



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 27th April, 2026***
Pronounced on: 27th July 2026

+ **RFA NO. 467/2025 & CM APPL. 31418-31421/2025**

LATE SH. DHIRAJ LAL

Through his Legal heirs/LRs

- 1(a) Aditi Bhati
D/o Late Sh. Dhiraj Lal
- 1(b) Akriti Bhati
D/o Late Sh. Dhiraj Lal
- 1(c) Anuj Singh Bhati
S/o Late Sh. Dhiraj Lal
(Legal heirs of Late Sh. Dhiraj Lal)
All residents of T-38/1, Kalu Sarai,
Hauz Khas, New Delhi.

....Appellants

versus

1. **LATE SH. RUP CHAND**

Through his legal heirs/LRs

- 1(A) Kamal Singh Bhati
S/o Late Sh. Rup Chand
- 1(B) Aman Singh Bhati
S/o Late Sh. Rup Chand
- 1(C) Raman Singh Bhati
S/o Late Sh. Rup Chand

2. Smt. Padma Wati
W/o Late Sh. Rup Chand

All residents of T-38/1, Kalu Sarai,



Hauz Khas, New Delhi.

...Respondents

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'the Suit Property'*) has been filed on behalf of the Appellants against the Judgment and decree dated 17.12.2024 whereby the ***Suit of the Plaintiffs/Respondents, for Recovery of Possession, Permanent Injunction and Damages/Mesne Profits, has been decreed.***

2. The Plaintiff/Respondent filed ***Suit bearing No. CS(OS) 644/2013*** for *Recovery of Possession of the part of Property situated at First Floor, T-38/1, Kalu Sarai, Hauz Khas, New Delhi (hereinafter referred to as 'the Suit Property')* and for *Recovery of Damages/Mesne Profits at the market rate.*

3. The Plaintiff also ***sought Permanent Injunction*** to restrain the Defendants from creating third party rights.

4. The **facts in brief**, are that the Plaintiff No. 1, Rup Chand and his wife, Sh. Padma Wati, Plaintiff No. 2 were the absolute owners of the suit property and in possession of the part of the same, as shown in the Site Plan. The *Defendants are the real brothers*, who had been permitted by the Plaintiff No. 1/owner, Late Sh. Rupchand, to reside in the portion of the suit property, on the Ground Floor. However, there were some areas under common use of the parties on the Ground Floor, but despite the withdrawal of permission by the Plaintiffs, the Defendants had still illegally occupied



the portion of the suit property. They had forcefully occupied one of the shops, which was earlier in possession of the mother of the Plaintiff No. 1.

5. The Plaintiffs explained that Late Sh. Sarju Ram, their father, expired in the year 1962. After his demise, the Plaintiff No. 1 along with his mother and the Defendants had started residing together in the rented accommodation, since the Defendants were totally dependent on Plaintiff No. 1, at that time.

6. The *Plaintiffs purchased the suit property, vide registered Sale Deed dated 28.01.1971, from Smt. Manoo Devi*, the erstwhile owner.

7. It was explained that the Plaintiff No. 1 had arranged the money from his employer, National Grindlays Bank. The property at that time consisted of two rooms and one kitchen, situated on the Ground Floor. The Plaintiff has been in continuous possession of the suit property since the date of its purchase. He has been paying the House Tax, Water Bills and other statutory charges.

8. It is further asserted that after Plaintiff No. 1 purchased the property, he had persuaded Smt. Jamna Devi, his mother, to open a small grocery shop from his funds, to have some financial support for the whole family, which was dependent upon him. Accordingly, a small shop was constructed by the Plaintiff in the suit property, from where his mother started running a shop, which she continued till her demise, in the year 2004.

9. The Defendants along with the mother, had been staying with the Plaintiff, but in the year 1986, they rented an accommodation, though they continued to run the shop from the suit property. Because of the congestion in the rented accommodation, the Plaintiffs requested and allowed the Defendants and the mother, to stay in the suit property, out of love and



affection, being the real brothers of the Plaintiff No.1. Thereafter, the Plaintiffs and the Defendants started living together and additional room and toilet and bathroom, were constructed to facilitate their stay in the suit property on the Ground Floor. The shop remained in the occupation and use of the mother.

10. The Plaintiffs, after obtaining an additional loan from the employer in the year 1988, have made additional construction in the Property. On completion of the construction, the Plaintiff started residing in the suit property along with his family consisting of three sons. The Defendants remained in possession of a portion of the suit property, as reflected in the Site Plan.

