



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

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Reserved on: 18th March, 2026

Pronounced on: 10th June, 2026

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**RFA 482/2023, CM APPL. 32132/2023, CM APPL. 67532/2023
and CM APPL. 20474/2024**

1. **RAMESH CHANDRA DUBEY**

S/o late Sh BR Dubey

Flat No. 121 Mithila Apartment

I P Extn Apartment

2. **SANJAY DUBEY**

S/o RC Dubey

Flat 126 Maitri Apartment, I P Extn

Patpar Ganj Delhi 110092

.....Appellants

Through: Mr. Jayant Bhushan, Sr. Advocate
with Mr. Tushar Bhushan, Mr. Yojit
Mehra and Mr. Amartya Bhushan,
Advocates

versus

NANDLAL

S/o Chandiram

R/o II-G/25 Lajpat Nagar Delhi-24

.....Respondent

Through: Ms. Priya Kumar, Senior Advocate
with Mr. Deepesh Aneja and Ms.
Shruti Verma, Advocates

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RFA 11/2024, CM APPL. 772/2024

SANJAY DUBEY

S/o RC Dubey

Flat 126 Maitri Apartment, I P Extn

Patpar Ganj Delhi 110092

.....Appellant

Through: Mr. Jayant Bhushan, Sr. Advocate
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with Mr. Deepesh Aneja and Ms.
Shruti Verma, Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid two Regular First Appeals under Section 96 of the Code of Civil Procedure, 1908 ('CPC') has been filed on behalf of the Appellants *against the two separate Judgments and Decrees dated 20.05.2023 and 31.05.2023, whereby the learned ADJ has decreed the suit for possession filed by Defendant Nandlal and dismissed the Suit of the Plaintiffs/Appellants for Specific Performance, under Order XII Rule 6 CPC.*

2. *The Plaintiff-Sanjay Dubey had filed Suit for Specific Performance and Injunction bearing CS No.82/2012 (new No. 1426/2016), against the Defendant Nandlal. The Plaintiff-Sanjay Dubey claimed that he approached the Defendant through Mr. Choubey, Mediator and Defendant agreed to sell his flat No. 126, Maitri Apartments, IP Extn., Patpar Ganj, New Delhi (hereinafter referred to as the "Suit Property"), for a total consideration of Rs.19.50 lakhs. It was also decided that Nandlal will get the flat made freehold within 03 months and in between, he would search a house*



somewhere near his residence in Lajpat Nagar and thereafter, would execute the Sale Deed in favour of the Plaintiff, within stipulated period of 03 months.

3. On finalization of the deal, Plaintiff offered Rs.5 lakhs as earnest money and promised to pay the balance amount within 03 months by selling his mother's flat in Mangla Apartment, IP Extn. Patpar Ganj. The Defendant stated that he himself would have to search for a house near his residence in Lajpat Nagar and that he would take the earnest money or else some money will be spent unnecessarily. He further advised the Plaintiff to dispose of his mother's flat in the meanwhile, and to arrange the total sale of consideration. The Plaintiff insisted to have some agreement in this regard, but the Defendant deferred to do so.

4. The Plaintiff approached the Defendant to permit him to get the Suit Property renovated with paint and polish for shifting, on which the Defendant handed over the keys of the flat to the Plaintiff. The Plaintiff got the Suit Property, which was a raw flat, renovated and shifted to the Suit Property along with his entire family, on 01.06.2007.

5. Thereafter, he sold his mother's flat at Mangla Apartments and requested the Defendant to accept the earnest money and to execute the Agreement, but the Defendant again, deferred the execution of formal document, by making a pretext of searching the house near his residence, in Lajpat Nagar.

6. The Plaintiff was unable to understand the intention of the Defendant, in insisting to first search the house and then to accept the earnest money, for his flat. The Plaintiff made a *bonafide* enquiry from the Defendant as to how he would live in his flat, when he is postponing his acceptance of



earnest money. The Defendant assured that he had seen two three houses in the nearby vicinity and would accept the payment shortly.

7. The Defendant also asked the Plaintiff to pay the overall maintenance and expenses of charges of the flat to the society, including the monthly rent of Rs.9,000/- to the Defendant, till the execution of the Sale Deed, within 03 months. The Plaintiff left with no other alternative, agreed as he would have otherwise, become homeless. The Defendant was also required to pay initially Rs.300/- p.m., which was later raised to Rs.500/- p.m. to the Society, on account of monthly maintenance, which the defendant never paid to the Society and retained with himself.

8. The Plaintiff kept bearing the liability of the Defendant, hoping that the matter would be settled in a few months, but the Defendant made it a practice for taking the money from the Plaintiff, till date. For 03 months, the Plaintiff kept on giving Rs.9,000/- p.m. to the Defendant, but when he realized that the Defendant has failed to search a house near his residence and was intentionally avoiding to execute the Sale Deed even after lapse of 06 months, the Plaintiff stopped making further payments for 6-7 months by not depositing the money in the bank account and got the cheque bounced repeatedly.

