

**IN THE COURT OF AASHISH GUPTA, DISTRICT JUDGE-01,
NORTH-EAST DISTRICT, KARKARDOOMA COURTS, DELHI**

In the matter of

**RCA DJ No. 36/26
CNR No. DLNE01-001259-2026**

Kamal
S/o Late Rich Pal Singh
R/o H. No. A-149,
New Seelampur,
Delhi-110053. Appellant

versus

1. Birju
S/o Late Jagdish
R/o H. No. A-149,
1st Floor, New Seelampur,
Delhi-110053.
2. Mukesh
S/o Late Jagdish
R/o H. No. A-149, 2nd Floor,
New Seelampur,
Delhi-110053. Respondent

**Date of institution : 16.04.2026
Reserved on : 16.05.2026
Date of Decision : 01.06.2026**

JUDGMENT

1. The present first appeal impugns the judgment and decree dated 10.03.2026 passed in CS no. 390/23 (hereinafter referred to as the

‘**impugned judgment**’) whereby the Ld. Trial Court has dismissed the suit of the appellant/plaintiff.

2. For the sake of convenience, parties shall be referred to by the nomenclature used in the Ld. Trial Court.
3. Plaintiff had premised his case on the basis of licensee-licensor relationship claiming that the suit property described in schedule hereinafter was allowed to be used on license basis to the defendants.

Schedule of Property

1st Floor & 2nd Floor of property bearing no. A-149, New Seelampur, Delhi-110053, measuring 80 square yards with D-1 occupying the first floor and D-2 occupying the second floor of the said property (more specifically shown in red colour in the site plan Ex.PW1/9)

4. Plaintiff is the uncle of the defendants and as per his case, despite termination of the license, the suit property was not vacated and hence he sought a decree of mandatory injunction against defendants seeking a direction to them to vacate the suit property.
5. It is pertinent to note that plaintiff does not specify as to when was the said license given to the defendants. He simply claims in the plaint that defendants were asked to vacate the property on 25.07.2023 and 05.08.2023.
6. Additionally, plaintiff has also sought a decree of permanent injunction restraining the defendants from creating any third party

interest. He had also sought a decree of damages claiming Rs.10,000/- per month from defendants.

7. It is also pertinent to note that as per plaintiff's case, his father Richpal was the original owner of the above described property and eventually he executed GPA, agreement to gift, Will and possession letter dated 05.05.2014 in favour of plaintiff (hereinafter referred as '**set-1**'). They were given Ex.PW1/1 (OSR) to Ex.PW1/4 (OSR) during trial. On the basis of the said documents, plaintiff claims that he is the absolute owner of the entire property.
8. Now, defendants are children of one Jagdish (since deceased and one of the brothers of plaintiff). They admit the fact that Richpal (father of plaintiff and grand-father of the defendants) was the original owner of the property in question. It is their case that during the lifetime of Richpal (Richpal admittedly died on 24.12.2019), sometime in 2005 an oral partition took place between the parties and in pursuance thereto about 40 square yards of area (out of the total area of 80 square yards) was given to the defendants.
9. They also claim that Richpal had executed some unregistered GPA, agreement to gift, Will and possession letter in favour of D-1 on 10.07.2009 (hereinafter referred as '**set-2**'). These documents were retained in original before the trial court and were given Ex.DW1/3 (colly.).
10. Thus, as per the defendants, on the basis of oral partition of 2005 read with the documents dated 10.07.2009, they do not occupy the

suit property as a licensee of the plaintiff. As per them, they are holding the suit property as their share in the property of Richpal.

11. It is pertinent to note that as per the answering defendants, the property at the site measures about 120 square yards and different children of Richpal (who admittedly had six sons and two daughters) are occupying different portions in the said 120 square yards. As per them, the site plan of the plaintiff Ex.PW1/9 is not the correct site plan. They rely upon a separate site plan Ex.DW1/1.
12. Thus, on one hand, plaintiff claims that defendants are his licensees, on the other hand, defendants claim that they are occupying the property as a share-holder being legal heir of Richpal. At the same time, it is pertinent to note that while plaintiff relies upon set-1 described above, defendants rely upon set-2.
13. Now, the Ld. Trial Court, based on evidence, have dismissed the suit of the plaintiff *inter alia* holding (a) that plaintiff has failed to establish the relationship of licensor-licensee with defendants at any point of time; (b) that plaintiff cannot be allowed to get possession of the suit property on the basis of unregistered documents i.e. set-1.