11. Smt. Jamna Devi, the mother of the Plaintiff, died in the year 2004 after which, the Plaintiff requested the Defendants to vacate the suit property, but they sought time to continue in the Property till they were able to find an alternate accommodation. The Plaintiffs, out of love and affection, conceded to their request. However, despite several years, the Defendants have failed to vacate the suit property. Moreover, after the demise of the mother of the Plaintiff No. 1, the Defendant No. 3, Sh. Prakash Chand, has taken possession of the shop, which was earlier in the possession of the mother.

12. The family of the Plaintiffs has extended due to the marriage of three sons; therefore, in the year 2006, the Plaintiff again requested the Defendants to vacate the premises, but they failed to do so. To the shock of the Plaintiffs, the Defendants *mala fide* and mischievously picked up a fight with them, when they tried to renovate the suit property and made additional construction to support the accommodation for the sons. The Plaintiffs



claimed that they have an apprehension that the Defendants intend to grab the Property.

13. The Plaintiffs asserted that they are not being allowed to live in their own house peacefully, despite being the true and legal owners of the Suit Property. On account of the illegal and unlawful acts, the Plaintiffs, who are the senior citizens, made a Complaint dated 29.07.2012 with the SHO, Police Station, Malviya Nagar, but no action was taken.

14. Hence, the *Plaintiff had filed the Suit for Possession, Permanent Injunction and Recovery of Mesne Profits/Damages.*

15. The ***Defendant No. 1, Sh. Dhiraj Lal in his Written Statement***, took the *preliminary objections* that the Plaint did not disclose *any cause of action and was an abuse of process of law*. It was explained that their father, Sh. Sarju Ram died in the year 1962. He was in the employment with Grindlays Bank (now Standard Chartered Bank) and on his demise, became entitled to statutory dues. Such funds were to be equally divided amongst the mother of the Plaintiff No. 1 and the Defendants.

16. The Plaintiff No. 1 was employed as a daily wager in the same Bank and assured Smt. Jamna Devi that the Plaintiff No. 1 would collect all the dues of Late Sh. Sarju Ram on behalf of Smt. Jamna Devi and pay her the same. However, Smt. Jamna Devi, who was an uneducated lady and had full trust in Plaintiff No. 1, agreed to sign the documents for collection of dues and funds of Late Sh. Sarju Ram. The other Defendants, including the answering Defendants, were younger to the Plaintiff No. 1 and none of them were adults. In these circumstances, the Plaintiff No. 1 collected all the dues and funds of Late Sh. Sarju Ram on behalf of all the legal heirs, but did not give account of the money to any of the legal heirs. When Late Smt. Jamna



Devi asked the Plaintiff for the money, he assured that he would buy a house and give it to her.

17. Ultimately, in 1971, the Plaintiff No. 1 informed Smt. Jamna Devi that he had purchased the suit property from the funds of Late father, Sh. Sarju Ram. The Plaintiff No. 1 gave the ownership documents along with the original map to Smt. Jamna Devi, to be kept in safe custody, being the head of the family. The Plaintiffs, however, never informed Smt. Jamna Devi during her lifetime that the suit property had been purchased fraudulently and maliciously by the Plaintiffs in their joint name and not in the name of the legal heirs of Sh. Sarju Ram. The Defendants claimed that the Plaintiff is illegally trying to usurp the suit property, which was purchased from the funds belonging to all the legal heirs of Late Sarju Ram.

18. The Defendants further asserted that the Suit was **barred by limitation**. They claimed that they are in peaceful, exclusive, continuous, and undisturbed possession of the suit property. The old structure of the suit property was purchased from Smt. Manoo Devi from the funds of their father, Late Sh. Sarju Ram in the year 1971 and all the family members had taken possession of the suit property. The Defendants have been in possession for the last 42 years, and the Suit is liable to be dismissed.

19. The Defendants also claimed that they have become the owner of the **suit property, by adverse possession**. The Suit of the Plaintiff has been filed at a belated stage, and material facts have been concealed. The Suit is, therefore, not maintainable.

20. The Plaintiff No. 1 was born in 1940 and was barely 22 years old in 1962, at the time of demise of father. Late Sh. Sarju Ram had got him employed as a daily wager, where he continued to work in the same capacity



from 1972 till 1973 when he applied for the post of Peon in Grindlays Bank. The Plaintiff No. 1, at the relevant time, had eight members to feed and also pay rent for the accommodation where Sh. Sarju Ram and the family were living. The Plaintiff No. 2, was also employed. Therefore, it can easily be concluded that the Plaintiff never had the financial capacity to purchase the suit property and was not in a position to take responsibility for the entire family. It is, therefore, evident that the Plaintiffs *did not have the independent source of income to buy the Property*. Furthermore, it is admitted by the Plaintiff himself that he had given the Property documents to Smt. Jamna Devi, his mother.

