



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

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*Reserved on: 19<sup>th</sup> March, 2026*

*Pronounced on: 8<sup>th</sup> July, 2026*

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**RSA 62/2022, CM APPL. 27449/2022**

**BABITA DEVI**

W/o Shri Ravinder Kumar

R/o H.No. E-57

Gali No.3, Hari Nagar Extension

Part-II, Badarpur

New Delhi-110044

.....Appellant

Through: Mr. Arvind Kumar, Advocate.

versus

**SURENDER SINGH**

S/O Late Shri Vasudev Singh

R/O H.No. D-2, 1<sup>st</sup> Floor

Gali No.I, Hari Nagar Extension

Part-II, Badarpur

New Delhi-110044.

.....Respondent

Through: Mr. Tuhin, Advocate.

**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 (hereinafter referred to as 'CPC') has been filed against the Judgment and Decree dated 22.11.2019 passed in RCA No. 20253/2016, whereby the learned First Appellate Court *set aside* the Judgment and Decree dated 28.04.2014 passed by the learned Civil Judge, *decreeing the Suit of the Plaintiff/Appellant herein for Possession in respect of one room on the first floor of property bearing No. E-57, Hari Nagar*



Extension, Part-II, Badarpur, New Delhi-110044, *and consequently, dismissed the Suit.*

2. The Plaintiff/Appellant had filed a *Civil Suit No. 736/2010*, (subsequently re-numbered as CS No. 610/2014), *for Possession and Permanent Injunction against the Defendant/Respondent*, in respect of one room on the first floor of property bearing No. E-57, Hari Nagar Extension, Part-II, Badarpur, New Delhi-110044, (*hereinafter referred to as suit property*) as shown in red colour in the site plan annexed with the *Plaint*.

3. The *facts in brief*, as stated in the *Plaint* are that the Plaintiff, Babita Devi are that the suit property was originally purchased by Sh. Ravinder Kumar, her husband, from one Sh. Pramod Kumar S/o Sh. Jai Prakash, by virtue of *General Power of Attorney, Agreement to Sell, Affidavit and Receipt*, all dated 08.06.1995.

4. In March, 2005, *the Defendant who is the brother of the husband of the Plaintiff*, expressed urgency to secure accommodation, to settle in Delhi. He along with his family members, was permitted by Sh. Ravinder Kumar *to reside in suit property as a licensee, without any charge for the use and occupation thereof.*

5. Thereafter, the said property was transferred by Sh. Ravinder Kumar in favour of the Plaintiff by virtue of *General Power of Attorney, Agreement to Sell, Affidavit and Receipt*, all dated 01.09.2005, for a sale consideration of Rs. 4,22,000/-, upon which she became the owner of the said property. Even after the purchase of the said property by the Plaintiff in September, 2005, the said arrangement was continued, out of the same familial consideration.



6. Soon thereafter, the Defendant started harassing the Plaintiff on one pretext or the other and creating various troubles, in her peaceful possession of the suit property. The Defendant also filed a *Civil Suit against the husband of the Plaintiff at the Tis Hazari Courts, Delhi.*

7. In view of the said developments, the licence granted to the Defendant was *terminated* by the Plaintiff, *vide* Legal Notice dated 06.09.2010, asking the Defendant to vacate the suit property within one week and to hand over the peaceful and vacant possession thereof. Despite service of the said Notice, the Defendant neither complied with the demands raised therein nor handed over the possession of the suit property to the Plaintiff.

