

**IN THE COURT OF SH. SACHIN SOOD,
DISTRICT JUDGE-01 (CENTRAL), THC, DELHI.**



RCA No. 179/25

CNR No: DLCT 01 015822 2025

1. Late Sh Ashok Sharma

Through his legal heirs

(a) Ms Meenakshi Sharma

(b) Ms Nisha Bhardwaj

2. Smt Krishna Sharma

W/o Late Sh Ashok Sharma

All R/o 1217, Mahal Sarai, Bada Bazar

Kashmiri Gate, Delhi 110006

APPELLANTS

V E R S U S

1. Sh Anil Rohtagi

S/o Late Sh B.M. Rohtagi

R/o 1-A, Utkarsh Apartment, 2, Raj Narain Marg,

Civil Lines, Delhi-110054.

2. Sh Shatrughan Rohtagi

S/o Late Sh Krishan Behari Rohtagi

R/o Flat No 1604, Tower-C (15 Floor)

IREO Victory Velly, Sector 67, Gurugram, Haryana

3. Bahu Geeta Devi Private Family Trust (Regd)

1218, Mahal Sarai, Bada Bazar,

Kashmiri Gate, Delhi-110006

RESPONDENTS

Date of Institution:

16.10.2025

Date of Judgment:

29.05.2026

J U D G M E N T

1. The present appeal has been filed against the judgment dated 09.09.2025.

Vide the judgment impugned herein the Court of the Ld. Civil Judge has decreed the suit of the plaintiff (respondent herein) for the relief of possession and recovery of mesne profit @ 7,000/- per month from the date of filing of the suit till the handing over of the possession together with a decree of permanent injunction against defendants No.1 and 2, thereby, restraining them from creating any third party rights, parting with possession, alienating or encumbering the suit property.

2. For the sake of convenience, the parties are being hereinafter referred to as per their original status/rank before the Ld. Trial Court i.e. appellants are defendants No.1 & 2 and the respondents as the plaintiffs.

Brief facts of the case:

3. The plaintiffs have filed the present suit against the defendants claiming that the plaintiff No.3 is a trust and plaintiffs No.1 and 2 are the trustees of a private family trust namely, Bahu Geeta Devi Pvt. Family Trust (REGD) and the said trust is the owner of properties bearing No.1217,1218 and 1220 to 1222 including temple, prayer hall, well (now covered), Dharamshala and open courtyard situated in premises No. 1218, Mahal Saria, Bada Bazar,

Kashmiri Gate, Delhi. As per the case of the plaintiffs, Late Sh. Narayan Dass created the private trust in the year 1920 in the memory of his mother Smt. Geeta Devi w/o of Late Lala Sh. Munni Mal. As per the case of the plaintiffs, disputes arose between the LRs of Smt. Geeta Devi in respect of the trust properties and vide judgment and decree dated 22.05.1940, it was held and declared that the properties are charitable and indivisible which are to be managed by one representative of each branch of Late Lala Sh. Narayan Das and Late Lala Sh. Ram Charan both sons of Late Smt. Geeta Devi. As per the case of the plaintiffs, in view of the changed circumstances, a registered trust deed dated 16.03.1998, was executed in terms of the judgment and decree dated 22.05.1940 by Sh. Krishan Bihari Rohtagi, son of Late Sh. Nar Singh Dass representing the branch of Late Lala Narayan Dass and Dr. Puneesh Rohtagi, representing the branch of Late Lala Ram Chand, who were appointed as trustees of the said trust. Thus, as per the plaintiffs Sh. Krishan Bihari Rohtagi and Dr. Puneesh Rohtagi, were competent to let out the trust properties including property No. 1217, Mahal Saria, Bada Bazar, Kashmiri Gate, Delhi.

4. As per the plaintiffs, Sh. Krishan Bihari Rohtagi expired on 09.02.2003 and vide rectification deed dated 20.11.2012, all the remaining LRs of late Sh.