21. It was further explained that the suit property, when purchased in the year 1971, was an old structure comprising of two rooms, one kitchen and open land. It is their mother, who made improvements by adding a temporary bathroom and gradually constructed a shop on the plot. The Defendant No. 1 constructed a third room in the old structure, to facilitate the living of so many persons therein. No objection was ever raised by either of the Plaintiffs to the construction so made by the Defendant No. 1, which clearly reflects that the Defendant No. 1 was the co-owner of the suit property. The Defendant No. 1 also claimed that his possession was clearly adverse to the knowledge of the Plaintiff. The possession can at no point in time be asserted to be with consent of Plaintiffs.

22. The Defendant No. 1 further asserted that the suit property was in exclusive possession of the mother and the Defendants since 1971, to the exclusion of the Plaintiff, who never lived in the suit property; more specifically in the old structure. He, along with his children at that time, was residing in Sector-7, R.K. Puram, as is mentioned in the Application dated



21.09.1971 filed by the Plaintiff No. 2, while applying for the job. Therefore, the right of the Plaintiff, if any, got extinguished in 1983.

23. The Defendant No. 1 further asserted that in 1986-1987, with the permission of Smt. Jamna Devi, the Plaintiff had built a new structure on the Ground Floor of the suit property, which he occupied in the year 1988. The Plaintiff used to tell Smt. Jamna Devi that the old structure on the Ground Floor of the suit property is for her and the new structure is for the Plaintiff and his family. The Plaintiff also used to take free grocery from the shop of Smt. Jamna Devi and take part of the earnings of the Defendants, being the eldest amongst the children of Sh. Sarju Ram. This continued for a number of years and the result was that the Defendants became poorer and the Plaintiff became richer.

24. The Defendant No. 1 further stated that Smt. Jamna Devi used to run a grocery shop in the name of "Jamna Stores" from the suit property, to earn her livelihood. The Defendants and the mother had been living together since 1971, till her demise. The Defendants are thus, the owners by virtue of adverse possession for 42 years.

25. It was denied that the Plaintiff is the owner of the suit property. It is claimed that he was never in possession of the old structure since 1971 till date.

26. All the Defendants, after the demise of their father, Sh. Sarju Ram, stayed with Smt. Jamna Devi, till her demise. The Plaintiff had separated from the family and after his marriage around 1970-1971, Smt. Jamna Devi, after the demise of Sh. Sarju Ram, became the head of the family and the entire family, including the Plaintiff, resided in tenanted premises till 1971, after which, the Plaintiff shifted to the Property in R.K. Puram.



27. The Defendants further asserted that the rates of the Properties are exorbitantly high and the greed has taken over the Plaintiff and does not want to even sell the suit property to the Defendants, but wants more money for it.

28. The Plaintiff No. 1, being the eldest son, has water and electricity connections in his name, but throughout, these bills are being paid by the Defendants and their mother. It is, therefore, submitted that the Suit of the Plaintiffs, is liable to be dismissed.

29. The **Defendant No. 2 and 3, Sh. Amar Chand and Sh. Prakash Chand, in their separate Written Statements**, took the same defence, as has been detailed by the Defendant No. 1.

30. The Plaintiff in the **Replication** reaffirmed his case as stated in the Plaint and denied the allegations made in the Written Statement.

31. The learned District Judge *vide* Order dated 15.01.2025 **framed the issues, which are as under:-**

1. *Whether the present suit does not disclose any cause of action? OPD*
2. *Whether the present suit is beyond limitation? OPD*
3. *Whether the plaintiffs are the owners and in possession of the suit property? OPP*
4. *Whether the defendants are in adverse possession of the suit premises? OPD*
5. *Whether the suit property is a family property of the plaintiffs and defendants? OPD*
6. *Whether plaintiffs purchased the suit property themselves and out of their own funds? OPP*



7. *Whether the plaintiffs have suppressed and concealed material facts from this Court? If yes, whether the suit is liable to be dismissed on this ground? OPD*

8. *Whether the suit has not been valued properly for the purpose of court fees? OPD*

9. *Whether the plaintiffs are entitled to a decree of possession? OPP*

10. *Relief.*

32. The ***Plaintiff, Sh. Rupchand examined himself as PW-1*** and deposed on similar lines as the facts narrated in the Plaint. In support of his case, he proved the registered Sale Deed in respect of the suit property, site plan, house tax records, electricity and water bills, documents pertaining to the housing loan obtained from Grindlays Bank, legal notices issued to the defendants calling upon them to vacate the premises, and other connected documents exhibited as Ex. PW1/1 to Ex. PW1/22.

