



2026:DHC:3376



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

% **Reserved on: 11th March, 2026**

Pronounced on: 23rd April, 2026

+ **RFA 856/2024 & CM APPL. Nos. 5089/2025 & 14618/2026**

MR. RAVI MALIK

S/o Sh. M. C. Malik,

R/o 1241, Dr. Mukherji Nagar, Delhi.

.....Appellant

Through: Mr. Bishwajit Dubey (DHCLSC) with
Mr. Akshit Awasthi and Ms. Gurleen
Kaur Advocates.

versus

SH. ASHOK KUMAR MALIK

S/o Sh. M. C. Malik,

R/o 1241, Dr. Mukherji Nagar, Delhi.

.....Respondent

Through: Mr. Hari Kishan, Advocate with
Respondent in person.

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 preferred by the Appellant/Defendant under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*), assailing the Judgment and Decree dated 07.10.2024 passed by the learned District Judge, Delhi in CS No. 1598/2016 titled '*Ashok Kumar Malik vs. Ravi Malik*', whereby the *Suit filed by the Plaintiff for Possession and Damages/Mesne Profits* in respect of second floor of property bearing No. 1241, Dr. Mukherjee Nagar, Delhi-110009 (*hereinafter referred to as the "Suit Property"*), was decreed.



2. The *case of the Plaintiff / Respondent* was that he had purchased the Suit Property from Smt. Swaran Kanta, from his self-acquired funds, in the year 1985. The property was initially a leasehold property, and was subsequently, converted into freehold property, and a Registered Conveyance Deed dated 11.08.2000 Ex.PW-1/1, was executed in favour of the Plaintiff / Respondent. He has claimed that he was the sole and absolute owner of the Suit Property.

3. The ground floor and the first floor were occupied by the Respondent/Plaintiff and his family members. In the year 1988, he had permitted the Appellant/Defendant, his brother, and his family members, to use and occupy one room with attached bathroom and kitchen on the first floor of the Suit Property. The remaining portion of the first floor of the Suit Property was in the occupation of the deceased son i.e. Sh. Sanjay Malik, of the Plaintiff, who had died on 03.10.2010.

4. In the year 2010, renovation of the suit property was undertaken, and during this period the Appellant and his family members were permitted to occupy two rooms with attached toilet, verandah and kitchen, admeasuring approx. 62.25 square meters, on the second floor of the Suit Property.

5. It was alleged that subsequently, the conduct of the Appellant became hostile and he started creating disturbances in the peaceful occupation and enjoyment of the Respondent. Despite repeated requests made by the Respondent to vacate the premises, the Appellant failed to hand over possession.

6. Consequently, the Respondent issued a Legal Notice dated 09.09.2013 to the Appellant, thereby revoking the Licence granted in his favour, and called upon him to vacate the portion under his occupation, on



or before 30.09.2013. Further, the Defendant replied to the said Legal Notice on 13.09.2013, wherein he claimed himself to be the co-owner of the Suit Property on the basis of a family settlement, and despite service of the said Legal Notice dated 09.09.2013, the Appellant failed to vacate the premises and continued to remain in unauthorized occupation of the same.

7. *The Plaintiff therefore, filed a Suit for Possession and damages/mesne profits at the rate of ₹20,000 per month, with effect from 01.10.2013, till the handing over of vacant possession.*

8. The Appellant/Defendant contested the suit by filing a **Written Statement**, wherein he denied the allegations made in the Plaint and claimed that he was not a Licensee, but a co-owner of the Suit Property, having an equal share with the Plaintiff therein.

9. It was submitted that he had been residing in the Suit Property since 1987, as a co-owner and not as a licensee, as claimed by the Plaintiff. It was explained that he was born on 15.02.1964, and his father Late Sh. Moolchand Malik expired when he was about 06 years old. Plaintiff was the elder brother of the Defendant. He studied upto class XII, and in the year 1981 he started working with the Plaintiff at Shop No.277/8 & 9, Pathak Karor, Ajmeri Gate, Delhi, which was a printing, photoshop and stationery supplies business. He continued to work with the Plaintiff in the shop till the year 1989, whatever was earned by the Defendant, between the period 1981-1989, was handed over to the Plaintiff, who was maintaining the accounts of the business.

10. In the year 1989, Defendant started his own separate business in the name of M/s Malik Trading Company at Shop No.277/8, Pathak Karor,



Ajmeri Gate, Delhi. Thereafter, he got married in the year 1990 and continued to carry on his business up to the year 1993.