8. The Plaintiff thus, instituted the present Suit, **seeking a decree of Possession** *in respect of the suit property, and Permanent Injunction for restraining the Defendant, his agents, servants and nominees from selling the said property or parting with the possession, thereof.*

9. The Defendant, Surinder Singh in his **Written Statement**, took the *preliminary objections* that the Plaintiff had *not approached the Court with clean hands and had suppressed the true and material facts*; that there was *no cause of action* in favour of the Plaintiff and the Suit was liable to be dismissed under Order VII Rule 11 of the CPC; that the Suit was not maintainable for *want of proper court fee and valuation*, the value of the Suit Property being more than Rs. 4,00,000/-; that *the Plaintiff had no locus standi to file the Suit, not being the owner of the Suit Property*; and that the Civil Court had *no pecuniary jurisdiction to entertain the Suit.*

10. **On merits**, the entire claim of the Plaintiff, was vehemently denied. It was asserted that the *father of the Defendant, Late Sh. Vasudev Singh, had purchased the Suit plot in the year 1993* and had thereafter, raised the



construction thereon, from his own funds in the year 1995. It was contended that, after the demise of his father, the Defendant was entitled to half share in the suit property by inheritance, along with his brothers; and that the Plaintiff had procured false and frivolous documents with oblique motive, only to harass the Defendant and to grab his share.

**11.** The Defendant categorically *denied the licensor-licensee relationship* claimed by the Plaintiff. It was asserted that the *Defendant had been residing in the suit property since the year 1995, during the lifetime of his father* and had been in possession thereof in his own right, having right, title and interest in the same, by virtue of inheritance from his father. It was denied that any Legal Notice dated 06.09.2010 had been served upon the Defendant. *The Defendant prayed for dismissal of the Suit.*

**12.** The Plaintiff filed **Replication** to the Written Statement, denying the contentions raised therein and reiterating the assertions made in the Plaint. It was clarified that the suit property had been purchased by the husband of the Plaintiff from Sh. Pramod Kumar and was thereafter, transferred to the Plaintiff. It was specifically denied that the father of the Defendant had ever purchased the Suit plot in the year 1993 or had raised construction thereon in the year 1995.

**13.** On the basis of the pleadings of the parties, ***the following Issues were framed on 17.10.2011:***

- (a) *Whether the plaintiff has not come to the court with clean hands? OPD.*
- (b) *Whether the suit has been valued properly? OPD.*
- (c) *Whether the suit property has been inherited by the defendants and husband of the plaintiff from their father? OPD.*



- (d) *Whether the plaintiff is the owner of suit property? OPP.*
- (e) *Whether the defendant is a licensee in the suit property? OPP.*
- (f) *Whether the plaintiff is entitled to relief of possession? OPP.*
- (g) *Whether the plaintiff is entitled to the relief of injunction as prayed? OPP.*
- (h) *Relief.*

**14.** In support of her case, the ***Plaintiff examined herself as PW-1*** and tendered her evidence by way of affidavit Ex. PW-1/A. PW-1 relied upon the General Power of Attorney dated 01.09.2005 as Ex. PW-1/1; the Agreement to Sell and Purchase dated 01.09.2005 as Ex. PW-1/2; the Affidavit dated 01.09.2005 as Ex. PW-1/3; and the Receipt dated 01.09.2005 as Ex. PW-1/4, executed by Sh. Ravinder Kumar in her favour. She further relied upon the General Power of Attorney dated 08.06.1995 as Ex. PW-1/5; the Agreement to Sell dated 08.06.1995 as Ex. PW-1/6; the Affidavit dated 08.06.1995 as Ex. PW-1/7; and the Receipt dated 08.06.1995 as Ex. PW-1/8, executed by Sh. Pramod Kumar S/o Sh. Jai Prakash in favour of her husband Sh. Ravinder Kumar. She also relied upon the Site Plan of the Suit Property as Ex. PW-1/9; the Legal Notice dated 06.09.2010 as Ex. PW-1/10; and the Postal Receipts and AD Card as Ex. PW-1/11.

**15.** The Plaintiff further examined PW-2, Sh. Ravinder Kumar, her husband who tendered his evidence by way of affidavit Ex. PW-2/A, on the lines of the case set up in the Plaint.