9. The Defendant contacted Mr. Choubey, the Mediator and promised that the Rs.9,000/- p.m. paid by the Plaintiff, would be subtracted from the total sale consideration at the time of Sale Deed, since the delay was on the part of the Defendant and the Plaintiff had to bear water and parking charges separately to the Society. The Plaintiff did not agree, but the Mediator and the Plaintiff's father were induced by the Defendant, to convince the Plaintiff with great effort. *The Plaintiff was so annoyed that he transferred*



the responsibility of further payment through his father, with the consent of the Mediator, Mr. Choubey.

10. In January 2008, the Defendant told the Plaintiff that he has identified a house for his residence and required Rs.5 lakhs, for giving as earnest money. On his demand, Plaintiff paid Rs.5 lakhs in cash, in the presence of the Mediator, and obtained the receipt.

11. Thereafter, the Plaintiff wanted to get the pipe cooking gas connection in the flat and required an NOC from the Defendant, but the Defendant kept postponing it on one pretext or the other. The Plaintiff then wrote a Letter dated 01.03.2008 to the Defendant, for grant of NOC for getting the gas connection. The defendant gave an NOC dated 04.05.2008 and the pipe gas connection was installed in the name of Pranay Dubey, brother of the Plaintiff.

12. The non-judicial stamp paper was eventually purchased on 11.09.2008, and the Agreement was prepared on 12.09.2008, which was signed, both by the Plaintiff and witnessed by Mr. Choubey, but the Defendant took the Agreement to Sell for consulting with his family members. Near after a month and a half, the Defendant tore the Agreement in front of the Mediator and insisted that the Agreement be prepared on plain paper, on the advice of his family members.

13. Left helpless, Plaintiff agreed, and the Agreement was prepared on a plain paper on 24.10.2008. Thereafter, the Plaintiff inquired about the status of the Suit Property being made freehold, on which the Defendant stated that it could not be done due to house tax pending from 2007 to 2010, on which the Plaintiff paid Rs.12,000 to the Defendant in May 2010, for clearing the arrears of house tax and was under the impression that the flat should be



made freehold. However, the Defendant again did not get the flat freehold. The Plaintiff also paid ground rent of the flat twice, on the direction of the Society's management.

14. In October 2011, the Defendant told the Plaintiff that he had searched for another house and demanded Rs.10 lakhs for giving to the seller, but Plaintiff could arrange only Rs.7 lakhs, which was not acceptable to the Defendant. However, after a lot of effort by the Mediator, he accepted Rs.7 lakhs on an assurance that the document would be executed within a week, on the payment of remaining amount of consideration and that too, without getting the flat freehold.

15. The Plaintiff after one week, wrote a Letter dated 20.10.2011 to the Defendant urging him to expedite the execution of Sale Deed, but no response came from the Defendant. Thereafter, after about one month, the Defendant was misguided by some members of the Society management that the price of the flat had gone up.

16. The Plaintiff's father, **Sh. Ramesh Chandra Dubey**, wrote a Letter dated 14.11.2011 to the Defendant, requesting him not to be misguided by anyone and to execute the Sale Deed. Thereafter, the Plaintiff approached the Defendant on several occasions, but he refused to execute the Sale Deed.

17. Then, *the Plaintiff stopped paying Rs.9,000/-p.m. since February, 2012.* The Plaintiff thus, *sought the Specific Performance of the Agreement to Sell and in the alternative, recovery of Rs.16,65,000/- paid by him to the Defendant, along with interest @ Rs.24,000/- p.m. He also sought a Permanent Injunction to restrain the Defendant from creating third party rights in the Suit Property.*



18. *Nandlal/Defendant in the Written Statement*, took the preliminary objection that the Suit had been filed on the basis of forged and fabricated documents and on blatantly misconceived averments. The alleged Agreement dated 11.09.2008, Agreement cum Receipt dated 24.10.2008 and Receipt dated 11.10.2011, were stated to be forged and fabricated. It was claimed that these documents relied upon by the Plaintiff, do not bear the signatures of the Defendant, and the purported signatures, are false and fabricated.

19. It was denied that the Defendant had ever entered into an Agreement to Sell concerning the Suit Property with the Plaintiff or any of his family members, at any point of time.

20. It is further stated that in *CS(OS) 1545/2009* titled *Pranay and Sanjay Dubey v. Meena Kumari and others*, pending adjudication in this Court, it was recorded in the Order dated 07.03.2012, that the Plaintiff had produced the proof of tenancy, in respect of the Suit premises. The recording of the statement of the Plaintiff is in direct contradiction with his averment in the present Suit of alleged Agreement to Sell. The Plaintiff had clearly admitted himself to be a tenant in the Suit Property, as referred to above.

21. It was further asserted that if the Plaintiff had allegedly purchased the Suit Property, there was no question of him expressly admitting that he was “residing on rent in the year 2009” in his Court, as recorded in the Order dated 07.03.2012.

22. The Plaintiff has admitted his tenancy in the Suit premises, and the present Suit was based on false premises and forged documents. The Suit of the Plaintiff was therefore, liable to be dismissed. It was claimed that



Plaintiff is an Advocate and has been making false submissions on oath and is liable to be prosecuted for abuse of the process of the Court.

