



2026:DHC:3404



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

% *Reserved on: 12th January, 2026*

Pronounced on: 23rd April, 2026

+ **RSA 131/2025, CM APPL. 53794-53797/2025**

+ **RSA 132/2025, CM APPL. 53800-53801/2025**

SH. UTTAM PANDIT @ UTTIM LAL YADAV

(Now Deceased) through LRs:

1. Smt. Ram Kumari Devi: Wife
2. Satyanarayan Pandit: Son
3. Ganesh Pandit: Son
4. Gaurishankar Pandit: Son
5. Ms. Lakhi Kumari: Daughter
6. Ms. Santoshi Kumari: Daughter

All R/o Ghat No.24, Jamna Bazar, Delhi.

.....Appellant

Through: Mr. Rinku Garg and Mr. Piyush Joshi,
Advocates.

versus

SH. RAMESH CHAND (DECEASED) THR LR.

1. Smt. Sarla Devi W/o Sh. Ramesh Chand
2. Sh. Ajay S/o late Sh. Ramesh Chand
3. Sh. Sonu S/o late Sh. Ramesh Chand
4. Sh. Ravi S/o late Sh. Ramesh Chand
5. Sh. Shyam S/o late Sh. Ramesh Chand
6. Ms Pooja D/o late Sh. Ramesh Chand

All R/o Ghat No.24, Municipal No.2150,
Jamna Bazar, Delhi.

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. Both Regular Second Appeals under Section 100 read with Order XLI Rules 1 and 2 of CPC have been filed on behalf of the **Appellant, Uttam Pandit** against common Judgment and Decree dated 24.05.2025 passed by **Ld. District Judge, Delhi** in *RCA DJ No. 61896/2016* preferred by the Respondent, Ramesh Chand and *RCA DJ No. 148/2017* preferred by the Appellant, Uttam Pandit respectively, whereby **the Appeal of Ramesh Chand was allowed** and decree of possession in favour of Ramesh Chand was passed, while the **Appeal of the Appellant, Uttam Pandit was dismissed.**

Suit No. 95328/2016: Filed by Ramesh Chand on 22.03.1995, for Declaration, Recovery of Possession, Damages and Mesne Profit and Permanent Injunction, against Uttam Pandit.

2. The Respondent, Ramesh Chand filed a **Suit No. 95328/2016** (initially bearing CRN No. DLCT03-000051-1995), before the Court of **Ld. Civil Judge -11 Delhi** on 22.03.1995, against the Appellant Uttam Pandit for **Declaration, Recovery of Possession, Damages and Mesne Profit and Permanent Injunction.** Plaintiff Sh. Ramesh Chand stated that Sh. Om Prakash was the original allottee of property bearing *Ghat No.24, Municipal No.2150, Jamuna Bazar, Delhi* (herein after referred to as 'Suit Property') measuring about 13 Biswas (i.e. about 650 sq. yards) forming part of *Khasra No.235/101/36* situated in the revenue estate of Village Bela, Delhi, which he had bequeathed to Smt. Munno Devi, vide Will dated 08.09.1964. The case of the Ramesh Chand was that Smt. Munno Devi bequeathed the Suit Property in favour of Respondent, Ramesh Chand through a Will dated



26.02.1992, by virtue of which, Ramesh Chand became the owner of aforesaid property.

3. Ramesh Chand in his Suit, further explained that Sh. Om Prakash had one servant *Sh. Suraj Prakash S/o Sh. Ram Ujagar* and one room was given to him in the Suit Property. After demise of Sh. Om Prakash, Sh. Suraj Prakash started claiming himself to be the son of Late Sh. Om Prakash and started creating nuisance. When this fact came to the knowledge of Smt. Munno Devi, she terminated the services of Sh. Suraj Prakash and asked him to vacate the room, which was in his occupation as a tenant in the Suit Property, but he failed to vacate the room.

