



2026:DHC:9055



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 17th August, 2026

Pronounced on: 12th October, 2026

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CNR No. DLWT010001112009

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RFA 56/2026, CM APPL. 3628/2026, 3629/2026, 3630/2026, 3632/2026, 7680/2026, 25805/2026, 29883/2026, 43006/2026, 50534/2026, 51809/2026 & 51810/2026.

SMT. RAJBALA

W/O SH. PRAKASH CHAND

R/O A-19, SANJAY ENCLAVE,

UTTAM NAGAR, NEW DELHI.

.....Appellant

Through: Appellant in-person.

versus

SH. GYAN CHAND (DECREASED)

Through his Alleged Legal Representatives:

- (i) Smt. Manju Devi
W/O Late Gyan Chand
- (ii) Sh. Harender Singh
S/O Late Gyan Chand
- (iii) Sh. Devender Singh
S/O Late Gyan Chand
- (iv) Sh. Virender Singh
S/O Late Gyan Chand
- (v) Ms. Sonia
D/O Late Gyan Chand

All R/O;

B-49, Sanjay Enclave,

Uttam Nagar, New Delhi.

.....Respondents

Through: Mr. Munish Chhoker and Ms. Jyoti Verma, Advs.



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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CM APPL. No.3629/2026 (seeking condonation delay)

1. The Appellant has filed the present application seeking condonation of 200 days' delay in filing the appeal.
2. The application is supported by the reasons set out therein. Having considered those reasons, the delay is condoned.

RFA 56/2026:

3. The present **Regular First Appeal** has been filed under Section 96 read with Order XLI CPC against the Judgment dated 29.03.2025, whereby the **Suit of the Plaintiff / Respondent for Possession and Permanent Injunction** has been decreed, while the prayer for mesne profits has been disallowed.
4. The Plaintiff had filed a **Civil Suit No. Civil DJ. No. 611504/2016** for **Possession, Mandatory and Permanent Injunction and for Mesne Profits**.
5. The **facts in brief** are, that the **Plaintiff, Gyan Chand** (now represented through LRs) was the owner of the property bearing no. A-19, Rajapuri Road, Sanjay Enclave, Uttam Nagar, New Delhi-110059, ad-measuring 150 sq. yds (*hereinafter referred to as 'suit property'*).
6. **Defendant No.1/Smt. Raj Bala** is the wife of **Sh. Prakash Chand**, the brother of the Plaintiff. **Defendant No.2/Mr. Virender Singh** since deceased (represented through LRs), is her father.



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7. Defendant No. 1, **Smt. Raj Bala** married Sh. Prakash Chand on 08.05.1995, and two children were born, from the marriage. It was averred that Defendant No. 1 compelled her husband to live separately from his family, whereupon he arranged separate accommodation. Defendant No. 1 later left the matrimonial home and began residing with her parents. She also filed a false dowry case against her husband, the Plaintiff and other family members. The Plaintiff consequently, severed his relationship with his brother, Sh. Prakash Chand, whose whereabouts are now unknown.

8. The Plaintiff further stated that he had purchased the suit property in 1981, from his own funds. He claimed that he and his family had remained in uninterrupted physical possession of the property, ever since.

9. Apprehending dispossession, the *Plaintiff instituted a Suit for Permanent Injunction* against Defendant No. 1, Smt. Raj Bala, before the learned Civil Judge, Tis Hazari Courts, Delhi. *The Defendants also instituted a Suit for Permanent Injunction against the Plaintiff, his wife, Sh. Bhanu Pratap* and also made a Complaint to the SHO, Police Station Uttam Nagar, Delhi, claiming rights in the suit property, on the basis of documents which the Plaintiff described as forged and fabricated.

10. The Plaintiff alleged that she had attempted to take forcible possession of the property on 02.06.2007, but had failed. He further alleged that, on the evening of 17.07.2007, she entered the property by scaling the wall and breaking open the inner lock, in an attempt to dispossess him.

11. The Plaintiff further alleged that, after dispossessing him, the Defendants obtained an electricity connection and raised unauthorized construction, in the suit property. He asserted that the Defendants had no



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right, title or interest in the property and were, at best, trespassers who had forcibly dispossessed him.