**16.** *The Defendant examined himself as DW-1* and tendered his evidence by way of affidavit Ex. DW-1/1, on the lines of his Written Statement. DW-1 relied upon various documents his Voter ID as Ex. DW-1/A to Ex. DW-1/S to support his possession since 1995.



17. Ld. Civil Judge, on the pleadings and the evidence on record, *held that the Defendant had failed to establish his claim of inheritance from his father as no documentary evidence having been produced in support thereof*, and that the mother and brother of the Defendant, who were the natural witnesses to support such a plea, had not been examined. *The plea of inheritance was accordingly, rejected.*

18. As regards the ownership of the Plaintiff, it was held that title in immovable property, cannot be conferred by means of unregistered documents and that no conclusive determination of ownership could be made; however, *the said documents could be read for the collateral purpose of establishing possession.* It was further held that on a preponderance of probabilities, the Defendant was in occupation of the suit property as a *licensee*, as proved from the testimony of Plaintiff as PW-1 and PW-2.

19. *The plea of forgery and manipulation in respect of Ex. PW-1/5 to Ex. PW-1/8 was rejected*, since no expert or independent witness having been led by the Defendant to substantiate the same. The plea regarding the description of the property in the said documents was also rejected, having regard to the fact that *the suit property was situated in an unauthorised colony, where house numbers had not been allotted at the relevant time.*

20. Accordingly, the *Suit of Possession in respect of the Suit Property was decreed*, and the Defendant was directed to vacate the said room within two months. *The relief of Permanent Injunction was, however, declined* for want of any pleading or evidence of an apprehension of transfer or creation of third-party interest by the Defendant.



**21.** *Aggrieved by the said Judgment and Decree dated 28.04.2014, the Defendant preferred a Regular Civil Appeal being RCA No. 20253/2016 before the learned First Appellate Court.*

**22.** The principal *grounds of challenge in the said First Appeal* were that the documents Ex. PW-1/1 to Ex. PW-1/4 placed on record by the Plaintiff were unregistered and not duly stamped, and could not be relied upon to confer title, and that the documents Ex. PW-1/5 to Ex. PW-1/8 had originally been executed in favour of the father of the Defendant, Late Sh. Vasudev Singh, and that the name of Sh. Ravinder Kumar had been inserted later; that the said documents did not pertain to the Suit Property; and that the Defendant had been in possession of the Suit Property much prior to the year 2005.

**23.** The *learned First Appellate Court*, upon re-appreciation of the record, rejected the pleas regarding the identification of the suit property and the alleged forgery of Ex. PW-1/5 to Ex. PW-1/8. However, reliance was placed upon the judgment of the Supreme Court in Suraj Lamp & Industries (P) Ltd. v. State of Haryana, SLP (C) No. 13917 of 2009, *to hold that no right, title or interest in immovable property can be transferred otherwise than through a registered deed of conveyance.*

**24.** It was further observed that the Plaintiff had failed to establish any independent source of income for the payment of the sale consideration of Rs. 4,20,000/- to her husband, and that the transaction therefore, appeared to be a sham one.

**25.** The *learned First Appellate Court* accordingly, held that the *notarised documents could not be relied upon for collateral purposes for granting possessory rights to the Plaintiff over the Suit Property. It was*



*further held that though the Defendant had been unable to make out any independent right, title or interest in the Suit Property, he was nevertheless in settled possession thereof and could be evicted only by the person having title thereto, or by a person authorised by such person.*

**26.** *It was held that the documents in favour of the Plaintiff did not bestow legal title upon her; **the First Appeal was allowed and the Suit of the Plaintiff was dismissed, vide Judgment and Decree dated 22.11.2019.***

**27.** *Aggrieved thereby, the Plaintiff has **preferred the present Regular Second Appeal.***

**28.** *The principal **grounds of challenge** are that the learned First Appellate Court erred in applying the ratio of Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656, retrospectively to a transaction of the year 2005, in respect of property situated in an unauthorised colony of Delhi, *where properties at the relevant time were being transferred on the strength of General Power of Attorney, Agreement to Sell, Affidavit and Receipt.**

