



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 20th January, 2025
Pronounced on: 04th March, 2025

+ **RFA 674/2014 & CM APPL. 51785/2022, CM APPL. 72603/2024**

VASUDEVAppellant

Through: Mr. Rakesh Saini, Advocate.

versus

ROOP KUMAR (DECEASED) THR LRS & ORS.Respondents

Through: Mr. Tarun Diwan and Ms. Pyari,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

1. This judgment would resolve the dispute pertaining to possession of a Suit Property,¹ mired in conflicting claims of ownership, that has entangled the parties in an unrelenting legal battle, that has stretched across nearly four decades. Both sides steadfastly assert their rights through contested documents. Over the years, the parties have made repeated rounds of courts, one relying on a sale deed and a Will, the other on a receipt as a transfer deed. The litigation has meandered through various courts, with neither side willing to cede ground. As a result, what is before this Court today is not merely a question of possession, but the culmination of a prolonged and exhausting legal struggle.

¹ Described in Paragraph No. 3.



2. Moreover, the Suit property, originally a vacant plot of land, is now fully constructed upon and inhabited. Thus, the Court is not oblivious to the consequences of this judgment. If the Respondents succeed, the Appellant's long-settled possession will inevitably be disrupted. However, prolonged occupation, in and of itself, cannot override the fundamental principles of ownership and legal entitlement. The mere passage of time does not confer legitimacy upon an unlawful possession, nor can it be a ground to deny relief to a rightful owner who has persistently pursued her claim. Recognizing the protracted nature of the dispute and the high likelihood that any judicial outcome would be challenged by the unsuccessful party, the Court actively encouraged mediation as a potential avenue for resolution. A negotiated settlement would have been the most pragmatic solution, sparing both parties further legal battles and uncertainty. However, despite best efforts, no settlement materialized. This Court, therefore, is left with no option but to adjudicate the matter on its legal and factual merits. It is nonetheless hoped that this judgment will bring long-overdue finality to a dispute that has persisted for over 37 years, resisting resolution at every stage. The cycle of litigation will hopefully now end.

3. For convenience, Mr. Vasu Dev, the Appellant and Defendant No.1 in the original suit, will be referred to as the 'Defendant'. Mrs. Roop Kumari, the Plaintiff in the original suit, has since passed away and is now represented by her Legal Representatives, the Respondents, and will be collectively referred to as the 'Plaintiff'.

The Appeal

4. The Defendant seeks setting aside of the Judgement and Decree dated



9th September, 2014,² passed by the Additional District Judge, in Suit No. 141/2014.³ The suit was instituted by the Plaintiff seeking possession of property bearing no. J-21, Pandav Nagar, Near Mother Dairy, Patparganj, New Delhi,⁴ along with damages. Through the Impugned Judgement the Trial court has decreed the suit in favour of the Plaintiff, granting them possession of the Suit Property. Additionally, *pendente lite* and future damages at the rate of ₹1,000/- per month, until the delivery of vacant possession of the Suit Property, have been awarded in their favour. The costs of the suit (₹9,701/-) were also awarded in favour of the Plaintiff.

The Controversy

5. The Defendant, Mr. Vasu Dev, and the Plaintiff, Mrs. Roop Kumari@ Banarsoo Devi, trace their ownership to the same original owner—Mr. Kishan Chand Jain. The Plaintiff asserts that her father, Mr. Kishan Chand Jain, sold half of the Suit Property to her through a sale deed dated 6th October, 1954. Additionally, she relies on a Will dated 25th February, 1969, executed by Mr. Kishan Chand Jain, through which the remaining 50% of the Suit Property, along with other assets, was bequeathed to her and other legal heirs. Conversely, the Defendant claims ownership through a different chain of title, asserting that he purchased the Suit Property from Mr. Kailash Chand by virtue of agreement to sell dated 9th January, 1984. According to him, Mr. Kailash Chand had earlier acquired the Suit Property from Mr. Kishan Chand Jain *vide* a receipt dated 10th July, 1953. The Defendant further contends that this receipt was executed by Mr. Kishan Chand at the behest of late Mr. Lala Rati Ram Jain, who had purchased the property in

² “Impugned Judgement”

³ Renumbered: [Old Suit No. 694/88]

⁴ “Suit Property”



the name of his grandson, Mr. Kailash Chand.

6. The dispute thus emanates, with one party relying on an unregistered sale deed and a Will, while the other anchors his claim in an unregistered receipt and subsequent transfers of ownership rights. However, beyond the issue of title, the question of delivery of possession also assumes significance, as it plays a crucial role in determining the Plaintiff's claim of ownership.

Procedural History

7. The suit was initially decreed in favour of the Plaintiff by the Trial Court *vide* judgment dated 29th August, 2001. The said judgment was assailed by the Defendant in Regular First Appeal [484/2001] before this Court. Furthermore, a separate proceeding to determine mesne profits was held following the judgment dated 29th August, 2001, during which both parties adduced evidence to support their respective claims. The Trial Court, after considering the evidence, awarded mesne profits/damages in favour of the Plaintiff. This award was then challenged by the Defendant through RFA No. 246/2008, wherein the execution of the awarded damages/mesne profits was stayed. In these appellate proceedings, this Court by its common order dated 01st February, 2012, allowing an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908,⁵ remanded the matter to the Trial Court for fresh consideration. The remand order, while setting aside the earlier judgment dated 29th August, 2001, restricted the scope of fresh evidence strictly to the aspect of possession of the Suit Property from 1953 until the filing of the suit in 1988. The order of remand reads as follows:

⁵ "CPC"



“RFA No.246/2008, RFA No.484/2001 and CM No.7176/2008(u/O.41 R.27CPC)

1. This application being CM No.7176/2008 is an application under Order 41 Rule 27 CPC to file on record the certified copies of the revenue records, and which are public documents under Section 74 of the Indian Evidence Act, 1872.

2. Counsel for the parties agree that the appeals be remanded back after allowing the application under Order 41 Rule 27 CPC, however, **both the parties be allowed to lead documentary evidence on the aspect of possession of the suit property from 1953 till the date of filing of the suit. It is clarified that no other evidence will be allowed to be led by any of the parties in the Trial Court. Both the parties can however cross-examine the witnesses of the other party with respect to the documentary evidence which is led and filed in the case including the documentary evidence which has been filed along with the present application under Order 41 Rule 27 CPC.**

3. Counsel for the respondents agrees to allowing the application, subject to payment of costs of `25,000/-, and therefore, the application is allowed and costs of `25,000/- shall be positively paid within a period of 4 weeks from today to the counsel for the respondents.

4. Parties to appear before the District and Sessions Judge, Tis Hazari, Delhi on 1.3.2012, and on which date, the District and Sessions Judge, Tis Hazari, Delhi will mark the suit limited to disposal after leading of evidence on the aspects within the narrow compass as stated in the present order. **The Trial Court will after be hearing both the parties, again pass a fresh judgment in accordance with law.** It is clarified that none of the parties will be entitled to delay the case by moving applications including amendment applications with respect to their pleadings. The Trial Court will be entitled to impose heavy costs on the party seeking unnecessary adjournments.

5. The concerned Court is directed to complete the evidence of the parties in a period of approximately about one year from the date it receives the copy of the present order, and thereafter, the Trial Court will proceed to urgently hear the final arguments and pass the judgment in accordance with law. It is also clarified that none of the parties will be entitled to more than 3 opportunities to lead evidence. The documents in power and possession of the parties, which is proposed to be led as evidence, be filed within a period of 4 weeks from the first date which is fixed before the competent Court for disposal of the suit. Nothing contained in today's order is a reflection on merits of the case of either of the parties, and the Trial Court will dispose of the suit after the evidence is led by both the parties in terms of today's order and in accordance will law.

6. Appeals and the application are disposed of accordingly by setting aside the impugned judgments.



7. *Parties are left to bear their own costs. Trial Court record be sent back so as to be available to the District and Sessions Judge, Tis Hazari, Delhi on 1.3.2012.”*

8. Both parties were thus granted an opportunity to adduce documentary evidence exclusively on the aspect of possession of the Suit Property from 1953 until the date of filing of the suit, i.e., 10th August, 1988. The scope of evidence was strictly confined to this issue, and it was expressly clarified that no additional evidence beyond this aspect would be permitted. However, both parties retained the right to cross-examine the opposite side's witnesses on the documentary evidence produced. Further, the Trial Court was directed to adjudicate afresh, considering the additional evidence, and pass a fresh judgment after hearing both parties. Pursuant to these directions, the Trial Court proceeded to determine the case based on the issues initially framed on 3rd May, 1989, which are extracted below:

- “1) Whether this Court has no pecuniary jurisdiction to decide the suit as alleged in preliminary objection No.1 & 2 of the Written Statement filed by the defendant no. 1? OPD*
- 2) Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction? OPD*
- 3) Whether the plaint has been signed, verified and the suit instituted by a duly authorized person? OPP*
- 4) Whether the suit is barred by time? OPD*
- 5) Whether the defendant has become the owner of the suit property as alleged in para-5 of the preliminary objection of the written statement of defendant no. 1? OPD*
- 6) Whether the plaintiff is the co-owner of the suit property as alleged in para – 1 of the plaint? OPP*
- 7) To what amount by way of damages, at what rate and for what period, is the plaintiff entitled to recover from the defendant no.1? OPP*
- 8) Whether the plaintiff is entitled to recover the possession of the suit property from defendant no. 1? OPP*
- 9) Relief.”*

9. On consideration of the oral and documentary evidence adduced by



the parties, the Trial Court arrived at the following findings:

“Issues no. 1 and 2 :

