



\$~64

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of decision:08th September, 2026

#

CNR No. DLHC010422432026

+

RSA 164/2026, CM APPL. 60557/2026, CM APPL.60559/2026
& CM APPL.60560/2026

KISHAN KUMAR

S/o Sh. Satya Pal

R/o Flat No. C-445, DDA LIG Flats,

East of Loni Road, Delhi-110093.

....Appellant

Through: Mr. Hitesh Kumar Bhardwaj and
 Mr. Sumit Kumar, Advocates with
 Appellant in person.

versus

Suresh Kumar (Since Deceased)**Through Lrs.**

1. Smt. Amresh
W/o Late Suresh Kumar
2. Sh. Piyush
S/o Late Suresh Kumar
3. Ms. Monu Chaudhary
D/o Late Suresh Kumar
4. Ms. Sonu Chaudhary
D/o Late Suresh Kumar

All residents of;
 H.No. A-139, Kabir Nagar,
 Shahdara, Delhi-110094

.....Respondent

Through: None.



CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 60558/2026 (Exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The Application is disposed of accordingly.

RSA 164/2026

3. **Regular Second Appeal** under Section 100 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed on behalf of the Appellant against the **common Judgment dated 23.05.2026** whereby the learned Appellate Court reversed the Judgment dated 30.09.2016 of the learned Civil Judge and decreed the ***Suit of the Plaintiff for Possession, Arrears of Rent and Mesne Profits.***
4. The **Civil Suit bearing CS No. 214/2009** was filed by the plaintiff, **Mr. Suresh Kumar** for *Possession, Permanent Injunction and Recovery of Arrears of Rent.*
5. The **facts in brief**, are that the **Plaintiff/Respondent** was the owner of **property bearing No. C-445, DDA LIG Flats, East of Loni Road, Shahdara, Delhi**, consisting of two rooms, one kitchen, one bathroom, one latrine and one balcony (*hereinafter referred to as 'the suit property'*).
6. The erstwhile owner, **Mr. Ashok Kumar** had inducted the **Defendant, Mr. Kishan Kumar** as a tenant in the suit property in the month of **March, 1995**, on a monthly rent of **Rs.1,500/- per month**, excluding water and electricity charges *vide* oral Agreement. The Defendant had paid the increased rent of Rs.3,212/- to Mr. Ashok Kumar, till April, 2003.



7. On 03.05.2003, the Defendant, *Mr. Kishan Kumar* filed a *Suit for Permanent and Mandatory Injunction* against Mr. Ashok Kumar, for restraining him from creating third party rights in the suit property and from dispossessing him, on the ground that he had entered into an *Agreement to Sell dated 04.02.2003*, for a total consideration of Rs.1,40,000/-, out of which, Rs.90,000/- had been paid as earnest money to Mr. Ashok Kumar. The Suit was decreed *ex-parte*, vide Judgment dated 13.04.2024.
8. Thereafter, Mr. Ashok Kumar moved an **Application under Order 9 Rule 13 read with Section 151 CPC**, on 10.09.2005, pursuant to which the *ex-parte* Judgment and Decree was set aside on **19.12.2005** and Mr. Ashok Kumar was allowed to contest the Suit. The Defendant had thereafter, withdrawn the aforesaid Suit with liberty to file afresh, on the same cause of action on 24.04.2007.
9. In the meanwhile, Mr. Ashok Kumar had executed **the Agreement to Sell, GPA, SPA and Will dated 01.04.2003**, in favour of **Mr. Ravi Kant Bansal**.
10. Mr. Ravi Kant Bansal further executed **GPA, Agreement to Sell and a registered Will** in favour of the **Plaintiff, Mr. Suresh Kumar (since deceased)**, on **27.05.2005**, for a total consideration of Rs.1,00,000/-. It was stated that the Agreement to Sell had been executed on the condition that Mr. Ashok Kumar shall get the suit property vacated from the Defendant and hand over the possession to Mr. Ravi Kant Bansal, who further shall hand over the possession to the Plaintiff.
11. Mr. Ashok Kumar thereafter, ***terminated the tenancy of the Defendant, Krishan Kumar*** and filed the earlier ***Suit for Possession, Declaration, Permanent Injunction and Recovery of Rent against him.***



12. The Plaintiff claimed that the Defendant was a *regular defaulter* in payment of rent, which was in the sum of Rs.3,212/-. He issued **Legal Notice dated 14.05.2009**, through registered AD, thereby *terminating the tenancy and seeking peaceful vacant possession of the Suit Property along with the Arrears of Rent*. Sh. Ashok Kumar failed to disclose the execution of the said documents in favour of Mr. Ravi Kant Bansal.