4. Ramesh Chand further stated that Defendant Uttam Pandit was a friend of Sh. Suraj Prakash and used to visit the Suit Premises, for offering prayers and *pooja*. He in collusion with Sh. Suraj Prakash, filed a *Suit for Permanent Injunction on 20.10.1987 bearing No. 264/1987, which got dismissed by the then Learned Sub-Judge, on 24.05.1988.*

5. Ramesh Chand further averred that one more *Suit bearing No.299/1988 was filed on 27.05.1988 by the Appellant Uttam Pandit, which got dismissed by Learned Sub Judge First Class, Delhi, vide Order dated 12.01.1993.*

6. Ramesh Chand further stated that Smt. Munno Devi had filed an Eviction Petition against Sh. Suraj Prakash, which was settled by way of a compromise and Suraj Prakash vacated and handed over the possession of the room. *The Petition was, accordingly, disposed of as withdrawn.*

7. Sh. Ramesh Chand further stated that on 03.07.1994, Defendant Sh. Uttam Pandit forcibly occupied the Suit Property, i.e. one room, which was earlier in occupation of Sh. Suraj Prakash.



8. Ramesh Chand had also filed **Suit No.315/1997** before the Court of the Learned Civil Judge, Delhi for Declaration, Recovery of Possession, Damages, *Mesne Profit* and Permanent Injunction, on 22.03.1995.

9. *The Local Commissioner appointed by Ld. Civil Judge, Delhi, visited the property on 12.01.1999 and filed her Report before the Court. The plaintiff relied upon the Report of the Local Commissioner. Thereafter, Ld. Civil Judge, Delhi, passed the order on 21.01.1999 for maintaining status-quo regarding possession in the property.*

10. The Plaintiff, thus filed the ***Suit for Recovery of Possession*** of one room in the Suit Property; **Declaration** that Sh. Uttam Pandit be declared as a trespasser and be directed to pay damages and *mesne profits*; and **Permanent Injunction** to restrain Sh. Uttam Pandit from occupying any other portion of the Suit Property.

11. The Suit was contested by Sh. Uttam Pandit, who in his **Written Statement** claimed that the *material facts have been suppressed*. He asserted that he was owner of the Suit Property, having purchased it from Sh. Suraj Prakash, who was admittedly the son of Late Sh. Om Prakash. All other contentions were denied by Sh. Uttam Pandit.

12. ***Sh. Ramesh Chand in his Replication***, reaffirmed his assertions made in the Plaint and denied the contentions of Sh. Uttam Pandit.

13. After completion of Pleadings, **Issues were framed on 27.10.2004**, as under:

- “1. *Whether the present suit is hit by section 10 of CPC?*
(OPD)
2. *Whether this court has no jurisdiction to try the present suit?* (OPD)



3. *Whether suit is bad for mis joinder and non-joinder of the parties? (OPD)*
4. *Whether the Plaintiff is the owner of the suit property? (OPP)*
5. *Whether Plaintiff is entitled for decree of possession as prayed? (OPP)*
6. *Whether Plaintiff is entitled for decree of declaration as prayed? (OPP)*
7. *Whether Plaintiff is entitled for damages and mesne profit as prayed against the defendant? (OPP)*
8. *Whether plaintiff is entitled for decree for permanent injunction as prayed? (OPP)*
9. *Relief.”*

14. Plaintiff Sh. Ramesh Chand, in support of his case, examined himself as **PW-1**; **PW-2 Sh. Anil Kumar**, **PW-3 Sh. Ansar Ali** and **PW-4 Sh. Prem Chand Sharma**.

15. Defendant Sh. Uttam Pandit examined **himself as DW -1** and deposed on similar lines, as his Written Statement.

16. **Learned Civil Judge, vide judgement dated 28.07.2016**, considered the evidence of both the parties and observed that Ramesh Chand was claiming ownership of the Suit Property on the basis of Will dated 26.02.1992, executed in his favour by Smt. Munno Devi, who, in turn, had got the suit property *vide* Will dated 08.09.1964 from Sh. Om Prakash, who was the original allottee of DDA. It was held that no document was filed to prove that original allottee was Om Prakash.

17. Furthermore, though Ramesh Chand was asserting that he had Will of Smt. Munno Devi in his favour, but referred to the Judgment dated 23.10.2009, passed by Co-ordinate Bench of this Court in the case of Mrs. Talat Parveen Naqvi vs. Delhi Development Authority & Anr. CS(OS)



1877/2009, which stated that mere Will *per se* does not confer any title, right or interest in favour of the legatee. To establish the interest in the Property, legatee must establish the title in his favour. Since no documents were produced to substantiate the ownership of Sh. Om Prakash, through whom Sh. Ramesh Chand was claiming title, he was not entitled to any relief.