Arguments of parties :

14. Counsel for plaintiff argued that the Ld. Trial Court did not appreciate the evidence of the plaintiff's witnesses in the correct perspective. As per plaintiff, the documents forming part of set-1 Ex.PW1/1 (OSR) to Ex.PW1/4 (OSR) were duly proved on record

through the testimony of PW-1 to PW-3 (namely Kamal/plaintiff himself, Madan/PW2 and Raju/PW3). PW2 and PW3 are the brothers of Kamal. Thus, PW1 to PW3 are all uncles of the defendants and it was submitted on behalf of plaintiff that the testimony of the aforesaid witnesses was sufficient to prove the execution of set-1. It was argued that once it is shown that Richpal was the original owner of the entire property (of which suit property is a part) and execution of set-1 is proved, plaintiff would step in the shoes of Richpal. It was argued that this shall mean that plaintiff became the owner of the property and can then ask the defendants to leave the property.

15. It was submitted that the Ld. Trial Court has held that it was Richpal who actually allowed the defendants to occupy the property. If the said fact is taken as correct, it shall mean that defendants were licensees of Richpal. As per plaintiff, once plaintiff stepped in the shoes of Richpal, he essentially became the licensor (substituting Richpal) and in that capacity, he can ask the defendants to leave the property.
16. It was also argued that the Ld. Trial Court has held that plaintiff does not have any title to the property. This was not even the case of plaintiff and therefore, the finding of the trial court on this count is liable to be set aside.
17. On the other hand, counsel for defendants submitted that there is no infirmity in the impugned judgment. As per the defendants, Richpal was the admitted owner of the suit property. Once he died in 2019,

the defendants would have a share in the property and therefore, they could not have been asked to vacate the property.

18. It was further argued that the findings returned by the Ld. Trial Court clearly shows that plaintiff failed to prove that it was he who inducted the defendants as licensees. It was argued that it was for the plaintiff to prove on record that they are licensees in the property. Once the same is not proved, defendants cannot be evicted from the property.
19. Additionally, it was submitted that from the bare perusal of the cross-examination of PW1/plaintiff, it is evident that the suit property is constructed by different children of Richpal in different portions. This, as per defendants, show that there was some partition between the parties and this would disprove the case of the plaintiff.

Analysis & Findings:

20. I have given thoughtful consideration to the rival arguments of the parties and have gone through the entire trial as well as appeal record.
21. In my humble opinion, the present appeal is liable to fail.
22. The only issue which arises in the present appeal is whether the plaintiff was able to establish licensor-licensee relationship between the parties or not.

23. In my humble opinion, the said relationship was never established. I may note that plaintiff did not sue the defendants on the basis of title and therefore, he cannot maintain his relief of possession (couched as mandatory injunction) on the basis of his purported title documents Ex.PW1/1 (OSR) to Ex.PW1/4 (OSR). Even if the suit was premised on the basis of title, it was liable to fail as the above documents are unregistered GPA, agreement for gift, Will and possession letter only. It is settled law that such documents are not documents of conveyance and therefore, they cannot give any right, title or interest to the plaintiff qua the property covered under them.
24. I may hasten to add that the Will Ex.PW1/3 could have conveyed the title of the property in question to plaintiff only if the same is proved in compliance of Section of 63 of Indian Succession Act, 1925 read with Section 68 of Indian Evidence Act, 1872. None of the attesting witnesses to the said Will were summoned by the plaintiff and thus, the said Will was never proved.
25. Thus, the Ld. Trial Court was correct in holding that plaintiff cannot be allowed to get possession of the property on the basis of unregistered documents forming part of set-1.
26. I may note that the argument that the case was never premised on title documents by the plaintiff and therefore, the said finding is incorrect is liable to fail. This is because, plaintiff himself claims in the plaint that on the basis of set-1, he is the absolute owner of the suit property and goes on to lead the said documents in

evidence. It was in view of the above that the Ld. Trial Court noted the nature of the documents and held that the same cannot be used by the plaintiff to get possession.

27. Now, even if the above finding of the Ld. Trial Court is overlooked and the case is considered only on the aspect as to whether plaintiff was successful in establishing licensor-licensee relationship *inter se* the parties, the answer has to be in the negative.
28. It may be recalled that plaintiff does not specify the time when he inducted the defendants as his licensees. It was his specific case that defendants are his licensees (see para 5 of the plaint wherein it is specifically pleaded by the plaintiff that **on account of love and affection, the defendants were allowed to occupy the scheduled property**).
29. Admittedly, Richpal was the actual owner of the suit property. Plaintiff never pleaded a case that it was Richpal who actually allowed the defendants to stay in the property. Thus, it was not the case of the plaintiff that Richpal was the actual licensor who allowed the defendants to occupy the property and eventually, when plaintiff purportedly purchased the property on the basis of set-1 from Richpal, he became the licensor of the defendants.
30. The argument made before this court of plaintiff stepping in the shoes of Richpal is thus, *de hors* the record. The said case was

never pleaded before the trial court and therefore, the said argument cannot be raised today.