13. The present Suit bearing **CS No.214/2009** was filed by Sh. Suresh Kumar on 21.08.2009 for Possession, Permanent Injunction and Recovery of Arrears of Rent.

14. The Suit was **contested** by the Defendant, Mr. Kishan Kumar, who in his **Written Statement**, admitted that Mr. Ashok Kumar was the owner of the suit property and the Defendant had been inducted as a tenant. He asserted that Mr. Ashok Kumar had agreed to sell the suit property to the Defendant by executing an Agreement to Sell etc., dated **04.02.2003**, against which Rs.90,000/- out of the total sale consideration of Rs.1,40,000/, were paid to Mr. Ashok Kumar, who failed to execute the sale documents in favour of the Defendant.

15. The Defendant, Mr. Kishan Kumar, then filed a *Suit for Specific Performance against Mr. Ashok Kumar*. In the said Suit, neither Mr. Ashok Kumar on 21.11.2007 but he **failed to disclose** that he had already executed the documents in respect of the suit property in favour of Mr. Ravi Kant Bansal on **01.04.2003**; rather he filed the earlier **Suit for Possession, Declaration, Permanent Injunction and Recovery of Damages against the Defendant** wherein also, he did not disclose the fact of execution of the said documents in favour of Mr. Ravi Kant Bansal, who was thereafter, impleaded as a party. He also, in his Written Statement **also did not disclose**



that he had further executed documents in respect of the suit property in favour of the Plaintiff, Mr. Suresh Kumar, on 27.05.2005.

16. The Defendant, Mr. Kishan Kumar denied that he was a defaulter of rent. He further asserted that he **did not recognise** the Plaintiff as a landlord of the suit property and there was **no question** of paying the arrears of rent or handing over the vacant possession to the Plaintiff.

17. The **Plaintiff in the Replication**, controverted the assertions made in the Written Statement and reiterated the submissions made in the Plaint.

18. From the pleadings, the **Issues were framed on 02.06.2010**, which are as under:-

1. *Whether the plaintiff is the owner of the suit property? OPP*
2. *Whether the suit of the plaintiff is liable to be dismissed for concealment of material facts? OPD*
3. *Whether the plaintiff is entitled for the relief of possession as prayed for? OPP*
4. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*
5. *Whether the plaintiff is entitled for the damages as prayed for, if so at what rate and for which period? OPP*
6. *Whether the plaintiff is also entitled to the interest on damages as prayed for? OPP*
7. *Relief.*

19. **PW-1, Mr. Suresh Kumar**, the Plaintiff tendered his evidence by



way of Affidavit as **Ex.PW-1/A**. He proved the GPA, Agreement to Sell etc. on 27.05.2005 as **Ex.PW-1/2** and the Legal Notice dated 14.05.2009 as **Ex.PW-1/3**.

20. **PW-2, Mr. Ashok Kumar**, the erstwhile owner proved the copy of the Judgment dated 13.03.2004 as **Ex.PW-2/1** and the Legal Notice as **Ex.PW-2/2**. The Agreement to Sell etc. dated 01.04.2003 was exhibited as **Ex.PW-2/3**.

21. **PW-3, Mr. Ravi Kant Bansal** tendered his evidence by way of Affidavit, **Ex. PW-3/A**, corroborating the case of the Plaintiff.

22. The **Defendant, Mr. Kishan Kumar** examined himself as **DW-1** and tendered his evidence by way of Affidavit, **Ex.DW-1/A**, wherein he reiterated the defence as taken in the Written Statement.

23. **DW-2, Mr. Vivek Saxena** and **DW-3, Mr. Pradeep Kumar**, corroborated the defence of the Defendant.

24. **DW-4, Janki**, UDC from the Office of Sub-Registrar-IV, Seelampur, produced the relevant records.