Krishan Bihari Rohtagi his brother Sh. Baldev Bihari Rohtagi and Sh. Arun Bihari Rohtagi (son of Late Sh. Baldev Rohtagi) nominated and appointed Sh. Chaten Rohtagi (son of Late Sh. Baldev Rohtagi) as trustee of the said trust to represent the branch of late Lala Sh. Narayan Dass and to perform and discharge all the duties as a co-trustee with Dr. Puneesh Rohtagi. Thus, as per the plaintiff Sh. Chaten Rohtagi and Dr. Puneesh Rohtagi became the trustees of the above trust. Thereafter, a supplementary trust deed dated 30.03.2015 was executed and got registered under Registration no 953 in Book No 4 Vol No 315 at page nos 116-120 dt 01.04.2015 and thus Sh Anil Rohtagi and Sh Chetan Rohtagi became the trustees being fully competent to control and manage the trust properties as its owners/landlords.

5. That out of trust properties, a double storied built up property no 1217, Mahal Sarai Bada Bazar, Kashmeri Gate, Delhi-6, a plot about 105 Sq yds (27' X 35') was originally let out to Sh Inderpal Arora (defendant no 3) and Sh Tara Chand Arora (father of defendant no 4 & 5) in the month of May 1995 for residential cum commercial purposes at a monthly rent of Rs 400/- by Kishan Behari Rohtagi and Dr Puneesh Rohtagi.

6. That defendant no 3 and the father of defendant no 4 & 5 after the demise of their father have permitted and allowed defendant no 1 to live with his wife

i.e. defendant no 2 herein in one room on the first floor of the said property bearing no 1217, Mahal Sarai Bada Bazar, Kashmeri Gate, Delhi-6 in the capacity of their caretaker/chowkidar. The defendant no 1 & 2 were also allowed by them to use the toilet and bathroom jointly with the defendant no 1 & 2 and their other employees/workers.

7. That some dispute regarding non-payment of rent arose between the plaintiffs and defendants nos. 3, 4, and 5 in respect of the said rented premises no. 1217, Mahal Sarai, Bada Bazar, Kashmeri Gate, Delhi-6 and thereby the tenancy of defendants nos. 3, 4, and 5 was terminated by the plaintiffs by serving legal notice dated 22.05.2015 and 23.06.2015 and the said notice dated 22.5.2015 was replied vide reply dated 19.06.2015 admitting therein their tenancy, rate of rent, and creation of the tenancy in May 1995.

8. Thereafter the plaintiffs have filed a Petition no. CA(S)/124 of 2015 under Section of the Slum Area (Development and Clearance) Act 1956 on 04.08.2015 against the defendant nos. 3,4 and 5 for getting the legally required permission to file an eviction petition against them and the same was granted by The Hon'ble Court of Sh. Purshotam Pathak, D.J.S., Competent Authority, Delhi Urban Shelter Improvement Board Government of N.C.T. of Delhi, Tis Hazari Courts, Delhi vide order dated 06.06.2017.

9. That the defendants nos. 3, 4, and 5 also paid the rent for the entire rented premises for the period of three years, i.e., from January 2003 to December 2005, on 04.09.2015, by way of three money orders of Rs. 4,800/- each during the pendency of said petition before the said Competent Authority (DUSIB).

10. That upon receiving the said permission vide order dated 06.06.2017 passed by the Competent Authority, Delhi Urban Shelter Improvement Board, the plaintiffs also served legal notice dated 22.06.2017 on the defendants nos. 1, 3, and 4 regarding the subletting, assigning, and parting of one room on the first floor of said rented premises no 1217, Mahal Sarai, Bada Bazar, Kashmeri Gate, Delhi-6 by defendants nos. 3 and 4 to the defendant no. 1 without any written permission and consent of the plaintiffs. On receiving the said notice dated 22.6.2017, the defendants nos. 3 and 4 have remitted the rent for the period from 1.6.2012 to 31.12.2017 by way of Demand Draft of Rs. 33,902/- to the plaintiffs as legally due amount of rent plus due amount of interest thereon along with their reply dated 17.07.2017.

