



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

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Reserved on: 29th April, 2026
Pronounced on: 27th July, 2026

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RFA 437/2026, CM APPL. 28883/2026

SMT. SAROJ

W/o Late Shri Surender
 resident of Property No. B-27,
 Road No.2 & 3 Gazipur Dairy Farm,
 Delhi

.....Appellant

Through: Ms. Akanksha Agrawal and Mr. Rohit
 Kumar Gupta, Advocates.

versus

1. LATE SURENDER SINGH, (SINCE EXPIRED)

S/o Late Bhagwan Singh
 R/o B-41, Gali No. 3, block G
 West Arjun Nagar,
 Krishna Nagar Delhi

2. SH. RAVINDER SINGH

S/o Shri Misri Lal,
 R/o A-1, Village Kondli,
 Delhi.

.....Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular First Appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed against the *Judgment and Decree dated 13.02.2026* of the



learned District Judge, *decreeing the Suit of the Respondents/Plaintiffs for Possession, and grant of Mesne Profits @ Rs. 600/- per month from 01.10.2011 with an annual increase of 10% effective from 01.01.2012, till delivery of possession.* A Decree of *Permanent Injunction* restraining the Defendants from creating any third-party interest in the suit property, and costs of the Suit, were also granted.

2. The Respondents/Plaintiffs filed **Civil Suit No. 349/2010, (re-numbered as CS No. 258/2015 and thereafter as CS No. 586/2016)**, for *Possession, Mandatory Injunction, Permanent Injunction and Mesne Profits* against the Appellant/Defendant No. 1, Smt. Saroj and Defendant Nos. 2 to 4, in respect of two rooms situated on the first floor of property bearing No. B-27, admeasuring 200 square yards, situated at Road No. 2-3, Gazipur Dairy Farm, Delhi-110096, (*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 Plaintiff No. 1, Sh. Surender Singh*, was the original owner of the suit property, which was thereafter, transferred by him to *Plaintiff No. 2, Sh. Ravinder Singh*, by virtue of a registered irrevocable General Power of Attorney dated 26.03.2010 executed before the Sub-Registrar, Delhi, for valuable consideration, upon which possession of the suit property was delivered to Plaintiff No. 2.

4. At the time of the said transfer, Plaintiff No. 1 informed Plaintiff No. 2 that *two rooms on the first floor* of the suit property, each admeasuring 12 feet x 19½ feet, shown in red colour in the site plan, was in the occupation of the Appellant/Defendant No. 1, Smt. Saroj, who had been permitted by Plaintiff No. 1 to occupy the said two rooms as a ***licensee***, for the purpose of



looking after his dairy work, without any right, title or interest of any nature therein. Upon purchase of the suit property, Plaintiff No. 2 stepped into the shoes of Plaintiff No. 1, as the owner-landlord.

5. Defendant Nos. 2 to 4, namely Sh. Leelu, Sh. Rahul and Sh. Rohit, being the sons of the Appellant/Defendant No. 1, were residing along with the Appellant/Defendant No. 1, in the said suit property on the same permissive licence basis, traceable to her occupation.

6. Plaintiff No. 1 asked the Defendants to vacate the said two rooms, to which they initially agreed. However, the Defendants thereafter, turned dishonest and began demanding a sum of Rs. 50,000/- from Plaintiff No. 1. Furthermore, Defendant No. 2, Sh. Leelu, along with the other Defendants, lodged a false complaint against Plaintiff No. 1 at Police Station Gazipur, wrongly mentioning his name as "*Sardar Sunder Singh*".

7. ***Defendant No. 2, Sh. Leelu, also instituted Civil Suit No. 104/2010*** against Plaintiff No. 1, again describing him as "*Sardar Sunder Singh*", *claiming tenancy rights in the suit property at a rent of Rs. 600/- per month exclusive of electricity charges, and asserted payment of Rs. 50,000/- as security.* The learned ***Additional Senior Civil Judge, Delhi, rejected the*** ***Plaint for want of cause of action, vide Order dated 15.03.2010.***

8. The Plaintiff No. 2 *vide* Legal Notice dated 07.04.2010, *terminated the licence with effect from 30.04.2010, and demanded mesne profits at Rs. 5,000/- per month from 01.05.2010.* The Notice was sent both by UPC and by registered A.D. post to all four Defendants; however, the registered A.D. envelopes were returned with the postal remark "I.D.".

9. A second *Legal Notice dated 29.04.2010* was thereafter, issued by Plaintiff No. 2 bearing the correct name of Plaintiff No. 1, both in his



personal capacity and as General Attorney of Plaintiff No. 1. The registered A.D. envelopes of the said Notice were also returned with the remarks "*I.D. and thereafter, 'unclaimed'*".

10. A third Legal Notice dated 16.08.2011 was thereafter, issued to all four Defendants by registered A.D. post, in view of the directions of the Hon'ble Supreme Court restraining the issuance of Notices under Postal Certificate. Due to inadvertent omission of the road number in the address, the said envelopes were returned with the postal remark "*Bina Road Number Ke Pata Adhura hai*".

