



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

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*Reserved on: 16th March, 2026
Pronounced on: 29th June, 2026*

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RSA 19/2017, CM APPL. 1905/2017 (stay)

1. **RAM ASHRYA UPADHYAY**

S/o Sh. Devender Upadhyay

....Appellant No.1

2. **KRISHNA NAND UPADHYAY**

S/o Sh. Devender Upadhyay

R/o RZ-H-141, Raj Nagar, Part-II

Palam, New Delhi

....Appellant No.2

Through: Mr. Jitender Saini, Advocate.

versus

VIJAY NARAIN UPADHYAY

S/o Kanshi UPadhyay

R/o 109, Maha Mandir, Munirka

New Delhi-110076

.....Respondent

Through: Counsel for Respondent (appearance
not given)

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 has been preferred by the Appellants **assailing the Judgment and Decree dated 24.08.2016** whereby the learned Additional District Judge, Delhi in *RCA No.13/2014*, has affirmed the Judgment and



Decree dated 28.02.2013 of the learned Civil Judge in Civil Suit No.640/2012, decreeing the Suit for Possession, Damages and Mesne profits.

2. The Respondent/Plaintiff instituted a ***Civil Suit No.640/2012 for Possession, Damages and Mesne Profits*** in respect of property bearing No. RZ-H-141, Raj Nagar Part-II, Palam, New Delhi, measuring approximately 150 square yards (*hereinafter referred to as the "Suit Property"*).

3. ***The facts in brief are, that the Plaintiff had purchased the Suit Property from one Smt. Saroj Chopra on 24.11.1984 through a set of documents comprising General Power of Attorney, Agreement to Sell, Receipt, Affidavit and Will.*** It was a vacant plot, possession of which was delivered to him on which he constructed three rooms, one kitchen, latrine, bathroom on the Ground Floor and one room on the First Floor, from his own resources.

4. The Plaintiff further asserted that the *Defendants are his nephews and were permitted to occupy one room on the first floor of the Suit Property, on account of the close family relationship between the parties.* According to him, such an occupation was ***purely permissive and did not confer any independent right upon the Defendants.***

5. The Plaintiff/Respondent asserted that he had kept the possession of entire Ground Floor under the lock and keys and the Defendants/Appellants had been given only one room on the First Floor. However, when he visited the Suit Property in the first week of January, 2002, to his utter shock and surprise, he found that the Defendants had occupied the entire Ground Floor as well, after breaking open the locks of the premises. The Plaintiff approached the local police, but they refused to take any action.



6. It was further alleged that with the passage of time, the Defendants started asserting rights in respect of the Suit Property and unauthorizedly occupied additional portions thereof. Despite repeated requests and demands, they failed to vacate the premises. The Plaintiff asserted that the Defendants had been allowed to live *on license basis* only in respect of one room on the First Floor, but *they have trespassed into the entire Ground Floor as well since January, 2002.*

7. It was further claimed that if the premises was given on rent, it would have fetched Rs.4,000/- per month as rent. Therefore, the Defendants/Appellants are liable to pay Damages @Rs.4,000/- per month w.e.f. 01.01.2002. *A sum of Rs.28,000/- was claimed to have become due on account of unauthorized use and occupation of the premises w.e.f. 01.01.2002 till 31.07.2002.* Further, Mesne Profits were claimed for the unauthorized use and occupation, till the vacant possession was handed over to the Plaintiff.

8. *The Plaintiff served a Legal Notice dated 14.08.2002 which was returned with the endorsement "no such person."* The Plaintiff thus, filed the Suit for Possession, Damages of Rs.28,000/- for unauthorized use and occupation and Mesne Profits.

9. **In their Written Statement**, the Defendants took a *preliminary objection that the Suit Property was a Joint Family Property having been purchased from the joint family funds* in the name of Sh. Kanshi Upadhyay, father of the Plaintiff and grandfather of the Defendants. Moreover, the Plaintiff is the Power of Attorney Holder, which does not confer any right title or interest on the Plaintiff. He can only act as per the instructions from



and on behalf of the original owner, but cannot claim any title on the basis of GPA.

10. The Plaintiff has not approached the Court with clean hands and has suppressed material facts. The Court has no jurisdiction. The Suit has not been valued correctly for the purpose of court fees and jurisdiction, as the value of the Suit Property is more than Rs.5,00,000/-. It is submitted that the Suit is liable to be dismissed, on these preliminary grounds.