12. *Perusal of the record of the case reveals that the Ld. Predecessor of this Court had decided issues no. 1 and 2 in favour of the plaintiff vide orders dated 21.05.1999. The plaintiff was directed to pay the deficient court fees. As per the orders dated 03.06.1999, the plaintiff had relinquished her claim of damages of Rs. 18,000/- only in order to bring the suit within the pecuniary jurisdiction of this Court. The Ld. Predecessor of this Court vide orders dated 21.08.1999 has further held that since the part of the claim, which was beyond the jurisdiction of the Court was relinquished by the plaintiff, this Court had the jurisdiction to try and entertain the present suit. Perusal of the record of the case further reveals that the said orders dated 21.08.1999 were challenged by the defendant no.1 vide CR no. 874/99, but the said Revision Petition was also dismissed by the Hon'ble High Court of Delhi vide orders dated 12.07.2001. As such, both the above said issues stand already decided vide orders dated 21.05.1999 and 21.08.1999.*

Issue no. 3 :

13. *The defendant no.1 in the written statement has taken the objection that the present suit has not been signed, verified and filed by a competent person.*

14. *The present suit has been filed by Sh. R.L. Kumar, Husband and Attorney of the deceased plaintiff on the basis of the GPA executed by the deceased plaintiff in his favour. Perusal of the plaint reveals that the plaint has been signed by the deceased plaintiff as well as her husband and GPA holder Sh. R.L. Kumar. The verification to the plaint has also been duly signed by the plaintiff herself as well as by the GPA, who has appeared as PW1 in the present suit. PW1, in his examination-in-chief, has categorically stated that the original GPA was filed alongwith the suit and the same bears his signatures as well as the signatures of his wife and the same was attested by a Notary Public. Perusal of the cross-examination of PW1, to my mind, reveals that PW1 has not been cross-examined so far as the GPA in favour of the PW1 is concerned. Perusal of the record of the case reveals that the original GPA dated 10.08.1988 is there on record and the same is attested by a Notary Public as well. Relying upon the ratio of the authority cited as **JT 2004(10) Supreme Court 264 titled as Janki Vashdeo Bhojwani and Anr. v. Indusind Bank Ltd. and Ors, Ld. Counsel for the defendant has argued that the GPA, in the case in hand, cannot be relied upon as the same was neither tendered in evidence, nor proved as per Section 85 of the Indian Evidence Act. It has been further argued that the plaintiff failed to appear in the witness box and as such, the testimony of GPA cannot be relied upon. Whereas on the other hand, Ld. Counsel for the Plaintiff has***



*relied upon the authority titled as **Mankaur Singh Vs. Hartar Singh Sangha cited as 2010(10) SCC 512.***

15. *If the pleadings of the parties and the evidence led as a whole, is carefully gone through, I am of the opinion that in the case in hand, it becomes apparently clear that the husband and Attorney of the plaintiff has the personal knowledge of the things and as such, to my mind, the plaintiff has been able to prove that the suit has been instituted by a duly authorized person. As stated by me herein above, the plaint has not only signed and verified by the plaintiff herself, but by her husband and Attorney as well. As such, the above said issue no.3 is decided in favour of the plaintiff and against the defendant no.1.*

Issues no. 5,6 &8

16. *All these issues are taken up together as the same are connected interse and over lap each other.*

17. *PW1 has placed on record the original Sale Deed dated 26.03.1953 executed by Delhi Housing Company in favour of Sh. Kishan Chand. The said Sale Deed has been proved by PW 5 Sh. Brij Nandan Lal. PW5, in his evidence, has stated that the said Sale Deed pertains to the suit property and this witness has signed the said sale deed Ex.PW1/6 as an attesting witness. The defendant no.1, on the other hand, has relied upon the document dated 10.07.1953 to prove that Sh. Kailash Chand Jain through his grandfather Late Sh. Lala Rati Ram Jain had purchased the suit property from Sh. Kishan Chand S/o Sh. Thakur Dass. The defendant no.1 has further stated that in turn, he had purchased the said property from the said Kailash Chand Jain vide documents i.e. receipt as Ex.DW3/1, the agreement dated 09.01.1984 as Ex.DW3/2, the Will dated 09.01.1984 as Ex.DW3/3, the affidavit as Ex.DW3/4 and the GPA as Ex.DW3/5.*

18. *From the above mentioned documents, it is apparently clear that the plaintiff and the defendant no.1, both derived their title from Sh. Kishan Chand Jain S/o Sh. Thakur Dass, who was the original owner of the suit property. As per the case of the plaintiff, her father Sh. Kishan Chand S/o Sh. Thakur Dass vide Sale Deed dated 06.10.1954 had sold the half of the suit property to the deceased plaintiff Smt. Roop Kumari for a consideration of Rs. 98/- only. The said Sale Deed dated 06.10.1954 has been filed on record as Ex.P1. The plaintiff has examined PW2 Sh. Gurditta Mal, who is the attesting witness to the said Sale Deed as PW2. PW2, in his examination-in-chief has categorically stated that Ex.P1 was scribed by Sh. Kishan Chand, the deed writer in his presence and he has identified the handwriting of the said deed writer. PW2 has further stated that Sh. Kishan Chand, the executant of the said sale deed has put his signatures at point A in his presence. If the examination in-chief and the cross examination of PW2 is carefully gone through it becomes evidently clear that the testimony of this witness is not shaken even in the cross-examination. No suggestion has been given to the above said witness to*



the effect that Ex.P1 was not scribed by the Deed Writer Sh. Kishan Chand. I am of the opinion that the plaintiff has been able to prove the due execution of the above said Sale Deed Ex. P1.

19. The plaintiff has further relied upon the certified copy of the Will EXPW/1 vide which the suit property as well as the other properties and assets of Sh. Kishan Chand are said to have been probated in favour of the plaintiff and other legal heir of Sh. Kishan Chand. Certified copy of the orders dated 05.07.1995 of the Probate Court in the form of Ex.P2 is there on record. The said certified copy reveals that the Succession Certificate has to be issued in terms of the orders dated 29.02.1980. Perusal of the said document Ex. P2 reveals that the Probate was sought by the attorney of the plaintiff and the Probate Court after perusing the orders dated 29.02.1980 passed by the then Ld. Sub-Judge ordered the issuance of the Succession Certificate as there was an agreement between the parties vide Ex.P1. The certified of the orders dated 21.02.1980 in the form of Ex. PW 1/3 is there on record, which was relied upon in the order Ex. P2. The compromise application Ex. P1/2 is also there on record. Half of the portion of the suit property has been mentioned therein. It has been stated that in the said compromise application, half portion of the suit property shall vest with the plaintiff and her son Sh. Bhushan Kumar (defendant no.2) and two other legal Representatives of late Sir. Kishan Chand in equal shares.

20. In the written final arguments filed on record by the Ld. Counsel for the defendant no.1, it has been argued that the original Will was neither produced before the Ld, Probate Court, nor it has been produced before this Court and in the absence of the original Will, its execution cannot be proved.

21. It has to be seen that the Will Ex. PW1/1 stand probated vide orders Ex. P2 of the Probate Court. This Court cannot loose sight of the fact that Ex.P2 i.e. the orders passed by the Ld. Probate Court have attained finality because the said orders have neither been challenged nor been set aside. The orders passed by the Probate Court Ex.P2 is a judgment in rem and the same operates as a conclusive finding on the validity of the Will Ex. P1/1. In the judgment reported in AIR 1984 SC 1866, it has been held that:

“it is well settled that the decision of the Probate Court is a judgment in rem and grant of certificate by the Probate Court is conclusive of the validity of such Will until it is revoked and no evidence can be admitted to impeach it except in the proceedings taken for revoking the probate.”

22. Whereas, on the other hand, the defendant no. 1 claims the ownership of the property in question on the basis of the documents. Ex.DW3/1 to Ex DW3/5. As per the case of the defendant no.1, he purchased the property from Sh. Kailash Chand by virtue of the said



documents dated 09.01.1984. It has been further stated that Sh. Kailash Chand had purchased the suit property in question from Sh. Kishan Chand S/o Late Sh. Thakur Dass vide receipt dated 10.07.1953. A copy of the said receipt has been placed on record in the form of Mark A, Except the abovesaid receipt Mark A, there is no other document showing the sale of the suit property by Sh. Kishan Chand to Sh. Kailash Chand Jain through his grandfather Late Sh. Rati Ram Jain.

23. The vital question to be considered by this Court is as to whether the defendant no.1 has been able to prove the said receipt Mark A in accordance with the provisions of the Indian Evidence Act or not. This Court has to consider as to whether the said receipt can be looked into by the Court for collateral, purposes as has been argued by the Ld. Counsel for the defendant.

24. First of all, it has to be seen that the said receipt contains a recital to the effect that the suit property was sold for a sum of Rs, 150/-. As per Section 17 of the Indian Registration Act, 1908, any non-testamentary instrument which purports or operates to create, declare or assign any right, title or interest in immovable property of the value of Rs. 100/- or more is required to be compulsory registered. This is not the case of the defendant no. 1 that the document Mark A falls in any of the causes as contained in Section 17(2) of the Indian Registration Act. Admittedly, the said receipt Mark A is unregistered and is on a plain piece of paper. As such, I am of the opinion that the said document Mark A cannot confer any valid title on Sh. Rati Ram Jain or on Sh. Kailash Chand Jain in respect of the suit property.

25. Furthermore, it has to be seen that Sh. Kailash Chand, who has been examined as DW5, has stated that the document Mark A was not executed in his presence and he has not even identified the signatures of Sh. Kishan Chand on the said document. DW5, Sh. Kailash Chand Jain has not stated in his evidence that how this document Mark A has come in his possession. As such, I am of the opinion that it cannot be said that the document Mark A has come from proper custody. I am of the opinion that the document Mark A has not been proved at all by the defendant no.1.

