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

% *Judgment reserved on: 29.10.2026*
Judgment pronounced on: 19.11.2026
Judgment uploaded on: 19.11.2026

CNR No. DLHC010957562008

\+ **CS(OS) 1269/2008 & I.A. 3612/2023, I.A. 26461/2025, I.A. 31248/2025**

SHRI UMESH KUMAR SAHNI .....Plaintiff

Through: Mr. Shantnu Aggarwal, Advocate

versus

SUSHIL KUMAR SAHNI .....Defendant

Through: Counsel (*appearance not given*)

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

O.A. 228/2025

1. The appellant/defendant impugns the order dated 17.11.2025 [hereafter '**the impugned order**'] passed by the learned Joint Registrar (Judicial), whereby I.A. No. 3612/2023, filed by the respondent/plaintiff under Order XVI Rule 1(3) read with Section 151 of the Code of Civil Procedure, 1908 [hereafter '**CPC**'], was allowed, permitting the respondent/plaintiff to summon an official

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from the office of the Sub-Registrar-II B, Rajouri Garden, New Delhi [hereafter '**Sub-Registrar**'], along with the record pertaining to a registered lease deed dated 27.01.2016, and to examine the said official.

2. The appellant/defendant in CS(OS) No. 1269/2008 has challenged the aforesaid order primarily on the ground that, *vide* the impugned order, the learned Joint Registrar has permitted the respondent/plaintiff to summon an official from the office of the Sub-Registrar in an attempt to bring on record a fresh document, which neither forms part of his list of documents nor has been subjected to admission/denial. It is, therefore, contended that the respondent is seeking to introduce a fresh document at a belated stage of the proceedings under the guise of an application under Order XVI Rule 1(3) of CPC. It is further pointed out that a copy of the said document had earlier been filed by the respondent along with I.A. No. 3480/2017 on 16.03.2017, i.e., about nine years after institution of the suit. In this regard, the appellant has drawn the attention of this Court to the impugned order dated 17.11.2025.

3. It is stated that the respondent had instituted the present suit, i.e. CS(OS) No. 1269/2008, seeking partition, rendition of accounts and permanent injunction against the appellant/defendant in respect of a residential property bearing House No. A-1/49, Janakpuri, New Delhi [hereafter '**suit property**'], which has been pending before this Court since 05.07.2008. It is stated that the respondent is the younger

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brother of the appellant and, according to the appellant, has no right, title or share in the suit property, as he was merely a student and residing with his parents and brothers at the relevant time and had not contributed any amount towards its sale consideration. It is stated that the appellant has already explained in his pleadings the peculiar circumstances in which the name of the respondent came to be reflected in the sale deed dated 05.01.1980, executed for transfer of leasehold rights in the suit property, and that the entire sale consideration was paid by the appellant, with some contribution from their other brother, Sh. Vinay Kumar Sahni. The appellant further states that the respondent had assured him that he would take steps for deletion of his name from the records pertaining to the suit property and had also executed a family settlement dated 15.06.1980. However, the respondent failed to honour the said assurance. It is further contended that the respondent had abandoned the suit property in the year 1986 and that the appellant/defendant and Sh. Vinay Kumar Sahni continued to reside therein along with their respective families and parents, without any objection or protest from the respondent, who never contributed towards its maintenance, repairs, upkeep, property tax or other bills. It is stated that, after a lapse of about 22 years, the respondent instituted the present suit without any prior notice or disclosure of the true facts and without even impleading Sh. Vinay Kumar Sahni, who had also instituted a separate suit, being CS(OS) No. 1467/2010, in respect of the suit property, which has been clubbed with the present suit for trial.