23. Furthermore, the Plaintiff had claimed that he had sold the flat of his mother in Mangla Apartment for Rs.18 lakhs, on the inducement of the Defendant. However, in the High Court Suit, it has been recorded in the Order that the same house was stated by the Plaintiff to have been sold for Rs.50 lakhs, to arrange the payment of funds to the Defendant.

24. It is claimed that how could the same property be sold by the Plaintiff twice, once for sale consideration of Rs.18 lakhs and second time for Rs.50 lakhs. It is a deliberate false statement made by the Plaintiff, Sanjay Dubey, for which he is liable to be prosecuted for perjury.

25. It was further asserted that Sanjay Dubey has failed to disclose the source of cash payment, allegedly made to the Defendant. He has not disclosed his or family members' Income Tax Returns, for the relevant year, in which the mother's property was allegedly sold by him. The Plaintiff has failed to disclose any source of cash for himself and his family members or produce Income Tax Records, in support thereof.

26. It was further claimed that the value of the Suit Property was far more than Rs. 20 lakhs, even at the time of execution of alleged Agreement to Sell, as is evident from the admissions of the Plaintiff in the proceedings before the High Court. *Therefore, there was no pecuniary jurisdiction with the Court.*

27. It was claimed that Plaintiff being a practicing Advocate, has entered into a conspiracy to illegally usurp the Suit Property, in order to harass the Defendant, who is a retired Civil Servant and a senior citizen, knowing full well, that he had limited capacity to contest against the Plaintiff, a practicing



Advocate. The Defendant thus, stated that the Suit of the Plaintiff was liable to be dismissed, in the absence of valid documents and instruments.

28. The Defendant further stated that similar Civil Suits as the present one, have been preferred by the Plaintiff or his family members, in several Courts, against various parties. He, being an Advocate, is involved in property transactions with non-suspecting parties, resulting in litigation in respect of the same properties.

29. The Plaintiff and his family members have initiated CS(OS) 1545/2009 pending before this Court, RSA 192/2012 pending in this Court. In addition, CS(OS) No. 141/2007 and RCA 05/2012 were decided against the Plaintiff, against which the Appeals are pending.

30. The Suit in the present form and substance is barred by law; does not disclose any cause of action, and the relief is undervalued. It was, therefore, submitted that the Suit of the Plaintiff be rejected at Order VII Rule 11 CPC.

31. It was further asserted that the Plaintiff has no *locus standi* to maintain the Suit, as he was admittedly a tenant on the Suit premises, as admitted by him in a Suit pending in this Court. The pleas taken in the plaint are contradictory in so much as he has sought recovery of damages in the alternative, thereby reflecting that damages would be an adequate remedy. No specific performance, therefore, can be granted to the Plaintiff.

32. The Defendant claimed that Plaintiff's father and his family were a tenant in the Suit Property, at a monthly rent of Rs.9,000/- per month which also has not been paid by the Plaintiff's father since February, 2012.

33. The Defendant, Nandlal, had also instituted *Suit bearing CSNos.248/2012 seeking Possession, arrears of rent, damages, and user and occupation charges*, which is pending trial before the learned ADJ.



34. The Defendant has stated that he is the owner of the Suit Property, which was lying vacant, after the previous tenant vacated it in the year 2006. The Defendant had been residing in his ancestral house bearing No.I1-G/25, Lajpat Nagar, at that time. Until his retirement from service, the Defendant had thought of generating some money from Suit Property by letting it out, for the time being. He had asked his neighbor Mr. Tarsem Kumar Jain, to recommend a prospective tenant for the Suit Property.

35. Further, in May 2007 through Mr. Tarsem Kumar Jain, saw the Suit Property and expressed the willingness to take the property on rent, for residence. Accordingly, Mr. Tarsem Kumar Jain recommended Ramesh Chandra Dubey (father of Sanjay Dubey) to the Defendant, for the purpose of letting out the property for two years.

36. Negotiations were undertaken in the presence of Mr. Jain and the parties entered into an oral Agreement to rent the property to Ramesh Chandra Dubey from 01.06.2007 for residential purposes, on the terms that monthly rent would be Rs.9,000/- excluding water, electricity and other charges, that rent would be paid by 10th day of each month; that rent would be enhanced by 15% each year; that the necessary repairs shall be done by Ramesh Chandra Dubey; and that Ramesh Chandra Dubey or his family members, shall not obtain any amenities like electricity, water connection without obtaining an NOC from the Defendant.

37. The tenancy commenced from 01.06.2007 and was to automatically terminate on 31.05.2009, on which day the Co- Plaintiff Ramesh Chandra Dubey, was liable to vacate the property and hand over the possession to the Defendant.



38. At the time of commencement of tenancy, the cheques were provided by Ramesh Chandra Dubey, but they got dishonored a number of times. At first, the cheque for the first three months of tenancy, got dishonored. Some cheques had been issued from the account of Ramesh Chandra Dubey, while other cheques had been issued by the Plaintiff, Sanjay Dubey, in respect of payment of monthly rent.