12. In addition, the Plaintiff *sought mesne profits at the rate of ₹5,000 per month and removal of the unauthorized construction*. He accordingly, instituted **Suit No. S-147/09 for Possession, Mandatory and Permanent Injunction, and Recovery of Mesne Profit, against Smt. Rajbala and Sh. Virender Singh.**

13. The Defendants, in their **joint Written Statement**, denied the Plaintiff's claims and objected that the Suit was founded on ***forged, fabricated and unregistered*** documents, which had no legal sanctity. They further pleaded that the Suit was barred by **Order II Rule 2 CPC** because the Plaintiff had earlier instituted a Suit for Permanent Injunction, concerning the same property. They also contended that Defendant No. 2 was not a necessary party and that the suit was bad for **misjoinder of parties.**

14. On **merits**, the Defendants asserted that the Plaintiff had already sold his share in the property and that Defendant No. 1 was in its actual physical possession and occupation. They described the suit property as comprising two rooms and a boundary wall.

15. Defendant No. 1 stated that she had married the Plaintiff's brother on 08.05.1995. **She claimed** that her husband had purchased **150 square yards** of the property in **1987**, from his own earnings. She stated that the property originally measured 300 square yards, of which 150 square yards stood in the Plaintiff's name, and that the purchase had taken place in the presence of her father-in-law.



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16. According to her, her husband had obtained an electricity connection for the property bearing K. No. 1261431 and a ration card that included her name and the names of their children. She further claimed that he had constructed the property and let out a shop to Sh. Shami Ahmad, vide **Rent Agreement dated 25.10.1996**. Their daughter, Sonam, was born at the property on 26.06.1997.

17. Defendant No. 1 also alleged that her husband, mother-in-law and the Plaintiff, had subjected her to cruelty. Her husband was involved in an illicit relationship with Smt. Sushma Aggarwal. She stated that, in 1999, she lodged a complaint against her husband and his family members with the CAW Cell, Police Station Tilak Nagar, Delhi. According to her, the matter was settled on 23.09.1999, when separate statements of her husband and the Plaintiff, were recorded.

18. She further alleged that her husband had been absent for **more than two and a half years** and was living with Smt. Sushma Aggarwal with the support of the Plaintiff and his mother, who knew his whereabouts. In his absence, she claimed, the Plaintiff and his family attempted to remove her belongings and dispossess her. She also stated that she and her children, were dependent on her parents and were living in conditions of hardship.

19. As to the events of 02.06.2007, Defendant No. 1 alleged that the Plaintiff and his mother had attempted to forcibly dispossess her and had beaten her and her children. She stated that, despite her calls to the police, she and her family members were falsely implicated in a *kalandara* under Sections 107/151 CrPC. She further claimed that she was arrested, remained



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in judicial custody for four days, and was then released on bail by the learned ACMM, Moti Nagar, Delhi.

20. Defendant No. 1 stated that she complained to senior police authorities on 10.07.2007 and had also instituted *Civil Suit No. 153/2007 against the Plaintiff, seeking a Permanent Injunction.*

21. In his **Replication**, the Plaintiff reaffirmed the averments in the plaint and denied the allegations made in the Written Statement.

22. **The issues arising from the pleadings, were framed by the learned ADJ on 08.09.2009, as under:**

- (i) *Whether the suit is barred u/o 2 Rule 2 CPC? OPD.*
- (ii) *Whether there is bad for misjoinder of defendant no.2? OPD.*
- (iii) *Whether the valuation of the suit for the purpose of Court fee and jurisdiction is correct? OPP.*
- (iv) *Whether the Plaintiff is entitled for decree of the possession of the suit property as shown in green colour in the site plan as prayed for? OPP.*
- (v) *Whether the Plaintiff is entitled for decree of mesne profit and if so at what rate and for which period? OPP.*
- (vi) *Whether the Plaintiff is entitled for decree of mandatory injunction as prayed for? OPP.*
- (vii) *Whether the Plaintiff is entitled for decree for Permanent Injunction as prayed for? OPP.*
- (viii) *Relief."*

23. The **Plaintiff in support of his case examined himself as PW-1**, the documents proved, included the *site plan*, exhibited as **Ex. PW-1/1**, and a copy of the *sale deed dated 10.02.1972*, marked as **Mark A**. He also proved the *General Power of Attorney, deed of agreement, affidavit, receipt*



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and Will, all dated **20.05.1981** and exhibited as **Ex. PW-1/3** to **Ex. PW-1/7**, respectively. The *House Tax Receipt* bearing No. 831085, the *MCD receipt* dated 01.08.1995 and the *electricity bill* dated 16.12.1995 were exhibited as **Ex. PW-1/8**, **Ex. PW-1/9** and **Ex. PW-1/10**, respectively.