11. **On merits**, the Defendants/Appellants admitted that the Suit Property admeasuring 150 sq. yards, is located in the area of Palam Village in the colony known as Raj Nagar Extension, Delhi *and that it is in their possession*. However, it was denied that the Property was purchased by the Plaintiff from one Smt. Saroj Chopra for valuable consideration on execution of sale documents, namely, General Power of Attorney, Agreement to Sell, Affidavit, Receipt and Will, etc. dated on 24.11.1984. It was claimed that the Plaintiff had only identified the Property and informed Sh. Kanshi Upadhyay, the grandfather, about the Property being available and the suit property had been purchased from the Joint Family Funds.

12. At that time in the year 1984, the Defendants were residing with the Plaintiff and his first wife, Smt. Sarosta Devi. The Plaintiff did not have any children of his own at that time and treated the Defendants as his own children; likewise, the Defendants treated the Plaintiff as their father. In the year 1988, Plaintiff and Smt. Sarosta Devi were blessed with a daughter. In November or December, 1986, the Plaintiff told the Defendants that there was an apprehension that some unscrupulous persons may occupy the plot as it is in an unauthorized colony and they should set up a Mandir at that place and also construct the residential accommodation. The Plaintiff was in a job,



working as Pujari and he apprehended that he may lose the job at any time; therefore, if the Defendants set up their own temple, it would be in the interest of the family including the Plaintiff.

13. The Defendants further claimed that at the time of execution of the documents for purchasing the Suit Property it was informed to the Plaintiff that the documents would be executed in the name of Sh. Kanshi Upadhyay.

14. When the Defendants went to the Suit Property, they realized that it was a low lying area and a lot of filling was required. Consequently, the Defendants requested the Plaintiff for financial assistance in filling the land and raising the construction, but the Plaintiff refused to provide any financial help; instead told the Defendants that they should pay him something for using the said land. Thereafter, with the intervention of the elders, it was agreed that the Defendants would be given the right to use and construct on the land, and since, there was also contribution of the Plaintiff, in order to compensate the Plaintiff, the Defendants would pay Rs.200/- per month and the construction on the plot would be raised by the Defendants from their own funds or from the contribution of their grandfather, who was also the father of the Plaintiff. It was also agreed by the Plaintiff that he would never ask the Defendants to vacate the Suit Property or else, the Defendants would not have made any investment in filling or raising construction on the Suit Property. It was further claimed that no money was contributed by the Plaintiff for raising the construction.

15. The Defendants claimed that *since then, they have been regularly paying Rs.200/- per month to the plaintiff*, however, now the Plaintiff wants to take undue benefit, as no receipt for the same, was ever issued by the Plaintiff.



16. The relations between the Plaintiff and the Defendants remained cordial till July, 2001 when the Plaintiff remarried after the death of first wife in September, 2000. The last rites of Smt. Sarosta Devi were also performed by the Defendants.

17. The Defendants claimed that they had raised the entire construction from their funds and some contribution from their grandfather. The Suit Property was constructed in parts and initially, only three rooms and one kitchen were constructed on the Ground Floor, and the back boundary wall was constructed in 1987. The Mandir in the premises was established in the year 1988. Thereafter in 1992, one room was constructed on the First Floor and Gumbad of the temple was constructed above the said room. A septic tank, a latrine and a raised platform, were also constructed.

18. It is only after the remarriage of the Plaintiff, that he became dishonest and filed the present Suit. He intends to take benefit of the original title deed of the Suit Property which is in his possession, and he may have fabricated some documents to show his title in the Suit Property.

19. It was submitted that the possession of the suit premises was handed over jointly to the joint family of the Plaintiff and Defendants, headed by the grandfather. The Plaintiff was never in possession of the suit premises.

20. The Defendants further denied that they came in the year 1991 from their native Village Mohammadpur Kusum, P.O. Mahrore, Distt. Ghazipur (U.P.), to Delhi. It was claimed that the Defendant No.1 came to Delhi in the year 1979, whereas the Defendant No. 2 came to Delhi in the year 1983 and stayed at Munirka Village at the residence of the Plaintiff, who is till date staying in Munirka Village. It was denied that they had no shelter to live or that they had been initially permitted to occupy one room on the First Floor



of the suit premises, on license basis. *The Defendants thus, submitted that the Suit of the Plaintiff was liable to be dismissed.*

21. On the basis of the pleadings, the following **issues** were framed which are as under:-

- i. *Whether Suit Property is not properly valued for the purpose of Court fee and jurisdiction? OPD*
- ii. *Whether Suit Property is a joint Hindu family/ancestral property qua the parties, if so its effect? OPD*
- iii. *Whether the Plaintiff is entitled to recover the possession of the Suit premises? OPP*
- iv. *Whether the Plaintiff is entitled to recovery of the damages/mesne profit, if so at what rate and for which period? OPP*
- v. *Whether the Plaintiff is entitled to claim interest? If so, at what rate and for which period? OPP*
- vi. *Relief.*

22. **The Plaintiff, Mr. Vijay Narain Upadhyay** examined himself as **PW-1** and tendered his evidence by way of Affidavit, *Ex.PW-1/A*. He proved the Site Plan, *Ex.PW-1/7* and also the chain of documents *Mark 'A' to Mark 'E'*.

