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

CS DJ 569/2019
CNR No.DLSW01-008206-2019

Sh. Sukhpal
S/o Late Sh. Samay Singh
R/o RZ-F-99/40A, Sadh Nagar-II
Street No.41A, Palam Colony,
New Delhi

…Plaintiff

VERSUS

1. Sh. Vijay Pal
S/o Late Sh. Samay Singh

2. Smt. Sunita @ Anju
W/o Sh. Vijay Pal

Both R/o RZ-G-10,
Street No.4,
Vishwas Park,
Near Akash Hospital, Dwarka Sector-3,
Uttam Nagar, New Delhi

…Defendants

Date of institution of the suit	: 10.07.2019
Judgment pronounced on	: 29.05.2026

SUIT FOR POSSESSION

PLAINT

1. Present suit has been filed for possession. According to the plaintiff, he is the actual and lawful owner of property bearing No. RZ-10, Street No.4,

Khasra No.99/3, Colony Known as Vishwas Park, Uttam Nagar, Near Dwarka, Sector- 3, New Delhi. It is stated that the plaintiff's mother, Late Smt. Ramko Devi resided with the plaintiff at the said property during her lifetime. During her lifetime, she executed the necessary documents in respect of the property in favour of the plaintiff, including a General Power of Attorney (GPA) and a WILL, which were duly registered before the Sub-Registrar on 25.05.2011.

2. Plaintiff submits that owing to his cordial relationship with his brother, he permitted the defendants to reside in the suit property as licensees. It is further stated that even the plaintiff's mother had requested him to allow the defendants to occupy the property solely for residential purposes.

3. After the demise of his mother, the plaintiff repeatedly requested the defendants to vacate the suit property and made several communications in this regard. However, the defendants refused to vacate the premises. In April 2019, when the plaintiff again asked the defendants to vacate the property, they openly claimed themselves to be the owners of the suit property and asserted that they were in possession of a chain of title documents relating to the property, which, according to them, would be produced at the appropriate stage.

Thereafter, plaintiff issued a notice dated 06.06.2019 terminating the licence granted to defendant No. 1 and calling upon the defendants to vacate the suit property. It is submitted that all the original documents pertaining to the property are in his possession and shall be produced at the appropriate stage.

Accordingly, the plaintiff has prayed for a decree of possession in

respect of the suit property in his favour.

WRITTEN STATEMENT

4. Summons of the suit were issued to the defendants, pursuant to which the defendants entered appearance and filed their written statement. In Written Statement it was contended that the plaintiff had not approached the Court with clean hands and that the suit was not maintainable. It was further stated that the plaintiff was guilty of suppression of material facts and was therefore not entitled to any relief whatsoever.

It was specifically denied that the plaintiff was the actual and lawful owner of the suit property. It was also denied that the plaintiff's mother had resided with the plaintiff at the suit property during her lifetime. Further, the defendants denied that the plaintiff's mother had ever executed any GPA or Will in respect of the suit property in favour of the plaintiff. According to the defendants, both the GPA and the WILL relied upon by the plaintiff are forged and fabricated documents. It was further contended that no probate in respect of the alleged Will had been obtained from any competent court.

It was stated that Late Smt. Ramko Devi never resided with the plaintiff and her last rites were performed by defendant No. 1. It was also stated that the plaintiff had failed to place on record any proof of his possession over the suit property.

Contents of paragraph no. 3 to 15 of the plaint were denied as incorrect and false. The contents of paragraph No. 34 of the plaint were stated to be matter of record. However, upon perusal of the plaint, it was found that there is no paragraph No. 34.

5. No replication was filed on behalf of the plaintiff. Thereafter, on 22.02.2022, issues were framed in the present matter.

ISSUES

6. On the basis of the pleadings of the parties, the following issues were framed:

(i) Whether the plaintiff is entitled to a decree of possession in respect of property bearing no.RZ-G-10, Street No.4, Vishwas Park, Uttam Nagar, Near Akash Hospital, Dwarka, Sector-3, New Delhi along with cost of the suit as prayed for? OPP

(ii) Whether the suit of the plaintiff is not maintainable in its present form on account of suppression of material facts and is liable to be dismissed? OPD

(iii) Relief.

