



**IN THE COURT OF SH. HEM SINGH, ADDITIONAL
SESSIONS JUDGE (SC-POCSO)-02, NORTH-EAST DISTRICT,
KARKARDOOMA COURTS, DELHI**

RCA No. 16/21

CNR No. DLET010068342021

In the matter of:

Smt. Iqbal Jahan

W/o Late Mohd. Yusuf

R/o B-73, JJ Colony, Sector-15,

Dwarka, Delhi-110078

.....Appellant/Plaintiff

Versus

1. Late Mohd. Yusuf (Through LRs)

Through his legal heirs:

(i) Nasim Bano

W/o M.S. Barsi

R/o B-73, JJ Colony,

Sector-15, Dwarka,

Delhi

(ii) Taslim

S/o Late Mohd. Yusuf

R/o H. No. 2024, Gali No. 4,

Surya Vihar Part-1,

Faridabad, Haryana-121003

(iii) Marriam

W/o Mohd. Salim

R/o H. No. 331, D-Block,

New Seema Puri, Delhi-110095

2. Sh. Akbar Ali (Now Deceased)
Through his legal heirs:

(i) Smt. Nusrat Jahan
W/o Late Sh. Akbar Ali

(ii) Nilofar
D/o Late Sh. Akbar Ali

(iii) Fahim
S/o Late Sh. Akbar Ali

(iv) Amir Khan
S/o Late Sh. Akbar Ali

All R/o:
O-120-121, O-Block,
Sunder Nagri, Delhi-110093

.....**Respondents/Defendants**

Date of institution	:	18.10.2021
Order reserved on	:	20.07.2026
Order pronounced on	:	08.08.2026

**JUDGMENT ON APPEAL UNDER SECTION 96 OF CPC AGAINST
THE IMPUGNED JUDGMENT AND DECREE DATED 31.07.2021**

1. Vide this judgment, I shall decide the instant appeal filed against the judgment & decree dated 31.07.2021 passed by Ld. SCJ-CUM-RC, District East, Karkardooma Courts, Delhi in Suit No. 8956/2016 titled as "*Iqbal Jahan vs. Late Mohd. Yusuf & Another*" whereby the suit of the plaintiff was partly dismissed.

2. Brief facts:

a) It is the case of the appellant that the appellant/plaintiff, Smt. Iqbal Jahan, is the recorded allottee and owner of property bearing No. O-121, Sunder Nagri, Delhi. That she instituted a civil suit seeking a decree of declaration, consequential relief of possession and permanent injunction, asserting that she had never executed any sale documents in favour of Defendant No.1, Mohd. Yusuf, or any subsequent purchaser, and that the documents relied upon by the defendants were forged, fabricated, illegal, void and non-binding upon her rights.

b) That the respondents contested the suit by alleging that the plaintiff had sold the suit property to Defendant No.1 on 01.07.1992 for a consideration of Rs.45,000/-, who thereafter transferred the property to Mr. Zamir Khan on 24.12.1993 for Rs.65,000/-, and subsequently Mr. Zamir Khan transferred the property to Defendant No.2, Akbar Ali, on 21.08.1995 for Rs.90,000/-. It is contended that the defendants further pleaded that Defendant No.2 had remained in peaceful possession of the property since 1995 and raised objections regarding maintainability, limitation, locus standi, court fee and cause of action. It is stated that the plaintiff denied all such allegations in her replication and reiterated that no document had ever been executed by her in favour of the defendants.

c) That during the pendency of the proceedings, Defendant No.2 expired on 04.08.2010 and Defendant No.1 expired on 07.02.2012 and their legal representatives were brought on record, with the legal representatives of Defendant No.1 opting not to contest the proceedings and the legal representatives of Defendant No.2 being proceeded ex parte. It is further

averred that the Ld. Trial Court initially framed issues on 02.11.2007 and, after amendment of pleadings, framed additional issues on 07.09.2018 concerning ownership, declaration, possession, permanent injunction and the validity of the alleged sale transactions.

d) That in support of her case, the appellant examined herself and produced relevant documentary evidence including the original allotment records, site plan, ration card survey records, complaints made before the authorities and other official documents. PW-2, an official from DUSIB, proved the original allotment records establishing that the suit property stood allotted in the name of the appellant. PW-3, a retired ACP, produced the record of FIR No.254/2008 and the Finger Print Bureau report, which confirmed that the thumb impressions appearing on the disputed documents did not match the admitted thumb impression of the appellant, thereby indicating that the documents relied upon by the defendants were forged.