11. The said Notice was re-sent on 24.08.2011 with the road number duly added, and all four registered A.D. envelopes were returned with the postal remark "***refused***", on 25.08.2011.

12. The Respondents/Plaintiffs asserted that the licence of the Defendants stood terminated w.e.f. 30.09.2011, *and the defendants have continued in the suit premises, as trespassers.*

13. It is further averred that after receipt of the Notices, the Defendants started threatening to part with possession of the suit property, to create third-party interests therein, and to make additions and alterations therein. With dishonest intent, the Defendants along with Sh. Sanjay, brother of the Appellant/Defendant No. 1, attempted to forcibly occupy two additional rooms on the first floor shown in green colour in the site plan. When their attempt was resisted by the servant of Plaintiff No. 2 and his nephew Sh. Shahzad Singh, a *false FIR bearing No. 151/2011* was registered against Plaintiff No. 2 and others, at Police Station Gazipur.

14. The Respondents/Plaintiffs thus, sought a *Possession* of the suit property; *Mandatory Injunction* directing the Defendants to remove their



goods, articles and belongings therefrom; *Permanent Injunction* restraining the Defendants from parting with possession, creating any third-party interest, or making any additions or alterations in the suit property; and future *Mesne Profits* at Rs. 5,000/- per month, with effect from 01.10.2011 along with interest at 18% per annum till delivery of possession, *and costs* of the Suit.

15. Defendant No. 2 Sh. Leelu was proceeded against ex parte vide Order dated 25.01.2023, no Written Statement having been filed on his behalf.

16. Defendant Nos. 1, 3 and 4 filed a joint Written Statement, wherein they took the **preliminary objections** that the *Suit was not maintainable*; that the Respondents/Plaintiffs *had not approached the Court with clean hands and had concealed material facts*; that the Suit had been instituted on *false and fabricated grounds*; that the Respondents/Plaintiffs had procured *false and fabricated documents* in collusion with each other; that Plaintiff No. 2 was neither the owner nor the landlord of the suit property; and that the General Power of Attorney relied upon by Plaintiff No. 2 had no validity in the eyes of law, and could not confer any ownership upon him.

17. It was further claimed that the *Suit was grossly undervalued for the purpose of Court fee and jurisdiction*, inasmuch as the market value of the portion in the possession of the Defendants at the time of filing of the Suit was in excess of Rs. 50 lakhs, and consequently the learned District Judge *lacked pecuniary jurisdiction to entertain the Suit*.

18. On merits, the entire claim of the Respondents/Plaintiffs was vehemently denied. It was asserted that the *Appellant/Defendant No. 1 had purchased the suit property from Plaintiff No. 1 in the year 2006, for a total*



*sale consideration of Rs. 10,50,000/-, paid in cash, out of the proceeds realised from the sale of her property situated at Khoda Village, Ghaziabad. Upon receipt of the said amount, Plaintiff No. 1 had executed various documents in favour of the Appellant/Defendant No. 1, **and since the year 2006, the Defendants had been in possession and enjoyment of the suit property, as owners.***

19. It was further asserted that the Appellant/Defendant No. 1 was in possession of all the seven rooms on the first floor of the suit property, along with the spaces attached thereto, and not merely of two rooms, as asserted by the Respondents/Plaintiffs.

20. It was asserted that Plaintiff No. 2 had forcibly *trespassed into the suit property* and snatched the original title documents belonging to the Appellant/Defendant No. 1, in respect of ***which FIR No. 191/2011 under Sections 323/452/506/34 IPC was registered against him, at Police Station Gazipur.*** It was also alleged that Plaintiff No. 2 had taken away cash amounting to approximately Rs. 4,50,000/-, 10 tolas of gold and 7 kilograms of silver, from the premises.

21. It was *denied that there existed any landlord-tenant relationship between the parties*, or that any Rent Agreement had ever been executed, and consequently the claim for *mesne* profits and damages, was untenable. It was also denied that any Notice, whether by UPC or by registered A.D. post, had ever been received by the Defendants.

22. **Defendant No. 2 admitted that he had no independent right, title or interest in the suit property, except as being a son of the Appellant/Defendant No. 1.**

23. The Defendants prayed for dismissal of the Suit.



24. The Respondents/Plaintiffs filed a **Replication** to the Written Statement, denying the contentions raised therein, and reiterating the assertions made in the Plaint.

25. On the basis of the pleadings of the parties, **the following Issues were framed on 03.05.2014:**

- "(i) Whether the suit is not maintainable? (OPD)
- (ii) Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction? (OPD)
- (iii) Whether the Plaintiffs are entitled to the decree of mandatory injunction, as prayed for? (OPP)
- (iv) Whether the Plaintiffs are entitled to the decree of possession of the suit property i.e. two rooms on the first floor of property No. B-27 situated at Road No. 2-3, Gazipur Dairy Farm, Delhi-110096, as prayed for? (OPP)
- (v) Whether the Plaintiffs are entitled to the decree of permanent injunction, as prayed for? (OPP)
- (vi) Whether the Plaintiffs are entitled to the mesne profits, as prayed for? (OPP)
- (vii) Relief."

