

IN THE COURT OF SH. ABHITOSH PRATAP SINGH RATHORE
DISTRICT JUDGE-05, SOUTH WEST DISTRICT,
DWARKA COURTS, NEW DELHI.

RCA DJ 13/2026
CNR No.DLSW01-001378-2026

IN THE MATTER OF:

Surender Sharma

S/o Ram Dass Sharma

R/o House No.N-2/7

D K Road, Mohan Garden, Uttam Nagar,

West Delhi, Delhi- 110059

...Appellant

Vs.

1. Suman Lata

D/o Suraj Prakash Chibber

R/o V/A-30, Gali No.1-A

Virender Nagar, Janapuri,

New Delhi- 997177767

2. Suraj Prakash Chibber (Dead)

Through its Legal heirs

R/o V/A-30, Gali No.1-A

Virender Nagar, Janapuri,

New Delhi- 997177767

...Respondents

Date of Institution	:	29.01.2025
Date of final arguments	:	23.03.2026
Date of judgment	:	30.04.2026

JUDGMENT

1. The present appeal has been filed u/s 96 r/w 151 of CPC against the impugned judgment & decree dated 20.12.2025 passed by Ld.SCJ, South West District, Dwarka Courts, New Delhi in Civil Suit no. CS SCJ 13.05/2022.

2. Brief facts as stated in the appeal are that appellant herein had filed a suit for declaration on the ground of adverse possession and permanent injunction restraining the defendant from creating third party interest and obstructing the peaceful possession and enjoyment of the suit property. Summons were served to defendant/respondent and defendant entered his appearance and filed written statement on 28.11.2022. Issues were framed and matter was listed for plaintiff's evidence on 05.06.2023. Plaintiff/appellant filed his evidence affidavit on 01.11.2023 however in the meanwhile, defendant/respondent moved an application under Order VII Rule 11 CPC which was allowed by the Ld Trial Court on 20.12.2025 and consequently the plaint was rejected.

3. The appeal has been filed on the ground that Ld. Trial Court had failed to appreciate the documents filed by the plaintiff and erringly passed the order. It is also stated that Ld Trial Court failed to record that the plaintiff has no cause of action.

4. Arguments heard. Trial Court record perused.

Brief facts as stated in the plaint are as under:-

5. The suit property was purchased by father of the defendant no.1 in the joint name of himself and defendant no.1. Plaintiff entered into possession of the suit property in 2007 as tenant and was paying monthly rent of Rs.650/- per month excluding water and electricity charges. It is further stated that relations between plaintiff and the father of defendant no.1 developed during the aforesaid period which resulted into gifting the suit property to plaintiff in December, 2008 and promising him to execute

a registered gift deed. Father of the defendant no.1 had 4-5 properties. Plaintiff used to collect the rent from tenant and hand it over to father of defendant no.1. Father of defendant no.1 died in July, 2022. During his lifetime neither defendant no.1 nor his legal heirs demanded any monthly rent or objected to the peaceful possession of the plaintiff. Plaintiff carried out necessary repairs in the roof and changed the tin shed in 2009. After the demise of her father, defendant no.1 started visiting the suit property in odd hours and creating nuisance and unreasonable harassment to the plaintiff.

6. The suit was filed for declaration and permanent injunction. Summons were served. Defendant appeared and filed the WS. ON the basis of pleadings, six issues were framed vide order dated 05.06.2023. When the matter was at the stage of PE, defendant filed an application under Order VII Rule 11 CPC. The said application was allowed with the following observations:

“8. Pertinently, the fact that the plaintiff was inducted as a tenant in the suit property is admitted by the plaintiff in his plaint. It is also admitted by the plaintiff that the defendant no.1 and her father had jointly purchased the suit property. It is however alleged by the plaintiff that the father of defendant no.1 had orally gifted the suit property to the plaintiff and had assured to execute a registered gift deed in favour of plaintiff, however, due to ill health, the same was not done by father of defendant no.1 nor did plaintiff ask him to execute the same. Thus, admittedly there is no written registered gift deed in respect of the suit property in favour of plaintiff. Section 123 of Transfer of Property Act, 1882 mandates the gift of movable property to be effected by way of a registered instrument signed by or on behalf of donor and attested by at least 2 witnesses. In absence of any such registered instrument, transfer of

movable property cannot be effected by way of an oral gift it being contrary to the mandate of Section 123 TPA. Thus, it cannot be said that the suit property was gifted by the father of defendant no.1 to the plaintiff. Further, as per the plaintiff himself, relations between him and father of defendant no.1 were sound and good, therefore, it is evident that plaintiff was in possession of the property only in the capacity of a permissive user and not as an owner thereof, at least till the time of the death of father of defendant no.1 which took place in the month of July, 2022. Further, perusal of the documents annexed by the plaintiff along with his plaint reveals that plaintiff has annexed a copy of an undertaking dated 21.04.2021, wherein he has stated that he has to pay rent up to 6th April to the father of defendant no. 1 and in 3 to 4 months he will pay ₹10,000 to ₹15,000/-. It is further stated in the said undertaking that he has made the said undertaking without any coercion or greed. Thus, evidently on 21.04.2021 plaintiff has admitted himself to be a tenant of the father of defendant no.1 which contradicts his own claim that he is in adverse possession of the suit property since December, 2008. It is a settled position of law that once a tenant is always a tenant and the tenant cannot claim adverse possession against the landlord since his possession is permissive in nature. Thus considering the admission of the plaintiff -6- himself in the undertaking dated 21.04.2021, wherein he has clearly admitted himself to be a tenant of father of defendant no.1, this court is of the view that plaintiff has no cause of action to file the suit in hand. Accordingly the plaint is rejected under Order VII Rule 11 (a) CPC. File be consigned to record room after due compliance