e) That after conclusion of evidence and hearing, the Ld. Trial Court partly dismissed the suit vide judgment and decree dated 31.07.2021.

f) Being aggrieved by the said Judgment and Decree, the Appellant/plaintiff has preferred the present Appeal on following grounds:

i) Because the Ld. Trial Court failed to appreciate that the appellant had successfully proved her title through official allotment records produced by DUSIB, which remained unimpeached and established that the suit property stood allotted in her favour.

ii) Because the Ld. Trial Court ignored the expert evidence produced by the Finger Print Bureau, which categorically established that the thumb impressions appearing on the disputed documents did not belong to the appellant, thereby proving that the documents relied upon by the respondents were forged and incapable of creating any legal right.

iii) Because the Ld. Trial Court erred in holding that the appellant ought to have sought cancellation of the disputed documents instead of seeking a declaration. Being a non-executant of the alleged documents, the appellant was only required to seek a declaration that such documents were null, void and non-binding, in accordance with the law laid down by the Hon'ble Supreme Court in *Sudhir Singh @ Sardool Singh v. Randhir Singh & Ors.*

iv) Because the Ld. Trial Court committed a serious error in clubbing together the independently framed issues relating to declaration, declaration with consequential relief and possession, instead of recording separate findings on each issue, thereby causing grave prejudice to the appellant.

v) Because the Ld. Trial Court failed to appreciate that the prayer clause itself contained distinct reliefs relating to declaration and possession, which required independent adjudication in accordance with the separately framed issues.

vi) Because the Ld. Trial Court wrongly dealt with the issue of court fee without considering the true nature of the relief claimed by the appellant.

vii) Because the Ld. Trial Court failed to appreciate that the respondents failed to discharge the burden of proving the genuineness and execution of the alleged sale documents forming the basis of their defence.

viii) Because the findings recorded by the Ld. Trial Court are contrary to the documentary evidence, expert evidence and settled principles governing declaratory relief, resulting in a manifest miscarriage of justice.

ix) Because the impugned judgment suffers from misreading of pleadings, erroneous appreciation of evidence and misapplication of settled legal principles, rendering the judgment perverse, illegal and liable to be modified/set aside.

g) The appellant, therefore, prays that the impugned judgment and decree dated 31.07.2021 be modified/set aside to the extent challenged and that the appellant be granted the relief of declaration, consequential possession and all other consequential reliefs as prayed for in the suit.

3. Arguments heard. Record perused. Considered.

4. **FINDINGS:-**

a) I have gone through the judgment and decree passed by the Ld. Trial Court and the material available on record.

b) The Ld. Trial Court decided Issue No.1 framed on 02.11.2007, i.e. whether the suit was barred by limitation, in favour of the plaintiff/appellant. The Ld. Trial Court also decided Issue Nos.5 and 6

framed on 07.09.2018, relating to the alleged sale of the suit property by the plaintiff in favour of Defendant No.1 on 01.07.1992, in favour of the plaintiff/appellant. Further, Issue No.1 framed on 07.09.2018, namely, whether the plaintiff was the owner of property bearing No. O-121, Sunder Nagri, Delhi, was also decided in her favour. While deciding the said issue, the Ld. Trial Court categorically held that the suit property had been allotted to the plaintiff by the DDA (Slum & JJ Department).

c) However, while deciding Issue No.2 framed on 02.11.2007 and Issue Nos.2 and 3 framed on 07.09.2018, concerning the relief of declaration and consequential relief of possession, the Ld. Trial Court declined the relief to the plaintiff on the ground that she ought to have specifically sought cancellation of the GPA, Agreement to Sell, receipt and other documents allegedly executed by her in favour of Defendant No.1, and ought also to have sought declaration in respect of the subsequent documents executed in favour of Defendant No.2. The Ld. Trial Court further observed that the plaintiff had failed to amend the plaint to incorporate such reliefs.

d) In my considered opinion, the aforesaid approach of the Ld. Trial Court is not sustainable in the facts and circumstances of the present case.

e) The case of the defendants, as pleaded in their written statements, was that the plaintiff had already transferred the suit property in favour of Defendant No.1, and that Defendant No.1 thereafter transferred the same to Zamir Khan, who subsequently transferred it to Defendant No.2. Significantly, however, the alleged transactions were admittedly based upon documents such as Agreement to Sell, GPA, Will, receipt and other

similar documents. No registered sale deed or conveyance deed was executed either by the plaintiff in favour of Defendant No.1, by Defendant No.1 in favour of Zamir Khan, or by Zamir Khan in favour of Defendant No.2.