**29.** *It is contended that the learned First Appellate Court failed to appreciate that the *Suit of the Plaintiff was not one for declaration of title, but for recovery of possession from a permissive occupant*, and that the right to maintain such a Suit flows not only from a complete ownership right, but from a better right to possession *vis-à-vis* the person in actual occupation of the property.*

**30.** *It is further contended that the learned First Appellate Court erred in reversing the well-reasoned Judgment of the learned Trial Court, without disturbing the concurrent findings recorded under Issues (a), (c) and (e); and that the learned Trial Court had correctly held that the unregistered*



documents in favour of the Plaintiff, were admissible for the collateral purpose of establishing her possession over the Suit Property.

31. Reliance has been placed on the judgments in Asha M. Jain v. Canara Bank, 94 (2001) DLT 841, Shri Dal Chand v. Bharat Singh, RSA No. 68/2011 decided on 12.05.2011 by this Court, and Shri Ramesh Chand v. Suresh Chand, RFA No. 358/2000 decided on 09.04.2012 by this Court.

32. The Appellant has proposed the ***following Substantial Questions of Law:***

*"(a) Whether the First Appellate Court committed grave error by applying the ratio of judgment passed by the Hon'ble Supreme Court in Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr. [SLP (C) 13917 of 2009] decided on 11.10.2011 retrospectively to the property transacted in the year 2005?*

*(b) Whether the First Appellate Court committed grave error by not taking judicial notice of the fact that the Suit Property is unauthorized and located in non-regularized colonies in Delhi, where properties were being transferred on execution of GPA, Agreement to Sell and Purchase, Affidavit and Receipt till the Suraj Lamp's judgment?*

*(c) Whether the First Appellate Court committed grave error by not following the observation made by this Hon'ble Court in the matter titled Asha M. Jain v. Canara Bank [94 (2001) DLT 841] as the Suit Property was transacted in the year 2005 and the said judgment was only overruled in October 2011 by the Hon'ble Supreme Court in Suraj Lamp's judgment?*

*(d) Whether the First Appellate Court has committed grave error by not maintaining consistency and judicial discipline by ignoring the*



*judgments passed by the Hon'ble Supreme Court in the matter titled R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple & Anr., Civil Appeal No. 10585 of 1996, and by this Hon'ble Court in the matter titled Shri Dal Chand (Deceased) through his LRs v. Bharat Singh & Anr. (RSA No. 68/2011 decided on 12.05.2011) and matter titled Shri Ramesh Chand v. Suresh Chand & Anr. RFA No. 358/2000?*

*(e) Whether the First Appellate Court wrongly applied the law of evidence with respect to burden of proof and onus to prove and not followed the law laid down in A. Raghavamma & Anr. v. Chenchamma & Anr. AIR 1964 SC 136?*

*(f) Whether the First Appellate Court committed grave error by setting aside the well-reasoned Judgment and Decree passed by the learned Trial Court, without disturbing the finding of facts by the learned Trial Court?*

*(g) Whether the First Appellate Court can entertain an Appeal which had not been valued as per the valuation on which the Suit was valued by the Appellant/Plaintiff in the original Suit and as per the relief claimed?"*

**33. *Written Submissions*** have been filed on behalf of the Appellant in support of and to substantiate the grounds raised in the present Appeal. The submissions contained therein reiterate the averments and contentions urged in the Memorandum of Appeal.

**34.** The Respondent has also filed his ***Written Submissions*** contending that the present Regular Second Appeal does not involve any substantial question of law and is liable to be dismissed at the threshold. Reliance has



been placed on *State Bank of India v. S.N. Goyal*, (2008) 8 SCC 92, for the proposition that the jurisdiction of the High Court to entertain a Second Appeal is conditional upon the existence of a substantial question of law.