26. Ld. Counsel for the defendant no 1 has vehemently argued that this document can be looked into by the Court at least for collateral purposes. It has been argued that at least for the purposes of verifying the possession of the defendant no. 1 or his successor-in-interest over the suit property from the year 1953 the document Mark A can be looked into by the Court. I am of the opinion that the abovesaid submission of the Ld. Counsel for the defendant no. 4 is absolutely fallacious. To my mind, the document Mark A has not been proved at all by the defendant no. 1 and as such, the said document cannot be looked into by the Court even for collateral purposes. Otherwise also, I am of the opinion that the transfer of the possession of the suit property by virtue of the document



Mark A has also not been proved as there is no evidence on record to show that the suit property was in physical possession of Sh. Kailash Chand Jain at any point of time.

27. *The present suit was remanded back to this Court vide orders dated 01.02.2012 passed by the Hon'ble High Court of Delhi with the observations that both the parties were allowed to lead the documentary evidence on the aspect of the possession of the suit property from 1953 till the date of the filing of the present suit. As such, this Court has to consider as to whether the defendant no.1 has been able to prove on record that either he himself, or his successor-in-interest was in continuous and uninterrupted possession of the suit property right from the year 1953. In para no.5 of the written statement, the defendant no. 1 has taken the stand that Sh. Kailash Chand Jain was in possession of the suit property since 1953 and he was enjoying the property in question as an absolute owner thereof.*

28. *After the passing of the orders, dated 01.02.2012 by the Hon'ble High Court of Delhi, the defendant no 1 has examined as many as six witnesses as DW6 to DW12. DW6 has placed on record the Khatoni of Khasra no. 1/125(0-2) of village and Revenue Estate Gharonda Neen Ka Bangar, Delhi pertaining to the years 1964-65 and 1968-69. Certified copies of the said Khatonies have been placed on record as Ex.DW6/1 and DW6/2. In the cross-examination, DW6 has categorically stated that he cannot tell as to whether the said entries pertained to the property in question in the present suit. Ld. Counsel for the plaintiff, during the course of the arguments and in the written final arguments as well, has vehemently argued that the defendant no.1 has failed to establish any link in between Khasra no. 1/125 and the suit property which bears no. as J-21, Pandav Nagar, Delhi. I am of the opinion that if the cross-examination of DWs is carefully gone through, it becomes apparently clear that none of the DWs has established any link in between Khasra no. 1/125 and the suit property. None of the DWs have proved that the suit property, which has been mentioned as J-21, Pandav Nagar, Delhi by the plaintiff and stand admitted by the defendant no. 1 in the written statement forms part of Khasra no. 1/125 or falls under Khasra no. 1/125. D6, who has been examined by none other, but by the defendant no. 1 has categorically stated in his cross-examination that he cannot tell whether the entries as mentioned in the revenue record Ex. DW6/1 and Ex. DW6/2 pertains to the property in question. I am of the opinion that the onus was upon the defendant no. 1 to establish on record that Khara no. 1/125 actually pertained to the suit property, which bears the number as J-21, Pandav Nagar, Delhi. As such, I am of the opinion that by the testimonies of DW6 to DW12, the defendant no.1 has not been able to prove on record that either the defendant no.1 or his successor-in-interest was in continuous and uninterrupted possession of the suit property right from the year 1953. Perusal of the House Tax receipt in*



the form of Ex. DW3/6 to Ex.DW3/8 and Ex. PW3/9 as well also revealed that the same pertains to the period after the filing of the present suit and as such, the said receipts are of no help to the defendant no.1.

29. *The defendant no. 1, in the written statement, has taken the stand that he was put into the physical possession of the suit property by Sh. Kailash Chand Jain in the year 1983 and the sale transaction in between them was completed on 09.01.1984. The defendant no.1 has further stated that nobody disputed the title and the possession of the defendant no. 1 over the suit property.*

30. *I am of the opinion that the defendant no.1 has vehemently failed to prove that Sh. Kailash Chand Jain was in uninterrupted possession of the suit property from the year 1953. So far as the possession of the defendant no. is concerned, the plaintiff himself in the plaint has categorically asserted that he came to know in the year 1983 that the defendant no.1 occupied the property illegally and wrongfully in the year 1983. The plaintiff has placed on record a notice dated 01.03.1988 in the form of Ex.PW1/4, AD Card has also been placed on record as Ex PW1/5, In para no.6 of the plaint it has been pleaded that the notice dated 01.03.1983 was sent by the plaintiff to the defendant no.1 and after non-compliance of the notice by the defendant no. 1, the present suit has been filed. In the corresponding para no.6 of the written statement of the defendant no.1, there is no denial of the receipt of the notice dated 01.03.1983. As such, I am of the opinion that the defendant no.1 has failed to prove that either he himself or his successor-in-interest has been in continuous and uninterrupted possession of the property in question right from the year 1953.*

31. *The sale deed Ex.P1 specifically states that half portion of J-21, Pandav Nagar with vacant possession was sold to the plaintiff by her father and by virtue of the Will Ex.PW1/1, all the movable and immovable property by the father of the plaintiff were divided equally amongst the legal heirs as mentioned in the Will*

32. *In the light of the above said discussion. I am of the opinion that the defendant no.1 has failed to prove issue no,5 in his favour and accordingly, issue no.5 is decided against the defendant no 1. I am also of the opinion that the plaintiff has been able to prove that she is co-owner of the suit property and as such issue nod is decided in flour of the plaintiff. I am also of the opinion that the plaintiff is entitled to recover the possession of the suit property from the defendant no.1, Accordingly, issue no. 8 is decided in favour of the plaintiff and against the defendant no.1.*

Issue no. 4 :

33. *The onus to prove this issue has been placed upon the defendant no.1. The categorical assertion of the plaintiff in the plaint is that he came to know in the year 1988 that the defendant no.1 had illegally occupied the property in question in the year 1983. The legal notice*



*Ex.PW1/4 dated 01.03.1988 was issued by the plaintiff to the defendant no.1. The receipt of the said legal notice is not denied. As such, I am of the opinion that the defendant no.1 has failed to establish on record as to how the present suit is barred by **the Law of Limitation**. Accordingly, this issue is decided against the defendant no.1 and in favour of the plaintiff.*

Issue no.7 :

34. Issue no.7 pertains to the claim of the damages. If the pleadings and the evidence led by the parties is carefully gone through, it becomes evidently clear that the superstructure on the plot was raised by the defendant no.1 and the plaintiff merely raised the boundary wall on the plot and affixed the gate on it. Keeping in view the entirety of the facts and the evidence led by the parties, I am of the opinion that if the damages are awarded to the plaintiff @ Rs. 1,000/- per month, the same would be sufficient to meet the ends of justice. As such, I hereby award the damages to the plaintiff @ Rs. 1,000 per month from the date of the filing of the present suit till the date of the delivery of the vacant and peaceful possession of the suit property by the defendant no. 1 to the plaintiff.

Relief:

*35. In the light of my findings on the foregoing issues, the suit of the plaintiff is hereby decreed for possession in favour of the plaintiff and against the defendant no.1 in respect of the plot no. J-21, Pandav Nagar, Near Mother Dairy, Patparganj, New Delhi. The pendente-lite and future damages till the date of the delivery of the vacant possession of the suit property are also granted to the plaintiff @ Rs, 1,000/- per month. The costs of the suit are also awarded in favour of the plaintiff
Decree sheet be prepared accordingly by the Reader.
File be consigned to record room after necessary compliance.”*

10. Aggrieved by the Impugned Judgment, the Defendant has preferred the present appeal. By an order dated 4th May, 2016, this Court granted a conditional stay on the execution of the Impugned judgement and decree, subject to the Defendant's compliance with the payment of past decretal amounts at the rate of ₹1,000/- per month from August 1988 to June 2016, and an enhanced amount of ₹10,000 per month from July 2016 onwards. Additionally, the Defendant was directed to maintain *status quo* with respect to both possession and construction on the Suit Property.



11. Alleging non-compliance with the Court's directions, the Respondents herein filed an application [CM Appl. 51783/2022] under Section 12 of the Contempt of Courts Act, 1971, contending that the Defendant had undertaken fresh construction on the Suit Property and inducted new tenants in clear violation of the *status quo* order. Taking cognizance of these allegations, this Court, *vide* order dated 30th November, 2022, issued notice in the contempt application and appointed a Local Commissioner to inspect the property. The Commissioner was tasked with ascertaining the extent of existing construction, identifying the current occupants, and determining the date and nature of their occupation.

12. On 28th March, 2023, in light of a substantive contempt petition [Contempt Case No. 1319/2022] having been instituted, the counsel for the LR's of Mrs. Roop Kumari, withdrew the contempt application [CM Appl. 51783/2022] filed in the present appeal. On the same date, with the consent of both parties, the matter was referred to the Delhi High Court Mediation and Conciliation Centre to explore a settlement. However, the mediation proved unsuccessful, and the case proceeded for final arguments.

Contentions on behalf of the Appellant

13. Mr. Rakesh Saini, counsel for Mr. Vasu Dev, contends as follows:

13.1. The suit, in its present form, was not maintainable before the Trial court. The Defendant had raised serious disputes regarding Plaintiff's ownership, possession, and title, which required the Plaintiff to institute a suit seeking a declaration of title along with possession. A mere suit for possession, without seeking declaratory relief, was not maintainable in light of the judgment in *Anathula Sudhakar V P. Buchi Reddy by Lrs and Ors.*⁶

⁶ (2008) 4 SCC 594



13.2. Pursuant to the remand order dated 1st February, 2012, the specific issue before the Trial Court was to determine which party had been in continuous physical possession of the Suit Property from 1953 until the filing of the suit. However, the Impugned Judgment does not explicitly record any conclusive finding on this aspect. This omission renders the decision incomplete and flawed, as the conclusions rest on conjecture rather than a definitive assessment of possession.