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4. The appellant further states that issues in the suit were framed on 19.02.2010 and an additional issue concerning rendition of accounts was framed on 01.12.2011. The respondent filed his list of witnesses on 29.11.2013, naming six witnesses, but neither named any specific witness in relation to the issue of rendition of accounts nor filed any document in that regard. It is contended that, about nine years after institution of the suit, the respondent, as an afterthought, filed I.A. No. 3480/2017 on 16.03.2017, purportedly under Order XV-A read with Section 151 of CPC, seeking mesne profits in respect of the suit property. Along with the said application, he also annexed a copy of the alleged lease deed dated 27.01.2016, executed between third parties in respect of a newly constructed, three-storeyed and fully furnished house bearing No. A-1/358, Janakpuri, situated on a 60-feet-wide main road, having commercial potential, adjoining a park and flanked by two DDA markets. The appellant strongly opposed the said application by filing a reply on 25.04.2017, contending, *inter alia*, that the two properties were not comparable, as the suit property was about 50 years old, had an outdated design and was in a poor condition, besides being situated on an internal lane. It was also pointed out that the respondent had obtained an order of *status quo* from this Court in respect of the suit property. It is stated that the respondent succeeded in obtaining an order dated 02.05.2017 on the aforesaid application from this Court.

5. Aggrieved thereby, the appellant preferred FAO(OS) No. 206/2017. *Vide* order dated 31.07.2018, the Division Bench modified

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the order passed by this Court, observing that the issues framed in the suit involved serious disputes which were required to be decided on the basis of rival evidence led by the parties. The Division Bench further observed that the question of mesne profits was also a matter to be contested and that the appellant would be at liberty to lead evidence on the said issue, in the event of the respondent succeeding in the proceedings. The relevant observations of the Division Bench are as under:

> "The appellant's grievance is that by the impugned order, the learned Single Judge in a pending suit granted the plaintiff's/applicant's request for proportionate monthly mesne profits determining at ₹ 10,000/- per month. The learned single Judge also stated that such amount would be deducted from the value of the defendant's/appellant's share in the property.
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> x x x
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> This court has considered the submission as well as the material on record. At least three of the issues framed in the same suit (C.S. (OS) No. 1269/2008) creates serious disputes and would be determined on rival evidence lead by the parties. In the same manner, the court has erred in holding the claim of the plaintiff that he is the owner of the property. That apart, the learned Single Judge recognised while framing the issues that mesne profit was also a matter to be contested. In these circumstances, even an adhoc determination, declaring that one party or the other would be entitled to a specific amount that would be eventually deducted from his/her share in the court was not warranted. Accordingly, this court modifies the order of the learned Single Judge; the amount of ₹ 10,000/-, shall no way be conclusive or binding upon the parties – especially the appellant, who is at liberty to lead such evidence on the issue of mesne profit, in the event of the plaintiff succeeding in the proceedings."

6. It is stated that, after a further lapse of five years from the passing of the aforesaid order and after conclusion of his own cross-

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examination on 06.01.2023, the respondent/plaintiff filed I.A. No. 3612/2023 on 17.02.2023, purportedly under Order XVI Rule 1(3) read with Section 151 of CPC, seeking summoning of an official from the office of the Sub-Registrar, along with the original record pertaining to the aforesaid lease deed dated 27.01.2016, with a direction to bring a certified copy thereof.

7. It is the case of the appellant/defendant that he and Sh. Vinay Kumar Sahni had filed their respective replies to the aforesaid application on 01.04.2023 and 24.11.2023, respectively, opposing the same, *inter alia*, on the grounds that neither does the name of the official witness sought to be summoned appear in the list of witnesses filed by the respondent/plaintiff, nor does the document sought to be summoned form part of his list of documents or has been subjected to admission/denial. It is contended that the respondent/plaintiff cannot be permitted to introduce and prove a fresh document under the guise of Order XVI Rule 1(3) of CPC, particularly after approximately 15 years of institution of the suit. It is further argued that the document pertains to transactions between third parties and can be proved only through its executants, whereas the official from the Sub-Registrar's office would have no personal knowledge of the parties or the contents of the document and would not be in a position to answer questions concerning the same, thereby causing prejudice to the opposite parties. It is also contended that the genuineness of the document itself has not been established. It is further argued that the property forming the subject matter of the alleged lease deed is not