18. It was observed that though the names of Sh. Om Prakash and Smt. Munno Devi and of Sh. Ramesh Chand, had been entered into Revenue Records and the Suit Property had been mutated in their names, and they were paying House Tax, but the Apex Court in the case of Balwant Singh & Anr. Etc vs. Daulat Singh (Dead) By L.Rs., decided on 07.07.1997, observed that Revenue Records are not the title documents to confer the right, title or interest in the Property. A reference was also made to Union of India vs. Vasavi Co-Op. Housing Society Ltd., Civil Appeal No.4702/2004 decided on 07.01.2014, to conclude that mutation of a particular property in the name of an individual or paying of House Tax does not create any right, title or interest in such person.

19. The mutation or paying House Tax by Sh. Om Prakash, Smt. Munno Devi or Sh. Ramesh Chand, **was held to be not sufficient to establish their right, title or interest in the Suit Property. It was thus, held that Sh. Ramesh Chand was unable to prove his ownership in respect of the Suit Property.**

20. Furthermore, *Declaration that Sh. Uttam Pandit was trespasser* in the Suit Property was denied, in terms of Section 34 SRA. It was also observed that Sh. Ramesh Chand had failed to seek any Declaration of ownership in his own favour. Insofar as the possession by Sh. Uttam Pandit was concerned, it was observed that there were contradictory pleas taken by the



Plaintiff Sh. Ramesh Chand, about his status and possession. *Considering that Ramesh Chand was not found to be the owner, the Recovery of Possession and other reliefs were declined and the Suit was dismissed.*

Civil Suit No.28/1999: Filed by Sh. Uttam Pandit on 12.02.1999, against Ramesh Chand seeking Possession of one room in the Suit Property:

21. Sh. Uttam Pandit in his Suit claimed his ownership and occupation in the Suit Property by virtue of GPA, Agreement to Sell and Receipt in the sum of Rs.1,80,000/-, executed in his favour by Sh. Suraj Prakash. He claimed to have purchased this Property in the year 1987. He got electricity meter installed in his name and got his name entered in the electoral list. He also got the property mutated in his name in Revenue Records and other Government Departments.

22. Sh. Uttam Pandit further claimed that Ramesh Chand was a trespasser, who forcibly took possession of the room in 1988, in which Ramesh Chand had been allegedly residing, though he is residing in another colony. The possession has been taken forcibly from Uttam Pandit, who has been dispossessed from another room.

23. Hence, Uttam Pandit filed the *Suit for Possession* in respect of one room forming part of the Suit Property.

24. The *defendant, Ramesh Chand (in this Suit)*, in his *Written Statement*, asserted that the Appellant had no *locus standi* to file the Suit, as GPA executed in his favour by Sh. Suraj Prakash, had been cancelled by Suraj Prakash through Public Notice published in daily Punjab Kesari, Delhi on 14.01.2000. Uttam Pandit was claimed to be a trespasser with no right,



title or interest in the Suit Property. It is also claimed that Suit did not disclose any cause of action.

25. Ramesh Chand asserted that Uttam Pandit had also **filed Suit No.299/1988 against Respondent Ramesh Chand for Permanent Injunction, before the Civil Court, Delhi**, on 27.05.1988. While the Suit was pending, he filed the Applications under Order XXXIX Rule 1 and 2 read with Section 151 and Under Order XXVI Rule 9 of CPC.

26. The **Local Commissioner** inspected the Suit Premises and defined the portions, in which the Plaintiff and Defendant were in possession in the Suit Property.

27. This **Suit No.299/1988** got dismissed by Ld. Sub Judge, First Class, Delhi, *vide* Order dated 10.01.1993, on the ground that Uttam Pandit had no *locus standi* and was not in possession of any portion of the Suit Property.

28. Sh. Ramesh Chand asserted that he was absolute owner of the Suit Property through Registered Will dated 26.02.1992, executed by Smt. Munno Devi, owner of the Suit Property, who died in the year 1994 and the Property stood mutated in MCD Records in his name. He denied having ever taken forcibly possession from Uttam Pandit, who was asserted to be a trespasser.