25. The **learned Civil Judge SCJ-cum-RC**, on appreciation of the evidence held that Mr. Ashok Kumar admittedly was the owner of the suit property from whom the Plaintiff, Mr. Suresh Kumar was deriving the interests in the suit property, on the basis of Agreement to sell, etc. executed in his favour by Ashok Kumar. It was further observed that the Plaintiff could not claim ownership in the suit property on the basis of GPA, Agreement to Sell, etc.

26. It was noticed that though, PW-2, Mr. Ashok Kumar had expired before his cross-examination could be concluded, but his Will dated 01.04.2003 was not proved in accordance with Sections 68 and 70 of the



Indian Evidence Act, 1872.

27. Accordingly, it was held that the Plaintiff did not become an absolute owner of the suit property.

28. It was further observed that Mr. Kishan Kumar, the erstwhile tenant/Defendant had filed a *Suit No.259/2007 (CIS/S. No.5613/2015) titled Sh. Kishan Kumar vs. Ashok Kumar & Ors., for Specific Performance and for Permanent Injunction*, was patently barred by limitation and the Appeal was dismissed, **vide Judgment dated 30.09.2016.**

29. The Suit bearing CS No.214/2009 filed by Mr. Suresh Kumar for Recovery of Possession, Permanent Injunction and Arrears of Rent had already been dismissed, **vide Judgment dated 14.09.2016** and was challenged by respondent, vide RCA DJ No.91/2016.

30. Mr. Kishan Kumar also filed RCA DJ No.96/2016 challenging the dismissal of his ***Suit for Specific Performance.***

31. Both the Appeals were decided by the common **Judgment dated 23.05.2026**, by the learned District Judge. *The Appeal in respect of Suit for Specific Performance of the Appellant was dismissed*, against which the Appellant has preferred no second Appeal.

32. Sh. Suresh Kumar, the landlord had filed the present Regular first Appeal, in regard to RCA DJ No.91/2016, **in regard to the dismissal of his Suit for Possession.**

33. **Ld. District Judge** observed that though the documents namely, Agreement to Sell, GPA etc. **did not constitute** conventional documents of sale and did not confer absolute ownership, but the Suit for Specific Performance filed by Mr. Kishan Kumar, the tenant, had been dismissed.

34. It was further noted that Mr. Kishan Kumar had been inducted as a



tenant and he never perfected his title as that of an owner by virtue of the Agreement to Sell etc. dated 04.02.2003. It was held that the Plaintiff, Mr. Suresh Kumar had derived a better possessory/proprietary right in the suit property through the registered GPA, Agreement to Sell etc. dated 27.05.2005.

35. It was further observed that attornment is primarily an acknowledgment of the tenant regarding the new landlord and protection for the tenant regarding the payment of rent, but the absence of attornment shall not *per se*, invalidate the status of Mr. Suresh Kumar as a transferee landlord. *The Plaintiff, Mr. Suresh Kumar had a better right vis-à-vis the Defendant and was entitled to seek possession.*

36. Consequently, the Appeal was allowed **and Suit of Mr. Suresh Kumar for Possession and Permanent Injunction, was decreed.** The Arrears of Rent w.e.f. 01.05.2006 till 20.05.2009 @ Rs.3,886/- per month, to be increased @10% p.a., amounting to Rs.1,39,896/- along with interest @6% p.a. and Mesne Profits @Rs.5,000/- per month along with interest @6% p.a. w.e.f. 20.06.2009 till the date of delivery of possession, were allowed and the Suit of the Plaintiff, was accordingly decreed.

37. *Aggrieved by the said Judgement, Mr. Kishan Kumar, the Appellant has preferred the present Second Appeal.*

38. The **grounds of challenge** are that the learned Civil Judge had rightly observed that on the basis of an Agreement to Sell, GPA and Will, neither Mr. Ravi Kant Bansal and thereafter, the Plaintiff could have acquired ownership in the suit property, since these documents do not confer ownership title in the suit property.

39. It was further contended that despite there being no transfer of



ownership from Mr. Ashok Kumar to Mr. Ravi Kant Bansal and thereafter, to the Plaintiff, it has still been held that Mr. Suresh Kumar, the Plaintiff was entitled to maintain the Suit for Possession, against the tenant. The possession never came in the hands of the Plaintiff and without the possession, the Plaintiff had *no locus to claim the possession from the tenant*.