23. **PW-2, Mr. Deep Chand Sharma** deposed that the Plaintiff was working as a Pujari in Maha Mandir Munirka and he used to visit the temple for worship. He further deposed that he had supplied the building material to the Plaintiff between 1985 to 1988 and also provided Masons and labour for raising construction on the Suit Property.



24. **PW-3, Smt. Janki** and **PW-4, Mr. G.C. Shrivastav** have tendered their evidence by way of Affidavits and deposed that they had visited the Suit Property, and witnessed Plaintiff's possession thereof.

25. **Defendant No. 1, Sh. Ram Ashrya Upadhyay as DW-1**, has tendered his Affidavit of evidence, *Ex.DW-1/A*. He proved the document, *Ex.DW-1/1* whereby he had handed over a sum of Rs.20,000/- to the Plaintiff.

26. **DW-2, Sh. Shyam Sunder Chaubey** in his evidence *vide* Affidavit, *Ex.DW-2/A*, proved the Receipt dated 20.10.1984 as *Ex.DW-1/1* whereby the Plaintiff had signed the receipt in his presence.

27. **DW-3, Sh. Krishna Upadhyay** has tendered his evidence Affidavit as *Ex.DW-3/A* and proved the documents, *Ex.DW-3/1 to Ex.DW-3/4*. He deposed documents relating to his training, licence, identity card and employment registration to show his long residence in Delhi and denied that he first approached the Plaintiff for shelter in 1991.

28. The *learned Civil Judge* considered the evidence of both the parties and held that the defence taken by the Defendants that the Suit Property had been purchased from Joint Family Funds was not established by any cogent evidence. The best witness to support his assertions was *Sh. Kanshi Upadhyay, grandfather but he had not been examined as a witness*.

29. The Plaintiff had produced the Agreement to Sell, *Ex.PW-1/1* and other documents, namely, GPA, Will, Possession Receipt etc. whereby he had purchased the Suit Property from one Smt. Saroj Devi.

30. It was further held that the Defendants had failed to prove that they had raised construction, but even if, their defence was accepted, the right of the Plaintiff to seek Possession could not be denied in the light of his title



documents. The Defendants were therefore, proved to be the licensees and the Plaintiff having terminated the license, was entitled to Recovery of Possession. *However, it was held that no evidence had been led in regard to the Mesne Profits/Damages and the same were denied. The Suit for Possession was accordingly decreed by the learned Civil Judge vide Judgment dated 28.03.2013.*

31. Aggrieved thereby, the *Defendants preferred a Regular Civil Appeal, RCA No. 13/2014.* The *learned ADJ* independently re-appreciated the entire evidence, and observed that the documentary chain produced by the Plaintiff, traced rights from the previous owners through Smt. Saroj Chopra and ultimately in favour of the Plaintiff through registered documents. The Appellate Court further held that the Plaintiff had established a better claim to the Suit Property, whereas the Defendants had failed to establish any legally recognizable competing title. *Consequently, the findings of the learned Trial Court were accordingly affirmed, and the Civil Appeal was dismissed, vide Judgment dated 24.08.2016.*

32. Aggrieved, the Appellant/Defendant **has preferred this Regular Second Appeal.**

33. *The grounds of challenge* are that the learned Trial Court and the learned ADJ failed to appreciate that the suit property was acquired from joint family funds and *Ex.DW1/1* established the contribution by Sh. Kanshi Upadhyay, Grandfather of the Defendants, towards its purchase.

34. It is further submitted that the findings returned by the said Courts, are contrary to the evidence on record and that the Plaintiff's claim has been erroneously preferred over that of the Defendants'.