29. **Issues** were framed by learned Civil Judge on **04.05.2005**, as under:

- “1. Whether the suit is barred under Order 2 Rule 2 CPC? (OPD)*
- 2. Whether this suit is liable to be stayed under section 10 of the CPC? (OPD)*
- 3. Whether Plaintiff is the owner of the suit property? (OPP)*
- 4. Whether the Plaintiff is entitled for a decree of possession as claimed? (OPP)*



5. Relief.”

30. The evidence led in Suit No.536/2012 (old No.160/2011), was read in the present Suit, with the express consent of the Parties.

31. **Learned Civil Judge** referred to the evidence, wherein Uttam Pandit asserted that documents of ownership were prepared by Sh. Suraj Prakash in his favour, on two occasions. First set of documents was prepared in 1986 and second set in 1988. He also relied upon mutation of his name in the MCD Records. However, **learned Civil Judge noted** the discrepancies in the testimony of Uttam Pandit and concluded that Uttam Pandit was unable to establish ownership in the Suit Property. Moreover, GPA, Agreement to Sell etc. did not constitute sale, in terms of the Judgment of the Supreme Court in *Suraj Lamp & Industries (P) Ltd. (2) vs. State of Haryana*, (2012) 1 SCC 656.

32. Furthermore, he was claiming title through *Suraj Prakash*, who was alleged to be the adopted son of Sh. Om Prakash, when in fact, he was domestic servant who was serving Om Prakash, and after his demise, since he was facing financial hardships, he was given temporary shelter, and kept in service of Smt. Munno Devi, the next owner of the Suit Property. However, he slowly started claiming ownership and his service was terminated, by Munno Devi. *It was concluded that Uttam Pandit had no ownership rights nor there was any Sale Deed or Transfer Documents executed in his name and that Uttam Pandit was unable to prove his title in the Suit Property and consequently, the Suit for Possession was dismissed.*



RCA DJ 61896/2016 filed by Ramesh Chand and RCA DJ 148/2017 filed by Uttam Pandit:

33. *Ramesh Chand filed RCA DJ 61896/2016 and Uttam Pandit filed RCA DJ 148/2017*, both of which were decided *vide* common Judgement dated 24.05.2025, by learned DJ-06 Delhi.

34. **Ld. DJ. observed** that on the appreciation of evidence, it emerged that both, Ramesh Chand and Uttam Pandit were deriving their title from the same person, namely Om Prakash. It was held that Ramesh Chand had been able to prove better possessory title in view of the earlier litigation undertaken by Smt. Munno Devi against Sh. Suraj Prakash, who claimed to be owner, but the matter got settled and Smt. Munno Devi got back the possession of the Suit Property.

35. Moreover, Uttam Pandit had filed a *Suit for Permanent Injunction* against Ramesh Chand, but was dismissed *vide* Judgment dated 10.01.1993, by observing that he was unable to show the sale of property in his favour by Registered Sale Deed, as per Section 54 of the Transfer of Property Act, 1882, and documents like GPA, Sale Agreement, Will through which he was claiming his ownership, do not confer him any ownership rights.

36. It was concluded that multiple litigations had been undertaken which show that Uttam Pandit/Appellant had failed at different levels, to show a better title *qua* Smt. Munno Devi and Sh. Ramesh Chand. *It was thus, held that Ramesh Chand had a better possessory title than Uttam Pandit; therefore, it was held that Ramesh Chand was entitled to get possession in respect of the Suit Property, while LRs of Uttam Pandit were held to be illegally occupying the Suit Property.*



37. *Consequently, RCA DJ 61896/2016 preferred by Ramesh Chand was allowed and his Suit for Declaration, Possession and Injunction was decreed, whereas RCA DJ 148/2017 preferred by Uttam Pandit was dismissed.*

38. *Aggrieved by the said Judgment, Uttam Pandit has filed present two Second Regular Appeals, one assailing the dismissal of his Suit and the other assailing the decree passed in favour of Ramesh Chand.*

39. **The grounds of challenge** are that the learned Appellate Court erred in observing that Respondent Ramesh Chand had a better title, despite there being no registered Title/Sale/Conveyance Deed in his favour, thereby erroneously the possessory claim of the Respondent, was accepted as superior, even though he had no title.