PLAINTIFF'S EVIDENCE

Plaintiff to prove its case examined himself as PW-1. He was examined in chief on 05.12.2023. In his examination in chief, he relied upon copy of the complaint dt. 06.06.2019 as Mark-A, printout of tracking report as Mark-B, Copy of courier receipts (5 receipts) running from page no.21 to 25 as Mark C(Colly) and copy of public notice issued by mother of the plaintiff as Mark-D. Matter was deferred for want of original documents.

On 17.09.2024, PW-1 was examined in chief afresh and relied on a complaint dated 06.06.2019, earlier marked as Mark-A, was exhibited as Ex. PW-1/A. Property papers (Colly) (page no.1 to 16) were exhibited as Ex. PW-1/A(OSR). WILL dated 25.05.2011 was exhibited as Ex. PW-1/B(OSR) and public notice, which was marked as Mark-D, was exhibited as Ex. PW-1/C.

Right to cross examine PW-1 was closed vide order dated 26.09.2025

and matter was listed for DE on 27.11.2025.

As defendant failed to file evidence affidavit despite giving opportunity, right to lead DE was closed vide order dated 28.01.2026. Thereafter, matter was fixed for final arguments.

7. Arguments heard. Record perused.

8. My issue wise findings are given below:-

ISSUE NO.1

a) *Whether the plaintiff is entitled to a decree of possession in respect of property bearing no.RZ-G-10, Street No.4, Vishwas Park, Uttam Nagar, Near Akash Hospital, Dwarka, Sector-3, New Delhi along with cost of the suit as prayed for? OPP*

Plaintiff in order to show that he is entitled to the possession of the property has relied upon original property documents as well as other documents that were allegedly executed in the favor of the plaintiff by his late mother. The documents that are specifically pressed into service are WILL and GPA dated 25.05.2011.

He has also relied upon a public notice issued by his Late Mother allegedly disowning her younger son, the defendant herein. The said public notice is reproduced herein-below.

PUBLIC NOTICE

My clientesss Smt. Ramko Devi W/o Late Sh. Samey Singh R/o RZG-10, Gali No.4, Vishwas Park-II, Near Sector-3, Dwarka, Uttam Nagar, New Delhi and her sons Sukhpal and his wife Smt. Sunita (living Rani (living separate) have cut off their family

relations from their son/brother Prem Vijaypal and his wife Smt. Sunita @ Anju separate), Prempal and his wife Smt. Raj Chand and his wife Smt. Mithlesh and and have disowned them from their movable/immovable properties due to their disobedient and quarrelsome nature and my clients were not/are not/shall not be responsible for any act of Prem Chand and his wife Smt. Mithlesh & Vijaypal and his wife Smt. Sunita @ Anju in any manner.

D. K. Sharma (Advocate)
WZ-1-6,Arya Samaj Road, Uttam Nagar, New Delhi-59

It has been observed by the Hon'ble Delhi High Court in ***Preeti Satija vs. Raj Kumari & Anr., 207 (2014) DLT 78 (DB)*** that, "In fact, the strategy of "disowning" sons, through public notices or advertisement, is not to be taken lightly. For example, even if a son is disowned by either parent, the death of that parent would, if intestate, still lead to devolution of property upon that son. Indeed,a mere proclamation does not have a dispositive legal effect, breaking all legally relevant familial ties."

Thus, the said public notice is of little legal consequence. It is neither a substitute for testamentary succession nor does it have the legal effect of interfering with the rules of non-testamentary (intestate) succession.

Property Chain documents are in two sets. Documents dated 21.09.1984, comprising a GPA, Agreement to Sell, and Receipt, were executed by Ramanand in favour of Phoolwati. Thereafter, documents dated 21.07.1989 were executed by Phoolwati in favour of Ramko Devi.

As the title of the mother of the plaintiff (also the mother of defendant) is not disputed by the defendant and as both parties in settled possession of the property, there is no occasion for this court to consider the validity of the aforesaid documents.

The documents relied upon by the plaintiff to establish his entitlement to possession are a GPA dated 25.05.2011 and a Will, also dated 25.05.2011.