39. This fact of dishonor of cheques was brought to the notice of Ramesh Chandra Dubey, orally. He, on a few occasions, requested the Defendant to re-deposit the cheque after a few days, so that he could arrange the funds and on a few occasions, he paid in cash.

40. After expiry of two years, Ramesh Chandra Dubey and Sanjay Dubey, Plaintiff, failed to vacate the Suit Property and also to pay the monthly rent. Despite repeated requests, on the contrary, the Plaintiff who is practicing Advocate in connivance of his father, filed the *Suit for Specific performance against the Defendant*, who is a retired Civil Servant and a senior citizen, knowing the limited capacity of the Defendant to defend the Suit.

41. The Defendant, Nandlal claimed that Plaintiff along with his father Ramesh Chandra Dubey, has been creating nuisance in the Suit Property and unnecessarily harassing the Defendant, neighbors, office bearers of the society and making false, frivolous and vexations complaints to the authorities. In fact, the Plaintiff himself had relied upon a Legal Notice sent to the Society showing his intent of harassment and causing nuisance. The Plaintiff has committed forgery and cheating, with the intention of grabbing the Suit Property.



42. The tenancy of the Plaintiff Ramesh Chandra Dubey, already stands terminated, by efflux of time and due to breach of terms of the tenancy. The Plaintiff, his father and the family members had become unauthorized occupants and are liable to deliver the vacant possession of the Suit Property.

43. The Defendant served a Legal Notice dated 25.06.2012 upon Ramesh Chandra Dubey and the Plaintiff, to vacate the Suit Property, but they have willfully and intentionally not complied with it. Instead, they gave a vexatious Reply dated 17.07.2012 on behalf of Ramesh Chandra Dubey and Plaintiff. It is asserted that Plaintiff and Ramesh Chandra Dubey are occupying the suit property, as trespassers.

44. The Plaintiff has also filed **Civil Suit 248/2012** against the Plaintiff and Ramesh Chandra Dubey for recovery of Possession, Arrears of Rent, damages and user and occupation charges, recovery of rent, arrears of mesne profits in the sum of Rs.4,64,200/- against Ramesh Chandra Dubey and Sanjay Dubey (*hereinafter for convenience has been referred to as the "Plaintiffs"*), wherein he asserted that he was the owner of the Suit Property and, being resident of Lajpat Nagar, had let out the Suit Property through Mr. Tarsem Kumar Jain, at a monthly rent of ₹9,000/-.

45. The tenancy of Ramesh Chandra Dubey commenced from 01.06.2007. It was clarified that the tenancy was oral, and there was no written document. It was asserted that Ramesh Chandra Dubey was a chronic defaulter, and several cheques issued towards payment of rent were dishonored many times due to insufficiency of funds.

46. It was further asserted that despite the expiry of the tenancy on 31.05.2009, Ramesh Chandra Dubey and his family members failed to



vacate the Suit Property and continued to remain in occupation thereof. Repeated requests and demands made by the Plaintiff for payment of the outstanding rent and for vacating the Suit Property allegedly went unheeded, thereby rendering them liable for payment of arrears of rent as well as user and occupation charges.

47. The Plaintiff explained that from June 2007 to July 2012, after adjusting the rent paid in respect of the Suit Property, there were arrears of Rs.4,64,200/- towards the rent.

48. Hence, *the Plaintiff sought recovery of Rs.4,64,200/- as arrears of rent and also mesne profits of Suit Property with 15% enhancements per annum and also decree of permanent injunction to restrain Ramesh Chandra Dubey and Sanjay Dubey from creating third party rights in the Suit Property.*

49. The Defendant asserted that because of the unauthorized use of the Suit Property, the Plaintiff is liable to pay occupation charges @ Rs.20,000/- p.m., including other charges. The flats in the vicinity and in the surrounding areas are fetching a monthly rate of not less than Rs.30,000/- p.m. All the averments were denied on merits, and it was submitted that the Suit of the Plaintiff, was liable to be dismissed.

50. In the *Written Statement filed by Sanjay Dubey and Ramesh Chand Dubey*, denied being a tenant and re-affirmed their case as stated in their Suit for Specific Performance. They denied that they were the tenant and asserted that there was an Agreement to Sell pursuant to which, they had no liability to pay the rent and were entitled to execution of the Sale Deed in their favour.



51. In the *Replication, Nandlal* re-affirmed the assertions made in the plaint and referred to the various litigation to assert that the Defendants had been admitting their tenancy in respect of the Suit Property.

52. The *learned ADJ thereafter, invoked Order XII Rule 6 CPC*, which provides that where admissions of fact have been made either in pleadings or otherwise, the *Court may at any stage of Suit*, in the Application of either party on its own submissions, without waiting for determination of any other question, *may give a judgment on the basis of admissions.*

53. The *learned ADJ, after considering the rival contention raised in the pleading, observed* that it was specifically admitted by the Plaintiff that they had entered in the premises as tenant@ Rs.9,000/- p.m. Many a times they paid rent, while the cheques towards rent, bounced for December,2007 and February to April,2008 and no payment was made for May-June 2008; it was only then the Agreement to Sell was executed. The Plaintiff had also taken the plea that Rs.9,000/- was paid for five years as part of the sale of consideration in terms of the Agreement dated 24.10.2008,without any opposition.

