne profits. While the Trial Court awarded Rs. 10,000/- per month from 28.07.2015 till 22.11.2018 with interest @ 8% per annum from 23.11.2018 till decree and @ 6% per annum, the Appellant seeks enhanced mesne profits @ Rs. 15,000/- per month, and interest @ 15% per annum and extension of period till 20.02.2019.

**85.** The term *Mesne Profits*, is defined under Section 2 (12) CPC and reads as under:

*“(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession”*

**86.** The just and fair compensation for the wrongful deprivation of the Plaintiff from use and enjoyment of his property and ordinarily corresponds to the market rent which the property might reasonably fetch. The burden to establish therent of the suit property, at such exorbitant rates, fairly lies on the party seeking Mesne Profits.

**87.** In the present case, though the Appellant has claimed rent at the rate of Rs. 25,000/- per month along with interest @ 15%, however he has not produced any evidence by way of Lease Deeds, Rent Agreements, Circle-Rate based valuations or other objective material of similarly



situated properties in Pratap Nagar, Mayur Vihar Phase-I, Delhi, to support this figure.

**88.** Where there is scant evidence, courts are often compelled to make a reasonable estimate having regard to the size, location and nature of the premises and the general trend of rentals, while avoiding either an unjust enrichment of the Plaintiff or an undue windfall to the Defendant. The Ld. Trial Court, bearing in mind that this is a small 50 sq. yards, considering the statement of DW-1, Smt. Neelam Wadhwa dated 12.01.2024, and yet conscious of the hostile conduct of Defendant no. 1 who deprived the Appellant even of access, *fixed Mesne Profits at Rs. 10,000/- per month, far above the figure suggested by the Respondents.*

**89.** In the absence of any documentary proof of higher rental value, enhancement to Rs. 15,000/- per month, would be arbitrary. **There is no justification for enhancement of the charges of Mesne Profits.**

**90.** The *next aspect is the period for grant of mesne profits.* The Ld. Trial Court has restricted the period till 22.11.2018, referring to an Order of the first Appellate Court directing removal of Respondent no. 1's locks and belongings. It is not disputed that the key of the second floor was in fact, handed over to the Appellant only on or about 20.02.2019, after the dismissal of RFA No. 156/2019. The cessation of unauthorized occupation must therefore, be taken as 20.02.2019, when the possession of second floor was actually delivered. There is no plausible explanation as to why the Appellant should be deprived of compensation for the gap between 23.11.2018 and 20.02.2019 when he could not in reality, use the suit property.

**91.** *However, there is no basis for enhancement of interest rate.*



92. It may also be noted that the Plaintiff was claiming Rs.25,000/p.m. over and above the mesne profits of Rs.10,000/-, *on account of his deprivation of use of property. In fact, the claim of the Plaintiff was in the nature of damages, to which in the given circumstances, he is not entitled, especially when mesne profits in the sum of Rs. 10,000/- p.m. have already been granted.*

93. Consequently, while the charges of Mesne Profits/ Unauthorized use / occupation, i.e. rate of Rs. 10,000/- per month is maintained, the period of Mesne Profits is extended from 23.11.2018 to 20.02.2019.

**Conclusion:**

94. **Suit of the Appellant for Mandatory Injunction is decreed.** The Defendant No. 1 is hereby, directed to remove this katcha room over the roof of second floor within 60 days, failing he may seek the implementation of these directions by way of execution. In the alternative, the Appellant is at liberty to get the room removed himself for which the expenses may be recovered by the Appellant, from the respondent No.1.

95. **The decree of Ld. District Judge is modified to the extent that the Mesne Profits @ Rs.10,000/- per month shall be payable from 28.07.2015 till 20.02.2019 with simple interest @ 8% per annum till decree and simple interest @ 6% per annum from the date of decree till realization of the amount.**

96. Thus, *the Appeal is partly allowed.* Decree Sheet be prepared, accordingly.

97. Pending Application(s) if any, are disposed of, accordingly.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**APRIL 06, 2026/RS**