Perusal of GPA dated 25.05.2011 shows it is executed by Late.Smt. Ramko Devi W/o late Sh. Samay Singh in favor of her son Sh. Sukhpal S/o Sh. Samay Singh. WILL dated 25.05.2011 shows that WILL is executed in favor of Sukhpal S/o late Sh. Samay Singh and it is stated that after the death of Ramko Devi, Sukhpal will become the owner of the said property.

Plaintiff in the present case is relying upon GPA as a title document, an equivalent of conveyance deed, which is not feasible in view of the settled law. It is now a settled position of law that no conveyance of property can be effected by way of GPA , agreement to sell or power of attorney.

In this regard, it would be pertinent to mention the observation of Hon'ble Supreme Court of India in ***"Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Anr 656: (2012) 1 SCC"*** wherein in para no.23 & 24 Apex Court observed that;

> *"23. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of `GPA sales' or `SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales.*
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> *24. It has been submitted that making declaration that GPA sales and SA/GPA/WILL transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient*

time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship".

It would also be pertinent to mention the observations of Hon'ble Supreme Court of India in "***Shakeel Ahmad Vs. Syed Akhlakh Hussain 2023 INSC 1016"***wherein in para 10, 11, 12, 13 & 14, it was observed that;

"10. Having considered the submissions at the outset,it is to be emphasized that irrespective of what was decided in the case of ***Suraj Lamps and Industries****(supra) the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered Agreement to Sell or on the basis of an unregistered General Power of Attorney. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right,much less a legally enforceable right to approach a Court of Law on its basis. Even if these documents i.e. the Agreement to Sell and the Power of Attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to sections 17 and 49 of the Registration Act and section 54 of the Transfer of Property Act, 1882.*

11. Law is well settled that no right, title or interest in immovable property can be conferred without a registered document. Even the judgment of this Court in the case of Suraj Lamps & Industries(supra) lays down the same proposition. Reference may also be made to the following judgments of this Court:
(i). Ameer Minhaj Vs. Deirdre Elizabeth (Wright) Issar and Others
(ii). Balram Singh Vs. Kelo Devi
(iii).M/S Paul Rubber Industries Private LimitedVs. Amit Chand Mitra & Anr.

12. The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property. Once this is the settled position, the respondent could not have maintained the suit for possession and mesne profits against the appellant,who was admittedly in possession of the property in question whether as an owner or a licensee.

13. The argument advanced on behalf of the respondent that the judgment in Suraj Lamps & Industries(supra) would be prospective is also misplaced. The requirement of compulsory registration and effect on non-registration emanates from the statutes,in particular the Registration Act and the Transfer of Property Act. The ratio in Suraj Lamps & Industries(supra) only approves the provisions in the two enactments. Earlier judgments of this Court have taken the same view.

14. In case the respondent wanted to evict the appellant treating him to be a licensee, he could have maintained a suit on behalf of the true owner or the landlord under specific instructions of Power of Attorney as landlord claiming to have been receiving rent from the appellant or as Attorney of the true owner to institute the suit on his behalf for eviction and possession. That being not the contents of the plaint, we are unable to agree with the reasoning given by the High Court in the impugned order".

Hon'ble Supreme Court of India in ***Ramesh Chand vs Suresh Chand 2025 INSC 1059*** observed as follows:-

18. A power of attorney is a creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him. It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. A General Power of Attorney does not ipso facto constitute an instrument of transfer of an immovable property even where some clauses are introduced in it, holding it to be irrevocable or authorizing the attorney holder to effect sale of the immovable property on behalf of the grantor. It would not ipso facto change the character of the document transforming it into a conveyance deed.

19. A power of attorney is not a sale. A sale involves transfer of all the rights in the property in favour of the transferee but a power of attorney simply authorises the grantee to do certain acts with respect to the property including if the grantor permits to do certain acts with respect to the property including an authority to sell the property.

Therefore, it is evident that plaintiff by virtue of GPA cannot establish his sole ownership of the property. GPA dated 25.05.2011 shows that Ramko Devi W/o Sh. Samay Singh who was in exclusive possession of property bearing no.R/o RZ-G-10, area measuring 50 Sq. Yards, out of Khasra

no.99/3, situated in the colony known as Vishwas Park, Part-II, Palam New Delhi, street No.4, in the area of village Palam, Delhi empowered and authorised her son Sh. Sukhpal S/o late Sh. Samay Singh to act on her behalf.