24. PW-1 further relied upon the *birth certificate* of Sh. Harender Singh, *caste certificates* concerning Gyan Chand, the *death certificate* of Gyan Chand, a *Life Insurance Corporation certificate*, a *Training Certificate* and an *admission card* containing a roll number, as **Ex. PW-1/12** to **Ex. PW-1/17**, respectively. The *letter* No. 16582 dated 16.08.1988 was **Ex. PW-1/17A**, the *ration card* as **Ex. PW-1/18** and Gyan Chand's *Election Identity Card* as **Ex. PW-1/19**. The *Photographs* were collectively **Ex. PW-1/20**.

25. The remaining documents were a *letter* dated 14.05.2007, a *complaint* dated 18.05.2007, a *statement* dated 07.07.2007, a *police report* dated 31.01.2009 and a *complaint* dated 15.06.2009, which were exhibited as **Ex. PW-1/21** to **Ex. PW-1/25**, respectively.

26. The Defendants were afforded repeated opportunities to cross-examine PW-1, but they did not avail themselves of those opportunities. An Application under **Order XVIII Rule 17 CPC** was subsequently filed, and the Defendants were granted an opportunity to cross-examine him. However, before the cross-examination could be completed, Defendant No. 2 died and steps were taken to implead his legal representatives. **In the meantime, PW-1 also died and he could not be cross-examined.**

27. **PW-2, Sh. Kulwinder Pal Singh**, Clerk with Jagriti Mahila Samiti, Rajouri Garden, Delhi, was examined in connection with the Notice dated 14.05.2007, already exhibited as **Ex. PW-1/21**, which the Samiti had sent to



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Sh. Gopal Chand @ Gyan Chand, son of Sh. Shyamlal. The Complaint filed by Defendant No. 1, Smt. Raj Bala, before the Samiti was exhibited as **Ex. PW-2/1**, and the proceedings sheet of the Samiti, as **Ex. PW-2/2**.

28. **PW-3, Sh. Harender Singh**, son of Gyan Chand and one of the legal representatives of the deceased Plaintiff, testified that his father had died on 26.11.2013 and had been the absolute owner of the suit property, measuring 150 square yards. He also corroborated PW-1's testimony.

29. **The Defendants did not lead any evidence, despite being given opportunities to do so.**

30. **The learned District Judge**, upon consideration of the pleadings and evidence, observed that although PW-1's cross-examination remained incomplete because he died before it could be concluded, his testimony did not thereby, become inadmissible. Relying on Krishan Dayal v. Chandu Ram, MANU/DE/0078/1969, it was observed that the absence of cross-examination affected the weight to be attached to PW-1's testimony, but not its admissibility.

31. It was further noted that PW-1 had proved the documents exhibited as **Ex. PW-1/3 to Ex. PW-1/7**, while the Defendants' allegation that those documents were forged, remained unsupported by evidence. Applying the presumption under *Section 90 of the Indian Evidence Act* to the documents produced from PW-1's custody, the **learned District Judge held that Ex. PW-1/3 to Ex. PW-1/6 had been duly proved**. The Will, Ex. PW-1/7, however, was held to have not been proved in accordance with Section 68 of the Indian Evidence Act, read with Section 63 of the Indian Succession Act, because no attesting witness had been examined.