11. The Defendant asserted that he had contributed equal amount in purchase of the Suit Property and had also contributed equally in raising the construction as well. Thereafter, Defendant had started residing in the Suit Property as co-owner. Neither the Plaintiff nor Smt. Ishwari Devi (mother) ever raised any objection against the occupation and possession of the Defendant, his possession and occupation were open, declared and to the full knowledge of the Plaintiff and mother Smt. Ishwari Devi, since the year 1987. The Plaintiff filed the Suit only in the year 2014, and it was clearly barred by limitation. The Defendant claimed that he had acquired the title in the Suit Property by way of adverse possession.

12. The Defendant further asserted that the Suit Property was purchased in the year 1985 in the name of Smt. Ishwari Devi (mother), as the father had expired much earlier. The title documents, executed in the name of Smt. Ishwari Devi and the Plaintiff, were the simple reason that the mother was the head of the family and Plaintiff was the eldest son. Both Ishwari Devi and Plaintiff were holding the Suit Property, in trust for the benefit of the Defendant, who was the sixth younger brother of the Plaintiff.

13. The right and interest of the Defendant in the Suit Property is thus protected by sub-Clause 3 of Clause 4 in the Benami Transactions (Prohibition) Act, 1988. The Defendant was standing in a fiduciary capacity in his relationship with the mother Smt. Ishwari Devi and the Plaintiff.

14. The Defendant further asserted that the Conveyance Deed dated 11.08.2000 was manipulated by the Plaintiff, who misused the documents executed in the name of Smt. Ishwari Devi in respect of Suit Property and



thereafter, without the knowledge of the Defendant, Plaintiff illegally and fraudulently got the Conveyance Deed executed in his name. The Defendant came to know about the Conveyance Deed dated 11.08.2000 only after receiving the Notice of the present Suit.

15. The Appellant, thus claims that he along with his family has been residing in the Suit Property as a co-owner and has half share in the Suit Property. In support of his assertions, he made reference to his LIC Policies and other documents, which were all at the address of the Suit Property.

16. On merits, the Defendant / Appellant explained that in the year 1985, the Suit Property was purchased for a sale consideration of Rs. 40,000/- though the documents were executed in the name of his mother Smt. Ishwari Devi, and the Plaintiff in two parts. The Registered GPA dated 13.05.1985 was executed in the name of Smt. Ishwari Devi, while un-registered Agreement to Sell dated 13.10.1985 was in the name of the Plaintiff. The Defendant / Appellant asserted that he is the co-owner and not a licensee, and therefore, is not liable for eviction from the Suit Property.

17. No replication was filed by the Plaintiff in response to the Written Statement of the Defendant.

18. On the basis of the pleadings of the parties, the learned Trial Court framed issues on 05.10.2016, as under:

- i. *“Whether the plaintiff is entitled for decree of possession as prayed for? OPP.*
- ii. *Whether the plaintiff is entitled for decree of mesne profit as prayed for? OPP.*
- iii. *Whether the plaintiff has not come to the court with clean hands and has suppressed material facts? OPD*



- iv. *Whether the defendant is the co-owner of property in question? OPD*
- v. *Whether the defendant has an adverse possession right/s, having uninterrupted and uncontested possession for a specific period, hostile to the right and interests of true owner in the suit premises? OPD (additional issue framed vide order 24.08.2017).*
- vi. *Relief.”*

19. The Respondent/Plaintiff examined himself as PW-1 and tendered his evidence as Ex. PW1/A, wherein he relied in relevant documents and reiterated the contents of the Plaint.

20. PW-2 Sh. Anil Kumar Singh, from the office of Sub-Registrar, Vikas Sadan, INA, Delhi, who proved the Conveyance Deed dated 11.08.2000 Ex.PW-1/1 (OSR), which was executed in favour of the Plaintiff.

21. The Appellant / Defendant Sh. Ravi Kumar Malik examined himself as DW-1, he relied on various documents, i.e. GPA, Bank Passbook, Agreement to Sell and Complaint to DDA etc. (i.e. Ex. DW-1/1 to DW-1/17).