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comparable to the suit property, as it is a substantially larger, newly constructed, three-storeyed and fully furnished property situated on a 60-feet-wide road with commercial potential, whereas the suit property is approximately half a century old, has an outdated design and fittings, and is situated in an internal lane in a poor condition. It is also pointed out that the lease deed is dated 27.01.2016, whereas the respondent/plaintiff seeks rendition of accounts from the year 2007 onwards and, apart from making an oral averment in his affidavit, has not placed any documentary evidence in support thereof. The explanation furnished by the respondent/plaintiff that the document was not in existence at the time of filing of his list of witnesses is stated to be superficial and untenable and does not constitute sufficient cause for allowing the application under Order XVI Rule 1(3) of CPC. It is further submitted that Janakpuri is a large residential colony where several families have been residing as tenants for a considerable period.

8. The appellant/defendant also contends that the application and the replies filed by him and Sh. Vinay Kumar Sahni were not duly considered while passing the impugned order, which has been passed mechanically and without appreciating that the mandatory requirement of sufficient cause under Order XVI Rule 1(3) of CPC was not satisfied. It is further argued that the learned Joint Registrar committed an error in observing, in paragraph 10 of the impugned order, that the objections regarding irrelevancy of the document, etc., could be put to the summoned witness during his cross-examination,

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which is contrary to Section 139 of the Indian Evidence Act, 1872 (corresponding to Section 144 of the Bharatiya Sakshya Adhiniyam, 2023), which reads as under:

> "**139. Cross-examination of person called to produce a document**: A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness."

9. It is contended that an official summoned merely to produce a public document does not become a witness and cannot be cross-examined on the contents or relevancy of the document. The appellant, therefore, submits that the impugned order is perverse and arbitrary and is liable to be set aside.

10. The learned counsel appearing for the respondent/plaintiff, on the other hand, submits that the plaintiff had filed an application under Order XV-A of CPC, seeking directions to the defendant to deposit occupation charges/mesne profits in respect of the suit property, as the defendant is in exclusive possession thereof. It is submitted that the plaintiff had procured a registered lease deed dated 27.01.2016 and relied upon the same to establish the prevailing market rent. *Vide* order dated 02.05.2017, this Court had directed the defendant to deposit Rs. 10,000/- per month towards mesne profits during the pendency of the suit. However, the Division Bench of this Court, *vide* order dated 31.07.2018, had modified the aforesaid order, clarifying that the amount of Rs. 10,000/- would not be conclusive or binding upon the parties and that they would be at liberty to lead

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evidence on the issue of mesne profits. It is further contended that the list of witnesses was filed by the plaintiff on 29.11.2013, whereas the lease deed dated 27.01.2016 came into existence and was registered only on 03.02.2016. The plaintiff had already examined all the witnesses mentioned in his list of witnesses and, thereafter, moved the application seeking summoning of an official from the office of the Sub-Registrar to prove the aforesaid lease deed. It is submitted that the name of the official witness from the Sub-Registrar's office could not have been included in the original list of witnesses, as the lease deed itself was not in existence at the relevant time. It is, therefore, contended that the application seeking summoning of the said witness was rightly allowed by the learned Joint Registrar *vide* the impugned order dated 17.11.2025.

11. The learned counsel appearing for the respondent/plaintiff further submits that the present appeal is an abuse of the process of law and has been filed with the mala fide intention of delaying the disposal of the suit. It is contended that since the defendant is in exclusive possession of the suit property, the plaintiff is required to establish the prevailing market rent in order to substantiate his claim for mesne profits. The summoning and examination of the official witness from the Sub-Registrar's office is, therefore, necessary and relevant for proving the prevailing market rent and is in consonance with the issues framed in the suit as well as the directions issued by the Division Bench of this Court. It is submitted that the plaintiff has claimed Rs. 30,000/- per month as the prevailing market rent and, in