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32. **The learned District Judge** further found that the documents supported the Plaintiff's possession of the suit property from 20.05.1981 until 17.07.2007. This finding was corroborated by the property-tax bills dated 20.07.1993 and 12.07.1995, exhibited as **Ex. PW-1/8** and **Ex. PW-1/9**; the electricity bill dated 14.02.1995, **Ex. PW-1/10**; and the birth certificate of PW-3, the Plaintiff's son, **Ex. PW-1/12**. The other records, including certificates, letters and identity documents exhibited as **Ex. PW-1/13 to Ex. PW-1/19**, also supported the Plaintiff's residence at the property. Although the Defendants denied his possession, they led no evidence to substantiate that denial or their claim that Defendant No. 1's husband had purchased the property.

33. The possessory rights claimed by the Plaintiff were considered in light of Ghanshyam v. Yogendra Rathi, AIR 2023 SC 2754. Applying that decision, it was held that, although the agreement to sell did not make the Plaintiff the owner in the strict sense, Ex. PW-1/4 and Ex. PW-1/6 supported his possessory rights, which were protected under **Section 53A of the Transfer of Property Act, 1882**. As the agreement to Sell dated 20.05.1981 pre-dated the 2001 amendment, the Plaintiff was held entitled to that protection.

34. The Defendants' claim that Defendant No. 1's husband had purchased the property from the Plaintiff, was unsupported by evidence. The suit for possession, founded on the Plaintiff's prior possession and subsequent dispossession, was therefore, held maintainable under Article 64 of the Limitation Act, and the Plaintiff was found entitled to a decree for possession.



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35. Although mesne profits were claimed at ₹5,000 per month, it was held that the Plaintiff had led no evidence of the prevailing rental value in the vicinity. His oral assertions about rent in 2009 and later years were therefore, not accepted. The claims for *mesne profits*, was **therefore, declined.**

36. Furthermore, **the claim for Mandatory Injunction was also rejected**, because there was no evidence identifying the construction raised by the Defendants or the alterations made to the suit property. **The Defendants were, however, restrained by Permanent Injunction from creating third-party rights in the suit property.**

37. Accordingly, by judgment dated 29.03.2025, the suit was **partly decreed** for possession and Permanent Injunction, while the claims for **Mesne Profits and Mandatory Injunction were declined.**

38. **Defendant No. 1, Smt. Raj Bala**, has challenged the judgment dated 29.03.2025, by filing the present Regular First Appeal.

39. The **grounds of challenge** are that the decree is null and void, as it had been passed in favour of the deceased Plaintiff without his legal representatives being substituted, in accordance with *Order XXII Rule 3 CPC*. It is further submitted that merely mentioning the names of the legal representatives, did not amount to their formal substitution. The Appellant has also challenged the reliance placed on the Plaintiff's testimony, on the ground that he had died before his cross-examination could be conducted.

40. It is further contended that the Plaintiff had admitted that the original property papers were lost and had relied only on photocopies which allegedly pertained to a property measuring 300 square yards, whereas the



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suit property admeasured only 150 square yards. She asserted that this discrepancy, undermined the Plaintiff's claim.

41. The Appellant has further contended that her documentary evidence including electricity bills, a voter identity card, a ration card and a rent agreement in her husband's name, as well as the children's birth certificates, had established her lawful possession of the suit property, but had been overlooked.

42. Lastly, it is contended that the Appellant had not been duly served or given an opportunity of hearing, *in violation of the principles of natural justice*. She further contended that the decree for possession and the Execution proceedings continued in the name of Sh. Gyan Chand, without recording his death.

43. It is therefore, submitted that the impugned judgement, be set aside.

Submissions heard and record perused.

44. Late Sh. Gyan Chand (Plaintiff/Respondent herein), now represented by his legal representatives (Respondents herein), instituted a **Suit for Possession, Permanent, Mandatory Injunctions, and Mesne Profits, against the Appellant/Defendant No. 1, Smt. Raj Bala.**

45. The facts as narrated in the plaint were that the Appellant, who was married to his brother, Sh. Prakash Chand, had forcibly occupied the suit property on 17.07.2007 and was liable to be evicted. He accordingly, claimed that he had the right to seek possession of the suit property ad-measuring 150 sq. yards, since he was dispossessed by the Appellant, on 17.07.2007.