22. DW-2 Smt. Ishwar Devi, tendered her evidence by way of affidavit and deposed that she had purchased the Suit Property by way of a registered Sale Deed dated 14.05.1985, following which her sons, Ashok Kumar Malik and Ravi Malik, raised construction on the Suit Property. Further, she deposed that during the introduction of the Freehold Scheme, her elder son, Ashok Kumar Malik, obtained her signatures on the conversion documents, under the fraudulent misrepresentation that the title would be transitioned into her name, whereas he surreptitiously secured the Conveyance Deed in his own name and retained the title deeds.



23. Further, *DW-3 Sh. Shyam Sundar Seth* and *DW-4 Sh. Naresh Kumar*, tendered their evidence by way of affidavit as Ex. DW3/A and DW4/A respectively, who corroborated the defence of the Defendant.

24. The *learned District Judge, vide Judgment dated 07.10.2024*, upon appreciation of the pleadings, evidence and material, observed that the Respondent had successfully established his ownership of the suit property by virtue of the registered Conveyance Deed dated 11.08.2000, Ex.PW1/1. It was further held that the Appellant had failed to establish his claim of co-ownership and his plea of adverse possession.

25. Accordingly, the *learned District Judge* decreed the *Suit for Possession* and also directed the Appellant to pay *Mesne Profits* at the rate of ₹7,000/- per month to the Respondent, with effect from 01.10.2014 till its realization.

26. Aggrieved by the Judgment and Decree dated 07.10.2024, the Appellant/Defendant *has preferred the present Appeal*.

27. The *grounds of challenge* are that the Learned Trial Court erred in holding that the GPA and Agreement to Sell dated 13.05.1985 were not duly proved. While it is undisputed that the Conveyance Deed dated 11.08.2000 was executed by Smt. Ishwar Devi, as the GPA holder, but it is also an admitted fact that a registered GPA dated 13.05.1985 in respect of the suit property, was executed by the erstwhile owner Smt. Swarn Kanta, in favour of Smt. Ishwar Devi, mother of both the parties. The finding, is itself, self-contradictory and legally unsustainable.

28. The Respondent claimed ownership on the basis of an unregistered and unnotarized Agreement to Sell dated 13.05.1985, and further it was submitted that the Will and Receipt dated 13.05.1985 executed in his favour



by Smt. Ishwar Devi, were not on the record. The onus of proof pertaining to these documents was upon the Respondent, which he has failed to discharge.

29. The Respondent/Plaintiff also took a contradictory stance by denying the execution of GPA dated 13.05.1985 in favour of Smt. Ishwar Devi in his replication, however, has admitted the same during cross-examination as PW1. It was admitted that the family, earlier resided at *property No. 396, Khayala*, belonging to Smt. Ishwar Devi was sold by her in 1986, and thereafter shifted to the Suit Property in same year, which indicates that the property formed part of family arrangement, rather than the exclusive ownership of the Respondent. The Plaintiff had claimed that the Appellant was permitted to occupy the property in 1988, whereas in cross-examination, *he admitted that both parties shifted to the suit property, in January 1987.*

30. The learned Trial Court failed to apply the principle laid down in *Gopal Krishnaji Ketkar v. Mohamed Haji Latif*, AIR 1968 SC 1413 at 1416, wherein it was held that the party who is in possession of the best evidence, which would throw light on the issue in controversy, withholds such evidence, an adverse inference under Section 114(g) of the Evidence Act ought to be drawn against such a party, notwithstanding that the onus of proof may not lie on him. Thus, the burden was upon the Respondent to prove the same.

31. Smt. Ishwar Devi was examined as DW2, she had filed her affidavit of evidence, wherein she has stated that both the parties were co-owners of the Suit Property and that the property was purchased from Joint Family Funds, which was wrongly ignored by the learned Trial Court. However, she died before she could be cross-examined. The Respondent neither challenged



nor disputed the affidavit and examination-in-chief of Smt. Ishwar Devi, before the Trial Court, thereby impliedly admitting its contents.

32. The learned Trial Court failed to apply the principle laid down in *Krishna Dayal v. Chandu Ram* (1969) ILR Delhi 1090 that the examination-in-chief of a witness does not become inadmissible, merely because the witness dies before cross-examination.

33. The Learned Trial Court failed to appreciate that if the Respondent had purchased the property from his own funds, there was no explanation as to why the GPA dated 13.05.1985 was executed in favour of Smt. Ishwar Devi, instead of the Respondent.