f) The legal position regarding the effect of such documents is well settled by the Hon'ble Supreme Court in *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana*, AIR 2012 SUPREME COURT 206, and the subsequent judgments including *Ramesh Chand v. Suresh Chand*, Civil Appeal No. 6377 of 2012 dated 01.09.2025 passed by Hon'ble Supreme Court.

g) Such documents, by themselves, do not convey title in an immovable property or create an interest therein in the manner contemplated by law. Consequently, on the facts of the present case, no legal title or interest in the suit property can be said to have been transferred from the plaintiff to Defendant No.1, or thereafter from Defendant No.1 to Zamir Khan and from Zamir Khan to Defendant No.2, merely on the basis of the aforesaid set of documents.

h) There is another significant aspect of the matter. Defendant No.1 and Defendant No.2, despite filing their respective written statements, neither cross-examined the plaintiff nor led any evidence in support of their pleaded case. The averments contained in a written statement do not, by themselves, constitute proof of the facts pleaded therein. In the absence of any evidence proving the alleged transactions, the Ld. Trial Court could not have proceeded on the assumption that the plaintiff had conveyed her rights

in the suit property in favour of Defendant No.1 merely because such a plea was taken in the written statement.

i) More importantly, the Ld. Trial Court itself, after appreciating the evidence on record, held that the suit property had been allotted to the plaintiff by the DDA (Slum & JJ Department) and decided the issue of ownership in her favour. Once the plaintiff's ownership/interest in the suit property stood established and the defendants failed to prove any lawful transfer of such interest in their favour, there was no occasion to compel the plaintiff to seek cancellation of documents which, in law, did not themselves create or convey title in the suit property.

j) The mere fact that the defendants, in their written statements, referred to a purported chain of transactions could not, in my considered view, create an obligation upon the plaintiff to seek cancellation of each and every such document. The relief required to be considered was the substantive relief claimed by the plaintiff on the basis of her title and entitlement to the property. The plaintiff had specifically pleaded that she had never executed any document transferring her rights in the suit property. The testimony of PW3 also assumes significance as report of PW3 indicated that the thumb impressions appearing on the disputed documents did not tally with the admitted thumb impression of the plaintiff. The defendants having failed to establish any legally valid transfer in their favour, the plaintiff could not have been non-suited merely for not seeking cancellation of documents which did not, in themselves, confer title upon the defendants.

k) The Ld. Trial Court further declined the relief of possession on the ground that the plaintiff had claimed possession as a consequential relief and had not sought the same as an independent and substantive relief by paying the requisite ad valorem court fee. The Ld. Trial Court was of the view that the plaintiff had structured the relief of possession as a consequential relief only to avoid payment of the appropriate court fee.

l) This finding also cannot be sustained in the facts of the present case. The plaintiff had specifically claimed possession of the suit property and the Ld. Trial Court itself had found the plaintiff to be the allottee/owner of the property. Once the plaintiff's entitlement to the property stood established, the relief of possession necessarily followed from such finding. At the highest, there could have been a deficiency in the court fee payable on the relief of possession. Such deficiency could not, by itself, result in dismissal of the substantive claim for possession without affording the plaintiff an opportunity to make good the deficient court fee in accordance with law.

m) Accordingly, merely on account of non-payment of the requisite court fee, the plaintiff could not have been deprived of the relief of possession after her entitlement to the suit property had otherwise been established. The appropriate course, if any deficiency in court fee was found, was to afford the plaintiff an opportunity to make good the deficiency rather than non-suit her on the substantive relief.

n) Consequently, the judgment and decree dated 31.07.2021 passed by the Ld. Trial Court is modified to the extent that the plaintiff/appellant is

held entitled to the relief of possession of property bearing No. O-121, Sunder Nagri, Delhi. Accordingly, the corresponding issue concerning entitlement to possession, i.e. Issue No.3 framed on 07.09.2018, is decided in favour of the plaintiff/appellant.

o) As regards the relief of declaration, the Ld. Trial Court proceeded on the premise that the plaintiff was required to seek cancellation/declaration in respect of the entire chain of documents relied upon by the defendants.