33. ***PW-2, Sh. Dinesh Kumar Maurya, Operation Officer, Standard Chartered Bank***, Branch, DLF Cyber Citi Gurgaon, Haryana deposed that the summoned record pertaining to year 1963 and 1971 of the erstwhile Grindlays Bank, were not available with Standard Chartered Bank after the merger.

34. ***PW-3, Sh. Ajay Singh***, Assistant Archivist, Department of Archives, 18A, Satsang Vihar Marg, New Delhi produced the transfer list, Ex.PW-3/A, office copy of Letters dated 28.02.2019, 08.04.2019 and 25.04.2019, which are Ex.PW-3/1 to Ex.PW-3/3.

35. ***Ms. Aditi Bhati, daughter of Defendant No. 1 Dhiraj Lal was examined as DW-1*** deposed on similar lines, as the defence set up in the



Written Statement. She further deposed that the defendants had been residing in the suit property as a matter of right and not as licensees under the plaintiffs. She proved various documents including ration card of Jamna Devi, letter by Plaintiff no. 1 Rup Chand regarding request for employment in the Bank, Site plan of the suit property, Letter dated 31.09.1971 issued by Plaintiff no. 2, Water bills, Electricity bills, copy of Police complaint dated 09.09.2012 and Letter dated 07.09.2009 to Smt. Jamuna Devi, as Ex. DW-1/1 to DW-1/8.

36. **DW-2, Sh. Anand Singh**, son of Sarju Ram, corroborated the testimony of DW-1 and reiterated that they are the owners of the suit property.

37. **DW-3, Sh. Parmod Kumar**, cousin brother of the Plaintiff and Defendant deposed that after the death of Sarju Ram, Plaintiff Rup Chand continued to reside at R.K. Puram in a government accommodation, whereas the Defendants and their mother shifted to the suit property after its purchase. He further deposed that the defendants remained in occupation of the suit property continuously and were looking after its maintenance. The mother of the parties Jamna Devi used to run a grocery shop from the premises and Defendant No.1 Dhiraj Lal was managing the affairs of the property. He asserted that the Plaintiff shifted to an adjoining portion of the property much later. Disputes regarding ownership surfaced around 30–35 years before his deposition when the plaintiff demanded that the defendants vacate the property, but the defendants refused and asserted their own rights therein.

38. **DW4 Sh. Jaswant Singh Cheema**, neighbour and friend of Defendant No.1 Dhiraj Lal, also deposed on similar lines as DW-3.



39. **DW-5, Sh. Mahipal Singh**, official from BSES Rajdhani Power Ltd., Adhchini, Delhi deposed that the summoned record pertaining to the electricity meter from 1979-2011 qua the connection CRN No. 2520020010, is not available.

40. **DW-6, Sh. Rakesh Kumar**, Zonal Revenue Officer, Delhi Jal Board, proved the summoned record pertaining to the water connection No. 18116 (now changed to new K No. 2373941000) for the period 2000 to 2024, as Ex. DW-6/A.

41. The **Ld. District Judge**, on appreciation of the evidence, concluded that the Sale Deed was admittedly in the name of the Plaintiff No. 1. The Defendants were unable to prove that the Property had been purchased from the funds of late father. Moreover, while the Defendant No. 1 had claimed to be the joint owner, he in the same breath, claimed his possession to be adverse to that of the Plaintiffs. It was held that two pleas taken by the Defendants were mutually destructive and not tenable. There was no evidence to prove that the possession of the Defendants was adverse to that of the Plaintiffs.

42. Furthermore, it was observed that though the Plaintiff had sought Mesne Profits/Damages but had not led any evidence in this regard, taking judicial notice of the facts, it was held that the Plaintiffs were entitled to Mesne Profits, which were quantified as Rs.1,000/- per month with 5% annual increment along with the interest @6% p.a. from 2013 till the realisation. ***The Suit of the Plaintiff was accordingly, decreed.***

43. Aggrieved by the said Judgment, the *present Regular First Appeal has been preferred under Section 96 read with Section 151 CPC.*



44. The **grounds of challenge** are that the Plaintiff has filed the Suit after more than 12 years of possession of the Defendants and the *Suit was barred by limitation*, but this aspect has not been considered by the learned District Judge, who on the other hand, has tested the case of the Plaintiff, on the ground of adverse possession of the Defendants for which the onus has been placed on the Appellants.

45. It has not been appreciated that the Plaintiff had specifically asked the Defendants to vacate the suit property, which was denied by him, time and again in 1986. The Plaintiff had sought the help of police to get his possession back, by filing a Complaint in the year 1990. The year 2004 has arbitrarily held as the starting point of limitation for the Suit for the relief of possession and has incorrectly held that the Plaintiffs are entitled to possession.