54. The learned ADJ further observed that the plea taken by the Plaintiff was self-contradictory, for they themselves alleged that the Sale Agreement was executed on 24.10.2008, but they have been making regular payments of Rs.9,000/- p.m. since June 2007. It cannot be believed that the Plaintiff starts taking payment of rent, one year prior to his intention to purchase the Suit Property.

55. Furthermore, reference was made to the Order dated 07.03.2012 of this Court in the Suit filed by Defendant No. 2 and his brother Pranay Dubey, wherein while disposing of the Miscellaneous Application, it was



stated that “*in order to raise funds, they sold their play school and their residential house at Mangla Apartments, Patar Ganj, Delhi and shifted to rented accommodation for Rs.9,000/- per month*”. In the same Order, it was observed that “*the proof of residence on rent @ Rs.9,000/- per month after selling the flat, was also placed on the record*”.

56. The above observations of this Court clearly reflected that the Defendant had taken the plea of being a tenant, in the Suit premises.

57. Therefore, it was established that the Plaintiffs were the tenants and were jointly and severally liable to pay the user and occupation charges, after their tenancy stood terminated. **It was thus, held that the Defendant, Nandlal was entitled to the possession of the Suit Property and also to user charges @ Rs.20,000/- per month and was also. The Suit for possession filed by the Defendant, was accordingly decreed.**

58. It was further held that the observations made by the learned ADJ in Order dated 10.10.2017 that Plaintiff was the tenant of the Defendant, Nandlal since the termination of tenancy on 10.10.2017, has not been challenged and has attained finality. He was solely held liable to pay the user and occupation charges.

59. The learned *ADJ vide a separate Order dated 31.05.2023*, observed that in the Suit for Specific Performance decided on the same date, had been held that Sanjay Dubey and Ramesh Chandra Dubey were the tenants @ Rs.9,000/- p.m. and on expiry of the Lease Agreement, they became unauthorized occupants. Therefore, ***the Suit filed by Sanjay Dubey for Specific Performance, was dismissed under O. XII Rule 6 CPC. Though, no orders were made as to costs.***



60. *The aforesaid two Appeals have been filed by the Appellants against the two separate Judgments and Decrees dated 20.05.2023 and 31.05.2023, whereby the Suit of Nand Lal for possession/arrears of rent has been decreed, while the Suit of the Appellants for Specific Performance, has been dismissed.*

61. *The grounds of challenge* taken in both the Appeals, are that in the impugned Orders, the learned ADJ has overlooked that the contention *sinter se* the parties, involved important questions of fact and law, which could have been decided only by leading evidence, during the trial. The disputed facts are that the suit premises on rent @ Rs.9,000/- p.m., were given to Ramesh Chandra Dubey, father of Sanjay Dubey, through Tarsem Kumar Jain.

62. There were contradictory statements of Nandlal in the pleadings. This Court in the Order dated 11.01.2019, had observed that there is a *bona fide* doubt as to who is the actual tenant and thus, both Ramesh Chandra Dubey and Sanjay Dubey, were made party, in order to ascertain the actual questions.

63. Furthermore, it has been overlooked that the Suit Property is located in a Cooperative Group Housing Society where management charges, entry fees from both sellers and purchasers, is taken, and in case of non-payment of huge entry fees by the seller, they do not permit the new user to enter into the Society. They overlooked that the property is situated in a Cooperative Group Housing Society, wherein it is the practice that the flats would be rented through Tripartite Agreement between the landlord, tenant and Management of Society. It has not been considered that it has to be followed



by police verification of the tenant, three months' security, which has not been done in the present case.

64. It is claimed that in order to skip the payment of entry fees, *it had been mutually decided that Nandlal would hand over the possession of the property to Sanjay Dubey and Ramesh Chandra Dubey.* It has not been considered that there was a Sale-Purchase Agreements dated 12.09.2008 and 24.10.2008 between the parties and that Sanjay Dubey had already paid Rs.16,65,000/- for the execution of the Sale Deed. Pursuant to the directions of this Court *vide* Order dated 20.08.2018, the Appellant Sanjay Dubey had already deposited Rs.3,00,000/- by way of FDR in the Court of learned District Judge as security for balance sale consideration, thereby protecting the interest of Sh. Nandlal.

65. It has been overlooked that Nandlal had admitted a fixed period of tenancy from 01.06.2007 to 30.05.2009, which was mandatorily required to be registered under the Registration Act. Therefore, the Suit filed by Nandlal on the plea of oral tenancy, was an afterthought and could not be considered. Moreover, the oral tenancy can only be month to month, while Nandlal in his Legal Notice dated 25.06.2012, claimed it to be a fixed period from 01.06.2007 till 31.05.2009.

66. It is a case of Nandlal himself that the property had been given initially on rent out to Ramesh Chandra Dubey, father of Sanjay Dubey. Furthermore, the Order of learned ADJ dated 23.05.2018 whereby Sanjay Dubey and Ramesh Chandra Dubey were directed to deposit rent, has been overlooked. It was argued that there existed a *bona fide* doubt as to who is the actual tenant and therefore, there could not have been any decree under



Order XII Rule 6 CPC. There were contradictions and no proof of oral tenancy between the parties.