35. It has also been argued that the *Civil Court lacked jurisdiction* in view of *Section 185 of the Delhi Land Reforms Act, 1954* and that the Appellate Court failed to properly consider the Application filed under *Order XLI Rules 25 and 27 of the Code of Civil Procedure, 1908 seeking framing of an additional issue and permission to lead additional evidence.*

36. Per contra, *Plaintiff/Respondent in his Written Submission* has submitted that the *plea of joint family ownership*, is wholly unsupported by any documentary or cogent evidence. The learned Trial Court duly considered the Receipt *DW1/1* as relied upon by the Appellant, and gave a categorical finding that it was neither filed with the Written Statement nor was there any pleading to that effect. Moreover, the Appellant has failed to prove that the said Receipt, bear signature of the Respondent. The learned Trial Court held that there was no documentary proof that the Appellant has produced to support their case. The Appellants had failed to produce their best witness, i.e. the Grandfather, Sh. Kanshi Upadhyay. The cross-examination of the Defence Witnesses reflected that Appellant has failed to prove his case and was not interested in telling the truth.

37. Similarly, the *learned ADJ*, on the basis of the registered documents, reaffirmed that the Respondent has undoubtedly established that the Suit Property was owned by the Plaintiff. It is further observed that the Appellants have not filed any document to show that the said Suit Property was purchased in their grandfather's name or that it was purchased from the Joint Family Funds. Only document relied upon by the Appellant was Ex. DW1/1, which was never produced with the Written Statement nor was there any pleading to this effect.



38. The Plaintiff/Respondent placed reliance upon Arikala Narasa Reddy v Venkata Ram Reddy Reddygari & Anr. (2015) 5SCC312 wherein the Supreme Court held that there can be no dispute to the settled legal proposition that “*as a rule relief not founded on the pleadings, should not be granted*”. Thus, a decision of the case should not be based on the grounds outside the pleadings of the parties. In the absence of pleadings, evidence if any, produced by the parties, cannot be considered. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.

39. It is further contended that the Defendant/Appellant has at Appellate stage, raised certain questions in respect of Delhi Land Reform Act. The said issue has been raised for the first time during the present Second Appeal. Moreover, the area in which the Suit Property lies, i.e. Palam Village, Delhi was officially declared urban by the Delhi Revenue Department, vide Notification dated 24.10.1994.

40. Reliance is placed on the judgment of this Court, Indu Khorana v Gram Sabha & Ors. 2010 SCC OnLine Del 1334 wherein this Court has held that once rural area is urbanized by issuance of Notification under section 507(a) of the Delhi Municipal Corporation Act, 1957, provisions of Delhi Land Reform Act, shall cease to apply.

41. It is contended that both the *learned Trial Court* and the *learned First Appellate Court* have concurrently found that the Defendant/Appellant failed to establish any title or ownership rights in their favour and that the findings so recorded are based upon proper appreciation of the evidence on record. It is, therefore, submitted that no substantial question of law arises



for consideration in the present Second Appeal, which is liable to be dismissed.

Submissions heard and record perused.

42. The case of the Plaintiff, Sh. Vijay Narain Upadhyay was that he was the owner of the suit property. The defendants were given a permissive right to occupy one room on the first floor, but they encroached upon the ground floor and Are in unauthorized occupation of the suit property.

43. To prove his case, plaintiff, as PW-1, had deposed that he had purchased the Suit Property from one Smt. Saroj Chopra, wife of Sh. M.K. Chopra, for valuable consideration, on the basis of General Power of Attorney, Agreement to Sell, Receipt etc., *Ex.PW-1/1 to Ex.PW-1/5*. It had been explained that Smt. Saroj Chopra herself had purchased the suit property by virtue of a registered Sale Deed from one Mr. Rizak S/o Sh. Bharthu and Khajan Singh. Smt. Saroj Chopra had handed over the peaceful and vacant possession of the plot to the Plaintiff where after, he had raised the construction of his house from the year 1985 to 1988, in instalments. He constructed three rooms, kitchen, latrine, bathroom on the Ground Floor and one room on the First Floor, as shown in the site plan, *Ex.PW-1/7*.

44. The testimony of the Plaintiff and the documents proved that Smt. Saroj Chopra was the erstwhile owner having a registered Sale Deed in her name, which established her ownership in the suit property. She further executed the Agreement to Sell, etc. *Ex.PW-1/1 to Ex.PW-1/5* in favour of the Plaintiff, which established the ownership rights of the Plaintiff in the Suit Property.

45. The Defendants pertinently have not claimed any document of purchase of Suit Property in their name nor have they challenged the



execution of the documents in favour of the Plaintiff. It was however, asserted that Plaintiff had merely identified the property, on the asking of the grandfather, Sh. Kanshi Upadhyay and the Suit Property was purchased from the Joint Family Funds in the name of their grandfather.