13.3. The issue of physical possession is fundamental as the Plaintiff's claim of ownership of the Suit Property is based on an unregistered sale document. Although such a document may not be required to be compulsorily registered under Section 17 of the Registration Act, 1908, but it must still satisfy Section 54 of the Transfer of Property Act, 1882. Under Section 54 of the Transfer of Property Act, 1882, in cases where the value of tangible immovable property is below ₹100, a sale may be effectuated either through a registered instrument or by delivery of possession. However, the Plaintiff has failed to produce any evidence before the Trial Court to establish that she was ever placed in physical possession of the Suit Property, whether at the time of the alleged sale in 1953 or at any point thereafter. Trial Court misinterpreted the remand order by placing the entire onus of proving possession from 1953 solely on the Defendant, thereby absolving the Plaintiff of any burden to prove her own possession. This approach is an erroneous reading of the remand order, which did not relieve the Plaintiff of her obligation to substantiate her claim of physical possession. The Impugned Judgment thus overlooks a fundamental flaw—that the Plaintiff failed to demonstrate possession of the Suit Property from 1953 until the filing of the suit.



13.4. In contrast to the Plaintiff's unsubstantiated claim of possession, the Defendant placed revenue records from 1964-65, 1968-69, and 1970-71 on record, establishing that the suit land was recorded in the name of his predecessor-in-interest, Mr. Kailash Chand. These records demonstrate that the alleged sale in favour of the Plaintiff could not have been completed, as the transferor (Mr. Kishan Chand) was not in possession of the property since 1953. The Trial Court, while acknowledging the presence of Mr. Kailash Chand's name in the revenue records of Gharonda Neem Ka Bangar, Khasra No. 1/125, Ilaka-Patparganj, Delhi, nonetheless refused to assign any evidentiary value to these records (Exhibits DW-6/1-2 to DW-12), concluding that they bore no connection to the Suit Property, J-21, Pandav Nagar, Delhi. It is submitted that this finding is erroneous and inconsistent with the report of the Tehsildar, Preet Vihar, dated 10th August 2007 (Ex. DW3/X), which explicitly states that J-21, Pandav Nagar, falls within Khasra Nos. 1/125 and 1/126. The Trial Court's conclusion, disregarding the clear link between Khasra No. 1/125 and the Suit Property, is contradictory to the evidence on record and demonstrates a misappreciation of material documents.

13.5. The Plaintiff has taken contradictory stands regarding the factum of possession, thereby weakening her case. In her legal notice dated 1st March 1988, she asserted that she was the absolute owner of the Suit Property by virtue of a registered sale deed dated 06th October 1954. On the other hand, in her suit, she claimed ownership over 50 sq. yards of the Suit Property through an unregistered sale deed dated 06th October, 1954, while asserting ownership over the remaining 50 sq. yards through an unprobated Will dated 25th February, 1969, allegedly executed in favour of herself and



her son. These shifting claims undermine the credibility of the Plaintiff's case and demonstrate inconsistencies that the Trial Court failed to address appropriately.

13.6. The testimonies of the Plaintiff's own witnesses cast serious doubt on her claim of possession and ownership. PW-2, Sh. Gurditta Mal, who claimed to be a witness to the document dated 6th October, 1954, (unregistered sale deed) conceded during cross-examination that he had never seen the Suit Property, no site plan or map was prepared, and he could not provide any details regarding its area or any existing construction at the time of execution. Furthermore, the Plaintiff's attorney and husband, Shri R.L. Kumar, testified that there was no demarcation of the plot at the time the sale deed was executed. He also confirmed that he had not filed any objection with the MCD's House Tax Department and was unaware of any mutation of the Suit Property in the Defendant's name. Additionally, he stated that no complaint regarding possession had been made to the police. PW-8, Shri Bhushan Kumar, son of the Plaintiff and co-owner of the property, further testified that he had never been in possession of the Suit Property for the past 35 to 40 years. This admission, coming from a co-owner of the property, directly contradicts the Plaintiff's claim that she had been in possession of the property after the alleged sale on 6th October, 1954.

13.7. The Defendant's claim of ownership is fully supported by documentary evidence, establishing an unbroken chain of transactions dating back to 1953. The Defendant purchased the property from Mr. Kailash Chand through document dated 09th January, 1984. Prior to this, Mr. Kailash Chand purchased the Suit Property from Mr. Kishan Chand *via* a receipt



dated 10th July, 1953. This receipt was executed by Mr. Kishan Chand at the request of the late Lala Rati Ram Jain, who had purchased the property in the name of his grandson, Mr. Kailash Chand. The document dated 10th July, 1953 whereby Late Mr. Lala Rati Ram purchased the Suit Property from Mr. Kishan Chand, records the factum of delivery of possession of the Suit Property. This document styled as “Receipt” therefore, is not compulsory registrable under Section 17(2)(v) of the Registration Act, 1908 as it does not create or extinguish any right/ title of the value of ₹100/- or above and it is only a memorandum to enable the predecessor-in-interest of the Defendant to obtain any other document. Since the document dated 10th July, 1953 [Mark A] is an acknowledgement of the receipt of payment and delivery of possession, its registration is optional under section 18(b) of Registration Act. These pleas were specifically taken by the Defendant in their written arguments filed on 19th July, 2013, at para (f), however, the Trial Court failed to consider the same and incorrectly observed at para 24 of the Impugned judgment, that no such plea has been pleaded. Furthermore, even unregistered sale deed or document of transfer could be admissible in evidence under Section 49 proviso of Registration Act.

13.8. The Trial Court failed to consider that if the Plaintiff is declared the rightful owner, the Defendant, as a *bona fide* purchaser who made improvements in good faith, is entitled to compensation under Section 51 of the Transfer of Property Act, 1882. The Supreme Court in **J. Narayana Rao v. V.G. Basavarayappa**,⁷ has held that a person who makes improvements in good faith is entitled to the value of those improvements as of the date of their dispossession. Since the Plaintiff neither holds ownership nor has

⁷ AIR 1956 Supreme Court 727



constructed any superstructure on the Suit Property, she is not entitled to claim damages in respect thereof. Moreover, the assessment of damages is both unreasonable and arbitrary.

Contentions on behalf of the Respondents

14. On the other hand, counsel for the Respondents, contends that the remand proceedings did not alter the evidentiary position in any material respect and that the Impugned Judgment rightly affirms the judicial findings of the earlier trial. His submissions are summarised as follows:

14.1 Although the matter was remanded for the limited purpose of leading additional evidence, the evidence recorded during the initial trial remains undisturbed. The Defendant has failed to produce any material evidence that could that could justify interference with the prior judicial findings or the Impugned Judgment. The findings rendered in the previous proceedings continue to hold evidentiary value and reinforce the Plaintiff's case. Both the initial judgment and the Impugned Judgment have adjudicated upon the same core issues comprehensively, and no new evidence has been introduced that would warrant a different conclusion.

14.2 There is no valid objection regarding the institution of the suit. The Plaint was duly signed/verified, and the suit was instituted by a lawfully constituted attorney. The Defendant has led no evidence to disprove the validity of the Plaint, nor has any suggestion to the contrary been put to the Plaintiff's witnesses in cross-examination. It is emphasized that the suit was signed and verified not only by the Plaintiff herself but also by her husband, PW-1 (Sh. R.L. Kumar), who had deposed as a material witness in support of the Plaintiff's claim. PW-1, being both the power of attorney holder and the husband of the Plaintiff, testified in his examination-in-chief as well as



cross-examination that the Sale Deed (Ex. P1) was executed in his presence. He further stated that he was the executor of the Will and that the compromise application entered between the parties bore his signature. He also proved that he had visited the Suit Property along with Defendant No.2, and thereafter, a legal notice was sent demanding possession from Defendant No.1. He was thus well-aware of the facts of the Plaintiff's case. The Plaintiff's case is squarely covered by the judgment in *Mann Kaur vs Hartar Singh Sangha.*⁸ which recognizes the competence of an attorney-holder to depose on matters within their personal knowledge. Moreover, Mrs. Roop Kumari's statement was duly recorded before the Trial Court during the proceedings for the assessment of mesne profits and damages, where she was subjected to cross-examination by the Defendant. This negates the allegation that the Plaintiff did not personally participate in the proceedings.

14.3 The Plaintiff has conclusively established ownership through the testimonies of witnesses, including PW-1 R.L. Kumar (the Plaintiff's husband and Power of Attorney), PW-2 Gurditta Mal, PW-5 Brij Nandan Lal, and others.

14.4 In particular, PW-1 proved Ex PW 1/6 (the Sale Deed dated 26th March, 1953, in favour of Kishan Chand) as follows:

"I have seen the original sale deed executed by Delhi Housing Company in favour of my father-in-law Sh. Kishan Chand, of dt. 26.3.53, the same was executed and signed by Sh. Banwari Lal, partner in my presence. I have also seen the signature of Sh. Banwari Lal and attesting witnesses on it, the same was executed by Sh. Banwari Lal in my presence and it was attested by the witnesses in my presence."

PW-1 also proved following documents:

⁸ (2010)10SCC512



Ex. P1 – Sale Deed dated 6th October, 1954 in favor of Roop Kumari

Ex. PW1/1 – Certified copy of Will dated 25th February, 1969

Ex. PW1/2 – Compromise Agreement dated 21st February, 1980

Ex. PW1/3 – Order dated 21st February, 1980, recording the compromise in succession proceedings

Ex. PW1/4 – Carbon copy of the legal notice

Ex. PW1/5 – Acknowledgment (AD) card of service of the legal notice

Ex. PW1/6 – Original Sale Deed dated 26th March, 1953, in favour of Kishan Chand

14.5 PW-1 also deposed that the original Sale Deed dated 6th October, 1954, was scribed in his presence, and that the vendor, Kishan Chand, as well as the attesting witnesses, signed the document in his presence. He also identified the signatures of the witnesses and the executor, thereby validating the transfer of half of the Suit Property in favour of the Plaintiff.