34. The learned Trial Court erred in holding that the GPA in favour of Smt. Ishwar Devi is a disputed document, whereas the conveyance deed dated 11.08.2000 Ex. PW1/1, executed by Smt. Ishwar Devi, as undisputed.

35. The Appellant had already filed a Complaint dated 13.03.2014 Ex. DW1/5, before the DDA, against the fraudulent act of the Respondent, and to verify the Conveyance Deed dated 11.08.2000.

36. The learned Trial Court awarded mesne profits at the rate of Rs. 7,000 per month, despite the Respondent having led no evidence whatsoever, regarding the prevailing rent of the Suit Premises.

Submissions heard and record perused.

37. It is an admitted case that the Respondent/Plaintiff had deposed that he has the Conveyance Deed dated 11.08.2000 Ex. PW1/1 in his favour, a fact which has not been disputed by the Appellant. The claim of the Appellant was that in fact the Suit Property in the name of Respondent, had been purchased from the funds of the mother.



38. It is claimed that the property bearing No. A-396, Khyala, DDA Colony, New Delhi, in the name of the mother, was sold in the year 1986 and the funds from the sale were utilised in purchasing of the Suit Property. However, as has been rightly noted by the learned District Judge, the Suit Property had been purchased in the year 1985 while the sale of property bearing No. A-396, Khyala, DDA Colony, New Delhi, took place in the year of 1986.

39. The Appellant had further claimed that the funds of joint family were used to purchase the property. However, he admitted in his cross-examination that he had no documents of sale to corroborate his assertions that the funds had been provided by their mother. The account books of State Bank of India, Khyala, Maharashtra Bank at Mukherjee Nagar, which were in the name of the mother, had not been produced.

40. Further, it was admitted that the Khyala property had not been purchased but had been allotted in lieu of demolition of Indira Vikas property. The Appellant in his cross examination as DW1, has categorically admitted that he had not placed on record any document to establish the Joint Funds of the family for the purchase of the Suit Property.

41. The Appellant had asserted that he had contributed Rs. 1,50,000/- through cheque dated 24.09.2007 and also made a payment of Rs.3,50,180/- in the month of September, 2007 to the Plaintiff after withdrawing the same from the bank as reflected in the passbook Ex.DW1/2. However, a perusal of the bank statement Ex.DW1/2 to shows that a payment of Rs.1,50,000/- made to the Plaintiff, but there is nothing corroborative to show that the said amount had been paid towards the construction of the property. Likewise, the Defendant may have withdrawn Rs.3,50,180/- from his account but there



is no evidence to show that this amount after withdrawal by the Appellant, had been handed over to the Respondent/Plaintiff.

42. There is no evidence led by the Appellant to show the total cost of construction or to corroborate his assertions of having contributed Rs.3,50,180/- and Rs.1,50,000/- towards the construction. Even if this amount had been paid to the Plaintiff, that does not make the Suit Property purchased from the Joint Funds nor does it create any vested right of the Appellant in the Suit Property.

43. The Appellant had further asserted that since he was working with the Plaintiff from 1981 to 1989, all his earnings were with the Plaintiff and this money was utilised in purchase of the property. However, this contention again did not meet approval of the learned District Judge. A reference was made to the evidence of the Plaintiff to show that the Defendant was not working with the Plaintiff and was operating independently from different office.

44. The Plaintiff as PW1 deposed that the Defendant was working as apprentice at Khyala Village for learning tailoring job in the year 1982. After learning the work, he opened a shop under the name and style of M/s Citizen Tailors, Khayala Village, Delhi, in the year 1983, where he continued to work till 1984. Thereafter, he started photocopy business under the name and style of M/s Paras Photostat at 116, Bajaj House, 97, Nehru Place, New Delhi. He then started the business of plastic toys in the name of M/s Ashoka Plastic at 5392/49, second floor, Gupta Market, Sadar Bazar, Delhi in the year 1988. Thereafter, the Defendant in the year 1989, started business of hardware in the name of M/s Malik Trading Company at Ajmeri Gate, Delhi. He, thereafter, took up the business of fabrication in the name of M/s Om



Creation in the year 1993 at Uttam Nagar, Delhi. The deposition of the Respondent/Plaintiff was corroborated by the documents Ex.PW1/8 to PW1/14.