**35.** It is further contended on behalf of the Respondent that the documents dated 01.09.2005 placed on record by the Appellant, were executed after the coming into force of the Registration and Other Related Laws (Amendment) Act, 2001, by which sub-section (1A) was inserted in Section 17 of the Registration Act, 1908, requiring documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 be registered, failing which they shall have no effect for the purpose of the said Section 53A TPA.

**36.** It is contended that the findings recorded by the learned First Appellate Court in the impugned Judgment and Decree dated 22.11.2019, are based on a correct appreciation of the evidence and calls for no interference.

**Submissions heard and record perused.**

**37.** At the outset, it may be observed that the scope of interference in a Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908, is confined to substantial questions of law.

**38.** Though various Substantial Questions of Law have been proposed, the substantial questions that arise for consideration, are framed as under:

- (i) *Whether the Appellant/Plaintiff has established a better possessory title over the Suit Property vis-à-vis the Respondent/Defendant; and*
- (ii) *Whether the learned First Appellate Court erred in law in applying the ratio of *Suraj Lamp & Industries (P) Ltd. v. State of Haryana*, (2012) 1 SCC 656, retrospectively to a transaction of the year 2005?*



**I. The Better Possessory Title of the Appellant/Plaintiff**

39. It would be first relevant to the findings of the Trial court as well as the Ld. Appellate Court, in regard to the factual findings.

40. PW-1 Smt. Babita Devi deposed in her evidence by way of affidavit Ex. PW-1/A, that the Suit Property was originally purchased by her husband Sh. Ravinder Kumar from one Sh. Pramod Kumar S/o Sh. Jai Prakash by virtue of the General Power of Attorney Ex. PW-1/5, Agreement to Sell Ex. PW-1/6, Affidavit Ex. PW-1/7 and Receipt Ex. PW-1/8, all dated 08.06.1995, and that the said property. Thereafter, it was transferred by her husband in her favour by virtue of the General Power of Attorney Ex. PW-1/1, Agreement to Sell Ex. PW-1/2, Affidavit Ex. PW-1/3 and Receipt Ex. PW-1/4, all dated 01.09.2005, for a stated consideration of Rs. 4,22,000/-.

41. PW-2 Sh. Ravinder Kumar, the husband of the Appellant/Plaintiff, in his evidence by way of affidavit Ex. PW-2/A, corroborated the testimony of PW-1 on the documents of purchase of the suit property by him and thereafter, its sale to the plaintiff.

42. The Respondent/Defendant sought to challenge the said chain by suggesting to PW-2 in his cross-examination that the documents dated 08.06.1995, had originally been executed in favour of his father Sh. Vasudev Singh and that the name of PW-2 had been manipulated by interpolation. PW-2 categorically denied the said suggestion. The allegation of forgery could only have been substantiated by examining the original executant, Sh. Pramod Kumar, or by adducing expert evidence; the Respondent/Defendant did neither. Both the Courts have concurrently rejected the plea of forgery, for want of any independent witness or expert evidence.



43. The further contention that the said documents pertain to Plot No. 52 and not to the Suit Property bearing No. E-57, has also been examined and rejected by both the Courts. The Suit Property is situated in an unauthorised colony in Hari Nagar Extension, Part-II, Badarpur, and the Respondent/Defendant himself in his cross-examination has admitted that the Voter Identity Card Ex. DW-1/A "*does not bear any house number*", his volunteered explanation being that "*when Ex. DW-1/A was prepared there were no house number allotted since it was a kachi colony*". The said admission of the Respondent/Defendant fully supports the concurrent finding of both the Courts that at the relevant time, house numbers had not been allotted in the said unauthorised colony, and that the identity of the Suit Property is not in dispute; ***the contention regarding the property number is therefore, of little consequence and that has been rightly rejected by both the Courts.***

44. The finding of the learned First Appellate Court that the transaction of 01.09.2005 appeared to be a sham one, on the premise that the Appellant/Plaintiff did not have any independent source of income to have paid the sale consideration to her husband, also suffers from an error of law. The said transaction is admittedly between the husband and the wife *inter se*, and the Respondent/Defendant, being a stranger to the said transaction, has no *locus* to call into question the adequacy of the consideration or the manner of its payment, in the absence of any plea or proof that the said transaction was a colourable device entered into with the object of defeating any anterior right of the Respondent/Defendant. No such plea or proof exists on the record.