46. It is further contended that the testimony and the submissions of the Defendants, have not been considered in the right perspective. The Court has relied on the literal words of the Respondents when he deposed that he has been in possession since 1990 against the wishes of the Plaintiff, while the substance of the contention was that the Respondent/Plaintiff had specifically asked the Defendants to vacate the Property again and again since 1986 and had even sought the assistance of the Police.

47. It has been wrongly observed that “*Besides, residing against one's wishes and residing despite being asked to vacate in denial of the title of the owner, are two different things. It is the latter that would make a possession adverse.*” The learned District Judge has failed to consider the principles of law in regard to the adverse possession, in the facts and circumstances of the case. It has been wrongly concluded that the Plaintiff had asked the



Appellants to vacate the Property in the year 2004. It has not been considered that the legal heirs of the Appellants were not even born in the year 1990, since when the possession of the Appellants became adverse.

48. It has also not been appreciated that the Appellants along with his mother and younger brothers, had entered into the suit property *in the year 1971 and have maintained continuous open and hostile possession*. He reconstructed the Property, paid water and electricity bills and exercised right of ownership; all of which are consistent with adverse possession. These aspects had been deposed by DW-4, Sh. Jaswant Singh, whose testimony has not been considered.

49. In the end, it is contended that the Mesne Profits @Rs.1,000/- per month with annual increment, is arbitrary and unsupported by any evidence. *It is, therefore, submitted that the impugned Judgment and decree be set aside.*

50. ***Learned counsel for the Respondents/Plaintiffs***, submitted that the evidence, including the Sale Deed and other documents, has been rightly appreciated by the learned District Judge, to observe the absolute ownership of the Plaintiffs. Moreover, no evidence had been led by the Defendants to show that the terminal benefits of the father, had been used for purchase of the suit property. There is nothing to show that the suit property was joint or that the Defendants were the joint owners of the suit property.

51. Moreover, it has been rightly held by the learned District Judge that the plea of adverse possession, has not been substantiated by the Defendants. It has also been rightly held that the Suit was not barred by limitation.

52. It is submitted that all the contentions of the Plaintiff have been appreciated in the right perspective and there is no merit in the present Suit.



The Respondent/Plaintiff had validly terminated the license on 24.12.2012, and the Suit was filed on 09.04.2013, which is well within the period of limitation. ***It is submitted that the Appeal is without merit and be dismissed.***

Submissions heard and the record perused.

53. The case of the Plaintiff Late Sh. Rup Chand is that he had purchased the suit property situated at the ground floor of T-38/1, Kalu Sarai, New Delhi vide a registered ***Sale Deed dated 28.01.1971 Ex. PW1/2*** from Smt. Manoo Devi. The property was mutated in the name of the Plaintiff in the year 1984, vide Mutation Letter dated 21.02.1984 Ex. PW1/14. After the purchase of the suit property, the Defendants along with their mother admittedly shifted to the suit premises. The Defendants have not denied that the Sale Deed is in favour of the Plaintiff No. 1, Sh. Roopchand s/o Sarju Ram.

54. The Plaintiff further explained that Plaintiff No. 1 was already employed with the Bank and was confirmed on 10.07.1962. The Plaintiff had proved his Service Certificate Ex.PW1/5, whereby it was confirmed that the *Plaintiff No. 1 had joined the Bank in 1962 and retired on 31.03.2000.* The Letter dated 10.01.1962 Ex.PW1/6 was written by the Bank to Plaintiff No. 1 in regard to his acceptance of employment dated 10.01.1962. He was informed that the Bank had engaged him as a member of its subordinate staff on probation w.e.f. 10.01.1962 in accordance with the Bank rules. It was further stated in that Letter that on completion of six months of probation satisfactorily, he was appointed as a permanent staff w.e.f. 10.07.1962.



55. The Defendant No. 1 had taken a plea that the Plaintiff No. 1 had got the job on compassionate basis on account of demise of the father during his tenure. However, the father had died on 03.12.1962, while the Plaintiff had already been confirmed in the job w.e.f. 10.07.1962. *The assertion of the Defendant that he had got a job on compassionate ground is not supported by the documents of employment.*

56. The Plaintiff No. 1 has further explained in his testimony that at the time of purchase of the property, it consisted of two rooms and one kitchen situated on the ground floor. After purchase of the property, he persuaded his mother, late Smt. Jamna Devi to open a small grocery shop, in order to generate financial support for the entire family, which was dependent upon the Plaintiff No. 1. Accordingly, *Plaintiff constructed one small shop which was being used by the mother to run the grocery shop since 1971 till the year 2004, when she died.*