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46. Gyan Chand, Plaintiff as PW-1 deposed that *Smt. Devi Bai, wife of Sh. Roop Chand*, had purchased 1,200 square yards of land, by way of a registered Sale Deed dated 10.02.1972, Mark A. He further deposed that *Smt. Devi Bai transferred 300 square yards to him on 20.05.1981*, for a consideration of ₹24,000, through a GPA, Agreement to Sell, affidavit, receipt and Will, Ex. PW-1/3 to Ex. PW-1/7. The trial court treated Ex. PW-1/3 to Ex. PW-1/6 as proved, but held that the Will, Ex. PW-1/7, had not been proved in accordance with law.

47. The Appellant claimed that her husband had purchased the suit property from the Plaintiff.

48. The Appellant's **first challenge** is that she was not afforded an opportunity to cross-examine PW-1 and that, in the absence of cross-examination, *his testimony could not have been read in evidence*.

49. The procedural history shows that PW-1 was examined in chief, on 08.03.2010. The Appellant's right to cross-examine him, was closed on 24.05.2010. Her application to recall PW-1 was allowed on 30.11.2011, subject to payment of costs of ₹5,000. Thereafter, an Application under *Order XVIII Rule 17 CPC* was allowed on 06.05.2013, subject to payment of costs of ₹10,000. Despite these opportunities, PW-1 was not cross-examined. In the meantime, Defendant No. 2 passed away on 26.11.2013 and steps were taken to implead his legal representatives. PW-1 died, before his cross-examination could take place.

50. The chronology set out above, shows that the delay in completing PW-1's cross-examination was not attributable to him. Despite repeated opportunities, the Defendants failed to cross-examine him.



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51. The *second aspect* is the probative value of the testimony of the witness, who could not be cross-examined, on account of his death.

52. This aspect was considered in the case of Krishan Dayal v. Chandu Ram (supra), by the Coordinate Bench of this Court, wherein it was held that a witness's examination-in-chief *does not become inadmissible merely because the witness dies before being cross-examined, provided the testimony was admissible when recorded*. The absence of cross-examination affects the weight to be attached to the testimony, but does not render it inadmissible or require it to be disregarded altogether. **The Court must assess its weight, in light of the facts and circumstances of the case, including the nature and probative value of the testimony, the witness's relationship or connection with the parties, any possible animus, and other circumstances bearing on the witness's credibility.** If, after applying due caution, the Court considers it appropriate to rely on the testimony; doing so would not, by itself, render the decision infirm.

53. It is therefore evident that the absence of cross-examination does not, by itself, render a witness's testimony inadmissible. It may affect the testimony's probative value but its credibility in light of the surrounding circumstances, including the witness's relationship or connection with the parties, any possible animus, and other relevant circumstances must be assessed.

54. In the present case, PW-1's claim to prior possession was supported by the documents exhibited as Ex. PW-1/3 to Ex. PW-1/7. The trial court treated Ex. PW-1/3 to Ex. PW-1/6 as proved, but held that the Will, Ex. PW-1/7, had not been proved in accordance with law. **His testimony was**



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therefore supported by documentary evidence and cannot be disregarded merely because it was not tested by cross-examination.

55. The Appellant's claim also traced her husband's alleged right to the Plaintiff, as she asserted that Sh. Prakash Chand had purchased the suit property from him under documents dated 10.06.1987. The Appellant had been given repeated opportunities to cross-examine PW-1 but did not avail herself of them, his subsequent death prevented the cross-examination from being completed. In these circumstances, the learned District Judge rightly considered PW-1's testimony, while assessing its weight with due caution.

56. The **second challenge** taken by the Appellant was that despite the demise of the Plaintiff, his legal heirs were not brought on record, under OXXII Rule 3 CPC, but only their names got mentioned.

57. This contention is fallacious as the record reflects that the Application under Order XXII Rule 3 CPC, was filed by the Legal heirs. By the Order dated 10.09.2014, the court condoned the two-day delay in filing the application under Order XXII Rule 3 CPC, and allowed the Application and brought the five legal representatives named therein, on record. The ground that the decree was passed without substitution of the Plaintiff's legal representatives, is therefore without any basis.