45. Pertinently, PW-1 in her cross-examination admitted that *"money was never taken from Surender and Virender for staying in the property"*, and PW-2 in his cross-examination also admitted that he had *"never demanded any money from Surender and Virender for staying in the suit property"*. The said admissions of PW-1 and PW-2 are wholly consistent with the case set up in the Plaint of a gratuitous family-arrangement/licence having been granted to the Respondent/Defendant.

46. Both the Courts have concurrently held that the Respondent/Defendant has been unable to make out any independent right, title or interest in the Suit Property; the plea of inheritance from his father Late Sh. Vasudev Singh was rejected for want of any documentary evidence in support thereof, and the **learned First Appellate Court, while differing from the learned Trial Court on Issues (d) and (f), has expressly affirmed that *"the defendant has been unable to make out any independent right, title or interest in the suit property"***.

47. As regards Issue (e), pertaining to the licensor-licensee relationship, the *learned Trial Court has, on a preponderance of probabilities, held the Respondent/Defendant to be in occupation of the Suit Property as a licensee, having regard to the parallel admissions noticed above. The said finding has likewise, not been disturbed by the learned First Appellate Court.*

48. The learned First Appellate Court, having so accepted that the Respondent/Defendant *has no right, title or interest in the suit property and having not disturbed the finding that he is in occupation as a licensee, nevertheless invoked the doctrine of settled possession in his favour, to hold that he could be evicted only by a person having title to the suit property.*



49. The Suit instituted by the Appellant/Plaintiff was not a Suit for Declaration of title, but a Suit for Possession and Permanent Injunction.

50. It is a well-settled principle of law that a Suit for Possession may be maintained either on the strength of proprietary title, or on the strength of possessory title. The two rights are conceptually distinct and are separately recognised under the Indian legal system, as reflected in Articles 64 and 65 of the Schedule to the Limitation Act, 1963.

51. Article 64 governs a Suit for Possession based on previous possession and not on title, thereby embodying the principle of possessory title; while Article 65 governs a Suit for Possession based on title, and thereby recognises proprietary title, wherein the Plaintiff must establish a better legal title vis-à-vis the Defendant.

52. The Supreme Court in *Nair Service Society Ltd. v. K.C. Alexander*, AIR 1968 SC 1165, has authoritatively laid down that a person in possession of land in the assumed character of owner, and exercising peaceably the ordinary rights of ownership, *has a perfectly good title against the entire world except the rightful owner*. When the facts disclose no absolute title in either party, possession alone decides. Where the parties trace their respective rights through a common predecessor-in-interest, or where the documents on record do not confer absolute title, the enquiry is not into absolute ownership, but into which of the two has demonstrated the ***better possessory title***.

53. The Supreme Court in *Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs.*, (2008) 4 SCC 594, has considered the principles governing Suits for Possession premised on title and the comparative strength of the rival claims. It was held that where the Plaintiff demonstrates a superior



entitlement to possession and the Defendant is unable to establish any competing title, the Court is required to examine the relative strength of the parties' claims rather than insist upon proof of absolute ownership.