40. Learned Civil Judge had rightly held that there was no document on record to show that the Suit Property was ever allotted to Sh. Om Prakash by the DDA. In the absence of any such allotment or ownership proof, Sh. Om Prakash had no right, title or interest to transfer the Suit Property to Smt. Munno Devi. Once Sh. Om Prakash had no legal title, subsequent transfer through Will dated 26.02.1992 executed by Smt. Munno Devi in favour of Sh. Ramesh Chand, could not create any valid or enforceable rights, as she herself had no transferable interest in the Suit Property.

41. Learned Appellate Court failed to appreciate the well-reasoned findings of the learned Civil Judge in this regard and erroneously accepted the *Will of Smt. Munno Devi*, as proof of better title.

42. *Learned Appellate Court* has contradicted the learned Civil Judge's correct finding that mutation or entry in Municipal/Revenue Records, cannot confer any title. The chain of title documents relied by the Respondent that



flows from Sh. Om Prakash to Munno Devi to Ramesh Chand, was legally not sustainable, since the original title of Om Prakash was never established. The long, settled, peaceful and continuous possession of the Appellant/ Uttam Pandit since 1988, has not been appreciated correctly, in the light of established jurisprudence that an independent possessory right enforceable even against the true owner, existed in favour of the Appellant.

43. Learned Appellate Court misdirected itself in law by not framing or addressing *the issue of adverse possession*, which squarely arose from the Appellant's long-standing uninterrupted possession, spanning well over 12 years without any legal challenge. The evidentiary value of documents such as Ration Card, Electricity Bills, Affidavits and Statements showing the Appellant's continued use, residence and occupation of the Suit Premises, has not been considered, rendering the finding against the Appellant, as perverse.

44. The Supreme Court in *Rame Gowda vs. M. Varadappa Naidu*, (2004) 1 SCC 769, has held that if the possession is settled, it must be protected and in the absence of better title, the person in possession is entitled to retain it.

45. Learned District Judge wrongly assumed that Ramesh Chand had better title merely based on alleged Revenue Records and Membership Receipts of Association, which are not the documents of title under law. The distinction between *de facto possession* and *legal ownership*, has not been appreciated and the correct test has not been applied, for determining who had better enforceable possessory right under the circumstances.

46. The *Appellant's Appeal bearing RCA DJ 148/2017* has been wrongly dismissed *on the ground of limitation*, without appreciating the *bonafide*



reasons for delay and without giving due weight to the fact that both parties, had been engaged in ongoing parallel litigations.

47. The Appellant/Uttam Pandit's claim was summarily rejected, without giving opportunity to prove that Suraj Prakash, from whom the Appellant derived possession, was in settled occupation of the Suit Property for decades and that his status as tenant or licensee, did not extinguish the Appellant's claim based on possession. The judgment of learned Court is asserted to be based on conjectures and surmises. Moreover, the judgment of *Suraj Lamp (supra)*, is asserted to have been incorrectly applied.

48. Learned Appellate Court ought to have *adjudicated purely on the basis of settled possession and conduct*, rather than recognizing the unregistered Will, as creating ownership in favour of the Respondent.

49. Furthermore, in Suit No.299/1988, PW-7 Anand Rao had clearly stated that he had paid rent to the Appellant/Uttam Pandit on the instruction of Suraj Prakash, thereby, corroborating Appellant's possession and control over the Suit Property in a landlord-like capacity. Appellant/Uttam Pandit has been proved to be collecting rent from tenants from Suit Premises, which evidence possession, control and public perception of ownership, none of which has been rebutted or challenged by the Respondents.

50. The Receipts of Rent, as recorded in the testimony of PW-7 Anand Rao, contradicts the allegations that Appellant was a mere trespasser; instead supports his possessory title under equitable principles. *The impugned common Judgement dismissing the Appeal of Uttam Pandit and decreeing the Suit of Ramesh Chand are, therefore, liable to be set aside.*



Submissions heard and record perused.

