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

+ RSA 90/2025

DINESH KUMAR

.....Appellant

Through: Counsel (appearance not given).

versus

SURENDER SINGH & ANR.

.....Respondents

Through:

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

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**09.07.2025**

**CM APPL. 31334/2025**

Exemption allowed, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed-of.

**RSA 90/2025**

**CM APPL. 31333/2025 (for stay)**

By way of the present appeal filed under section 100 and Order XLII of the Code of Civil Procedure 1908, the appellant impugns judgment dated 11.02.2025 passed by the learned District Judge, South District, Saket Courts, New Delhi in RCA DJ No. 74/2024.

2. Learned counsel appearing for the appellant submits, that as would be evident from a perusal of the documents, copies of which have been appended to the appeal, to begin with the respondents, who are the petitioner's brothers had relinquished their shares in the suit property in favour of appellant by way of a common Relinquishment Deed dated 20.04.2010. Subsequently however, in deference to the wishes of their mother, the appellant gifted the First Floor of the suit property to



respondent No.1 *vide* Gift Deed dated 01.09.2017; and the Second Floor of the suit property to respondent No.2 *vide* Gift Deed dated 29.03.2019.

3. Counsel further submits that a perusal of the gift deeds would show that the ownership rights transferred by way of gift deed were, in so many words, specifically stated to be “without roof rights”; and that the narration in one of the gift deed dated 01.09.2017 to the effect that the donee “will not be entitled to any other property except first floor and common terrace rights/benefits” was intended only to convey a *limited* licence to install water tanks, dish antenna, and other similar amenities on the roof, without conferring any *title* to the roof upon either brother.
4. Learned counsel submits that the learned trial court correctly appreciated this aspect; however the learned first appellate court has reversed this finding, holding as follows :

*“In view thereof, I am of the view that once the terrace rights are declared common, it cannot be said that mere easementary rights were being conferred. If the language in the grant was defective, it was for the defendant to seek alteration/correction in the gift deed in terms of Specific Relief Act.”*

5. It is submitted that in these circumstances, the learned first appellate court has proceeded to hold, that even though the respondents had not filed any counterclaim nor questioned the validity of the gift deed, and therefore could not be declared 1/3<sup>rd</sup> owners of the terrace, they could nevertheless seek the relief of injunction restraining the appellant from altering or creating any third-party interest in the ‘common terrace’.



6. Counsel further points-out, that in doing so, the learned first appellate court has failed to draw a distinction between *ownership rights* and a *licence to use* the roof/terrace for certain limited purposes. This, it is argued, is the substantial question of law arising in the matter.
7. Issue notice.
8. Upon the appellant taking steps, let notice be sent to the respondents by all permissible modes, returnable for the next date.
9. Let the notice indicate that reply to CM APPL. No. 31333/2025 be filed within 06 weeks of service; rejoinder thereto, if any, be filed within 04 weeks thereafter; with copy to the opposing counsel.
10. Re-notify on 15<sup>th</sup> October 2025 before the learned Joint-Registrar for completion of service and pleadings in CM APPL. No. 31333/2025.
11. List before court thereafter.
12. On a *prima-facie* view of the matter, and considering the proposed question of law as narrated above, the effect and operation of impugned judgment and decree dated 11.02.2025 shall remain *stayed* till the next date of hearing, before this court.

**ANUP JAIRAM BHAMBHANI, J**

**JULY 9, 2025**  
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