

04.10.2025

Present : Sh. Anil Sharma, Ld. counsel for the plaintiff.
Sh. Subham Sharma, Ld. counsel for the defendant through VC.

Order on the application filed under Order XVA read with Section 151 CPC seeking payment to the plaintiff towards use and occupation charges/rent for the period during the pendency of the proceedings:

It is submitted on behalf of the plaintiffs that the defendant is a tenant in respect of the property in question, paying a monthly rent of Rs. 12,000/-. It is further stated that Nitin Gupta was the original owner of the property and, upon his death, the property devolved upon the plaintiffs. The plaintiffs further submit that the counter-claim filed by the defendant regarding the suit property was already dismissed by this Court on 10.11.2021.

It is also submitted on behalf of the plaintiffs that the agreement alleged by the defendant was never disclosed during the lifetime of Nitin Gupta. There is no transfer of property in favour of the defendant under Section 52 of the Transfer of Property Act in this case. The plaintiffs further submit that the defendant cannot be permitted to use the property without any legal right.

On the other hand, it is submitted on behalf of the defendant that an appeal against the dismissal of his counter-claim is pending before the Hon'ble High Court of Delhi. The defendant contends that the agreement to sell was disclosed during the lifetime of Nitin Gupta and relies upon Section 53A of the Transfer of Property Act. It is further submitted that the defendant has been paying property tax and electricity charges in his own name and that the appropriate consideration for the property has already been paid to Nitin Gupta.

I have heard the rival contentions of the parties, perused the record, and considered the relevant provisions of law.

As per the plaintiffs, the initial owner, Sh. Nitin Gupta, held ownership of the property through documents dated 27.04.2001, which include a registered general power of attorney, a notarized agreement to sell, a possession letter, and a receipt. However, it is settled law that, in the strict sense, these documents do not confer ownership.

According to the written statement filed on behalf of the defendant, he purchased the suit property from Nitin Gupta vide an agreement to sell dated 07.11.2001, paying a consideration of approximately Rs. 3,40,000/- through two cheques and in cash.

Considering the documents placed on record by both parties, it is yet to be determined which party has a superior claim over the property.

There is no documentary evidence to show that a landlord-tenant relationship ever existed between Nitin Gupta and the defendant. The plaintiffs' pleadings contain only general averments, without specifying when the alleged tenancy commenced. There is no particular mention of when rent was paid, nor is there a definite date of default in payment. The pleadings in this regard are vague. Paragraph 4 of the plaint, which is relevant on this point, is reproduced as follows:

“4. That the plaintiffs are not aware about upto which period the defendant has paid rent to the deceased Nitin Gupta, however, it is sure that the defendant has not paid rent after the death of Nitin Gupta i.e. w.e.f. 01.03.2017 till date because the defendant is chronic defaulter in making the payment of rent and as such the plaintiffs do not want to keep the defendant as their tenant and has

terminated the tenancy of the defendant by means of the legal notice dated 01.05.2018 served by plaintiff No. 1 upon the defendant being one of the legal heir of Late Sh. Nitin Gupta”

The applicant has, at this stage, failed to demonstrate the prima facie existence of a landlord-tenant relationship. The plaintiff has not shown when or how the defendant came into possession of the property.

In view of the foregoing, no ground exists at this stage to grant the interim relief of payment or deposit of rent/occupation charges. **Accordingly, the application is dismissed and stands disposed of.**

Put up for PE on **23.12.2025**.

Nothing stated herein shall tantamount to an expression of opinion on the merits of the main case between the parties.

(Vikas Garg)
DJ-05/East/KKD
Delhi/04.10.2025