11. That the defendant no. 1 also replied to the said notice dated 22.06.2017 through Sh. Rajesh Sharma, Advocate vide reply dated 04.07.2017 alleging therein that the defendant no. 2, wife of defendant no. 1, is in possession of

the said first floor of property no. 1217, Mahal Sarai, Bada Bazar, Kashmeri Gate, Delhi for the last more than 22 years and so she has become the absolute owner of the same.

12. That the defendants nos. 3 and 4 have also handed over the peaceful vacant possession of the entire premises no. 1217, Mahal Sarai, Bada Bazar, Kashmeri Gate, Delhi-6, except for one room on the first floor, to the plaintiffs under a Memorandum of Understanding dated 22.07.2017, duly signed by them and the plaintiffs on 24.07.2017, by settling all their disputes and differences. The defendants nos. 1 and 2 were also asked and persuaded, in the presence of the plaintiffs, to hand over the peaceful vacant possession of the said one room on the first floor of the premises in their possession and occupation, as they have no right to retain it.

13. That the plaintiffs also sent the replication dated 02.08.2017 to the said reply dated 04.07.2017, from defendants Nos. 1 and 2, calling upon them to vacate and hand over the peaceful possession of the said room to the plaintiffs by 10.08.2017 but no fruitful result was yielded.

14. That on 16.08.2017, plaintiff No. 2, Sh. Chetan Rohtagi visited the said premises No. 1217, Mahal Sarai, Bada Bazar, Kashmeri Gate, Delhi, and found that defendant Nos 1 and 2 have also illegally and unauthorizedly

occupied the other two rooms and one kitchen on the first floor of the above mentioned property after the said notice dated 22.06.2017 and said M.O.U. dated 22.07.2017 duly signed on 24.07.2017 and said rejoinder dated 02.08.2017 give to the reply dated 04.07.2017 of the said notice dated 22.6.2017 while latrine (WC) and bath-room are being jointly used by the occupants of the said entire premises hence, at present the defendant no 1 and 2 are jointly and exclusively in illegal and unauthorized possession and occupation of the 3 rooms and the kitchen on the said first floor of the property bearing no 1217, Mehal Sarai, Bada Bazar, Kashmeri Gate, Delhi. Another legal notice dt 17.08.2017 was served upon defendant no 1 & 2 by the plaintiffs calling upon them to vacate and hand over the peaceful possession of the suit property by 25.08.2017 failing which they would be liable to pay damages @ Rs 7,000/- per month to the plaintiffs from the said date till the handing over the peaceful possession of the suit premises.

15. That on 10.09.2017, the plaintiffs noticed that the defendants 1 and 2, with malicious and dishonest intentions, have also placed their old house hold goods on the open terrace of the said first floor to grab the entire first floor of the property no. 1217, Mahal Sarai, Bada Bazar, Kashmeri Gate, Delhi, consisting of three rooms, a kitchen, and an open terrace.

16. That the aforesaid acts and actions of the defendants nos. 1 and 2 are illegal, unlawful, uncalled for, unjust, improper, malicious, and dishonest, committed by them to cheat the plaintiffs and to seize the suit property by illegal means and methods, which could be in collusion and in connivance with the defendants nos. 3, 4, and 5, the previous tenants.

17. Since despite the service of summons upon the defendant nos 1,2,3,4 & 5 on 06.12.2017 since defendant no 3,4 & 5 failed to file their WS and thus the right to file the same was closed vide order dt 10.01.2018 and they were also proceeded Ex parte. Thereafter, defendant no 3 got expired and an application u/o 22 Rule 4 CPC for impleading the LRs of defendant no 3 was allowed on 05.03.2019.

18. Written statements have been filed on behalf of defendant no 1 & 2 taking the following stands:

(a) That the plaintiffs have not approached the court with clean hands and are not the owners property occupied by defendant no 1 & 2 and no documents or title have been filed showing the ownership of the suit property.

(b) The plaintiffs have no locus standi as they do not have any title to the suit property and the documents filed by the plaintiffs are forged and fabricated.

(c) That defendant no 1 & 2 have been residing in the suit property alongwith their family members for the last more than 22 years and have thus become the absolute owner of the first floor with roof by adverse possession. Defendant no 2 has been paying the house tax and electricity charges who are thus the absolute owners by virtue of adverse possession.