57. The Plaintiff has explained in his affidavit of evidence Ex.1/A, that at the time of purchase of the property, he had procured the money from his employer National and Grindlays Bank. He had also applied for the loan through a Home Loan Application Ex.PW1/3 dated 11.01.1971 for purchase of the suit property. It was mentioned in the Loan Application that the market value of the house was Rs.14,000/-. The Confidential Report dated 09.01.1971 Ex.PW1/4 has also been filed by the Plaintiff wherein the Verification Report was submitted by S.N. Gupta, Advocate confirming the purchase of the property by Plaintiff No. 1 for Rs.14,000/-. The title of the erstwhile owner Manoo Devi was also verified from the Office of Sub-Registrar, and it was narrated that there were no encumbrances in respect of the suit property.



58. The Plaintiff thus, explained that he had purchased the property in the year 1971 from his own resources and after taking the loan from the bank to pay the sale consideration of Rs.14,000/-, in the year 1971.

59. The Plaintiff further explained that late Sarju Ram, his father, died during his service, on 03.12.1962. After his demise, the Bank wrote a Letter dated 28.01.1963 Ex. PW1/10 advising Smt. Jamna Devi to obtain the Certificate from the Court to enable the release of the balance Rs.1238.72/- in respect of the Provident Fund. Likewise, *vide* Letter dated 27.02.1963 Ex.PW1/11, the bank informed Smt. Jamna Devi that Rs.882/- as gratuity is payable to the legal ends of her deceased husband. It was also informed *vide* Memorandum dated 06.03.1963 that the loan outstanding in the name of your husband is Rs.500/- excluding interest from 14.09.1962.

60. The Plaintiff No. 1 then wrote a Letter to the Administrator General, Punjab and Delhi States Ex.1/8 for issuance of a Certificate under Section 31 of the Administrators General Act in regard to the Provident Fund of Rs.1238.70/- less Rs.500/- taken as loan against it and Rs.882/- as gratuity payable on account of the demise of the father. A request was also made that the Certificate be granted in the name of the mother. Consequently, a Certificate dated 11.07.1963 Ex.PW1/7 was issued in the name of Smt. Jamna Devi giving the details of the Provident Fund and the Gratuity totalling Rs.1620.77/- payable to Smt. Jamna Devi.

61. The amount of Provident Fund and the Gratuity of the father, was given to Smt. Jamna Devi, the mother of Plaintiff No. 1 and the Defendants. The Certificate from the Office of Administrator General of Punjab and Delhi Province is Ex.PW1/7. The No Objection Certificate in this regard was submitted to the Administrator General, Punjab Ex.PW1/8.



62. The Plaintiff further explained that the total amount so received by the mother was Rs.1620.77/-, in the year 1963. The letters from the bank confirming the Provident Fund and Gratuity are Ex.PW1/9, PW1/10 and PW1/11, which prove that the money in fact, was received by the mother, Jamuna Devi.

63. All these documents established that the Gratuity and Provident Fund of the father was received by Smt. Jamna Devi the sum of Rs.1620.77/- way back in 1963, while the suit property was purchased for Rs. 14,000 in the year 1971. The assertion of the Defendants that the money for the purchase of the property was arranged from the Gratuity and Provident Fund of the father is therefore, not sustainable in the light of the aforesaid discussion.

64. The Defendant No.1 had asserted that admittedly the Plaintiff had given all the original documents and the map of the suit property, after its purchase, to their mother, which further reflects that the property was purchased from the funds of the father. However, it has emerged from the evidence that Defendants and the mother were residing together in the suit property which was purchased by Plaintiff in the year 1971. It shows that there was close bonding in the family members and there was a respect for the mother, in recognition of which the original documents were given to the mother. However, merely because the original documents of purchase and the original site plan was handed over to the mother, there is nothing to show that it was in recognition of her ownership rights. It may have been due to respect for the mother, but that itself would not change the contents of the documents which clearly reflected that the property had been purchased by the Plaintiff *vide* the Sale Deed dated 28.01.1971 Ex.PW1/2.



65. It is therefore, proved that the suit property is the exclusive property of the Plaintiff, in which admittedly the mother and the Defendants came to live, while the Plaintiff was living in another premises. It is also proved from the evidence of the Plaintiff, which has not been controverted by any cogent evidence by the Defendants, that a small shop had been constructed by the Plaintiff in the suit premises from where Smt. Jamna Devi, was running a grocery shop till her demise in 2004; a fact which is also admitted by the Defendants.