51. It is not in dispute *inter se* the parties that both Uttam Pandit and Ramesh Chand trace their respective claims in the Suit Property through Om Prakash.

52. The main contention of the Appellant was that he had a long and settled possession through Om Prakash, and he could not be ousted by Ramesh Chand, who had no title document, in his favour.

53. The learned District Judge, while deciding both First Appeals, had rightly observed that in the given circumstances, once both the parties were tracing their respective right through Sh. Om Prakash, the Suit should have been decided based on *better possessory title over the Suit Property*.

54. *Indeed, the dispute revolves around the “possessory rights” rather than, on the basis of “ownership rights” inter se the parties.*

55. It is, therefore, significant to understand the two concepts, i.e. “*possessory rights*” and the “*ownership rights*”. *Salmond on Jurisprudence (12 Edn. at paras 59-60) expounded the two concepts as under:*

“These two concepts of ownership and possession, therefore, may be used to distinguish between the de facto possessor of an object and its de jure owner, between the man who actually has it and the man who ought to have it. They serve also to contract the position of one whose rights are ultimate, permanent and residual with that of one whose rights are only of a temporary nature.”



56. While the law was still not certain whether the possession alone could be entitled to protection, in *Perry v Clissold* (1907 AC 73), the Australian Court categorically held that it cannot be disputed that a person in possession of land, is in the assumed character of owner and exercising peaceably the ordinary rights of ownership, has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, *and the possessory owner acquires an absolute title.*

57. In *English law*, possession is a good title of right against anyone who cannot show a better title. A wrongful possessor has the rights of an owner with respect to all persons except earlier possessors and except the true owner himself.

58. Many other legal systems, however, go much further than this, and treat possession as a provisional or temporary title even against the true owner himself. Even a wrongdoer, who is deprived of his possession, can recover it from any person whatever, simply on the ground of his possession. Even the true owner, who takes his own, may be forced in this way to restore it to the wrongdoer, and will not be permitted to set up his own superior title to it. He must first give up possession, and then proceed in due course of law for the recovery of the thing on the ground of his ownership. The intention of the law is that every possessor shall be entitled to retain and recover his possession, until deprived of it by a judgment according to law.

59. Legal remedies thus, intended for the protection of possession, even as against ownership, *are called possessory*, while those available for the



protection of ownership itself, *may be distinguished as proprietary*. The distinction in modern and medieval civil law, is expressed by contrasted terms; *Petitorium* (a Proprietary Suit) and *Possessorium* (a Possessory Suit).

60. As far back as 1924, in *Midnapore Zamindary Co. Ltd. v. Naresh Narayan Roy* 1924 SCC OnLine PC 18, the learned Judge observed that in India, persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a court.

61. *This was followed by the case in Nair Service Society Ltd. v. K. C. Alexander AIR 1968 SC 1165, wherein the Apex Court held that when the facts disclose no title in either party, possession alone decides. It was further held that if Section 9 of the Specific Relief Act, 1877 (corresponding to the present Section 6) is employed, the plaintiff need not prove title and the title of the defendant does not avail him. When, however, the period of six months has passed, questions of title can be raised by the defendant, and if he does so the plaintiff must establish a better title or fail. In other words, such a right is only restricted to possession in a suit under Section 9 of the Specific Relief Act (corresponding to the present Section 6) but does not bar a suit on prior possession within 12 years from the date of dispossession, and title need not be proved unless the defendant can provide one.*

62. *It was also observed in Nair Service Society Ltd.(supra) that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against the entire world except the rightful owner. In such a case, the defendant must show in himself or his predecessor a valid legal title and probably a possession prior to the plaintiff's, and thus be able to raise a presumption prior in time.*



63. As held in the case of *Nair Service Society Ltd. (supra)*, entitlement either by way of Possessory Title or Proprietary Title is recognized under Indian Law, which is evident from Articles 64 and 65 of Schedule to Limitation Act, 1963 which reads as under:

	Description of suit	Period of limitation	Time from which period begins to run
64.	For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years.	The date of dispossession.
65.	For possession of immovable property or any interest therein based on title. <i>Explanation...</i>	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff.

64. Article 64 thus, recognizes the maintainability of a Suit for Possession of immovable property based on *previous possession* and not on title, thereby embodying the principle of possessory title.