Grounds to the Dismissal of the Suit for Specific Performance

67. It was further contended that the learned ADJ erred in dismissing the Suit for Specific Performance without recording evidence and without adjudicating upon the genuineness and enforceability of the Agreements to Sell dated 12.09.2008 and 24.10.2008. It was argued that substantial questions of fact existed regarding the payment of ₹16,65,000/- by Sanjay Dubey towards the sale consideration, the execution of the Agreements to Sell, and the readiness and willingness of the Plaintiff to perform his part of the contract. These disputed questions could not have been decided without a full-fledged trial.

68. It is, therefore, submitted that the aforesaid two Appeals may be allowed, and the impugned judgment dismissing the Suit for Specific Performance of Sanjay Dubey and decreeing the Suit of Nandlal for possession and arrears of rent, be set aside.

Submissions heard and records perused.

69. Mr. Nandlal is admittedly, the owner of the Suit Property, to which essentially there is no challenge by either Mr. Ramesh Chandra Dubey or by Mr. Sanjay Dubey, the two Appellants.

70. Mr. Nandlal had filed his Suit for Possession bearing Suit No. 82/2012 and had asserted that he was in Government Service and was staying in his ancestral house in Lajpat Nagar, Delhi. The suit premises had earlier been on rent and after it got vacated by the erstwhile tenant in 2007, it was lying vacant. In order to generate some additional income for himself, Mr. Nandlal requested Mr. Tarsem Kumar Jain, who lived in the



neighborhood, to recommend some gentle and civilized family as a prospective tenant in the Suit Property, for a limited period.

71. On the recommendation of Mr. Tarsem Kumar Jain, **Mr. Ramesh Chandra Dubey** met him and it was mutually agreed that the Plaintiff would let out the Suit premises to Mr. Ramesh Chandra Dubey, on a monthly rent of Rs.9,000/- p.m. excluding water, electricity and other charges, which were directly payable to the concerned authorities as per consumption and also to pay the maintenance charges leviable to the concerned authority. It was further agreed that the rent was liable to be enhancement by 15% in case of extension of the Rent Agreement. The tenancy accordingly commenced from 01.06.2007 till 31.05.2009.

72. The Plaintiff had claimed that Mr. Ramesh Chandra Dubey was a chronic defaulter in payment of rent and many times; the cheques issued for rent were dishonored due to insufficiency of funds. Many a times, the cheques were returned, and he issued fresh cheques from his own account, or the payment was made in cash. The tenancy got terminated by efflux of time, but Mr. Ramesh Chandra Dubey continued in the premises.

73. Pertinently, Mr. Ramesh Chandra Dubey in the *Written Statement filed in the Suit for Possession*, had evasively denied the assertions made in the Plaint and merely asserted that he had come into the possession of the Suit Property on account of Agreement to Sell for a sale consideration of Rs.19.50 Lakhs. He admitted that the payment of Rs.9,000/- per month was being made till February, 2012 but asserted that it was payment towards part sale consideration.

74. It is pertinent to note that the specific case of the Plaintiff was that Mr. Ramesh Chandra Dubey had been inducted as a tenant to which, there is



no specific denial. It is the case of Mr. Ramesh Chandra Dubey and his son, Mr. Sanjay Dubey that Mr. Sanjay Dubey had negotiated for the purchase of the Property and that a formal Agreement to Sell on stamp paper, was executed on 11.09.2008 though, it was never signed by Mr. Nandlal. On the insistence of Nandlal to execute the Agreement to Sell on the plain paper, an Agreement to Sell dated 24.10.2008 had been executed on plain paper, but this Agreement also did not have the signature of Mr. Nandlal. The Appellants themselves assert that the Agreement to Sell executed on Stamp Paper, was not signed by Nandlal, and he tore it at the time of execution of the Agreement to Sell on plain paper.

75. The Appellants have filed photocopy of the two Agreements to Sell. In the Agreement to Sell dated 11.09.2008, as well as, the Agreement dated 24.10.2008 relied upon by Mr. Sanjay Dubey and Mr. Ramesh Chandra Dubey recorded that they had entered into the premises in May, 2007 as there were negotiations for sale of the Property by Mr. Nandlal to Mr. Sanjay Dubey. However, because the Property was not freehold, it was agreed that the Property would be first converted to freehold before a formal Agreement to Sell is executed, and Rs.9,000/- per month was agreed to be paid.

76. There is no denial in the Written Statement filed by Mr. Ramesh Chandra Dubey and Mr. Sanjay Dubey that though there were negotiations for sale of the Property and there was an understanding, but they had been paying Rs.9,000/- p.m. *This clearly amounts to an admission by the Defendants that Mr. Ramesh Chandra Dubey had entered into the premises along with his son, Mr. Sanjay Dubey, on rent @Rs.9,000/- p.m.*



w.e.f. 01.06.2007 though, the parties regularly continued to negotiate for formal Agreement to Sell, to be effected.