It is not a transfer or conveyance deed. This court can't rely on it for holding plaintiff's ownership over the property, particularly in light of the categorical observations of the Hon'ble Supreme Court of India in plethora of cases. Besides, the plaintiff's case suffers from an inherent contradiction. On the one hand, he relies upon the General Power of Attorney executed by his mother as a property document. On the other hand, he relies upon the Will. If the General Power of Attorney is treated as a property document, the Will becomes infructuous, as the testator would no longer have any right to dispose of the property. Conversely, if the Will is considered valid, then, by necessary implication, the General Power of Attorney becomes infructuous.

However, considering that the Will, General Power of Attorney, and Agreement to Sell were commonly used modes of conveyance prior to the Hon'ble Supreme Court of India's decision in Suraj Lamp's case (supra), this Court does not consider it appropriate to proceed on this contradiction alone.

In such a situation the only document that could confer title on the plaintiff is the WILL which is allegedly executed by the mother of the plaintiff on 25.05.2011. WILL has been tendered in evidence and it is Ex. PW-1/B.

It is a settled position of law that to execute a valid WILL, compliance has to be made with Section 63 of Indian Succession Act and to prove it in the court of law atleast one attesting witness as provided by Section 68 of Indian Evidence Act, 1872 *(Section 67 of Bharatiya Sakshya Adhiniyam,*

2023) is required to be examined.

Section 63 of Indian Succession Act, 1925 and Section 68 of Indian Evidence Act, 1872 are reproduced herein-below for ready reference.

Section 63 of Indian Succession Act, 1925.

Execution of unprivileged Wills.—

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:----

(a) The Testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b)The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c)The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Section 68 of Indian Evidence Act, 1872

Proof of execution of document required by law to be attested.—If a document is required by law to be attested, it shall not be used as evidence ***until one attesting witness at least has been called for the purpose of proving***

its execution, *if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*

[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, ***not being a will****, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.]*

Section 63 of Indian Succession Act, 1925 provides that, Will needs to be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the 'Will' and further, each of the witnesses to the 'Will' should have signed the 'Will' with the requisite *animus attestandi*. Section 67 of Bharatiya Sakshaya Adhiniyam, 2023 which is identical to the Section 68 of Indian Evidence Act, 1872 further provides that, if a document is required by law to be attested, it shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence. Even registration of the Will won't absolve the party seeking to prove a will, of this requirement.

Hon'ble Supreme Court of India in ***Shiv Kumar & Ors. vs Sharanabasppa and Ors. (AIR 2020 SC 3102)*** summarized the principles governing the proof of Will which are as follows:

> *"1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.*
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> *2.* ***Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at***

least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.

3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.

4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.

5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free Will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is "suspicious" when it is not normal or is 'not normally expected in a normal situation or is not expected of a normal person'. As put by this Court, the suspicious features must be 'real, germane and valid' and not merely the 'fantasy of the doubting mind'.

7. As to whether any particular feature or a set of features qualify as "suspicious: would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the depdndants; an active or leading part in making of the Will by the beneficiary thereunder et cetera

are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the prof of attestation.

8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essential of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will".

Hon'ble Supreme Court of India in ***'Meena Pradhan vs Kamla Pradhan' (2023 INSC 847)*** in Para 10 observed:

"10.Relying on H. Venkatachala Iyengar v. B.N. Thimmajamma, 1959 Supp (1) SCR 426 (3Judge Bench), Bhagwan Kaur v. Kartar Kaur, (1994) 5 SCC 135 (3-- Judge Bench), Janki Narayan Bhoir v. Narayan Namdeo Kadam, (2003) 2 SCC 91(2Judge Bench)Yumnam Ongbi Tampha Ibema Devi v.Yumnam Joykumar Singh, (2009) 4 SCC 780 (3Judge Bench) and Shivakumar v. Sharanabasappa, (2021) 11 SCC 277 (3-Judge Bench), we can deduce/infer the following principles required for proving the validity and execution of the Will:

i.The court has to consider two aspects: firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;

ii.It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.