65. Likewise, Article 65 governs Suits for possession of immovable property based on *title*, and thereby recognises *proprietary title*, where the plaintiff must establish a better legal title as against the defendant.

66. It is therefore, evident that Possessory Rights and Proprietary Rights are distinct rights recognized under Indian Law, as has also been explained in *Nair Service Society Ltd. (supra)*.

67. In *Rame Gowda v. M. Varadappa Naidu (2004) 1 SCC 769*, a three-Judge Bench of the Apex Court, while discussing the Indian law on the subject, observed as under:

“8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled



*to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A **rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force.** If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. **Law presumes the possession to go with the title unless rebutted.** The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.”*

68. In *Rame Gowda*, the Hon'ble Supreme Court thus, held that *in the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title.*

69. Similar observations have been in *Poona Ram vs. Moti Ram* (2009) 11 SCC 309, the Apex Court endorsed the observations made in *Rame Gowda* (*supra*) that legal remedies thus, appointed for the protection of possession



even against ownership, are called *possessory*, while those available for the protection of ownership itself may be distinguished as *proprietary*. The distinction is expressed in contrasted terms of *petitorium* (a proprietary suit) and *possessorium* (a possessory suit). It was thus, held that the Plaintiff in the absence of better Title, can claim prior peaceful settled possession which itself is the evidence of title. It was held that the settled possession must be (i) effective; (ii) undisturbed; and (iii) to the knowledge of the owner or without any attempt and concealment by the trespasser. Moreover, there can be no straight jacket formula to determine settled possession and each case must be decided on its own facts. The possession should contain an element of *animus possidendi*. It was further observed that in order to claim possessory title, the Plaintiff will have to prove his own case and also will have to show that he has better title than any other person.

70. In the case of *Saleem & Ors. vs. Wahid Malik*, RSA No.118/2022 decided by this Court, it was held that in a suit for possession *simplicitor* or a suit for injunction against dispossession *simplicitor*, the Plaintiff is not required to establish title or ownership, but is only required to establish a better right to remain in possession of the Suit Property as compared to the right of the Defendant.

71. The aforesaid judgements thus, held ***that when the facts disclose no title in either party, possession alone decides***. It was thus, required to be considered about who had a better possessory title over the property, as had been rightly observed by Ld. District Judge, in the two Appeals.

72. Essentially, the Appellant, Uttam Pandit had been claiming title by asserting that he had purchased the Suit Property from Suraj Prakash, who was stated by him to be the adopted son of Om Prakash, through GPA,



Agreement to Sell, etc. dated 29.11.1988 Ex. PW-1/A to Ex. PW-1/C, Ex. PW-1/E respectively, as well as the electricity bills of the Suit Property, for 15th September 2015 and 27th February 2007 as Ex. PW-1/H, which was issued to him.

73. It has been rightly held by the Courts below that these documents do not create any right, title or interest in favour of the claimant so as to clothe him with ownership in the Suit Property and *therefore, the Appellant/Uttam Pandit was rightly, held not to be the owner of the Suit Property.*

74. Pertinently, the record reflects that the predecessor-in-interest of the Respondent, namely Smt. Munno Devi, had taken steps to recover possession from Suraj Prakash, and the possession of the Suit Property was restored pursuant to earlier proceedings. *The subsequent occupation of the Appellant is, therefore, not shown to be settled, continuous and acquiesced to, but rather emerges as disputed and contested throughout.*

75. In these circumstances, insofar as the question whether Ramesh Chand was entitled to recovery of possession from Uttam Pandit is concerned, it has been rightly observed that Uttam Pandit and Ramesh Chand, both were deriving their title from Om Prakash. The chain of documents flowing through a Will from Om Prakash to Munno Devi to Ramesh Chand have more credence, as compared to the Agreement to Sell of the Appellant and *consequently, Ramesh Chand was rightly, held to be entitled to Decree of Possession.*

76. There is no perversity shown in the findings of the learned District Judge. Essentially, the challenge in present Second Regular Appeal, is on the facts and *does not raise any substantial question of law.*



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77. There is no merit in both these Regular Second Appeals, which are accordingly **dismissed**. Pending Applications, if any, stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 23 , 2026/R