66. The Defendants had taken a plea of being joint owners of the property, on the ground that the funds for purchase of property had been arranged from the terminal benefits of the father. As has been discussed in detail, the funds were of the Plaintiff and not of the father. Even otherwise, the Sale Deed is in the exclusive name of the Plaintiff No. 1. *Therefore, the claim of the Defendants of being a joint owner in the property, has rightly been rejected by the learned District Judge.*

67. The Defendants had further asserted that the suit property had the old construction comprising two rooms, bathroom and kitchen. However, the Plaintiff had constructed an additional portion, i.e., the new portion in which he shifted, after his return in 1981. The Plaintiff has explained that he himself had built this new portion, to which he shifted. The Plaintiff, being the rightful owner of the property in question, had himself raised the construction. The claim of the Defendants that the suit property, i.e., the old portion, belongs to the Defendants and that the new portion is of the Plaintiff, is clearly not established by the evidence on record.

68. The overwhelming evidence on record and also the admissions of the Defendants who have not denied the factual scenario, *clearly show that the*



Defendants were in the permissible user of the property. Such permissible user may have continued for a span of over 42 years, but the status of the Defendants does not change to that of ownership, and it continues to be that of permissible user.

69. The last plea taken by the Defendants to protect their defence *was that they have been in adverse possession and have been occupying the suit property in the capacity of an owner.*

70. The very concept underlying **adverse possession** is that the person in possession, must claim to be so of right as against the true owner. It must be *nec vi, nec claim, nec precario*. It must be adequate in continuity and publicity to the extent of showing that it is averse to the competitor. It must be hostile and under a claim or colour of title. It must be actual, open, uninterrupted notorious, exclusive and continuous and it must run over the entire statutory period of 12 years. Any person who bases his claim to title by adverse possession should be hostile to the real owner with the attributes of notoriety, exclusivity and continuity over the statutory period.

71. In S. M. Itarim vs. Mst. Bibi Skina, AIR 1964 SC 1254, the Hon'ble Supreme Court declared that adverse possession must be adequate in continuity, in publicity and extent and that a plea is required to at least show as to when possession became adverse so that the starting point of limitation against the party affected by the same can be determined.

72. In Annasaheb Bapusaheb Patil and Others Vs. Balwant @ Balasahet Babusaheb Patil (dead) by LRs & heirs etc. AIR 7995 Supreme Court 895, their lordships described the meaning of the expression adverse possession and the pre-requisite for proving the same in the following words:



"Article 65 of the Schedule to the Limitation Act, 1963 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 6, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence that 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 title on the adverse possession, therefore, must show by clear and unequivocal evidence that possession was hostile to the real owner and amounted to a denial of his title to the property claimed".

73. In Konda Lakshmana Bapuji v. Govt. of A.P. and others, 2002 (3) SCC 258 the Apex Court declared that onus of proof to establish acquisition of title by prescription lies on the party who makes any such assertion. The court further held that time for the purpose of adverse possession, would start running from the date, both, the actual possession and assertion of title, are shown to exist. The court explained that mere possession of land, however, long it may be, would not ripen into title unless the possessor has



animus possidendi to hold the land adverse to the title of the true owner and that an assertion of title by adverse to the title of clear and unequivocal through, not necessarily addressed to the real owner. Consequently, where at the commencement of the possession there is no *animus possidendi*, the period relevant for the plea of adverse possession commences from the date when both, the actual possession and assertion of title by the possessor, are shown to exist. The following passage is in this connection apposite:

"Mere possession of the land, however long it may be, would not ripen into possessory title unless the possessor has animus possidendi to hold the land adverse to the title of the true owner. It is true that assertion of title to the land in dispute by the possessor would in an appropriate case be sufficient indication of the animus possidendi to hold adverse to the title of the true owner. But such an assertion of title must be clear and unequivocal through it need not be addressed to the real owner. For reckoning the statutory period to perfect title by prescription both the possession as well as the animus possidendi must be shown to exist. Where, however; at the commencement of the possession there is no animus possidendi, the period for the purpose of reckoning adverse possession will commence from the date when both, the actual possession and assertion of title by the possessor are shown to exist".

74. The Supreme Court in Karnataka Board of Wakf v. Government of India and others, 2004 (970) SCC 779 summed up the legal position in the following passage:



"It is well settled principle" that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with the wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Physical fact of exclusive, hostile and the animus possedendi 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".

75. Reliance may also be placed upon the decision of the Apex Court in Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors (2019) 8 SCC 729, wherein the Court held that a claim of adverse possession can succeed when the claimant establishes the essential ingredients of *nec vi, nec clam and nec*



precario, i.e., possession must be continuous, open and notorious, and hostile to the title of the true owner. Further, it was held as under:

"We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed."