14.6 PW-1 has further substantiated the Plaintiff's ownership by proving the probate order in Case No. 355/1985, granted in her favour by the probate court. This order, based on the Will dated 25th February, 1969, executed by the late Mr. Kishan Chand, was exhibited as P-2. By virtue of this probate, the Plaintiff, Roop Kumari, along with her son, Bhushan Kumar, became the rightful owners of the remaining half share of the Suit Property.

14.7 The Defendant has not filed any petition or pursued any appropriate legal remedy seeking revocation of the probate granted in favour of the Plaintiff. Calling for the probate case file, during trial was merely a weak attempt to bolster the Defendant's case, without any substantive



challenge to the probate order itself. Reliance is also placed on *Crystal Developers vs Smt. Asha Lata Ghosh (Dead)Thr.Lrs.Ors*,⁹ where the Supreme Court held that a probate, once granted, attains the status of a judgment in rem and cannot be revoked merely on vague allegations. To seek revocation on the ground of fraud, specific pleadings and proof must be furnished in accordance with law. In the absence of such a foundation, the probate remains conclusive, rendering any challenge to it legally untenable.

14.8 The Defendant's allegations of fabricated title documents are not only improbable but entirely devoid of merit. The record establishes that proceedings for a succession certificate and grant of probate were initiated in 1973, following the demise of Kishan Chand in 1969. The court, after due consideration, granted the succession certificate in 1980, recognizing the Plaintiff's rights over both movable and immovable properties, including the Suit Property. The suggestion that the Plaintiff would have fabricated title documents as early as 1969 or 1980 is preposterous and defies logic. In stark contrast, the Defendant's claim to ownership rests on a purported sale deed of 1984, allegedly executed by Kailash Chand, who himself claims to have acquired the property from Kishan Chand. The inherent flaw in this assertion is self-evident—the Defendant's chain of title is premised on a transaction by Kishan Chand despite the Plaintiff having already secured recognition of ownership years earlier.

14.9 PW2 Gurditta Mal [attesting witness] has also proved the execution of sale deed dated 06th October, 1954 in respect of half portion of Suit Property in favour of Plaintiff. He had deposed that Kishan Chand has signed the sale deed in English and possession of the property was also

⁹ 2005 (9) SCC 375



given to Mrs Roop Kumari. No suggestion was given by the Defendant that Kishan Chand was not signing in English (this aspect gains significance since in the alleged document Mark A the alleged signatures of Kishan Chand are in Hindi script).

14.10 Based on the evidence on record, the Plaintiff has successfully proved her ownership over the Suit Property. The ownership of the Plaintiff over one undivided half share in the Suit Property was proved through the valid Sale Deed EX P1 executed by Kishan Chand and for the remaining half in the Suit Property, the Plaintiff had duly proved the Will executed by Kishan Chand.

14.11 The legal notice dated 1st March,1988 [EX PW1/4] issued on behalf of the Plaintiff to the Defendant stands duly proved to be served. The AD card placed on record before the Trial Court marks the name of ‘Maya’ as receiver. Ms. Maya is wife of the Defendant as evident from the copy of the Ration card placed on record by the Defendant. The Defendant’s failure to reply to the legal notice issued by the Plaintiff warrants an adverse inference.

14.12 The Defendant has examined himself as DW-3 and has placed on record various documents along with list of documents dated 7th January, 1998 in his examination in chief. No application for filing the documents listed in the list dated 7th January, 1998 has been submitted, nor had any permission been requested from the Trial Court. Furthermore, no reference was made to the earlier list of documents dated 3rd May, 1989, nor was it mentioned in the Written Statement filed by the Defendant. Thus, such documents cannot be looked into for any purpose whatsoever. Interestingly, none of the documents filed by the Defendant were put to any of the



witnesses of the Plaintiff. Neither the alleged receipt, nor any other alleged purchase documents of the Defendant were put to the witnesses to setup the case of the Defendant.

14.13 On the careful scrutiny of the document Mark A (filed along with list of documents dated 7th January, 1998), it clearly transpires that even the same does not mention the sale of J-21 Pandav Nagar, Delhi, from Kishan Chand to Kailash Chand Jain. The same only sought to prove the alleged sale of J-21 Pandav Nagar from Kishan Chand to Lala Rati Ram Jain.

14.14 Moreover, the documents filed by the Defendant and the alleged transactions mentioned therein, have not even been pleaded in the Written Statement, which clearly evidences that the alleged transaction/documents are clearly by way of an afterthought to defeat the claim of the Plaintiff.

14.15 Even otherwise the document Mark A is incapable of being relied on various grounds, including the following reasons:

- a. The Written Statement was filed on 6th January, 1989, but Mark A was not included in the list of documents filed by the Defendant, nor was it mentioned in the Written Statement itself. On 3rd May, 1989, documents were filed along with a list, but Mark A was conspicuously absent from both the list of documents, as well as from the Written Statement. The document was produced by DW 3 on 7th January, 1998 in the absence of the Plaintiff, and without any permission and thereafter it was marked as Mark A.
- b. DW 5 Kailash Chand Jain did not say in his evidence that his grandfather had given Mark A, to him and in turn, he has given this to the Defendant, at the time of handing over the documents of transfer of



property. It is also not the case of the Defendant, that on the basis of this document Mark A, Kailash Chand Jain has ever applied for mutation in the revenue record or with any other government department.

c. The Mark A is not in the form of an agreement to sell. DW-5 in his examination mentions that *“Sh. Kishan Chand executed one receipt in 1953 & in 1953 the possession of plot was handed over by grandfather Sh. Ratti Ram. I can see the signature of Kishan Chand written in Hindi (Q. of exhibition left open.”* Similarly, the Defendant, in his evidence recorded as DW-3, states that *“Sh. Kailash Chand Jain purchased the abovementioned property to grandfather who purchased for Kishan Chand S/o Thakur Dass to him. The said original document was handed over to him by Kailash Chand, in respect of the, property bearing No. J-21 measuring 100 sq. yds. Pandav Nagar, Delhi.”*

d. The document Mark A is on plain piece of paper and if it is a document for sale of immovable property then it is required to be compulsorily registered under Section 17 of the Registration Act as the sale consideration of the property is more than Rs. 100/-.

e. DW-5 does not say that he has given this receipt to the Defendant. The document Mark A has not been proved by any of the witnesses produced by the Defendant. The document does not bear the signature of Kishan Chand. The receipt does not even mention for what purpose the same was being executed.

f. There is no prior chain of ownership documents in possession of Kailash Chand Jain, which shows that the property was purchased by Kailash Chand from Delhi Housing Company. If the Defendant is the *bona fide* purchaser of the property in question, then as a reasonable and prudent



man, he would have obtained the possession of the title document of the previous owner(s). The original of the Title documents are in custody of the Plaintiff, and the Plaintiff had produced the same in the court.

g. In the cross-examination of PW-2 or PW-1, who have respectively proved the signature of Kishan Chand, stating that Kishan Chand signed the Sale Deed in their presence in English, were never confronted with Mark A. Furthermore, not even a suggestion was given to the effect that Mr. Kishan Chand has not been signing in English or that he was signing in Hindi also.

h. Mark A had not been proved in accordance with law by the Defendant in his evidence. Mark A was never admitted by the Plaintiff either in pleading or examination in chief or in cross-examination. Therefore, Mark A not being an admitted document, has no evidentiary value even for the collateral purposes. The Mark A was set up by the Defendant after the conclusion of the evidence of the Plaintiff, therefore it cannot be relied upon for any purposes by the Defendant to prove his case.

i. Thus, the argument of the Defendant that the physical possession of the property was handed over to Lala Rati Ram by virtue of document Mark A is baseless and without any material on record. Document Mark A has been manipulated for illegal and *malafide* purposes. There is no material on record to show that Kailash Chand Jain was in actual possession of the Suit Property since the execution of the said documents.

14.16 Moreover, in the documents (Agreement to sell and General power of attorney), it is explicitly recorded that Kailash Chand Jain purchased the Suit Property from Kishan Chand, son of Late Shri Thakur Dass, *vide* receipt dated 10th July, 1953. However, this directly conflicts with the Defendant's primary contention that Kailash Chand did not purchase the



property himself but instead received it through his grandfather, Lala Rati Ram Jain.

14.17 Afterthought version of Defendant that the Suit Property J-21 falls in/has connection with Khasra No. 1/125:

a. It was not the case of the Defendant that the Suit Property description is Khasra No. 1/125 Village Neem ka Bangar Delhi, either in the pleading or in the evidence deposed by the witness of the Defendant.

b. Besides the aforesaid, in the Khatoni for the year 1964-1965 there is an endorsement that Khasra No. 1/125 stands mutated in name of Kailsah Chand Jain, son of Rich Pal Singh, from Delhi Housing Company. As per the case of the Defendant, the Suit Property was purchased by Rati Ram Jain from Kishan Chand, if the said contention of the Defendant is correct then the mutation in Revenue record should have been a straight endorsement from Kishan Chand to Rati Ram Jain or Kailash Chand Jain. Whereas the document filed and relied upon by the Defendant, the mutation, seems to have been done from Delhi Housing Company in favour of Kailash Chand Jain, which is highly improbable and defies logic.

c. The said mutation has taken place from Delhi Housing to Kailash Chand though admittedly Delhi Housing has sold the property J-21 to Kishan Chand. Kailash Chand in examination in chief does not aver that he was in the possession of property since 1953. He also does not say as to when his grandfather Rati Ram has gifted/conveyed the property to him. There is no statement that Rati Ram gifted the property J-21 Pandav Nagar to Kailash Chand. Moreover, even assuming the allegations and false deposition of Kailash Chand, to be true for a moment, in the year 1953, he was a minor in the eyes of law and was incapable of accepting the



possession of immovable property.

d. Similarly, in the Written Statement, it has not been disclosed as to how Kailash Chand Jain became owner of the Suit Property, and it has also not been stated that the property was purchased by his grandfather for his benefit.

e. There is absolutely nothing on record to substantiate that the said property No. J-21 Pandav Nagar relates to or falls within the Khasra No. 1/125 Village Neem ka Bangar.