(d) That prior to the answering defendants, the portion of the ground floor and the first floor was in the possession of one Sh Bansi Ram and thereafter the answering defendants possessed the said portion of the property No 1/1217 which is different property than the property no 1217 which is an adjacent property. The defendants were handed over the possession of the said property by the son of Sh Bansi Ram. The plaintiffs never contacted the answering defendants and never claimed the suit property and thus the possession of the answering defendant is continuous and uninterrupted and the defendants have possessory rights over property bearing no 1/1217, Mahal Saria, Bada Bazar, Kashmeri Gate, Delhi-06.

On merits, the contents of the plaint were denied including the fact that the property no 1217 was originally let out to Sh Inder Pal Arora and Sh Tara Chand Arora in the month of May 1995 by Sh Krishan Bihari and Dr Puneesh Rohtagi. It has further been denied that defendant no 3 and the

father of defendant no 4 & 5 after the demise of their father have permitted and allowed defendant no 1 to live with his wife in the capacity of a caretaker/chowkidar. Rest of the contents of the plaint have been denied by the defendants.

19. Written statements have also been filed by defendant no 4 & 5 who have submitted that Sh Inder Pal Arora prior to his demise have settled the matter with the plaintiff and possession of the tenanted premises stands handed over to the plaintiff on the basis of MOU as entered into between the parties and defendant no 4 has no concern since he is not in possession of any of the portion of the suit property. Defendant no 4 has stated that defendant no 1 alone is in possession of the said property who was kept as a chowkidar.

20. Replication have been filed to the WS as filed by defendant no 1, 2, 4 & 5 wherein the plaintiffs have reiterated the contents of the plaint. During the course of the proceedings, the defendant no 1 Sh Ashok Sharma expired on 18.04.2025 and his LRs was brought on record as per the amended memo of parties.

21. Pursuant to completion of pleading, vide order dt 20.12.2020 following issues were framed:

Issue 1: Whether the plaintiffs are entitled to a decree of possession as prayed for in prayer (a) of the plaintiff? OPP.

Issue 2: Whether the plaintiffs are entitled to recovery of mesne profits/damages as prayed for in prayer (b) of the plaintiff? OPP.

Issue 3: Whether the plaintiffs are entitled to a decree of permanent injunction as prayed for in prayer (c) of the plaintiff? OPP.

Issue 4: Whether the plaintiffs have no locus to file the present suit? OPD1 and 2

Issue no. 5: Whether the plaintiffs have no cause of action to file the present suit? OPD 1 & 2.

Issue no. 6: Relief.

22. The plaintiffs have examined 4 witnesses. Sh Anil Rohtagi as PW-1, Sh Sevajit as PW-2, Sh Saifuddin as PW-3 & Sh Shatrudhan Rohtagi as PW-4.

23. Sh Anil Rohtagi examined himself as PW-1. He tendered his evidence by way of affidavit Ex.PW1/A and relied upon the following documents:

1. Ex. PW1/1 is site plan

2. Ex. PW1/2 is the photocopy of the certified copy of the judgment, in Urdu dated 22.05.1940 passed in the suit title Sh. Brij Mohan and Anr. Vs. Sh. Krishan Bahri and Anr. is now De-exhibited as marked as 'Mark A' (Colly).

3. Ex. PW1/2A is the translated copy of the judgment dated May 22, 1940, passed in the case of Sh. Brij Mohan and Anr. vs. Sh. Krishan Behari and Anr. It is now de-exhibited and marked as 'Mark B' (Colly).

4. Ex. PW1/3 is the photocopy of a certified copy of a registered trust deed dated 16.03.1988, which is de-exhibited and marked as 'Mark C' (Colly).

5. Ex. PW1/4 is a copy of a registered trust deed dated 30.03.2015, which is de-exhibited and marked as 'Mark D' (Colly).