Iii. A Will is required to fulfill all the formalities required under Section 63 of the Succession Act, that is to say:

(a) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;

(b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;

Each of the attesting witnesses must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;

(d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;

*iv.**For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;***

v.The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator;

vi.If one attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;

vii.Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;

viii.Whenever there exists any suspicion as to the execution of the Will, it is the responsibility of the propounder to remove all legitimate suspicions before it can be accepted as the testator's last Will. In such cases, the initial onus on the propounder becomes heavier.

ix.The test of judicial conscience has been evolved for

dealing with those cases where the execution of the Will is surrounded by suspicious circumstances. It requires to consider factors such as awareness of the testator as to the content as well as the consequences, nature and effect of the dispositions in the Will; sound, certain and disposing state of mind and memory of the testator at the time of execution; testator executed the Will while acting on his own free Will;

x.One who alleges fraud, fabrication, undue influence et cetera has to prove the same. However, even in the absence of such allegations, if there are circumstances giving rise to doubt, then it becomes the duty of the propounder to dispel such suspicious circumstances by giving a cogent and convincing explanation. xi. Suspicious circumstances must be 'real, germane and valid' and not merely 'the fantasy of the doubting mind'. Whether a particular feature would qualify as 'suspicious' would depend on the facts and circumstances of each case. Any circumstance raising suspicion legitimate in nature would qualify as a suspicious circumstance for example, a shaky signature, a feeble mind, an unfair and unjust disposition of property, the propounder himself taking a leading part in the making of the Will under which he receives a substantial benefit, etc."

In the present case, the only documents the plaintiff has relied upon are GPA and WILL. GPA does not confer any title or the ownership rights in the person in whose favor the GPA has been executed. WILL in the present case has not been proved in accordance with the law. Hence, the suit of the plaintiff fails.

The factual and legal position of the present case can be summarized as below:

1. The plaintiff and the defendant are sons of the same lady, who is stated to be the original owner of the property. There is no dispute with respect to her title to the property.
2. The plaintiff claims that, during her lifetime, she executed certain documents in his favour, which he describes as property documents. These documents include a General Power of Attorney (GPA) and a

Will.

3. However, for the reasons discussed above, a GPA cannot be considered a title document. Further, the Will cannot be regarded as proved due to the non-examination of any attesting witness as provided by Section 67 of the Bharatiya Sakshya Adhiniyam, 2023.
4. Had the Will been duly proved and free from any suspicious circumstances, as observed by the Hon'ble Supreme Court of India in Meena Pradhan (supra), the situation might have been different. However, since the plaintiff has failed to examine any attesting witness, the Will cannot be accepted as proved.
   In the absence of these documents, the plaintiff cannot be held entitled to possession of the property.
5. The plaintiff also cannot derive any benefit from the alleged lack of evidence on the part of the defendant, since the defendant, as being plaintiff's brother and a legal heir of late Smt. Ramko Devi, the original owner, is presumed to be residing in the property in the capacity of a legal heir. He is equally entitled to the property as the plaintiff.
   Accordingly, this Court is of the considered opinion that the plaintiff is not entitled to a decree of possession against the defendant.

Issue No.1 is decided with the finding that plaintiff is not entitled to possession.

ISSUE NO.2

(ii) Whether the suit of the plaintiff is not maintainable in its present form on account of suppression of material facts and is liable to be dismissed? OPD

Onus to prove this issue was on defendant.

Defendant on his part has not produced any evidence. Although,

plaintiff's case has failed due to its own insufficiency and lacuna, it does not show that any concealment has been made by the plaintiff.

Defendant to discharge onus was required to show as to what particular concealment was made by the plaintiff however no evidence has been led by the defendant. Hence, onus on defendant remained undischarged.

The issue no.2 is decided against the defendant.

Relief

In view of the findings of issue no. 1, plaintiff is held not entitled to any relief. Suit of the plaintiff is hereby dismissed.

Parties to bear their own cost.

Decree sheet be prepared accordingly, on filing of deficient court fees, if any.

File be consigned to Record Room thereafter.

Typed to the dictation directly,
corrected and pronounced in the
open Court on 29.05.2026

abhitosh pratap singh rathore
Digitally signed by abhitosh pratap singh rathore
Date: 2026.05.29 17:05:26 +0530

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