40. Furthermore, there was no averment that Mr. Suresh Kumar had ever let out the suit property to the Appellant nor had the Appellant attorned to the Respondent as the landlord. Therefore, in the absence of such relationship, **Section 116 of the Indian Evidence Act** was not applicable and the Appellant had a right to raise a question about the title of the Plaintiff.

41. It was further contended that the learned Appellate Court overlooked the testimony of **PW-2, Mr. Ashok Kumar** (in CS No.214/2009), who admitted having offered to sell the suit property to Mr. Kishan Kumar and also admitted his signatures on the Agreement to Sell, the presence of witnesses and their signatures on the Agreement to Sell. The possession of Mr. Kishan Kumar, the Defendant, was thus claimed to be protected as the Agreement to Sell in his favour, was genuine.

42. The **definition of landlord**, has been claimed to have been misinterpreted. It was asserted that the rights claimed by the Plaintiff ultimately traced through the GPA, etc. executed by Mr. Ashok Kumar in favour of Mr. Ravi Kant Bansal and that upon the demise of Mr. Ashok Kumar, the agency so created ceased. The Plaintiff was neither entitled to collect rent from the Appellant nor had he ever collected any rent from the Appellant. *Hence, it was claimed that there was no relationship of landlord*



and tenant and the Plaintiff was not entitled to a decree of possession.

43. Furthermore, while observing that Mr. Suresh Kumar did not have a perfect title, it was held that he had a right to seek eviction of the tenant. It has not been appreciated that the possession of the suit property had never been delivered to the Plaintiff.

44. It is asserted that the Judgments in Mahendra Raghunathdas Gupta vs. Vishvanath Bhikaji Mogul & Ors. and Charanjit Singh Makkar vs. Phalwinder Arora, RFA (Comm) 347/2025, have been misapplied by ignoring the fact that Mr. Ravi Kant Bansal had **allegedly** executed the GPA etc. in favour of the Plaintiff and the Defendant/Appellant had never been a tenant of Mr. Ravi Kant Bansal.

45. It is claimed that further error has been committed in the impugned Judgment, by ignoring that even after executing the GPA etc., Mr. Ashok Kumar had instituted a *Suit bearing CS No.599/2017 for Recovery of Possession, Declaration, Permanent Injunction and Arrears of Rent against the Defendant though, it was rejected under Order 7 Rule 11 CPC vide Judgment dated 18.03.2009.*

46. It is further contended that there was no evidence of any nature to prove that the rate of rent in respect of the suit property, was more than Rs.3,500/- per month. There was no document, rent receipt or any other proof of rent, being more than Rs.3,500/-. The Judgment is, therefore, bad in law and is liable to be set-aside.

Submissions heard and the record perused.

47. At the outset, it may be noted that the Suit for Specific Performance filed by the Appellant/Defendant, Mr. Kishan Kumar had been dismissed by the learned Civil Judge against which, **RCA DJ No.96/2016** had been filed



but the Appeal has also been dismissed upholding the Judgment of the learned Civil Judge. **The dismissal of RCA DJ No.96/2016 has not been assailed in any Appeal.**

48. Therefore, it stands established that **Mr. Kishan Kumar has not acquired ownership on the basis of the Agreement to Sell etc. dated 04.02.2003**, allegedly executed in his favour by the erstwhile owner, Mr. Ashok Kumar. *The status of the Appellant is, therefore, established to have originated as that of a tenant and not an owner.*

49. It is **not in dispute** that Mr. Ashok Kumar, erstwhile owner, who had inducted the Appellant as a tenant, had executed an Agreement to Sell, etc. dated 01.04.2003 in favour of Mr. Ravi Kant Bansal, who appeared in the witness-box and corroborated having purchased the suit property from Mr. Ashok Kumar, the erstwhile owner.

50. Mr. Ravi Kant Bansal further executed the **Agreement to Sell etc. dated 27.05.2005, Ex.PW-1/2**, in favour of Mr. Suresh Kumar, the Plaintiff. Mr. Suresh Kumar, therefore, stepped into the shoes of the erstwhile owner, Mr. Ashok Kumar, on the basis of these documents.