6. Ex. PW1/5 (Colly) is the copy of the notice dated 22.05.2015

7. Ex. PW1/6 is the reply dated June 19, 2015, to the notice dated 22.05.2015.

8. Ex. PW1/8 is the notice dated 22.06.2017.
9. Ex. PW1/9 is the reply dated 17.07.2017.
10. Ex. PW1/10 is the reply dated 04.07.2017.
11. Ex. PW1/11 is the replication dated 02.08.2017, to the reply dated July 4, 2017.
12. Ex. PW1/12 and Ex. PW1/13 are the original postal receipts.
13. Ex. PW1/14 and Ex. PW1/15 are the tracking reports of the postal receipts which are de-exhibited and marked as 'Mark E & Mark F'.
14. Ex. PW1/16 is the notice dated 17.08.2017.
15. Ex. PW1/17 and Ex. PW1/18 are the postal receipts.
16. Ex. PW1/19 and Ex. PW1/20 are the tracking reports of the postal receipts which are de-exhibited and marked as 'Mark G & Mark H'.
17. Ex. PW1/21 (OSR) (colly) is the copy of the trust deed dated 30.01.2019
18. Ex. PW1/22 is the pedigree table of Smt. Bahu Geeta Devi.
19. A photocopy of the MOU dated 22.07.2017, which is marked as 'Mark A' in the affidavit, is now marked as 'Mark I' (colly).
20. Ex. PW1/7 is the certified copy of the order passed by the Hon'ble Court of Sh. Purshottam Pathak, DJS, Competent Authority, Slum Area, Delhi.

24. PW-2 Sh Sevajit who was Record Attendant relied upon document Ex PW 2/A i.e. Registered Trust Deed dt 16.03.1998.

25. PW-3 Sh Saifuddin from the office of Sub Registrar, Central has relied upon the document Ex PW3/A i.e. Registered Supplementary Trust Deed dt 30.03.2015.

26. PW-4 Sh Shatrudhan Rohtagi entered into the witness box and tendered his evidence by way of affidavit Ex PW 4/X and relied upon the following documents:

- 1. Certified copy of the judgment/decreed in suit no 2017/39 dt 22.05.1940 alongwith translated copy of said judgment /decree Ex PW4/A.*
- 2. Original MOU dt 22.07.2017 (Ex PW 4/2). Copy of the same is already exhibited as Mark I.*

27. All the 4 witnesses were duly cross examined by Ld counsel for the defendants. Thereafter PE was closed on 05.01.2024.

28. Thereafter defendants examined 2 witnesses. One Sh Ashok Sharma as DW-1 and another Mrs Krishna Sharma as DW-2.

29. DW-1 entered into the witness box and tendered his evidence by way of affidavit and has relied upon the following documents:

- (a) Aadhar and Voter ID of DW-1 is Ex DW1/B (colly)*
- (b) House Tax Payment Receipt is Ex DW1/C (colly)*
- (c) Various Electricity Bills is Ex DW1/D. (colly)*
- (d) Primary School Certificate of Ms Shweta is de-exhibit as Mark X*
- (e) Certificates of M/s Laxmi Auto Agency is Ex DW1/H (colly)*

30. The said witness was duly cross examined by Ld counsel for the plaintiffs.

31. Thereafter, DW-2 Ms Krishna Sharma examined herself and has relied upon following documents:

(a) Voter ID of DW-1 is Ex DW2/B (colly)

(b) House Tax Payment Receipt is already Ex DW1/C (colly)

(c) Various Electricity Bills is already Ex DW1/D. (colly)

(d) Primary School Certificate of Ms Shweta is already de-exhibit as Mark X

(e) Registration order and Certificates of M/s Laxmi Auto Agency is already Ex DW1/H (colly).

32. Both the witnesses were duly cross examined by Ld counsel for plaintiffs.

Thereafter DE was closed on 28.09.2024 and the matter was listed for final arguments.