77. The documents of the Defendants and the evasive Reply of Mr. Sanjay Dubey and Mr. Ramesh Chandra Dubey in their Written Statement, wherein while Ramesh Dubey took the defence of Agreement to Sell, between Sanjay Dubey and Nandlal, but was completely non-evasive about his induction in the suit property, in 2007 as tenant. It clearly reflected that they had been inducted as a tenant with an understanding of an Agreement to Sell being formalized between them.

78. It is also pertinent to note that another litigation in relation to suit No. 1545/2009 before this Court, Mr. Sanjay Dubey, had admitted himself to be a tenant in the Suit Property and filed proof of payment of rent of Rs.9,000/- per month. *This Court in its Order dated 07.03.2012* noted the factum of tenancy of Mr. Sanjay Dubey, at a rate of Rs.9,000/- per month.

79. It is clear admission, from the statement made by Mr. Sanjay Dubey in another Suit, that they had been living in the Property on rent @Rs.9,000/- per month. *It is also evident from the record that in fact, the tenancy was between Mr. Nandlal and Mr. Ramesh Chandra Dubey, while Mr. Sanjay Dubey was also in the occupation of the Property, as the family member.*

80. The learned District Judge thus, rightly concluded on the basis of the pleadings, as well as their admissions made in another Suit before this Court, **that there existed a relationship of landlord-tenant between the parties.** The Legal Notice dated 25.06.2012 was admittedly issued by Mr. Nandlal to both Mr. Sanjay Dubey and Mr. Ramesh Chandra Dubey. Moreover, it being an oral tenancy is for a month to month and was validly



terminated *vide* Legal Notice dated 25.06.2012. Once the tenancy got terminated, Mr. Sanjay Dubey and Mr. Ramesh Chandra Dubey became unauthorized occupants and liable for eviction. *The learned District Judge in the impugned Order dated 20.05.2023, correctly appreciated the facts and the admissions of Mr. Ramesh Chandra Dubey and Mr. Sanjay Dubey, to hold that Mr. Nandlal, the Plaintiff was entitled to decree of possession, and the Suit was accordingly decreed.*

81. *There is no infirmity in the Order dated 20.05.2023 decreeing the Suit of Mr. Nandlal, for possession.*

82. *Mr. Sanjay Dubey, son of Mr. Ramesh Chandra Dubey had filed a Suit for Specific Performance alleging that there was an oral Agreement to Sell in May, 2007 for a sale consideration of Rs.19.50 Lakhs, pursuant to which, he along with his father and other family members, came into the suit premises in June, 2007. It is the case of Mr. Sanjay Dubey and Mr. Ramesh Chandra Dubey that there was no formal Agreement to Sell executed, and Mr. Nandlal had shown a disinclination to formalize the Agreement to Sell. There was an understanding between the parties that the formalization of the Agreement to Sell would take place, once Mr. Nandlal got the property made freehold.*

83. *It is evident from the averments made by Mr. Sanjay Dubey in his Suit for Specific Performance that though, there was an understanding in May 2007, but no formal Agreement to Sell ever got executed.*

84. *Mr. Sanjay Dubey further asserted that on their much insistence, Mr. Nandlal agreed for formal Agreement to Sell, to be drawn and accordingly one Agreement to Sell on stamp paper, was prepared by him on 11.09.2008. But it is the case of Mr. Sanjay Dubey himself that Mr. Nandlal refused to*



sign the same. Once, there were no signatures appended by Mr. Nandlal, who was not agreeing to execution of any Agreement to Sell, Mr. Sanjay Dubey could not have claimed that there was any formal Agreement to Sell.

85. Mr. Sanjay Dubey further asserted that, on the insistence of Mr. Nandlal, who wanted the Agreement to Sell to be executed on plain paper, he got an Agreement to Sell prepared on 24.10.2008 on plain paper, whereupon the Agreement to Sell earlier prepared on stamp paper was torn. However, even from these averments, it emerges that no formal Agreement to Sell was ever signed by Mr. Nandlal, including the Agreement dated 24.10.2008 prepared on plain paper.

86. Mr. Sanjay Dubey had relied with vehemence, on the Letter dated 01.03.2008, which he had written to Mr. Nandlal, asking him to issue an NOC for gas pipe connection, wherein he asserted that he was *the prospective buyer* and that he had already paid Rs.5,00,000/- to Mr. Nandlal. He also stated that he had been paying Rs.9,000/- and maintenance to the Society, separately. Even though the maintenance charges were included in Rs.9,000/-, and he has been separately paying the maintenance charges to the Society. He further stated that, since December 2007, he had stopped making the payment of ₹9,000/- per month, resulting in the dishonour of cheques issued towards such payments, and would not resume making the said payments unless the NOC was granted by Mr. Nandlal.

87. Mr. Nandlal faced the prospect of not getting his Rs.9,000/- per month, gave his NOC on 04.05.2008. It is evident that the No Objection for gas pipe connection, was given by Mr. Nandlal, since there was a threat to stop the payment of Rs.9,000/- per month. The Letter dated 01.03.2008 relied upon by Mr. Sanjay Dubey may have a reference to their negotiations



for purchase of the Property, but cannot be interpreted as an acknowledgement of any formalized Agreement to Sell. Therefore, from the averments and the documents relied upon by Mr. Sanjay Dubey himself, it is evident that there was no formal Agreement to Sell even though, there may have been some negotiations in this regard.