51. It has been rightly held by the learned Appellate Court that even though the Agreement to Sell, etc. are **not conventional documents** of sale and do not confer absolute ownership, they **may create enforceable proprietary rights** *inter se* the parties. Here is a case where Mr. Ashok Kumar, the erstwhile owner, who had appeared as PW-2, had corroborated having executed the documents in favour of PW-3 Mr. Ravi Kant Bansal, who in turn executed the documents in favour of the Plaintiff. ***It has been rightly held that, in the facts of the present case, the Plaintiff had stepped into the shoes of Mr. Ashok Kumar and had a better right as against the***



Defendant in respect of the suit property.

52. The Appellant has **taken objection to the maintainability of the Suit**, essentially on the grounds that: (a) upon the demise of Mr. Ashok Kumar, the agency created under the GPA ceased to have any effect; (b) that the Plaintiff had never been put in physical possession of the suit property nor had the Appellant attorned to him as the landlord; and (c) that in the absence of proof of rent being more than Rs.3,500/- per month, the jurisdiction of the Civil Court was barred.

(a) Whether the Agency stood Terminated under Section 201 Indian Contract Act:

53. An objection had been taken by the Appellant that on demise of Mr. Ashok Kumar, the GPA ceased to be of any effect and the agency created thereunder, got automatically terminated, thereby leaving the Plaintiff with no right to deal with the suit property.

54. *Section 202 of the Indian Contract Act, 1872* carves out an exception in respect of an agency coupled with an interest, which cannot be terminated to the prejudice of the interest so created. **The mere use of the expression "irrevocable" is not, by itself, determinative.**

55. The principle is traced back to the settled exposition in Seth Loon Karan Sethiya v. Ivan E. John, AIR 1969 SC 73, wherein it was authoritatively laid down that **where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked.**

56. The Supreme Court, in the case of P. Seshareddy (D) v. State of Karnataka, 2022 INSC 1191, has reaffirmed that **Section 201 of the Indian Contract Act** cannot be read in isolation of **Section 202**, and has



authoritatively held that where an interest has accrued in favour of the holder of a Power of Attorney in the subject-matter of the agency, **the said agency is not terminated to the prejudice of such interest, even upon the demise of the principal.**

57. Applying the said principles to the facts of the present case, the GPA dated 01.04.2003 having been executed along with the Agreement to Sell, etc. for valuable consideration in favour of Mr. Ravi Kant Bansal, the interest created thereunder **could not be brought to an end** merely by the subsequent demise of Mr. Ashok Kumar. Furthermore, much prior to the demise of Mr. Ashok Kumar, Mr. Ravi Kant Bansal had already executed the GPA, Agreement to Sell etc. dated 27.05.2005, Ex.PW-1/2, in favour of the Plaintiff, Mr. Suresh Kumar.

58. Therefore, the assertion of the Appellant that the Plaintiff lost his right in respect of the suit property merely on account of the demise of Mr. Ashok Kumar, is **without any merit.**

59. Admittedly, the Appellant had been inducted initially as a tenant in the suit premises by Mr. Ashok Kumar as already noted above. Though, the Appellant had claimed to have purchased the suit property from Mr. Ashok Kumar, *vide* Agreement to Sell etc. dated 04.02.2003. However, his Suit for Specific Performance of Agreement to Sell has been dismissed by the learned Civil Judge and the Appeal bearing RCA DJ No.96/2016, has also been dismissed. The dismissal has not been challenged in the present Appeal. **It is, therefore, established that he had not acquired the ownership rights and his initial induction in the suit property was as a tenant and he continues to be so under the Plaintiff.**

b) ***Whether the Plaintiff had never been put in physical possession of the***



suit property and whether the attornment of Plaintiff as the landlord, is mandatory:

60. The contention raised by the Appellant was that the Plaintiff was never handed over physical possession of the suit property and thus, cannot claim the same from the Defendant/Appellant, is absolutely fallacious. It is the **legal right**, which has travelled from Mr. Ashok Kumar to Mr. Ravi Kant Bansal and thereafter, to the Plaintiff. The physical possession may not have ever come to the Plaintiff, but through these documents of ATS etc., he acquired a **better possessory/proprietary right** as against the Defendant/Appellant, and received the legal possession under these documents, thereby entitling him to maintain the Suit for possession.