**54.** The Supreme Court, in Rame Gowda v. M. Varadappa Naidu, (2004) 1 SCC 769, has clarified the interplay between possession and title. It was held that in the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title, and that the law presumes possession to go with the title unless rebutted. The doctrine of settled possession, as expounded in *Rame Gowda*, protects a person in settled possession against forcible dispossession by a rightful owner, *but does not confer any independent substantive right against a person who has established a better possessory title through due process of law.*

**55.** The said principles were reiterated by the Supreme Court in Poona Ram v. Moti Ram, (2009) 11 SCC 309, wherein it was observed that legal remedies appointed for the protection of possession, even against ownership, are called *possessory*, while those available for the protection of ownership itself may be distinguished as *proprietary*. It was further held that in order to claim possessory title, the Plaintiff must establish his own case and must also show that he has a better title than the Defendant.

**56.** This Court, in Saleem v. Wahid Malik, RSA No. 118/2022, has held that in a Suit for Possession *simplicitor*, the Plaintiff is not required to establish title or ownership, but is only required to establish a better right to remain in possession of the Suit Property, as compared to the right of the Defendant.

**57.** As regards the burden of proof in such a Suit, the Supreme Court in Anil Rishi v. Gurbaksh Singh, (2006) 5 SCC 558, observed that although the



initial burden rests upon the Plaintiff, the same stands discharged upon the Plaintiff placing on record the documentary evidence in support of her case; thereafter, the onus shifts upon the Defendant to substantiate his defence. Where the Defendant fails to discharge such onus, the burden of proof originally cast upon the Plaintiff shall be deemed to have been duly discharged.

**58.** The reasoning of Ld. Appellate Court, is intrinsically inconsistent and is also a misapplication of the doctrine of *settled possession*, as expounded in *Rame Gowda* (supra) and *Poona Ram* (supra).

**59.** The doctrine of settled possession is a shield against forcible dispossession otherwise than by due process of law; it is not a sword to defeat a regularly instituted Suit for Possession by a person having a better possessory title. The protection that the doctrine extends to a person in settled possession, is that he cannot be dispossessed by self-help or by the use of force, but must be dispossessed only through the due process of law. *The present Suit, instituted by the Appellant/Plaintiff in the Civil Court, is itself the due process of law contemplated by the doctrine.*

**60.** Furthermore, the doctrine of settled possession, cannot be invoked by a licensee against his licensor. The possession of a licensee is juridically referable to that of the licensor and does not constitute an independent possessory estate capable of being asserted against the licensor upon revocation of the licence. Having been concurrently held to be in occupation as a licensee, the Respondent/Defendant cannot, in the very same breath, claim the protection of settled possession against the Appellant/Plaintiff who, on the documents proved on record, ***has a better possessory title than***



*the Respondent/Defendant, the latter having been unable to establish any right, title or interest in the suit property.*

61. The contention that the Respondent/Defendant has been in possession of the Suit Property prior to the year 2005, even if accepted on the strength of the documents Ex. DW-1/A and Ex. DW-1/K, it merely indicates the settled possession of the Respondent/Defendant in the suit property, but does not establish his right, title or interest therein, as has been rightly observed by the learned First Appellate Court as well.

62. Such settled possession does not enure to the benefit of Respondent/Defendant as against the Appellant/Plaintiff, who has a *better possessory title*, particularly when the said possession of the Respondent/Defendant is juridically referable to the licence granted to him by the licensor.

63. In view of the foregoing discussion, the first Substantial Question of Law is answered in the affirmative, in favour of the Appellant/Plaintiff and against the Respondent/Defendant. The Appellant/Plaintiff has, on the documents proved on record and on the concurrent findings of both the Courts below, established a better possessory title *vis-à-vis* the Respondent/Defendant, who was concurrently held to have failed to establish any independent right, title or interest in the Suit Property, and who was, in law, *a licensee bound to vacate upon revocation of the licence*. The learned First Appellate Court fell in error in dismissing the Suit of the Appellant/Plaintiff and *in invoking the doctrine of settled possession in favour of the Respondent/Defendant*.