58. The **third challenge** relates to the merits of the case. In her written statement, the Defendant/Appellant asserted that she was the wife of Sh. Prakash Chand, the brother of the Plaintiff, Sh. Gyan Chand, and that she had come to reside in the suit property after her marriage to Sh. Prakash Chand on 08.05.1995. She claimed that they had resided there peacefully and that their two children, Sonu and Suraj, then aged about 12 and 10



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years, respectively, also resided in the suit property. She further asserted that Defendant No. 1 was in actual physical possession and occupation of the suit property.

59. The Defendant/Appellant, Smt. Rajbala, further asserted that the property originally measured 300 square yards, of which 150 square yards stood in the name of the Plaintiff. She claimed that her husband, Sh. Prakash Chand, had purchased the suit property from the Plaintiff, Sh. Gyan Chand, on 10.06.1987, from his hard-earned money. She also stated that an electricity connection and ration card had been issued in her name and those of her children by the Government of Delhi. According to her, her husband had constructed the property and had let out a shop to a tenant, Shami Ahmad, under a rent agreement dated 25.10.1996. She further stated that their daughter, Ms. Sonam, was born on 26.06.1997.

60. The Plaintiff's chain of title includes the sale deed dated 10.02.1972, marked as Mark 'A', executed in favour of Smt. Devi Bai, who purchased a total area of 1,200 square yards. The Plaintiff, in turn, purchased 300 square yards from her in 1981 through an Agreement to Sell, GPA and other documents dated 20.05.1981 (Ex. PW-1/3 to Ex. PW-1/7), for a total consideration of ₹24,000/-. **These documents support the assertion that the Plaintiff purchased 300 square yards in 1981. However, the Plaintiff's case is that the suit property comprises 150 square yards, and the Defendant's residence in that property is admitted.**

61. The Appellant's case was that the Plaintiff later sold 150 square yards to his brother, Sh. Prakash Chand, her husband, for ₹13,000 through



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an Agreement to Sell and other documents dated 10.06.1987. The Appellant did not lead evidence at trial to prove the execution of those documents, payment of the alleged consideration, or the identity of the portion, said to have been transferred. The mere assertion of a purchase in the pleadings could not, without proof, establish the Appellant's husband's right to the suit property.

62. Further, the consideration recorded for the alleged sale, was only ₹1,000 more than the proportionate consideration, attributable to 150 square yards in the 1981 purchase, despite the passage of six years. This circumstance, together with the Plaintiff's denial of the alleged sale, casts doubt on the Appellant's claim. The burden was on the Appellant to prove both; the alleged transaction and that the portion purportedly purchased by her husband, was the suit property. She led no evidence to prove her either assertion.

63. PW-1 further deposed that the Appellant began residing in the suit property after marrying his brother, Sh. Prakash Chand. This testimony supported the Plaintiff's case that she occupied the property as a family member, rather than under an independent right arising from a purchase. The Appellant led no evidence to rebut or establish that her occupation was founded on a transfer of the suit property, to her husband.

64. **The Plaintiff, therefore, successfully proved his right to claim the possession of the suit property.**

65. Although the Appellant led no evidence in support of her case, she has filed an application, **CM APPL. No. 3630/2026, under Order XLI Rule 27 read with Section 151 CPC**, seeking permission to place



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additional documents on record. She states that the documents, including an electricity bill and ration card, were in her possession but could not be formally produced due to inadvertence and omissions on the part of her former counsel. She seeks to rely on them to establish her possession of the suit property.\

66. Order XLI Rule 27 CPC permits additional evidence in appeal where the trial court refused to admit evidence that ought to have been admitted, where, ***despite the exercise of due diligence, the evidence was not within the party's knowledge or could not be produced at the time of trial or where the appellate court requires the evidence to pronounce judgment, or finds some other substantial cause for admitting it.***

67. In the present case, the Appellant attributes the non-production of the documents to ***inadvertence and omissions*** on the part of her former counsel. **The documents existed and were in her possession from the outset.** The explanation offered does not establish that, despite due diligence, she was unable to produce them at trial. Nor has she shown that this Court requires the documents to pronounce judgment or that any other substantial cause warrants their admission. **The requirements of Order XLI Rule 27 CPC are therefore not satisfied.**

68. The application also appears to be an attempt to address the observations made by the learned Trial Court while decreeing the suit in favour of the Plaintiff. In any event, the documents are sought to establish the Appellant's long-standing possession, which is not in dispute. The material issue is whether she has established a right to remain in the suit property. The documents necessary to support her case on that issue were



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the documents of ownership, which she did not prove in accordance with law.