46. However, no document whatsoever has been produced by the Defendants to reflect that the Suit Property was purchased in the name of grandfather. The Defendants claimed that the documents had been retained by the Plaintiff, which again is not tenable. *The documents which have been produced by the Plaintiff clearly show that the sale documents had been executed in his favour.*

47. The Defendants had claimed that the Suit Property was purchased from the Joint Family Funds but the Written Statement as well as the evidence of Defendant No. 1, is absolutely silent about the existence of Joint Family or there being a joint family nucleus, from which the funds were given for purchase of the suit property. *Bereft of any evidence of there being a Joint Family, the defence of the Appellant was not tenable and has been rightly rejected by the learned Civil Judge, as well as by the learned ADJ.*

48. The Defendants had relied upon a Receipt, *Ex.DW-1/1* asserting that *vide* this Receipt, a sum of Rs.20,000/- had been given by the Defendant No.1 to the Plaintiff. The learned District Judge had noted that this Receipt was absolutely untrustworthy, *firstly*, because it was not filed along with the Written Statement and there was no mention of the same in the Written Statement. *Secondly*, the Respondent/Plaintiff had denied his signatures and had also denied its execution. There was no evidence whatsoever that the Receipt has been executed by the Plaintiff. *Thirdly*, the Appellants themselves had asserted that the suit property had been identified by the



Plaintiff to be purchased later from the Joint Family Funds in the name of the grandfather. There is neither any pleadings nor any evidence to show from where did the Appellant No. 1 get the sum of Rs.20,000/- and why did he pay the same to the Plaintiff. The learned ADJ, therefore, rightly observed that this document did not inspire the confidence and was not acceptable.

49. Furthermore, *DW-1*, had claimed that he and his younger brother/Appellant No. 2, Sh. Krishna Nand Upadhyay, along with Sh. Kanshi Upadhyay and the Plaintiff, were present at the time of purchase of the suit property, but he was unable to give the details of the lawyer, the Notary Public or any particulars to explain the execution of the documents. The falsehood became more evident from the fact that he claimed that the suit property was purchased from Sh. Pawan Solanki, which is absolutely, and blatantly false, in the light of the title documents produced by the Plaintiff along with the Sale Deed, in the name of Smt. Saroj Chopra, the erstwhile owner.

50. Another pertinent aspect which needs to be mentioned is that the Appellants themselves have stated in their Written Statement, that when they went to visit the suit plot, they found it to be in a low lying area and were told by the Plaintiff to fill the land and to build a temple, to prevent its unauthorised occupation by unscrupulous persons. The Defendants have themselves stated that the Plaintiff was a Pujari and apprehending loss of his job, had told them to build a temple for which the funds were to be provided by the grandfather of the Defendants or the money was to be raised by the Defendants, with no contribution from the Plaintiff. However, not a single document or source or the expenditure incurred in the construction, has been



disclosed by the Appellants. Rather, the Plaintiff himself has stated that the construction was done in phases from 1988 to 1995. *Moreover, the Appellants admitted that they were regularly paying Rs.200/- per month to the Plaintiff though, no receipt was being issued. This again fortifies the claim of the Plaintiff that the Defendants had been inducted only as a licensee and were permitted to occupy the First Floor but subsequently, trespassed into the ground floor.*

51. The **learned District Judge has rightly held** that the Defendants were unable to prove any right, title in the Suit Property nor that they had raised the construction. In fact, the overwhelming evidence on record and their admissions in the Written Statement, as well as in their evidence, established that they had been permitted to reside on the First Floor and had subsequently, taken possession of the Ground Floor. ***Their status in the Suit Property is, only that of a licensee.*** Even if for the sake of arguments, it is accepted that they had raised any construction, but the fact remains that they were only a permissive user. *Once the Legal Notice dated 14.08.2002 was served upon the Defendants, their license stood terminated and they became liable for eviction.*

52. The learned Civil Judge had denied the Mesne Profits and Damages, but no Appeal has been preferred by the Plaintiff.

53. *The learned ADJ has rightly upheld the Judgment of the learned Civil Judge dated 28.02.2013 directing the eviction of the Appellants from the suit premises. No substantial question of law has been raised in this Second Regular Appeal and the challenge is only to the facts, which cannot be a ground for consideration in the Second Appeal.*



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54. **There is no merit in the present Appeal, which is hereby dismissed.** Pending Application(s), if any, are also disposed of, accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 29, 2026/RS