88. *Another significant aspect, which emerges that there was no written or the registered document of Agreement to Sell, ever executed between the parties .On the other hand, there is overwhelming evidence from the pleadings of Mr. Sanjay Dubey and Mr. Ramesh Chandra Dubey that they had entered the promises and had continued to be so on a monthly rent of Rs.9,000/- per month.*

89. In the case of *M/s Jagdambey Builders vs. J.S. Vohra*, 2016 SCC OnLine Del 765, it was held that a person, who comes into the property as a tenant, cannot subsequently acquire any right to continue in the premises on the basis of an Agreement to Sell. The Stamp Act, 1899 provides that an Agreement to Sell of the immovable property, wherein the possession is delivered to the tenant in part-performance, can be done only by way of registered document bearing a Stamp Duty of 90% of the total agreed sale consideration.

90. There is no Agreement to Sell admittedly that got formalized in a written document; the question of it being registered therefore, does not arise. In terms of the Stamp Act, Mr. Sanjay Dubey cannot seek any protection under the claim of an alleged Agreement to Sell. The status of Mr. Ramesh Chandra Dubey, his father, with whom he had shifted in the premises, continued to be that of a tenant/permissive user, and he cannot



seek protection on the alleged oral Agreement to Sell or a non- concluded Agreement to Sell.

91. It having been established on record that Mr. Sanjay Dubey along with his father, Mr. Ramesh Chandra Dubey, had entered into the premises on the basis of a tenancy in favour of Mr. Ramesh Chandra Dubey, there was no question of his status ever metamorphosing into that of an owner.

92. In the case of Jiwan Das vs. Narain Das, AIR 1981 Delhi 291, it was held that no right enuresto the Agreement purchaser, not even after the passing of Decree of Specific Performance, till the Conveyance Deed is executed in his favour.

93. The rights and liabilities of lesser and lessee have been defined under Section 108 of the Transfer of the Property Act, 1982 wherein it provides that the lessee is bound to hand over the possession of the tenanted premises to the lesser, on the termination of the lease. The mere Agreement to Sell does not create any right in the Property except those stated in the Agreement.

94. In the case of Abdul Hakim Mia vs. Pana Mia Miaji, AIR 1919 Calcutta 293 (DB), it was held that the lessee cannot alter the character of his possession if he has been inducted as a tenant, without the consent of the Plaintiff.

95. In the case of M.R. Sawhney vs. Doris Randhawa, AIR 2008 Delhi 110 (SLP No. 13820/2008, against which was dismissed on 22.10.2010), it was held that *once a tenant was always a tenant*, unless the status is changed by contract or operation of law. This principle had also been applied by the Hon'ble Supreme Court of India in Sant Lal Jain vs. Avtar Singh, (1985) 2SCC 332 wherein it was held that a licensee must always be deemed to be



a licensee. It is not open to him during the subsistence of the license or in a Suit for Recovery of Possession of Property instituted after revocation of license, to set up a title to the Property in himself or anyone else. His plain duty is to surrender the possession as a licensee and seek his remedy separately, in case he has acquired any title to the Property subsequently.

96. Similarly, in the case of Md. Raza vs. Geeta, (2022) 13 SCC 756, in a similar situation where the tenant had instituted a Suit for Specific Performance against the Plaintiff, who was admittedly the owner, it was held that merely on the basis of Agreement to Sell, the licensee cannot claim to have become the owner of the Suit Property. Until and unless, a decree is passed in favour of the licensee, and the Sale Deed is executed pursuant thereto; the licensee cannot claim himself to be the owner of the Suit Property.

97. Even if the entire case of Mr. Ramesh Chandra Dubey and Mr. Sanjay Dubey, is admitted to be correct, then too, they do not acquire any right against the alleged Agreement to Sell, which admittedly never got signed by Mr. Nandlal, to give rise to a concluded Agreement to Sell.

98. Likewise, Mr. Sanjay Dubey cannot seek protection of his possession under Section 53A of the TPA. Even if it is accepted that he had come into possession of the Property pursuant to the negotiations for Agreement to Sell, the Protection under Section 53A of TPA, can be sought by Mr. Sanjay Dubey only if it is a registered document, as has been provided in Section 17(1)(A) Registration Act, as has been held in the cases of Uma Hada vs. Sunil Gupta, 2021 SCC Online Del 3009 and in Pawandeep Singh and Anr. vs. Gurdeep Singh Virdi, 2019 (7) AD (Del) 506. Admittedly, there is no



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registered Agreement to Sell, under which protection of possession, can be sought by the Appellants.

99. *The Suit for Specific performance filed by Mr. Sanjay Dubey has, therefore, been rightly dismissed by the learned District Judge vide Order dated 31.05.2023.*

Conclusion:

100. There is *no merit in the aforesaid two Appeals*, which are hereby dismissed and disposed of accordingly. The pending Application(s), if any, also are disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 10, 2026
N/RS