69. The Appellant has also relied on copies of an Electricity Bill dated 30.01.1997, Ration Card, the children's Birth Certificates and Voter Cards, amongst other documents, to show residence and long possession. Those documents were filed, along with her Application under Order XLI Rule 27 CPC.

70. Even if taken into consideration, the documents showing an Electricity Connection, residence or the children's birth at the property, may support the fact of occupation; they do not, without more, prove the alleged sale or establish ownership of the specific 150-square-yard portion. The Appellant's case is that her husband acquired the property from Gyan Chand. Unless that transaction is proved, records of residence or possession cannot, by themselves, establish the proprietary right asserted by her. They may be relevant to possession, but do not establish that the possession was held in the capacity of an owner.

71. The evidence also has to be considered against the Plaintiff's account that the Appellant began residing at the property, after marrying his brother, Sh. Prakash Chand. The documents relied upon by the Appellant may show that she or her family resided there, but they do not contradict that explanation that she came to reside in the suit property after marriage or establish an independent purchase. In the absence of proof of the alleged 1987 transaction, the fact of residence does not displace the Plaintiff's evidence of an earlier possessory right.



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72. The distinction between proprietary and possessory rights is settled. Prior possession gives a person a right to recover the property from a subsequent trespasser, but that right does not prevail over a defendant who establishes a better legal title. In Nair Service Society Ltd. v. Rev. Father K.C. Alexander, AIR 1968 SC 1165, the Supreme Court held that where the defendant proves a better title, the plaintiff must establish a superior right to possession or fail. Articles 64 and 65 of the Limitation Act recognize, respectively, Suits based on prior possession and suits based on title.

73. The same principle was reiterated in Smriti Debbarma (Dead) through Legal Representative v. Prabha Ranjan Debbarma, 2023 SCC OnLine SC 9. The Supreme Court held that a person in possession cannot be dispossessed unless the claimant establishes a better legal right, whether by ownership or an entitlement to possession. The plaintiff must succeed on the strength of that right; the weakness of the defendant's case alone cannot justify a decree for possession.

74. In Poona Ram v. Moti Ram, (2019) 11 SCC 309, the Supreme Court held that a claim based on prior possession must be supported by proof of settled possession and identification of the disputed property. The Court upheld the defendant's claim where the defendant established title and possession, and the plaintiff failed to prove settled possession of the property in dispute.

75. These principles do not permit forcible dispossession. As held in Rame Gowda v. M. Varadappa Naidu, (2004) 1 SCC 769, even a rightful owner must resort to law to remove a person in settled possession. That protection against self-help does not, however, convert possession into



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ownership or defeat a superior right established in proceedings for recovery of possession.

76. In the present case, the Appellant's documents establish, at most, her family's residence or occupation of the property. They do not prove the alleged transfer of suit property to her husband or a proprietary right in the specific suit property. The Plaintiff's evidence, on the other hand, establishes his earlier possessory right. The Appellant's evidence of residence, without proof of the alleged purchase, does not entitle her to any proprietary right.

77. Accordingly, the learned District Judge rightly held that these documents do not, by themselves, convey absolute ownership of the suit property to the Plaintiff.

78. The learned District Judge also declined to award *mesne* profits for the period claimed because the Plaintiff had not proved the prevailing rental value. This finding warrants no interference.

79. Accordingly, the learned District Judge rightly held that these documents by themselves do not convey absolute ownership the Plaintiff.

Conclusion:

80. The learned District Judge rightly decreed possession in favour of the Plaintiff and restrained the Appellant/Defendant from creating any third-party rights in the suit property.

81. The Appellant nevertheless continues to occupy the suit property, despite the decree for possession. She shall, therefore, vacate the property within three months from today. If she fails to do so, she thereafter, shall



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pay the Respondents user-and-occupation charges of ₹5,000 per month, until delivery of vacant possession.

82. The present First Appeal, is hereby, **dismissed** with the aforesaid directions. The pending Applications are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 12, 2026/dss/R