p) The said approach, in the facts of the present case, is also not warranted. Mere reference in the written statements to an alleged chain of transactions does not, by itself, compel the plaintiff to seek a declaration that every document forming part of such alleged chain is null and void, particularly when the plaintiff herself has consistently denied execution of the documents and the defendants have failed to prove the alleged transactions by leading evidence.

q) Further, an Agreement to Sell, GPA, Will, receipt and similar documents, without a duly executed and registered conveyance in accordance with law, do not by themselves create title in an immovable property. Where the documents relied upon by the defendants do not confer title upon them, the plaintiff is not necessarily required to seek cancellation of such documents as a precondition to establishing her own title and seeking consequential relief.

r) In the present case, the Ld. Trial Court has already found the plaintiff to be the allottee/owner of the suit property and has also decided

the relevant issues in her favour. Therefore, the plaintiff cannot be denied relief merely because she did not seek an independent declaration that each of the documents referred by the defendants was null and void.

s) Accordingly, Issue No.2 framed on 02.11.2007 and Issue No.2 & 3 framed on 07.09.2018, insofar as they relate to the relief of declaration, are decided in the aforesaid terms.

RELIEF

In view of the foregoing discussion, the present appeal is allowed and the judgment and decree dated 31.07.2021 passed by the Ld. Trial Court is modified to the extent indicated hereinbelow.

(i) The findings of the Ld. Trial Court on Issue No.1 framed on 02.11.2007, regarding limitation, and Issue No.1 framed on 07.09.2018, regarding ownership of the suit property, are affirmed. The findings returned by the Ld. Trial Court on Issue Nos.5 and 6 framed on 07.09.2018, concerning the alleged transactions dated 01.07.1992, 24.12.1993 and 21.08.1995, are also affirmed.

(ii) The plaintiff/appellant, Smt. Iqbal Jahan, is held entitled to possession of property bearing No. O-121, Sunder Nagri, Delhi. The defendants/respondents, their legal representatives, agents, representatives or any person claiming through or under them are hereby directed to hand over vacant and peaceful possession of the aforesaid suit property to the plaintiff/appellant.

(iii) The plaintiff/appellant is further held entitled to a decree of permanent injunction. The defendants/respondents, their legal representatives, agents, representatives or any person claiming through or under them are hereby restrained from selling, transferring, alienating, encumbering or creating any third-party interest in the suit property bearing No. O-121, Sunder Nagari, Delhi, or from otherwise interfering with the rights and interest of the plaintiff/appellant therein.

(iv) As regards the relief of declaration, it is held that, in the facts and circumstances of the present case, the plaintiff/appellant was not required to seek cancellation of the alleged Agreement to Sell, GPA, Will, receipt or other documents relied upon by the defendants, particularly when the defendants failed to establish any valid transfer of title or interest in the suit property in their favour. Accordingly, the findings of the Ld. Trial Court declining the relief of declaration on the aforesaid ground are set aside and Issue No.2 framed on 02.11.2007 and Issue No.2 framed on 07.09.2018 are decided in favour of the plaintiff/appellant in the aforesaid terms.

(v) Consequently, the decree passed by the Ld. Trial Court stands modified accordingly.

(vi) The appeal is accordingly disposed of in the above terms.

(vii) A decree sheet be prepared accordingly upon payment of deficient court fee on relief of possession. The plaintiff/appellant shall make good such deficiency within the period prescribed by the Ld. Trial Court.

(viii) The Trial Court Record, along with a copy of this judgment, be sent back to the concerned Court forthwith.

(ix) Appeal file be consigned to the Record Room after due compliance.

The judgment in the present case was reserved by the undersigned while posted as District Judge-01, East District, Karkardooma Courts, Delhi. Subsequently, before pronouncement of the judgment, the undersigned was transferred to this Court vide transfer order No. 32/D-3/Gaz.IA/DHC/2026 dated 01.08.2026. In terms of Note No. 2 of the aforesaid transfer order, the present case was retained by the undersigned for pronouncement of judgment. Accordingly, the judgment has been pronounced today.

The Court Ahlmad is directed to hand over the file of the present case to the Court Ahlmad attached to the Court of Ld. District Judge-01, East District, Karkardooma Courts, Delhi. The file shall thereafter be consigned to the Record Room after due compliance by the Court Ahlmad of the Court of Ld. District Judge-01, East District, Karkardooma Courts, Delhi.

Announced in the open Court
on 08.08.2026

(HEM SINGH)
Addl Sessions Judge (SC-POCSO)-2
North-East District, KKD Courts/Delhi