## **II. Misapplication of Suraj Lamp by the First Appellate Court**



**64.** The learned First Appellate Court, to set aside the Judgment and Decree of the learned Trial Court, placed reliance upon the judgment of the Supreme Court in Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656, to hold that no right, title or interest in immovable property can be transferred otherwise than through a registered deed of conveyance, and that the notarised documents in favour of the Appellant/Plaintiff could not be relied upon for any collateral purpose for granting possessory rights.

**65.** The said reliance is misplaced. The Supreme Court in *Suraj Lamp (supra)*, in paragraph 26 of the said judgment, court expressly clarified that SA/GPA/will transactions can continue to be treated as existing agreements of sale, and that such transactions *may be relied upon to defend possession under Section 53-A of the Transfer of Property Act, 1882*, and if entered before the date of the said Judgment, they may be relied upon to apply for regularisation of allotments/leases by development authorities.

**66.** The said observations were fortified in paragraph 27, wherein the Supreme Court has clarified that the observations made therein are not intended to in any way affect the validity of sale agreements and powers of attorney executed in *genuine transactions*, and by way of example, has expressly referred to a person giving a power of attorney to his spouse, son, daughter, brother, sister or a relative, to manage his affairs or to execute a deed of conveyance.

**67.** Applying the said saving to the facts of the present case, it is not in dispute that the transaction in favour of the Appellant/Plaintiff is of 01.09.2005 and the upstream transaction in favour of her husband is of



08.06.1995; both are anterior in point of time to the judgment in Suraj Lamp (*supra*), which was rendered on 11.10.2011.

**68.** Further, the transaction of 01.09.2005 is admittedly between the husband and the wife, which squarely falls within the ambit of the *genuine transactions* carve-out expressly recognised by the Supreme Court in paragraph 27 of Suraj Lamp (*supra*). The documents Ex. PW-1/1 to Ex. PW-1/8, having been duly proved by PW-1 and PW-2, which do not stand defeated by the law laid down in Suraj Lamp (*supra*), for the purposes for which they may legitimately be relied upon under the proviso to Section 49 of the Registration Act, 1908.

**69.** In view of the foregoing, the second Substantial Question of Law is answered in the affirmative, in favour of the Appellant/Plaintiff and against the Respondent/Defendant.

**70.** The learned First Appellate Court fell in error in applying the ratio of Suraj Lamp (*supra*) retrospectively to a transaction of the year 2005, in ignoring the saving expressly contained in paragraph 26 thereof, and in failing to appreciate the genuine-transactions recognised in paragraph 27 of the said judgment.

### **III. Challenge to Suit Valuation:**

**71.** Insofar as the contention regarding the alleged improper valuation of the Regular Civil Appeal is concerned, the same does not arise for consideration in the present Regular Second Appeal, *the question of valuation of the Suit having been concluded by a separate Judgment of the learned Civil Judge dated 14.05.2012 on a preliminary issue and the said Judgment having attained finality.*



**Conclusion:**

72. In view of the aforesaid discussion, it is held that the impugned Judgment and Decree dated 22.11.2019 passed by the learned First Appellate Court in RCA No. 20253/2016 *is not sustainable in law and that the learned Trial Court had rightly decreed the Suit of the Appellant/Plaintiff for Possession of one room on the first floor of property bearing No. E-57, Hari Nagar Extension, Part-II, Badarpur, New Delhi-110044.*

73. Accordingly, the present Regular Second Appeal is **allowed**. The impugned Judgment and Decree dated 22.11.2019 is hereby *set aside* and the Judgment and Decree dated 28.04.2014 passed by the learned Trial Court in Civil Suit No. 610/2014, is restored.

74. The Respondent/Defendant is granted six months from the date of this Judgment to hand over the peaceful and vacant possession of the suit property to the Appellant/Plaintiff, failing which the Plaintiff is at liberty to seek Possession, in accordance with law.

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

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JULY 8, 2026**  
AS/RS