14.18 The Defendant has taken inconsistent and mutually destructive Plea throughout the proceedings as can be noted from the following:

a. In RFA number 484 of 2001, the Defendant in his grounds of appeal has laid a claim over the Suit Property by virtue of Adverse Possession. On the one hand the Defendant claims to be deriving title from Kishan Chand and at the same time endeavours to strengthen his alleged title by virtue of adverse possession. Both these pleas of the Defendant are self-contradictory and mutually destructive. No reliance can be placed upon the version and the position taken on behalf of the Defendant.

15. In the alleged agreement deed dated 9th January, 1984, produced by the Defendant, it is recorded that “*the first party has handed over the previous concerning documents to the title of the said property to the second party*”. This clearly shows that the Defendant, as per his own claims, was having the previous chain of documents concerning the title of the property in his possession. However, during the trial, it was the Plaintiff who had produced the original documents of title of the property from her possession and custody.



Analysis and Findings

16. This Court has considered the submissions advanced by counsel for parties. The first objection for determination is the maintainability of the suit. The Defendant argues that since he had seriously challenged the Plaintiff's ownership, possession, and title, the suit in its present form was not maintainable. He argues, the Plaintiff ought to have instituted a suit for declaration with possession, rather than a simplicitor suit for possession. In support of this argument, reliance has been placed on the judgment of the Supreme Court in *Anathula Sudhakar V P. Buchi Reddy (Dead) by Lrs. And Ors.*,¹⁰ wherein it was observed as follows:

"17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

*(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. **But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.***

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

¹⁰ (2008) 4 SCC



(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

17. The Defendant’s reliance on ***Anathula Sudhakar*** is misplaced for two primary reasons. First, the judgment pertains to suits for prohibitory injunctions, whereas the present case is a suit for possession. The legal principles set out in ***Anathula Sudhakar***, particularly in paragraph 17, address different situations which have no application to a suit for possession, where the very relief sought inherently involves an adjudication of title. Second, even assuming that the principles in ***Anathula Sudhakar*** are relevant, they do not advance the Defendant’s case. In Para 17(d) of the judgment, the Supreme Court expressly recognized that a Court may decide on the issue of title even in a suit for injunction, provided there are necessary pleadings and appropriate issues framed, and the matter does not involve complex factual or legal questions. The rationale behind this principle is to prevent frivolous litigation from obstructing legally recognized property rights. In the present case, the Plaintiff’s claim, is not for an injunction but for substantive relief of possession based on title, which inevitably entails an examination of ownership. The Trial Court, accordingly framed specific issues on title, and adjudicated them on the basis of the evidence led by both parties. Hence, the suit for possession is maintainable, and the Defendant’s



objection is without merit.

The Significance of Possession: Applying the Principle of ‘Possession Follows Title’

18. Next, the Defendant contends that, despite specific directions in the Impugned Judgment, the Trial Court, after remand, failed to make a clear finding on which party was in physical possession of the Suit Property from 1953 until the suit was filed in 1988. Before addressing this argument, it is essential to consider scope of the remand order which explicitly limited the scope of the reconsideration to the following effect:

“2. Counsel for the parties agree that the appeals be remanded back after allowing the application under Order 41 Rule 27 CPC, however, both the parties be allowed to lead documentary evidence on the aspect of possession of the suit property from 1953 till the date of filing of the suit. It is clarified that no other evidence will be allowed to be led by any of the parties in the Trial Court. Both the parties can however cross-examine the witnesses of the other party with respect to the documentary evidence which is led and filed in the case including the documentary evidence which has been filed along with the present application under Order 41 Rule 27 CPC.

3. Counsel for the respondents agrees to allowing the application, subject to payment of costs of `25,000/-, and therefore, the application is allowed and costs of `25,000/- shall be positively paid within a period of 4 weeks from today to the counsel for the respondents.

4. Parties to appear before the District and Sessions Judge, Tis Hazari, Delhi on 1.3.2012, and on which date, the District and Sessions Judge, Tis Hazari, Delhi will mark the suit limited to disposal after leading of evidence on the aspects within the narrow compass as stated in the present order. The Trial Court will after hearing both the parties, again pass a fresh judgment in accordance with law. It is clarified that none of the parties will be entitled to delay the case by moving applications including amendment applications with respect to their pleadings. The Trial Court will be entitled to impose heavy costs on the party seeking unnecessary adjournments.”

19. Furthermore, the determination of possession was not meant to establish possessory title, as the real dispute between the parties concerned



the ownership. In cases where both parties assert ownership, the decisive factor is not mere possession, but the validity of title. Possession, though a relevant consideration, cannot take precedence over the requirement to prove lawful ownership. Possession becomes determinative only in cases where neither party can establish a clear title. In such cases, the Court must decide the dispute solely on the basis of possession. However, when ownership is established through valid legal documents, possession naturally follows title. The Defendant's attempt to make possession the sole determining factor is legally untenable.

20. During the hearing on 16th January, 2025, counsel for Mr. Vasu Dev was specifically asked whether the Defendant asserted any claim of 'adverse possession'. In response, Mr. Rakesh Saini, categorically stated that their claim was grounded on ownership, not adverse possession. This admission is decisive, as it completely negates any argument that possession alone should determine ownership in this case. Having expressly refuted adverse possession, the Defendant cannot now insist that the Trial Court was required to render an independent finding on possession. The Trial Court's mandate was to adjudicate title, and once ownership is established, possession is a mere consequence.

21. In view of the above, it is clear that the purpose of allowing additional evidence on possession, after remand, was not to examine continuous possession over the years, but to ascertain whether there was credible evidence to establish that possession was transferred to the Plaintiff when she acquired title. Accordingly, the Trial Court rightly prioritized adjudication of ownership rather than limiting its inquiry to possession.

22. We now turn to an analysis of the title documents presented by both



parties. To establish ownership, the Plaintiff primarily relied on two key documents:

- (i) A Sale Deed dated 06th October, 1954, [Ex. P1] executed by Mr. Kishan Chand Jain, her father, through which she purchased half of the Suit Property.
- (ii) A Will dated 25th February, 1969, [Ex. PW-1/1] executed by Mr. Kishan Chand Jain, bequeathing the Suit Property, along with other properties and assets, in favour of Roop Kumari and other legal heirs.

23. The Sale Deed dated 06th October, 1954 [Ex. P1] (translated copy) records the following:

“SALE DEED

I Kishan Chand S/o Thakur Dass cast Arora Resident of Ajmeri Gate Gali Shahdara Delhi.

That the detail of the property is as under :-

A plot No. 21, land white (vacant) measuring area 100 sq. yard situated at block J. village Gharonda Neem K Bagar alias Patparganj New Colony named Pandav Nagar Delhi state bounded plot No. East 22J-West 20 J, North Road, south Road which is purchased by myself executant a plot No. 6 land (white) vacant measuring area 169/10 Sq yard situated at Block C Krishna Nagar extension village Ghandley, near Jheel Khureji, Delhi state Bounded as under, East land (vacant) west Road North Plot suit-land (vacate) is purchased by myself executant through registered document No. 919 Book No. 1 and volume No. 218 at Page No. 22 & 23 dated 20.2.1953 From Delhi Housing Finance Company. I am the absolute owner and in possession of this plot. I am the complete owner.

*Now I executant has sold all the rights of the half portion of the above said land of plot No. 21 and plot No. 6 in favour of Smt Roop Kumari W/o Ramlal Kumar cast Arora resident of Ajmeri Gate Gali Shahdara. **Handed over the possession half portion of these two plots mentioned above to the purchaser (vendee).** Now the purchaser become the complete owner and possessor of sold half portion of these two sold plots. Now I and my legal heirs have or will have no concern regarding the sold half portion of these two plots. **Receive the sale price of Rs. 98 from the vendee (purchaser).** I assure to the vendee (purchaser) that sold land I had purchased and is free and safe from are types of buden, mortgaged, transfer, if there is any proof against my above written and the vende (purchaser) suffer any loss than I vendor will be responsible to pay all the*



damages. Therefore his sale deed is executed as a proof.

Date: 6.10.1954

SD/Kishan Chand

Kinari Bazar, Delhi”

(sic)

24. The execution of Ex. P1 has been duly proved in evidence. Gurditta Mal (PW2), the attesting witness categorically affirmed that Ex. P1 was scribed by Kishan Lal, the deed writer, in his presence. He further identified the handwriting of the said deed writer and affirmed that Sh. Kishan Chand, the executant, had signed this sale deed at point ‘A’ in his presence after the document, Ex. P1, was read over to him. This document unequivocally records that possession of the Suit Property was handed over to the Plaintiff, Mrs. Roop Kumari, at the time of execution of the sale. This recital satisfies the statutory requirement under Section 54 of the Transfer of Property Act, 1882, which mandates that in cases where a sale is effected without a registered document, the transfer must be accompanied by delivery of possession. Since the Sale Deed itself confirms the transfer of possession, the legal requirement under Section 54 stands duly fulfilled. Accordingly, this Court finds that the Plaintiff has successfully established both the sale and the corresponding transfer of possession, thereby affirming her ownership over the Suit Property.

25. It must also be emphasised that at the time of execution of the Plaintiff’s Ex. P1, the Suit Property was an undeveloped vacant plot of land, making it inherently difficult to establish physical delivery of possession in a tangible manner. In such cases, the recorded recital of possession in the Sale Deed carries significant weight. The principle that “possession follows title”



is particularly relevant here, as in the case of open, vacant land, mere physical occupation does not serve as a conclusive indicator of ownership. Therefore, the delivery of possession recorded in Ex. P1 not only substantiates the Plaintiff's title but also affirms her actual possession at the time of sale.