45. The evidence of the Respondent along with the documents, establish the claim of the Appellant that he had been working with the Respondent/Plaintiff from 1981 to 1989 and all his earnings had been kept by the Plaintiff, was clearly not proven. In any case, even if for the sake of argument, it is accepted that the Appellant was working with the Respondent/Plaintiff and the money was retained by the Plaintiff, the Appellant may have had a right to claim his share of money, but definitely it cannot be said that his earning had been used by the Respondent in purchase of the Suit property.

46. The Appellant had also asserted that in the year 2012, he had supplied certain hardware goods to the Plaintiff which were not returned by the Plaintiff and there was an outstanding payment. Firstly, there is no documentary evidence to corroborate the deposition of the Respondent. Moreover, the learned District Judge further noted that this statement did not form part of the pleadings. Even otherwise, the property had been purchased in the year 1985 while the investments are being shown of a subsequent period, which cannot by any interpretation be termed as a contribution for purchase of the Suit Property. Likewise, the Appellant had claimed that Plaintiff had joined as a partner on 25.11.1995, which was taken over by the Plaintiff w.e.f. 31.03.1996 after the Appellant retired.

47. Again, as observed by the learned District Judge, firstly, there is no documentary evidence, and secondly, this pertains to the business



relationship, and in no way establishes the fact that the Joint Family Funds were ever used for purchase of the Suit Property.

48. The Appellant, therefore, miserably failed in proving that he had any right, title, interest as an owner in the Suit Property. The learned District Judge, has thus, rightly concluded that the Suit Property solely belonged to the Plaintiff, and the Appellant was not the co-owner in the Suit Property.

49. The Appellant had also set up a plea of adverse possession by claiming that he had been in uninterrupted possession since 1987, and had relied upon various documents Ex. PW1/2 to PW1/17 in support thereof.

50. It is the case of the Respondent/Plaintiff himself that the Appellant had been inducted, in the Suit Property, by him as a licensee in the year 1988 and therefore, his being in possession, was not in dispute. The only question was whether the possession of the Appellant was open and hostile to that of the owner. The license was terminated by the Plaintiff in September, 2013 and when he did not vacate the property, filed the Suit.

51. In the case of M. Radhey Shyam Lal v. V. Sandhya & Anr., 2024 INSC 214, it had been held that when a party claims an adverse possession against the actual owner, he must establish that it was open and uninterrupted possession for more than 12 years to the knowledge of the owner. Pertinently, none of the ingredients to prove adverse possession, had even been pleaded, what to talk of proving of adverse possession. Merely because the Appellant was in possession, could not make it adverse and hostile to that of the original owner.

52. It is the case of the Respondent himself that he was inducted as a licensee. There is not an iota of evidence to show that his possession was



open and adverse. The plea of adverse possession has rightly been rejected by the learned District Judge.

53. The Appellant in order to assert that the Suit Property was purchased from Joint Family Fund, had relied upon the GPA dated 13.10.1985 which was executed in the name of the mother, while the Agreement to Sell dated 13.10.1985, was executed in the name of Respondent.

54. It was argued that the GPA in the name of the mother indicated that property was, in fact, intended to be purchased by her, though, in the name of the Respondent. However, this contention is absolutely fallacious for the simple reason that the Sale Deed in favour of the Respondent on the basis of Agreement to Sell was required to be executed by an Attorney and the Respondent could not have been the executor as well as the executee of the Sale Deed. Merely because GPA was in the name of the mother was not indicative of her being the actual owner, rather she on the basis of the GPA got the Sale Deed executed in the name of the Respondent. Further, if the property was purchased by the mother, Smt. Ishwar Devi, there was no reason for the Agreement to Sell not being in her name. Likewise, Smt. Ishwari Devi may have stated that Joint Family Funds were utilized for the purchase of the Suit Property, in her affidavit of evidence, but on account of her demise, she could not be cross-examined. There was no explanation in her affidavit to the source amount of the Joint Family Funds and thus, mere bald assertion, is of little assistance to the Appellant.

55. The last aspect, is in regard to the Mesne Profits, granted in favour of the Respondent. The Respondent had claimed Mesne Profits @ Rs.20,000/- per month, but the learned District Judge took judicial notice of the extent of the Suit Premises, which was two rooms with attached toilets on the second



2026:DHC:3376



floor of the Suit Property and reasonably assessed the mesne profits @ Rs.7,000/- per month. Thus, there is no ground to interfere with the mesne profits so awarded to the Respondent.

56. There is **no merit in the present Appeal, which is hereby dismissed.** Pending Applications, if any, also stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 23, 2026/R/N