31. The Ld. Trial Court has correctly appreciated the evidence on record and has observed that during the cross-examination of various defence witnesses (particularly DW4/Santosh Devi and DW6/Vinod Kumar), plaintiff himself have put a question to the said defence witnesses suggesting that Richpal had actually allowed the defendants to occupy the suit property.
32. The relevant portions of said cross-examinations read as under:

Cross-examination of DW-4/Santosh Devi

“.....It is correct that the suit property was given to the defendants by the grandfather to reside and since then they have been living in the suit property.....”

Cross-examination of DW-6/Vinod Kumar

“.....It is correct that Sh. Richpal, father of Sh. Jagdish, asked Birju and Mukesh to reside at the property bearing no. A-149, A Block, New Seelampur.....

..... Sh. Richpal asked Mukesh and his family to reside in suit property long back but I do not remember the exact month and year.....”

(emphasis supplied)

33. A bare perusal of the above cross-examinations would show that plaintiff himself suggested to the above defence witnesses that it was Richpal who permitted the defendants to reside in the suit property. This is in contradiction to the case of the plaintiff whereby he claim that it was he who had given license to the defendants.

34. It may be recalled that plaintiff never pleaded or proved the time when he allowed the defendants as licensees in the suit property. Now, it has come in the cross-examination of the defence witnesses that it was Richpal who allowed the defendants to enter the property.
35. This means that when the defendants entered the property, they were licensees of Richpal. As already noted, the documents of title relied upon by the plaintiff i.e. set-1 cannot given him any right, title or interest in the suit property. This means that even on 05.05.2014 or thereafter till the death of Richpal on 24.12.2019, defendants were licensees of Richpal only.
36. I may note that the documents relied upon by the defendants i.e. set-2 are also unregistered GPA etc and they themselves cannot give any title to the defendants (especially D-1 in whose name the said documents were purportedly executed by Richpal). Thus, till the death of Richpal on 24.12.2019, defendants were only licensees of Richpal.
37. When Richpal died, the property would then devolve upon his heirs as per law of succession. It may be noted that defendants are children of Jagdish (one of the sons of Richpal). Thus, possibly the defendants succeeded to a share in the property. This is presuming that Richpal had died *intestate*.
38. Be that as it may, in my humble opinion, the case set up by the plaintiff that defendants are his licensees is not proved on record

from his evidence. His oral plea that he allowed the defendants to occupy the suit property out of love and affection is without any specific date when he gave the said permission. His argument before this court that he stepped in the shoes of Richpal shows that, by necessary inference, he admits that he actually did not give license to the defendants and it was Richpal who allowed the defendants to occupy the property. He never set up the said case before the trial court. His documents i.e. set-1 cannot give him any right, title or interest in the suit property and thus, he cannot claim that he has stepped into the shoes of his father/Richpal.

39. From the record, possibly defendants have come to hold a share in the property and they cannot be treated to be mere licensees.
40. Thus, in my humble opinion, the Ld. Trial Court has correctly come to the conclusion that plaintiff failed to establish licensor-licensee relationship between the parties and was thus, right in dismissing the suit of the plaintiff. The relief of permanent injunction and damages was consequential to the proof of the above relationship. Once the same was not proved, the suit was liable to fail *in toto*.
41. The argument of the counsel for the plaintiff that the testimony of PW2 and PW3 was over-looked by the trial court is incorrect. It is pertinent to note that in the plaint, plaintiff never claimed that he gave the license of the suit property in the presence of his brothers Madan/PW2 or Raju/PW3. Thus, plaintiff could not have examined or placed reliance on the testimony of the said two

witnesses to prove his purported license. Again, the said two witnesses are not witnesses to set-1. It is not pleaded in the plaint that they had witnessed the execution of said documents in favour of plaintiff. In fact, they claim in their respective affidavits of evidence Ex.PW2/A and Ex.PW3/A that they identified the signatures of their father at point A on set-1. But, admittedly, Richpal was an illiterate person and as per set-1, he only placed his thumb impressions on set-1. If that be true, which signatures of Richpal/father of PW2 and PW3 were identified by the said witnesses is anybody's guess.

42. Thus, the Ld. Trial Court committed no infirmity by not placing any reliance on the testimony of PW2/Madan and PW3/Raju. The testimony of the said two witnesses was beyond pleadings of the plaintiff and was rightly over-looked by the Ld. Trial Court.
43. Considering the above, there is no infirmity or illegality in the impugned judgment and decree dated 10.03.2026. Accordingly, the present appeal is dismissed.
44. Let a decree-sheet be prepared accordingly.
45. Let copy of the judgment passed in appeal along with decree-sheet be sent to Ld. Trial Court.

**Announced in the
open Court on 01.06.2026**

**Aashish Gupta
District Judge-01, North-East District,
Karkardooma Courts, Delhi**