26. The Defendant's objections to the credibility of PW2's testimony are inconsequential. The inability of PW2 to describe the precise area or physical attributes of the Suit Property does not undermine the reliability of his testimony, especially when the existence of the Suit Property itself is undisputed. More importantly, the execution of Ex. P1 has been proved through direct testimony. Once the execution of a document is established, the document itself must be read in evidence, rendering oral testimony regarding the physical description of the property largely insignificant.

27. In addition to the Sale Deed dated 06th October, 1954 [Ex. P1], the Plaintiff also relies on a Will [Ex. PW1/1] to substantiate her claim over the remaining portion of the Suit Property. Paragraph 4 of the Will explicitly directs that upon the testator's demise, all his movable and immovable properties shall be shared equally among his seven legal heirs, including Mrs. Roop Kumari. This express bequest in favour of the Plaintiff establishes her ownership over the remaining half of the Suit Property, along with other legal heirs of the testator. The Plaintiff also produced the certified copy of the order dated 5th July, 1975 [Ex. P2] whereby the Court issued a succession certificate in terms of an earlier order dated 21st February, 1980,¹¹ [PW1/3] affirming the Plaintiff's claim. A perusal of the order dated 5th July, 1975 [Ex. P2] and order dated 21st February, 1980, [PW1/3] reveals

¹¹ Inadvertently mentioned as 29th February, 1980



that the parties had entered into an agreement regarding the estate of Kishan Chand. Pursuant to this agreement, a compromise application [Ex. PW1/2] was filed, which specified that the remaining 50% of the Suit Property would vest jointly in the Plaintiff, her son Bhushan Kumar, and two other legal representatives of Kishan Chand in equal shares. Paragraph 7(b) on page 2 of the compromise application states as follows:

“7. The following properties, both moveable and immovable shall vest with i) Smt. Banarso Devi alias Roop Kumari ; ii) Smt. Bimla Devi alias Kusum Lata; iii) Smt. Kamla Rani alias Bina Kumari; iv) Sh. Bhushan Kumar, in equal shares

..xx.. ..xx.. ..xx..

b) Half Plot No.21-J, Pandav Nagar, Delhi which was jointly owned by the deceased and Smt. Banarso Devi.”

To this effect, the compromise application in paragraph 2 also specifically notes as follows:

*“That some of the parties had objected to the grant of Succession Certificate. **The executors have already closed their case and have proved the execution of the Will** by the deceased. The Objecting parties have satisfied themselves of the due execution of the Will by Shri Kishan Chand. In order to maintain the family harmony they do not intend to contest the issue of the execution of the Will by the deceased. **They accept the Will as it is.**”*

28. Pursuant to this compromise, the Probate Court, by order dated 21st February, 1980 issued the succession certificate. Thus, the objecting parties have accepted the Will in its entirety. The Plaintiff’s rights, under the Will, have been recognized not only by the Court but also by the other legal heirs of Kishan Chand, who have supported her claim.

29. The Defendant contends that the original Will was neither produced before the Probate Court nor before this Court, and therefore, its execution remains unproven. However, this argument is misconceived and untenable.



The Plaintiff has placed on record a certified copy of the Will [Ex. PW1/1], which was duly produced before the Trial Court. Under Section 65 of the Indian Evidence Act, 1872, secondary evidence, including certified copies, is admissible when the original document is unavailable, provided that the document is of a nature that the law permits to be proved by secondary evidence. In the present case, the Will was not merely relied upon by the Plaintiff but was also adjudicated upon in probate proceedings, where the court, after noting the compromise between the contesting parties, issued a succession certificate in favour of the Plaintiff and other legal heirs. The certified copy of the Will, being admissible as secondary evidence, establishes the Plaintiff's title. Furthermore, the certified copy of the Probate Court's order [Ex. P2] confirms that the executors duly proved the execution of the Will, forming the basis for the issuance of the succession certificate.

30. To conclude, the Plaintiff has successfully established ownership over the Suit Property—50% through the Sale Deed [Ex. P1] and a portion of the remaining 50% through the Will [Ex. PW1/1], as affirmed in the probate court's order [Ex. P2].

The Burden of Proof

31. In civil litigation, the burden of proof is not static—it shifts depending on the nature of the claims and defences raised. Under Section 101 of the Indian Evidence Act, 1872, the party that asserts a fact bears the initial burden to prove it. However, once initial burden is discharged, it shifts to the opposing party to disprove the claim or establish a valid defence.

32. It is a well-settled principle that a person in possession of land, acting as the assumed owner and peacefully exercising the rights of ownership, has



a legal right against the entire world except the rightful owner.¹² Consequently in order to dispossess the Defendant, the Plaintiff had to establish a better title and rights over the Suit Property. In the present case, where the Plaintiff, admittedly sought possession based on ownership, she discharged her initial burden by producing documentary evidence to support her title—the Sale Deed [Ex. P1] and the probated Will [Ex. PW1/1]—which substantiated her ownership. The burden then shifted to the Defendant to justify his possession, either by proving a valid title or by raising an alternative legal defence. The Trial Court correctly required the Defendant to substantiate his occupation, in the face of the Plaintiff’s clear documentary evidence of ownership. However, as discussed above, the Defendant failed to produce any credible proof of ownership. His reliance on Mark A—an unregistered receipt introduced belatedly—and revenue records [Ex. DW6/1, DW6/2, DW-7/X1], which bore no direct nexus to the Suit Property, did not establish any legally enforceable right. Accordingly, the Trial Court correctly concluded that the Defendant’s occupation lacked lawful basis, and the Plaintiff, having successfully established her title, was entitled to reclaim possession of the Suit Property.

In-depth analysis of the Defendant’s Claim of Ownership

33. The Defendant’s assertion of ownership over the Suit Property hinges on a series of documents, primarily relying upon an agreement to sell dated 9th January 1984 [Ex. DW3/2], purportedly executed by Kailash Chand Jain in his favour. In support of this agreement, the Defendant has also relied upon an affidavit [Ex. DW3/4], a receipt [Ex. DW3/1], a Will [Ex. DW3/3], and a General Power of Attorney [Ex. DW3/5], all purportedly executed by

¹² Poona Ram v. Moti Ram (Dead) through Legal Representatives. (2019) 11SCC 309



Kailash Chand Jain in respect of the Suit Property.

34. This claim of ownership is predicated on an alleged sale of the Suit Property by Kishan Chand, son of Late Sh. Thakur Das, to Kailash Chand Jain. The sole document produced to support this alleged transfer is a handwritten receipt dated 10th July 1953 (Mark A), which is written on a plain piece of paper. Significantly, this receipt is unregistered, lacks attestation by witnesses, and does not contain any supporting documentation such as a contemporaneous sale deed or mutation entry pertaining to the year 1953. Apart from Mark A, there is no evidence on record on record to establish that Kishan Chand ever transferred ownership to Kailash Chand Jain, either directly or through his grandfather, Lala Rati Ram Jain. A translated and typed copy of the Mark A is reproduced herein below for reference:

“I, Kishan Chand son of late Shri Thakur Das R/o of H-824, Katra Neel, Chandni Chowk, Delhi, I sold my plot situated at J-21, Pandav Nagar, village Gharonda Neema Ka Bangar at Patpar Ganj, Road, admeasuring 100 sq. yards to Shri/Lala Rati Ram Jain son of Late Hardwari Lal Jain, R/o Deputy Ganj, Sadar Bazar, Delhi, against a cash receipt of Rs. 150/- of which half is Rs.75/- on the spot. I have handed over the possession of the same. Plot No. J-21 situated at Pandav Nagar, Delhi is purchased by Shri Lala Rati Ram Jain son of late Hardwari Lal Jain for his grand son Shri Kailash Chand Jain son of Shri Rishpal Singh Jain. From today onwards I as well as any of my legal heirs will not have any claim over the plot No. J-21, Pandav, Delhi. I have executed this without any pressure with full of my conscious and voluntarily. Though this receipt has been executed that it may be used at times for any purpose/requirement. At any date after appearing before the Registrar, Delhi I will get the same registered.

Kishan Chand

Sd/- In Hindi

Dt. 10.7.53

Kishan Chand

S/D in Hindi On revenue Ticket

Dt. 10.7.53”

(sic)

35. A plain reading of Mark A reveals that it purports to record a sale



transaction in favour of Lala Rati Ram Jain for the benefit of his grandson, Kailash Chand, for a sum of Rs. 150/-. The document suffers from multiple legal infirmities. First, it has never been proved in accordance with law, as no witness has deposed to its execution, nor has the Defendant led any corroborative evidence to authenticate its legitimacy. Second, and more significantly, under Section 17(1) of the Registration Act, 1908, any non-testamentary instrument that creates, assigns, or transfers rights in immovable property valued at Rs. 100/- or more must be compulsorily registered. Since Mark A purports to document the sale of immovable property and exceeds the statutory threshold of Rs. 100/-, its non-registration renders it inadmissible in evidence as proof of ownership.

36. Even assuming, for the sake of argument, that Mark A records a sale transaction, the document itself does not establish delivery of possession to the Defendant's predecessor-in-interest. No contemporaneous record, such as mutation entries, revenue records, or even tax receipts, has been presented to show that possession changed hands in 1953. The Trial Court was, therefore, correct in rejecting Mark A as a proof of ownership over the Suit Property.