61. Learned counsel for the Appellant had further asserted that the *Appellant had never attorned to the Plaintiff, Mr. Suresh Kumar*, as the landlord. However, *first and foremost*, it may be considered who is defined as a **Landlord** and what are his rights.

62. The learned District Judge has relied upon the Judgment in Swadesh Ranjan Sinha vs. Haradeb Banerjee, 1992 AIR 1590, wherein the Supreme Court of India considered the expression '**landlord**' in wide terms so as to include a person who, for the time being, is entitled to receive or but for a special contract, would be entitled to receive the rent of the premises, whether or not on his own account. *This definition shows that even if the rent is received by a person not on his own account, but on account of any other person, such as his principal or his ward, he would for the purpose of the Act, be treated as a landlord. Therefore, such person is entitled to institute proceedings for eviction.*

63. It has further been observed that ownership denotes relationship



between a person and an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are *in rem*, being good against the whole world but not merely against specific persons. (*Salmond on Jurisprudence, 12th ed., Ch. 8, p.246 et seq.*).

64. There are various incidents or rights of ownership all of which need not necessarily be present in every case that may include a right to possess, use or enjoy the thing owned; and a right to consume, destroy or alienate it. Such a right may be indeterminate in duration and residuary in character. A person has a right to possess the thing which he owns, even when he is not in possession, but only retains a reversionary interest, i.e., a right to repossess the thing on the termination of a certain period or on the happening of a certain event. **All that a Plaintiff is required to prove is that he has a better title than the Defendant. The question, however, is whether he has a superior right or interest vis-à-vis the person challenging it.**

65. Therefore, it has been rightly held by the learned District Judge that *even if Mr. Suresh Kumar did not have a perfect title, but he had a right to possession and to enforce the right for eviction of the tenant.*

66. The Appellant had contended that he has never attorned to the Plaintiff as a landlord and thus, there was no relationship of landlord-tenant between the parties and Section 116 of the Indian Evidence Act, was not attracted. In this regard, the learned District Judge had rightly observed as under:-

“It is trite, attornment by a tenant is not the source of title of the transferee. When a lessor transfers his interest in the property, the transferee acquires all rights of the lessor in respect of the tenancy and a subsequent



transferee can sue for eviction even if no formal letter of attornment was issued and even if the tenant never expressly consented to the transfer. An attornment is primarily acknowledgment by the tenant regarding the new landlord and protection for the tenant regarding payment of rent. In Charanjit Singh Makkar v. Phalwinder Arora, RFA (COMM) 347/2025 decided on 26.08.2025, the Hon'ble Delhi High Court observed that "a letter of attornment is not required to complete the title of the transferee under the mandate of Section 109 of the Transfer of Property Act, 1882. The title of the transferee becomes effective upon the execution of the sale deed itself or by any other lawful mode of transfer and is not dependent on or postponed until attornment by the tenant."

Attornment is merely a notice to the tenant so that he knows to whom the rent is payable. Absence of attornment shall not per se invalidate the status of Suresh Kumar as a transferee landlord. It is trite that in landlord-tenant litigation, absolute ownership is not required, a better title than the tenant is sufficient. In these circumstances, it is sufficiently clear that Suresh Kumar could have easily maintained a suit against Kishan Kumar seeking the relief of possession, permanent injunction and recovery of arrears of rent and the Ld. Trial Court committed an error in dismissing the said suit on this account.

67. The learned District Judge, therefore, rightly held that **the attornment was not a necessary incident**, but the Plaintiff being having better possessory/proprietary rights and a better title than the Defendant/Appellant, had a right to maintain the Suit for Possession and Injunction.

(c) Whether the jurisdiction of the Civil Court was barred, in the



absence of proof of rent being more than Rs.3,500/- per month:

68. Another aspect which merits consideration is that the Appellant has asserted that he acquired ownership rights by virtue of Agreement to Sell, etc. dated 04.02.2003, and had a right to continue in the suit premises.