7. It is a settled position of law that a plaint can be rejected under Order VII Rule 11 only if it falls within any of the categories specifically provided under the said rule. It is an equally well-settled position that a plaint can be rejected only on the basis of the averments of the plaint;

while deciding an application, a court cannot look into the defence of the defendant or the documents produced by the defendant. In other words, a plaint can be rejected only for reasons arising out of the inherent insufficiency of the plaint itself. Wherever any triable question is involved, such issue cannot be determined at the stage of Order VII Rule 11 CPC. Order VII Rule 11 is a drastic power which curtails the right of the plaintiff to prove his case through trial; hence, it must be exercised by the court with much circumspection.

8. In the present case, the case of the plaintiff is that he entered into possession of the suit property in the year 2007 as a tenant and was paying monthly rent of Rs.650/- per month, excluding water and electricity charges. In the month of December 2008, late Suraj Prakash Chhibber orally gifted the suit property to the plaintiff and assured him that he would execute a registered gift deed. However, due to his ill health and old age, the plaintiff never asked late Suraj Prakash to execute the gift deed as promised earlier. It is stated that the plaintiff did not pay any monthly rent of the suit property to the defendants or any other person after November 2008. Thereafter, in the month of September 2009, adverse to the rights, interest, and title of the defendant, the plaintiff carried out certain repairs in the suit property, as he replaced the tin metal roof with a cemented roof and made the suit property suitable for human dwelling, and began residing there with his family. In 2010, the plaintiff again carried out routine maintenance. In the years 2015–16, the plaintiff constructed a kitchen and a store room on the northern side of the suit property. In the year 2019, the plaintiff renovated the kitchen and bathroom and carried out tile work in the kitchen and bathroom of approximately Rs.50,000/-. In January 2022, the plaintiff carried out

whitewashing in the suit property. However, after the demise of late Suraj Prakash in the month of July 2022, his daughter started visiting the suit property at odd hours and began harassing the plaintiff unnecessarily. On 27th September 2022, when the plaintiff was out of station and had gone to his native place to attend the funeral ceremony of his uncle, defendant No. 1, along with two persons, came to the suit property and began abusing the plaintiff's wife. On 07.10.2022, the plaintiff's wife made a complaint to the concerned SHO. The suit has been filed for a decree of declaration, declaring the plaintiff as owner on the ground of adverse possession, and for permanent injunction against the defendant from making obstruction in the peaceful possession or creating any third-party right, title, or interest.

9. Along with the plaint, certain documents have been filed, such as the Aadhaar card of the plaintiff, the site plan of the suit property, photocopies of the water bill and electricity bill, the birth certificate of the plaintiff's son, and a school fees receipt. A photocopy of a settlement deed between late Suresh Prakash and his tenant, dated 21.04.2021, has also been annexed. Upon perusal of this document, it appears that all the bills are in the name of the defendant, and the document dated 21.04.2021 reads as follows: "I have to give rent for Uncleji's house till April. I will pay Uncleji fifteen thousand rupees every three or four months. I am stating this without any pressure or greed. I am stating this in my complete senses." It further states that the payment will be made either to Uncleji or to Sharmaji. Uncleji has been identified as SP Chhibber.

10. With respect to the document, the observation of the trial court that the said document shows that it is an undertaking on behalf of the plaintiff

to pay rent to the father of defendant No. 1 is incorrect. The document has been executed by one Dilip Singh, in which he has undertaken to pay rent either to the father of defendant No. 1 every three to four months or to Sharmaji. It is unclear as to who Sharmaji is. In any case, the document is not an admission of liability by the plaintiff herein. Hence, the observations regarding that document are incorrect. However, even if this document is not considered, the plaintiff's case would not be on any better footing. The plaintiff has stated that he was a tenant and subsequently claimed that the suit property was orally gifted to him. An oral gift of immovable property is of no legal effect as it is contrary to the dictum of Section 123 of the Transfer of Property Act, 1882. When the inception of the plaintiff's right to the property is in the nature of tenancy, it cannot ripen into adverse possession. Mere repair of the property does not disclose a cause of action regarding adverse possession. Besides, the plaintiff himself is making contradictory claims. He is taking the plea of adverse possession while also claiming that the property has been gifted to him, which are mutually contradictory. Once a tenant, always a tenant, and no amount of time can convert a tenancy into title, even by way of adverse possession. Hence, this Court is of the opinion that the plaintiff's suit deserves to be rejected under Order VII Rule 11. There is no infirmity or illegality in the judgment passed by the Ld Trial Court. The appeal is accordingly dismissed.

**Typed to the dictation directly,
corrected and pronounced in the
open Court on 30.04.2026**

(Abhitosh Pratap Singh Rathore)
District Judge-05,
South West, Dwarka Courts, New Delhi