37. The Defendant, seeks to circumvent this requirement by contending that Mark A merely records the factum of delivery of possession, making it an acknowledgement of payment, rather than a transfer of title. According to the Defendant, this would bring Mark A within the ambit of Section 17(2)(v) of the Registration Act, which exempts certain receipts from compulsory registration. He further argues that even if registration was optional, it could still be relied upon under Section 18(b) of the Registration Act as an evidentiary document. This argument, however, is untenable. Firstly, Mark



A clearly recites that the property was ‘sold,’ and thus purports to transfer ownership of an immovable property. Therefore, it was mandatory for the transaction to be registered. Secondly, if it is treated as a mere receipt of payment, it does not satisfy the legal requirements to serve as proof of ownership. The Defendant’s contention that the Trial Court failed to consider these arguments is also misplaced. The Trial Court expressly specifically addressed the legal effect of Mark A in para 24 of the Impugned Judgment and correctly held that it could not confer ownership.

Analysis of the Defendant’s Reliance on Revenue Records

38. The Defendant places heavy reliance on revenue records from 1964-65, 1968-69, and 1970-71 [Ex. DW-6/1-2 and Ex DW-7/X1], asserting that these documents establish that the Suit Property was recorded in the name of his predecessor, Kailash Chand Jain. On this basis, he contends that the alleged sale in favour of the Plaintiff could not have been valid, as the Plaintiff’s predecessor-in-title, Kishan Chand, was not in possession of the Suit Property at the time of transfer in 1954. The Trial Court, while acknowledging that Kailash Chand’s name appeared in the revenue records for Gharonda Neem Ka Bangar, Khasra No. 1/125, Ilaka-Patparganj, Delhi, found these entries to be of no probative value in the present case. The primary reason for this conclusion was that the Defendant failed to establish any direct correlation between these records and the Suit Property, J-21, Pandav Nagar, Delhi. Mere entries in revenue records do not confer ownership rights unless supported by legally admissible title documents. The Defendant challenges this finding, relying on the report of the Tehsildar, Preet Vihar, dated 23rd August, 2007 [Ex. DW3/X], which purportedly confirms that J-21, Pandav Nagar, falls within Khasra Nos. 1/125 and 1/126.



The Exhibits DW-6/1-2 and DW-7/X1 (Translated copies) are reproduced herein below:

English Translation of Urdu Versions

[Form P-6]

[See Rule 83]

Khatoni of Village Neem Ka Bangar Hadbast No. Tehsil and District Delhi, for the years 1964-65

Serial No. of Khasra Khatoni	Name of tenure of holder with parentage and residence.	Year of commencement of tenure.	Khasra No. of each plot of the Khata.	Area of such plot in bighas or acres	Land Revenue or rent payable by tenants, landlords	Substance, effecting change, if any, with No. and of order, designation, date of authority, passing the order.				Remarks.
						Year F 1965-66	Year F 1966-67	Year F 1967-68	Year F 1968-69	
1	Above Delhi Housing		1/111 118-119 1/120 1/125 1/126 1/128 1/129 1/130 1/131 1/32	0-2 0-2 0-18 0-2 0-2 0-2 0-2 0-2 0-2 0-2		7	8	9	10	11 402-44
						Date 22/10/60 File No 13/T/60 the mutation of sale of 16 khasra 1/125 land Measuring 0-2 land 0-2 is sanctioned in name of Kailash Chand son of Lala Richpal Singh resident of Richpal Singh resident of Building Mohan Chan Bajaj Deputy Ganj from Delhi housing Delhi				

English Translation of Urdu Versions

[Form P-6]

[See Rule 83]

Khatoni of Village Neem Ka Bangar Hadbast No. Tehsil and District Delhi, for the years 1968-69

Serial No. of Khasra Khatoni	Name of tenure of holder with parentage and residence.	Year of commencement of tenure.	Khasra No. of each plot of the Khata.	Area of such plot in bighas or acres	Land Revenue or rent payable by tenants, landlords	Substance, effecting change, if any, with No. and of order, designation, date of authority, passing the order.				Remarks.
						Year F	Year F	Year F	Year F	
81 206	Kailash Chand son of Rich Pal Singh Building Mohan Lal Bazar Deputy Ganj Sarar Bazar Delhi	1966-67	1/125	0-2	0-2	7	8	9	10	11 13T 66 7-4-67

English Translation of Urdu Versions

[Form P-6]

[See Rule 83]

Khatoni of Village Neem Ka Bangar Hadbast No. Tehsil and District Delhi, for the years 1970-71

Serial No. of Khasra Khatoni	Name of tenure of holder with parentage and residence.	Year of commencement of tenure.	Khasra No. of each plot of the Khata.	Area of such plot in bighas or acres	Land Revenue or rent payable by tenants, landlords	Substance, effecting change, if any, with No. and of order, designation, date of authority, passing the order.				Remarks.
						Year F	Year F	Year F	Year F	
55	Kailash Chand son of Rich Pal Singh Building Mohan Lal Bazar Deputy Ganj Sarar Bazar Delhi		1/125	0-2		7	8	9	10	11 402-44

ANNEXURE A



39. This Court finds no merit in the Defendant's reliance on revenue records to dispute the Plaintiff's title. Firstly, revenue records primarily serve fiscal and administrative purposes and do not confer proprietary title over immovable property. The Supreme Court has consistently held that mutation entries in revenue records are not conclusive proof of ownership and nor does it have any presumptive value on title.¹³ Secondly, the revenue records relied upon by the Defendant pertain to the period from 1964 onward, whereas the Plaintiff's Sale Deed was executed a decade earlier, in 1954.

40. Nonetheless, the Defendant contends that these records undermine the validity of the Plaintiff's sale, arguing that the transferor, Mr. Kishan Chand, was not in possession of the property since 1953. However, this argument is misconceived. The Defendant did not produce any revenue record from 1953-1954 to contradict the Plaintiff's claim that the possession was delivered at the relevant time. As a result, these records do not undermine the Plaintiff's title or the validity of her sale deed. Additionally, the revenue records relied upon by the Defendant indicate that Khasra No. 1/125 was recorded in the name of Kailash Chand, purportedly transferred by the Delhi Housing Company. However, this assertion directly contradicts the Defendant's own case. The Defendant has consistently maintained that the Suit Property was originally purchased by Lala Rati Ram from Kishan Chand, in the name of his grandson, Kailash Chand. If that were true, there would be no occasion for the property to have been transferred by the Delhi Housing Company to Kailash Chand. This glaring inconsistency remains unexplained and therefore, the Court finds no reason to place reliance on

¹³ *Sawarni vs. Inder Kaur and Ors* (1996) 6 SCC 223



these inconsistent documents, as they fail to establish any clear chain of ownership in the Defendant's favour.

Effect of Long and Continuous Possession

41. The Defendant's mere assertion of continued possession is insufficient to establish lawful possession of the Suit Property. Possession, in itself, is not a substitute for ownership. It is well-settled that possession, to have any legal sanctity, must be either lawful or adverse in nature. The Defendant, however, has failed to establish either. Mere long-standing occupation, does not automatically confer ownership rights, especially when the Plaintiff has successfully demonstrated her title through legally recognized documents. Defendant's documentary evidence, particularly Mark A, was unregistered, unproven, and failed to establish any lawful right to retain possession. On this issue, it would apposite to rely on the Judgment of the Supreme Court in *Indira v. Arumugam and Another*¹⁴ where it was observed:

"It is, therefore, obvious that when the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited."

Plea for value of improvements under section 51 of the Transfer of Property Act

42. Regarding the Defendant's claim for compensation under section 51 of the Transfer of Property Act, it is important to note that in paragraph 34 of the Impugned Judgement, the Trial Court has specifically noted that the superstructure on the plot was raised by the Defendant and the Plaintiff merely raised the boundary wall. It was only after considering the

¹⁴ *Indira v. Arumugam and Another* (1998) 1 SCC 614



aforenoted facts that damages for the modest sum of Rs.1000/- per month, from the date of filing of the Suit till the date of delivery of possession were awarded to the Plaintiff. In such circumstances, the court finds no merit in the Defendant's argument, to interfere with the Impugned judgement on this ground.

On Limitation

43. The Defendant, in their brief note of submissions, contends that the Plaintiff was never in physical possession of the Suit Property and has failed to produce any evidence of prior possession. On this basis, they argue that the suit is barred under Section 27(2) of the Limitation Act, 1963. This argument is fundamentally flawed. It must be highlighted that the counsel for Appellant, on instructions, has stated that they are not basing their claim on Adverse possession. The Plaintiff has specifically averred in the plaint that she became aware of the Defendant's illegal occupation in or around 14th February, 1988. Upon discovering the encroachment, she promptly issued a legal notice (Ex. PW1/4) on 1st March, 1988. The Defendant has not denied receipt of this notice. In these circumstances, the Defendant has failed to demonstrate that the suit is time-barred.

CONCLUSION:

44. In view of the foregoing analysis, this Court finds no infirmity in the Trial Court's finding that the Plaintiff is the rightful owner of the Suit Property. The Plaintiff has successfully established her title through a sale deed and probated Will, whereas the Defendant has failed to substantiate his claim of ownership with legally admissible documents. Although the Defendant has remained in possession of the Suit Property for over three



decades, this is a consequence of prolonged litigation rather than any lawful entitlement. In light of the above, this Court finds no merit in the present appeal. The Impugned Judgment of the Trial Court is upheld in its entirety. Consequently, the stay on execution of the Impugned Judgment, granted by this Court on 4th May, 2016 stands vacated. Consequently, the amount deposited with the Court, along with interest accrued, is directed to be released to the Respondents.

45. To facilitate the release of the amount deposited, all the Respondents/ Legal Representatives of Roop Kumari, must submit an affidavit detailing their respective shares in the aforementioned amount. Upon receipt of such affidavits, the Registry shall release the said amount to the Respondents, in proportion to the share specified in the said affidavits.

46. It is noticed that there is an error in the cause title. The deceased Respondent is Roop Kumari and not Roop Kumar. Registry is accordingly directed to correct the cause title.

47. Appeal Dismissed.

SANJEEV NARULA, J

MARCH 04, 2025

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