69. The question which thus emerges for consideration is, **what is the status of a tenant who denounces being a tenant in the suit property and whether such claim of the Appellant, resulted in forfeiture of his status as a tenant.**

70. **Section 111(g) Transfer of Property Act** deals with *Determination of Lease* and provides for circumstances in which the lease of immovable property gets determined. It reads as under:

S.111. By forfeiture; that is to say,

(1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or

(2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or

(3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event;

and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease.

71. In Mohammad Amir Ahmad Khan vs. Municipal Board of Sitapur and Ors., MANU/SC/0326/1964, while making a reference to the case of Maharaja of Jeypore vs. Rukmini Pattamahadevi, MANU/PR/0154/1919, AIR 1919 PC 1, the Apex Court observed that the principles embodied in *Section 111(g) TPA* are equally applicable to tenancies in which the TPA does not apply, on the ground of the same being in consonance with justice,



equity, and good conscious. It was further observed that it was clear law that permanent tenancies are within the rule and *are liable to forfeiture, if there is a disclaimer of tenancy or denial of the landlord's title*. This disclaimer of repudiation of landlord's title, *must be clear and unequivocal and made to the knowledge of the landlord*. It was further observed that where there is a disclaimer of tenancy and repudiation of landlord's title, *it would amount to forfeiture of relationship of landlord and tenant*

72. In Kundan Mal vs. Gurudutta, MANU/SC/0280/1989, JT 1989 (1) SC 147, it was held that the **principle of forfeiture on disclaimer** is founded on the rule that a man cannot *approve and reprobate at the same time*. Since the consequence of applying the rule is very serious, it must be held that the denial has to be **clear and in unequivocal terms**.

73. Similar observations were made by the Supreme Court in Majati Subbarao vs. P.V.K. Krishna Rao (Deceased) by Lrs. AIR 1989 SC 2187. It was observed that it is abundantly clear from the decision of the Apex Court in Kundan Mal vs. Gurudutta, JT 1989 (1) SC 147, that the principle of forfeiture on disclaimer was founded on the rule *that a man cannot approve and reprobate at the same time*. Since the consequence of applying the rule was very serious, *it must be held that the denial of title has to be clear and in unequivocal terms*. It was further noted that where there is a provision under the Rent Act for eviction on the ground of repudiation of the title, then the *remedy with the landlord is only to approach under the Rent Act, as was the case in Rajasthan Rent Law*.

74. Certain State tenancy laws provide denial of title of landlord, as a ground for eviction, in which case the remedy for the landlord is to approach under Rent Law, but where there is no such provision in Rent Act as in



Delhi, the only remedy remains under the general civil law, to which the *Transfer of Property Act, 1882* is applicable.

75. In the case of *Hatimullah and Ors. vs. Mahamad Arju Choudhury* MANU/WB/0396/1927, 113 Ind. Cas. 13, this aspect was further explained by observing that where the tenant denies the Plaintiff's title to recover rent on the *bona fide* ground of seeking information of such title or having such title established in a Court of law in order to protect himself, he cannot be charged with disclaiming the Plaintiff's title. ***But, where the disclaimer is done not with this object, but with expressed repudiation of tenancy under the Plaintiff, it would operate as forfeiture***

76. In the case of *Sada Ram & Ors. vs. Gajjan Shiyama* MANU/PH/0080/1970, AIR 1970 P&H 511; *Shiv Parshad vs. Smt. Shila Rani* MANU/HP/0009/1974, AIR 1974 HP 22, it has been held that the proposition that a denial of title in the Written Statement cannot be taken advantage of that Suit, but can be taken advantage of only in a subsequent Suit to be filed by the landlord, *would only lead to unnecessary multiplicity of legal proceedings* as the landlord would then be obliged to file a second suit for ejectment of the tenant on the ground of forfeiture, entailed by the tenants' denial of his character as a tenant in the Written Statement.

77. In *Sheikh Miadhar vs. Rajani Kanta Roy*, MANU/WB/0481/1909, 5 Ind. Cas. 708, more light was thrown on this aspect, wherein it was held that where in a suit for rent the Defendant denies the Plaintiff's title and claims to hold under a third party, *the Defendant can be, in a Suit for ejectment by the landlord, debarred from pleading his tenancy and claiming protection of possession on that ground*. It was further observed that this principle was embodied in *Section 111(g) TPA*, wherein one of the grounds for forfeiture,



was to set up a title in the third person or in himself.