76. The Supreme Court in 'Karnataka Board of Wakf v. Govt. of India and Ors.' (2004) 10 SCC 779 observed:

"111. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam nec precario", that is, peaceful open and the possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.



77. It was further 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 true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Dr. Mahesh Chand Sharma v. Raj Kumari Sharma (1996) 8 SCC.

78. In ‘M. Siddique (Ram Janmabhumi Temple’s case-5 J.) vs Suresh Das (2020) 1 SCC 1 Hon’ble Supreme Court observed:

“1142, A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit No.4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an



acceptance of a title in the latter. Dr. Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

79. Recently in Narasamma vs A. Krishnappa (dead) through LRs, AIR 2020 SC 4178 Hon'ble Supreme Court in Para 29 observed:

“29. We may also note that on the one hand, the appellants herein have sought to take a plea of bar of limitation vis-à-vis the original defendant claiming that possession came to them in 1976, with the suit being filed in 1989. Yet at the same time, it is claimed that the wife had title on the basis of these very documents. The claim of title from 1976 and the plea of adverse possession from 1976 cannot simultaneously hold. On the failure to establish the plea of title, it was necessary to prove as to from which date did the possession of the wife of the defendant amount to a hostile possession in a peaceful, open and continuous manner. We fail to appreciate how, on the one hand the appellants claimed that the wife of the original defendant, appellant herein, had title to the property in 1976 but on their failure to establish title, in the alternative, the plea of adverse possession should be recognized from the very date”.

80. The Defendant No. 1 Dhiraj Lal claimed that he had been paying the water and electricity bills throughout, which reflects that he was in possession which was adverse to the Plaintiff. However, the learned District



Judge had rightly observed that merely because he was paying the water and electricity bills being in possession of the suit property, would not make his possession adverse.

81. From the overwhelming evidence as discussed above, *it has been established that Defendants were only in permissive user of the suit property owned by the Plaintiff.* It is quite evident that being in possession and utilising the water and electricity, the Defendants may have paid the charges to the concerned authority, but that was only facilitated amenity availed by them, while being in permissive possession of the suit property. In no way does the payment of charges of electricity and water bills, establish the possession of the Appellants to be adverse to that of the Plaintiff.

82. The Defendants nowhere stated in their Written Statement about the dates since when they claimed the possession to be *adverse, open and hostile* to that of the Plaintiff. Rather the plea which has been set up was of joint ownership, which is absolutely contrary and to the plea of adverse possession and the two concepts are mutually destructive.

83. PW1-Sh. Rup Chand in his cross-examination had deposed that Defendants have been residing in the suit property against his wishes since 1990. It has been rightly observed by the learned District Judge that there was no evidence whatsoever to show that Plaintiff had ever asked the Defendants to vacate the premises. Even though the Plaintiff may have been intending the Defendants to vacate the premises, but that in itself cannot be treated as a circumstance terminating the permissive user.

84. No evidence has been produced to show that Defendants claimed their possession to be adverse since 1990, when the Plaintiff was unhappy with their continued possession. However, the entire evidence of the Appellant is



based on a statement made in cross-examination by the Plaintiff, which cannot be any justification especially in the absence of the relevant facts in the Written Statement.

85. The Defendants in the Written Statement had claimed their possession to be adverse since 1971 as he had asserted in his Written Statement that his possession was adverse since last 42 years. Though, there was a shift in evidence in asserting that the possession was adverse since 1990.

86. *The plea of adverse possession was therefore, not established by the Defendants for the reasons that no specific date was given as to when the alleged possession became hostile, open and adverse to that of the Appellant.* The evidence on the other hand, reflected that there was never ever any assertion made by the Defendants of having a title adverse to that of the Plaintiff. In fact, the Defendants had been claiming that their possession was in the capacity of the joint ownership and if so, is the claim, it obviously implied that there can be no adverse possession claimed by the Defendants.

87. The learned District Judge, therefore, rightly concluded that none of the components to establish adverse possession has been established by the Defendants and their plea of adverse possession was rejected.

88. In the end, the question ***which arises is whether the Suit for possession was filed within limitation.*** Considering that the Defendants have been in possession of the suit property along with their mother, had been put in permissive user of the suit property and it is only in 2013 as is admitted by the Defendants that the Plaintiff had terminated his permission *vide* two Legal Notices dated 03.10.2012 and 24.12.2012 and had sought



possession. The *Suit for possession* was filed well within the period of limitation.

Conclusion:

89. In the light of the aforesaid discussion, it is held that the Suit of the Plaintiff has been rightly decreed.

90. There is **no merit in the present Appeal, which is hereby, dismissed.**

91. Pending Applications, if any, are also disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

JULY 27, 2026/RS