33. The Ld Civil Judge vide judgment and decree dt 09.09.2025 decreed the suit of the plaintiff for possession and mense profits and also for permanent injunction holding that the plaintiff was able to establish the ownership over the suit property through the judgment and decree dt 22.05.1940 passed in suit no 2017/1939 and also on the basis of the registered trust deeds dt 16.03.1998 and 30.03.2015. It was further held by Ld Civil Judge that mere long standing possession without animus possidendi and without acknowledgement of hostile nature of such possession does not constitute adverse possession in law. It was further held that since the defendants have failed to identify or acknowledge the true owner hence the very foundation of a claim for adverse possession is defeated since the said claim can only be

raised against the true owner. It was further held that the right and capacity of one Bansi Ram remains unascertained and given the testimonies of PW-1 & 4 to the effect that defendants no 1 & 2 were permitted to reside as caretakers the same would constitute permissive possession thereby negating the claim of adverse possession. It was further held that after the termination of the tenancy of the original tenants the defendants are in unauthorized and unlawful occupation of the suit premises.

34. The judgment and decree dt 09.09.2025 as passed by Ld Civil Judge is being challenged by the appellants on the ground that Ld Civil Judge have returned incorrect findings in the judgment and decree as passed by it. The thrust of the entire arguments of the Ld counsel for the appellants is that since the appellants have been in long possession spanning approx 22 years hence they are in adverse possession of the suit property. It has further been contended that the long possession of the appellants itself establishes the fact that the appellants have become the owner of the suit property by way of adverse possession.

35. Per Contra, it is submitted by Ld counsel for the respondents that there is no infirmity in the judgment and decree as passed by the court of Ld Civil Judge.

ANALYSIS AND FINDINGS:

36. I have heard the arguments from both the parties and have carefully gone through the record of Ld Trial Court and perused the same.
37. The respondents have duly placed on record the trust deed with respect to the properties owned by the trust including the suit property ie property bearing no 1217 Mahal Saria, Bada Bazar, Kashmeri Gate, Delhi. The respondents have also proved on record the supplementary trust deeds dt 30.03.2015. The Ld Civil Judge on the basis of aforesaid documents i.e. Ex PW 2/A & Ex PW 3/A having been corroborated through oral depositions of PW1 to PW3 held the plaintiffs have the necessary locus to file the present suit within their rights to administer and recover possession of the trust properties from any unauthorized occupant. The court of Ld Civil Judge accordingly held that the suit property belongs to the trust i.e. Bahu Geeta Devi Private Family Trust (Regd) and the respondents being its trustees were well within their rights to file the suit for possession.
38. Having affirmed the ownership and having established the locus to file the present suit over the suit property, the burden of proof to the effect that the appellants were holding ownership over the suit property entirely rested upon the shoulders of the appellants. The case set up by the appellants is that they

obtained possession of the suit property from one Sh Bansi Ram and since the year 1995 they are in uninterrupted possession of the suit property hence they have become the owners of the suit property by way of adverse possession. Defendant no 1 in his cross examination has clearly stated that the defendants were residing at the first floor of H No 1217, Mahal Saria, Bada Bazar, Kashmeri Gate, Delhi ie the trust property. He has also admitted that in the site plan (Ex DW1/F) filed by the appellants the said property has been mentioned as property no 1/1217, Mahal Saria, Bada Bazar, Kashmiri Gate, Delhi. He also admitted that he himself has given the property number as 1/1217 since he was doing business on the ground floor of property No 1217 and was residing on the first floor and for the purpose of clarification the said number i.e. 1/1217 had been given to the property situated at first floor in the property bearing no 1217, Mahal Saria, Bada Bazar, Kashmeri Gate, Delhi. DW-1 has categorically stated that Sh Bansi Ram had given the suit property to his father and also that he does not have any document with respect to its ownership. He also categorically admitted that Bansi Ram was residing at the suit property and also that he do not know under what capacity he was residing therein. He clearly stated that he do not have any document of ownership of the property in the name of Bansi Ram or his son. He

categorically admitted that the plaintiffs were not know to him before filing the present matter.

39. Thus in the considered opinion of the court the court of Ld Civil Judge has rightly returned the findings that the defendants have failed to substantiate any right, title or interest either through documentary evidence or through legal presumption with respect to suit property and their occupation is unauthorized. The court of Ld Civil Judge has rightly returned the finding that since the defendants have failed to identity and acknowledge as to who is the true owner of the suit property hence defeating the very foundation of the claim of adverse possession which can only be raised against a known and established title holder of the property.