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order to substantiate the said claim, it is just, necessary and proper that the registered lease deed dated 27.01.2016 be proved by summoning the official witness from the Sub-Registrar's office. The said lease deed would serve as a relevant reference for this Court while determining the prevailing market rent and awarding mesne profits, if any, in favour of the plaintiff and against the defendant. It is further denied that the property forming the subject matter of the lease deed is not comparable to the suit property, as alleged by the appellant/defendant. It is submitted that the official witness from the Sub-Registrar's office has already been examined-in-chief and is competent to prove the existence, execution and registration of the lease deed dated 27.01.2016. The appellant/defendant would be at liberty to lead rebuttal evidence to establish that the property in question is of a lesser area or is otherwise not comparable to the suit property. It is also contended that the appellant himself is residing in the suit property and, therefore, cannot, on the one hand, claim to be in possession thereof and, on the other hand, contend that the property has no market value or that no person would take it on rent. It is further submitted that the appellant is entitled to cross-examine the official witness, who has already been examined in chief by the plaintiff. In these circumstances, the provisions of Section 139 of the Indian Evidence Act are inapplicable, as the plaintiff has not merely summoned the official for production of a document but has also examined him as a witness. The learned counsel further contends that the grounds raised in the present appeal are false, frivolous, vague

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and evasive and do not disclose any merit or substance warranting interference with the impugned order dated 17.11.2025. It is, therefore, contended that summoning of the official witness from the Sub-Registrar's office to prove the existence, execution and registration of the lease deed dated 27.01.2016 is relevant and necessary for establishing the prevailing market rent and substantiating the plaintiff's claim for mesne profits. All averments contrary to the case of the plaintiff are denied, and dismissal of the present appeal is accordingly prayed for.

12. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

13. At the outset, the impugned order passed by the learned Joint Registrar is extracted hereunder:

> "1. Further arguments on captioned IA heard. Record perused.
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> 2. Perusal of record shows that plaintiff has filed present suit for partition, perpetual injunction as well as for rendition of accounts. After completion of pleadings, issues were framed on 19.02.2010. One additional issue i.e. pertaining to rendition of accounts was framed on 01.12.2011 and matter is at the stage of plaintiffs evidence.
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> 3. Perusal of record further shows that the plaintiff had filed an IA bearing no. 3480/2017 praying therein that the defendant be directed to deposit an amount of Rs. 30,000/- per month in court as mesne profit. The said application was decided vide order dated 02.05.2017. Order dated 02.05.2017 was challenged by defendant before Hon'ble Division Bench. The said appeal was partly allowed vide order dated 31.07.2018.
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> 4. Plaintiff has filed captioned IA to prove the lease deed, copy whereof was filed along with IA no. 3480/2017.
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> 5. Counsel for plaintiff/applicant submits that the witness from the office of Sub-Registrar be summoned for proving the said

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lease deed as well as for proving the quantum of mesne profits.

6. On the other hand, counsel for defendant has strongly opposed the captioned IA on the ground that plaintiff is not a party to the said lease deed. The said lease deed is not pertaining to a property which is similarly situated. The said lease deed is pertaining to a commercial property and is situated on the main/commercial road whereas, the suit property is situated inside the locality. Captioned IA is without merits and the same is liable to be dismissed.

7. Learned counsel for defendant has relied upon order/judgment dated 11.08.2017 passed in a case titled as "Dr. Anil Gupta and Ors. versus Panna Lal Gupta and Ors." i.e. CM(M) 866/2017.

8. I have duly considered the rival submissions. I have perused the record carefully. I have also perused the aforesaid judgment.

9. It is a matter of record that an issue pertaining to rendition of accounts has been framed in the present matter. The onus of proving the issue of rendition of accounts is upon the plaintiff and plaintiff is trying to prove the said issue by summoning a witness from the office of concerned Sub-Registrar.

10. The objections taken by defendant pertaining to irrelevancy etc. can be put to said witness during his cross-examination.

11. Keeping in view the totality of facts and circumstances, captioned IA is hereby allowed and disposed of accordingly.

12. Re-notify on 06.02.2026 for plaintiffs evidence. The witness from office of Sub-Registrar concerned be summoned along with relevant document on filing of PF."

14. In the present appeal, the primary objection raised by the appellant/defendant is that the name of the official witness sought to be summoned by the respondent/plaintiff did not find mention in the original list of witnesses filed by him and, therefore, he cannot be permitted to summon the said witness at this belated stage of the proceedings. It is further contended that the lease deed sought to be

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proved through the said witness was also not part of the original list of documents and had not been subjected to admission/denial.