78. In the case of Arjunlal Bhatt Mall Gothani and Ors. vs. Girish Chandra Dutta and Ors., MANU/SC/0326/1973, AIR 1973 SC 2256, similar plea of having acquired ownership by virtue of documents of purchase was raised by the tenant, who further claimed that because of this Agreement, the old relationship of landlord and tenant, had come to any end. It was held that the rights of the parties had to be worked out, on the basis of this subsequent Agreement. **It was obvious that when such Agreements stood cancelled, the landlord would automatically be entitled to possession, under the terms of the Agreement.**

79. In the case of Guru Amarjit Singh vs. Rattan Chand and Ors., MANU/SC/0065/1994, AIR 1994 SC 227, the *doctrine of forfeiture* was explained to be founded upon the existence of a lease under jural relationship between a lessor and a lessee, as contemplated under *Section 105 TPA*. It is implicit that if the lease is in operation, the lessor has been given a right to determine the lease for committing breach of a covenant or for disclaimer by the lessee on the happening of any of the events specified therein. The tenant, by repudiation of the relationship of landlord-tenant, exposes himself to the risk of forfeiting his lease and giving a right to the lessor to determine the lease. ***The repudiation, however, must be clear and unequivocal and anterior to the issuance of the notice determining the lease. Where there was an unequivocal admission of the earlier relationship of landlord-tenant, but denial in the subsequent litigation, the tenant forfeits its right to lease.***

80. **The principles of forfeiture as encapsulated in *Section 111(g)(2)*, may be crystallized as under:**



- (i) *There is denial of title of landlord or the status as a tenant; and*
- (ii) *It must be clear and unequivocal and anterior to the issuance of the notice determining the lease.*

81. Applying the aforesaid principles to the present case, it is evident that the Appellant has in *clear and unequivocal terms*, repudiated his status as a tenant, by asserting ownership on the basis of Agreement to Sell etc. dated 04.02.2003. He has completely denied the title of the Plaintiff or the erstwhile owners, through whom the Plaintiff has derived the title as being the owner of the suit property. **Therefore, there is a complete repudiation of the status of the Appellant in the suit property, as a tenant.**

82. Once the status of tenant is fortified, the relationship of landlord-tenant ceases to exist between the parties. The Appellant has thus, become the unauthorised occupant in the suit property, who has been served with a Legal Notice to vacate the Property.

83. In *M/s Nopany Investments (P) Ltd. vs. Santokh Singh (HUF)*, (2008) 2 SCC 728, the Supreme Court has held that filing of an eviction Suit under the general law itself is a notice to quit on the tenant. *Therefore, even otherwise, the filing of the Suit itself tantamount to termination of the rights of a tenant/occupant in the suit premises. It is thus, established that the Appellant has no right title to continue in the suit premises.*

84. Even otherwise, the Appellant was admittedly inducted as a tenant and, by virtue of termination of his tenancy, he has become an unauthorised occupant liable to vacate the suit premises.

85. The contention raised by the Appellant that there was no evidence to prove that the rate of rent in respect of the suit property was more than Rs.3,500/- per month and, therefore, the jurisdiction of the Civil Court was



barred, is **also without merit**.

86. As already discussed above, the Appellant has himself repudiated the relationship of landlord and tenant and asserted an independent title in himself. It has already been discussed, the title of the Appellant never matured into that of an owner, but while claiming ownership, he repudiated his status in the suit property as that of a tenant thereby, ***became an unauthorised occupant, entitling the Plaintiff to seek possession.*** Having denied his status as a tenant and having set up ownership in himself, he cannot simultaneously seek protection of the tenancy under the **Delhi Rent Control Act, 1958**.

87. **The Suit for possession under the general civil law is, therefore, maintainable.**

Conclusion:

88. Accordingly, it is held that the Appeal has **been rightly allowed** by setting aside the Judgment of the learned Civil Judge and ***the Suit of the Plaintiff, has been rightly decreed for Possession, Mesne Profits and Permanent Injunction.***

89. **No substantial questions of law** have been raised. The Appeal is without merit and is accordingly, **dismissed**. The pending Applications are also disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 8, 2026/RS