40. The law on the aspect of adverse possession is well settled in a catena of judgments as follows:

(a) In **T Anjanappa Vs Somalingappa & Ors (2006) 7 SCC 570** the Hon'ble Supreme Court of India had set aside the finding of the Hon'ble High Court that the defendants claiming adverse possession do not have to prove who is the true owner. If the defendants are not sure who the true owner is, the question of them being in hostile possession as well as of denying the title of the true owner does not arise. The Court held as under:

“12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. **The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed.** For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them:

“24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owners.” (See Vidya Devi v. Prem Prakash [(1995) 4 SCC 496] , SCC p. 504, para 24.)

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession:

“14. ... Adverse possession means a [hostile possession] which is expressly or impliedly in denial of title of the true owner. Under Article 65 [of the Limitation Act,] burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and

circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. ...

15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all. (See Annasaheb Bapusaheb Patil v. Balwant [(1995) 2 SCC 543, p. 554 : AIR 1995 SC 895, p. 902] , SCC p. 554, paras 14 15.)”

(b) In Brijesh Kumar & Anr. v. Shardabai (Dead) by Legal Representatives & Ors., (2019) 9 SCC 369 the Court held as under:

“13. Adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner as held in M. Venkatesh [M. Venkatesh v. BDA, (2015) 17 SCC 1 : (2017) 5 SCC (Civ) 387]. The respondent had failed to establish peaceful, open and continuous possession demonstrating a wrongful ouster of the rightful owner. It thus involved question of facts and law. The onus lay on the respondent to establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The respondent was seeking to deny the rights of the true owner. The onus therefore lay upon the respondent to establish possession as a fact coupled with that it was open, hostile and continuous to the knowledge of the true owner. The respondent plaintiff failed to discharge the onus. Reference may also be made to Chatti Konati Rao v. Palle Venkata Subba Rao [Chatti Konati Rao v. Palle Venkata Subba Rao, (2010) 14 SCC 316 : (2012) 1 SCC (Civ) 452] , on adverse possession observing as follows: (SCC p. 322, para 15)

“15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. The plea of adverse possession is not a pure question of law but a blended one of fact and law.”

(c) In **Kurella Naga Druva Vudaya Bhaskara Rao vs. Galla Jani Kamma**; Civil Appeal No. 4788/2008, the court held that the payment of tax receipts and mere possession for some years was found insufficient to claim adverse possession. It was held that if according to the defendant, the plaintiff was not the true owner, his possession hostile to the plaintiff's title will not be sufficient. The Court held as under:

“19. The defendant claimed that he had perfected his title by adverse possession by being in open, continuous and hostile possession of the suit property from 1957. He also produced some tax receipts showing that he has paid the taxes in regard to the suit land. Some tax receipts also showed that he paid the tax on behalf of someone else. After considering the oral and documentary evidence, both the courts have entered a concurrent finding that the defendant did not establish adverse possession, and that mere possession for some years was not sufficient to claim adverse possession, unless such possession was hostile possession, denying the title of the true owner. The courts have pointed out that if according to the defendant, the plaintiff was not the true owner, his possession hostile to

the plaintiff's title will not be sufficient and he had to show that his possession was also hostile to the title and possession of the true owner. After detailed analysis of the oral and documentary evidence, the trial court and the High Court also held that the appellant was only managing the properties on behalf of the plaintiff and his occupation was not hostile possession.”

(d) The Hon’ble Apex Court in **M Radheshyamlan Babu Vs V. Sandhya & Ors** (Civil Appeal No 4322-4324/2024), has held that in order to prove the plea of adverse possession (a) it must be pleaded and proved that the possession is being claimed adverse to the true owner, (b) it must be pleaded and proved that the long and continuous possession was known to the true owner, (c) it must also be pleaded when the person claiming adverse possession came into possession, and (d) it must be established that the possession was open and undisturbed and the wrongful continuous possession was for a period for more than 12 years.