15. In this regard, it is relevant to note that the list of witnesses was filed by the respondent/plaintiff on 29.11.2013, whereas the lease deed in question is dated 27.01.2016 and was registered on 03.02.2016. Thus, admittedly, the document itself came into existence much after the filing of the list of witnesses. In these circumstances, there was no occasion for the respondent/plaintiff to have included the name of the official witness or the particulars of the said document in his original list of witnesses. The explanation furnished by the respondent/ plaintiff, therefore, cannot be said to be unreasonable or devoid of merit.

16. It is pertinent to note that Order XVI Rule 1(3) of CPC permits a party, with the leave of the Court, to summon a witness whose name does not appear in the list of witnesses, provided *sufficient cause* is shown for such omission. In the present case, since the lease deed itself came into existence after filing of the list of witnesses, this Court finds that sufficient cause existed for not including the official witness in the original list. Further, a copy of the lease deed had already been filed by the respondent/plaintiff along with I.A. No. 3480/2017. Thus, the present application is essentially for summoning the official witness to prove the said document and cannot be treated as an attempt to introduce an entirely new document at this stage. The aforesaid objection raised by the

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appellant/defendant, therefore, does not merit acceptance.

17. The next objection raised by the appellant/defendant is that the lease deed pertains to a property which is not comparable to the suit property, being a newly constructed, three-storeyed and furnished property situated on a main road, whereas the suit property is an old property situated in an internal lane. In this regard, it is to be noted that an additional issue pertaining to rendition of accounts was framed in the suit on 01.12.2011, and the Division Bench of this Court, *vide* order dated 31.07.2018, had also specifically observed that the parties would be at liberty to lead evidence on the issue of mesne profits. The respondent/plaintiff is seeking to rely upon the registered lease deed dated 27.01.2016 as a reference for establishing the prevailing market rent in the locality and, consequently, for substantiating his claim for mesne profits. The fact that the lease deed pertains to another property, or that the appellant/defendant disputes the comparability of the two properties, cannot, by itself, be a ground to prevent the respondent/plaintiff from leading evidence in respect thereof. Whether the property covered by the lease deed is actually comparable to the suit property, having regard to its location, area, condition and other relevant factors, is a matter which can be examined while appreciating the evidence led by the parties. The appellant/defendant would also be at liberty to lead evidence in rebuttal in this regard. Therefore, at this stage, the document cannot be held to be wholly irrelevant so as to disallow its proof.

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18. The appellant/defendant has also raised an objection with reference to Section 139 of the Indian Evidence Act, contending that a person summoned merely for production of a document does not become a witness and cannot be subjected to cross-examination. In this regard, it is to be noted that the said provision applies to a person who is summoned merely to produce a document. In the present case, however, the respondent/plaintiff has sought summoning of the official from the office of the Sub-Registrar not merely for production of the lease deed, but also for proving its existence, execution and registration. The impugned order itself permits summoning and examination of the said official as a witness. It is also the submission of the learned counsel for the respondent/plaintiff that the examination-in-chief of the said official has already been recorded. In these circumstances, the appellant/defendant would be entitled to cross-examine the said witness in accordance with law. Needless to state, the appellant/defendant would be at liberty to put questions to the witness within the permissible scope of his testimony and to lead evidence in rebuttal, if so advised. The evidentiary value of the lease deed, including its relevance and comparability with the suit property, shall be independently examined by the Court at the appropriate stage. Therefore, merely permitting the respondent/ plaintiff to summon the official witness and prove the document cannot be construed as an acceptance of the contents of the lease deed or as a finding regarding the prevailing market rent or the entitlement of the respondent/plaintiff to any particular amount towards mesne

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profits.

19. In view of the aforesaid discussion, this Court finds no infirmity in the impugned order dated 17.11.2025 passed by the learned Joint Registrar.

20. The present appeal is, accordingly, dismissed.

21. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

NOVEMBER 19, 2026/ns

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