‘ 12 Therefore to prove the plea of adverse possession:

(a) *The plaintiff must plead and prove that he was claiming possession adverse to the true owner;*

(b) *The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;*

(c) *The plaintiff must also plead and establish when he came into possession; and*

(d) *The plaintiff must establish that his possession was open and undisturbed.”*

“It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore,

the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.”

(e) In **Annasaheb Bapu Saheb Patil Vs Balwant** AIR 1995 SC 895, it was held that Article 65 of the Schedule to the Limitation Act prescribes that for possession of immovable property or any interest therein based on title, the limitation of 12 years begins to run from the date of the defendant's interest becomes adverse to the plaintiff. Adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of title of the true owner. Under Article 65, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

41. Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be

referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. There fore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.

42. In **Saroop Singh Vs Banto** 2005 (8) SCC 330 it has been held that in terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date defendants possession became adverse.

43. In **Vasantiben Prahladi Nayak and Others vs. Somnath Muljibhai Nayak and Others** (2004) 3 SCC 376] it has been held that 'Animus possidendi' is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the Appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. [See Md. Mohammad Ali (Dead) By LRs. Vs. Jagdish Kalita and Others, (2004) 1 SCC 271, para 21].

44. Yet again in **Karnataka Board of Wakf vs. Government of India and others** [(2004) 10 SCC 779], it was observed :

"Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) **whether the factum of possession was known to the other party**, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

45. The aforesaid case laws when applied to the facts and circumstances of the present case and more particularly as deposed by DW-1 to the effect that the plaintiff was not known to the defendants and also the categorical deposition in the examination in chief to the effect that the plaintiffs never contracted that defendants is clearly an admission on the part of the defendant/appellants that neither he was aware as to who the true owner of the suit property was and neither the true owner of the suit property was aware about the unauthorized occupation of the defendants/appellants of the suit property. The appellants have stated to have been delivered possession by one Sh

Bansi Ram who could not establish the right and capacity of Sh Bansi Ram in the suit property, hence, the court of Ld Civil Judge rightly held that mere long possession without animus possidendi and without acknowledgement of hostile nature of such possession, does not constitute adverse possession in law.

46. The court of Ld Civil Judge has rightly returned the finding that in order to succeed under the plea of adverse possession the appellants must prove open, continuous, exclusive and hostile possession against the true owner to the knowledge of the true owner for the statutory period which could not be proved by the defendants since in terms of the deposition of DW-1, the defendants were not even aware as to the identity of the plaintiffs or acknowledged to the plaintiffs to be the true owner of the suit property. The court of Ld Civil Judge has rightly returned the finding that since the right and capacity of Sh Bansi Ram remained un-ascertained hence the defendant could not prove the fact that the defendants wrongfully entered into the suit property. Since the defendants could not prove the factum of their possession being hostile since the year 1995 as against the true owners of the property and since the true owners were not even known to the defendants and neither did the true owners were aware about the wrongful possession of the

appellants merely on the basis of long possession without animus possidendi, the defendants have failed to prove their having become owner of the suit property on the basis of adverse possession.

47. Ld counsel for the appellants has contended that the appellants had paid house tax with respect to property bearing no 1/1217, Mahal Sarai Bada Bazar, Kashmeri Gate, Delhi-6 from the year 2014 till the year 2017 who thus have become the owner of the suit property merits outright rejection in terms of the ratio rendered in the matter of Kurella Naga Druva Vudaya Bhaskara Rao vs. Galla Jani Kamma (Supra) wherein it was held that the payment of tax receipts and mere possession for some years was insufficient to claim adverse possession. It was held that if according to the defendant, the plaintiff was not the true owner, his possession hostile to the plaintiff's title will not be sufficient.

48. Thus in view of the aforesaid, no infirmity is said to have crept in the judgment and decree as passed by the court of Ld Civil Judge. Hence, the present appeal being bereft of any merits is dismissed. No orders as to costs.

49. File be consigned to record room after due compliance.

Announced in the open court
29th May 2026.

(Sachin Sood)
DJ-01 (Central)
THC, Delhi.