26. On 25.01.2023, **an additional Issue** was framed by the learned District Judge, which reads as under:

"Whether the suit is not maintainable in the present form? OPD Nos. 1, 3 and 4."

27. In support of their case, the Respondents/Plaintiffs examined **PW-1 Sh. Ravinder Singh, Plaintiff No. 2**, who tendered his evidence by way of



affidavit Ex. PW-1/A, and relied upon the site plan Ex. PW-1/1; the registered irrevocable General Power of Attorney dated 26.03.2010 Ex. PW-1/2; the three sets of legal notices dated 07.04.2010, 29.04.2010 and 16.08.2011 as Ex. PW-1/3, Ex. PW-1/8 and Ex. PW-1/17 respectively, along with their postal receipts and returned envelopes as Ex. PW-1/4 to Ex. PW-1/7, Ex. PW-1/9 to Ex. PW-1/16 and Ex. PW-1/18 to Ex. PW-1/29; and the certified copies of the pleadings, orders and proceedings in Civil Suit No. 104/2010 filed by Defendant No. 2 as Ex. PW-1/30 to Ex. PW-1/36.

28. PW-2 Sh. Surender Singh, Plaintiff No. 1, tendered his evidence by way of affidavit Ex. PW-2/A, adopting the case set up in the Plaint and the documents proved by PW-1. The cross-examination of PW-2 was deferred at the request of the learned counsel for the Defendants; however, PW-2 expired thereafter, and could not be cross-examined.

29. PW-3, Sh. Shyam Vir Singh, the attesting witness to the Will dated 26.03.2010, tendered his evidence by way of affidavit Ex. PW-3/A, and proved the original Will as Ex. PW-3/1.

30. In support of her defence, the **Appellant/Defendant No. 1 Smt. Saroj examined herself as DW-1** and tendered her evidence by way of affidavit Ex. DW-1/A, on the lines of her Written Statement. She relied upon the copy of FIR No. 191/2011 registered at Police Station Gazipur as Ex. DW-1/2.

31. The **learned District Judge**, upon appreciation of the pleadings and the evidence led by the parties, held that the registered irrevocable General Power of Attorney dated 26.03.2010 Ex. PW-1/2 in favour of Plaintiff No. 2, proved his proprietary title. Appellant/Defendant No. 1 along with



Defendant Nos. 3 and 4 in their Written Statement, had unequivocally admitted Plaintiff No. 1 to be the original owner of the suit property.

32. The execution of GPA in favour of Plaintiff No.2 was proved by PW-2 **Sh. Surender Singh**, Plaintiff No. 1, though he died before his cross-examination could be completed. An objection was taken by the Defendants that the cross-examination of PW-2 could not be conducted, and his evidence to prove GPA in favour of Plaintiff No.2 was inadmissible, the learned District Judge, held it to be admissible by placing reliance on the judgment of this Court in Krishan Dayal v. Chandu Ram, ILR (1969) II Delhi 1090, wherein it was held that where death of a witness prevents his cross-examination under circumstances that no responsibility can be attributed to the witness or to his party, the testimony of the said witness in examination-in-chief *remains admissible* and is capable of being relied upon, subject to the appropriate weight being attached to the same.

33. The learned District Judge noticed and further observed that in view of the Order dated 30.01.2020, of its learned predecessor, the Suit was founded on the assertion of a *licensor-licensee relationship*, and that Plaintiff No. 2 had been permitted, vide Order dated 03.08.2023, to represent the estate of the deceased Plaintiff No. 1, and accordingly held that the plaintiff had the locus to maintain and continue the Suit after the demise of erstwhile owner/Plaintiff No.1.

34. The learned District Judge further held that as the original ownership of Plaintiff No. 1 stood established, the applicability of Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656, was not applicable to the facts of the present case. Even if Plaintiff No. 2, was not treated as the absolute owner, he derived substantial rights under the



irrevocable registered General Power of Attorney and would in any event, have a better title vis-à-vis the Defendants, who had failed to establish any lawful derivation of ownership in themselves.

35. It was further held that the Appellant/Defendant No. 1 was unable to substantiate her claim of having purchased the suit property in the year 2006 from Plaintiff No. 1, for a sale consideration of Rs. 10,50,000/- paid in cash, as *no registered conveyance had been placed on record*; no independent witness had been examined to prove the alleged execution of any document in her favour, and no particulars of the date, place or manner of payment of the alleged sale consideration had been furnished. Moreover, DW-1 in her cross-examination, was unable to state when the alleged sum was paid, *and had further described herself as a tenant in the suit property, which was inconsistent with the plea of ownership, set up in the Written Statement.*

36. ***Accordingly, Suit for Possession, was allowed in favour of the Plaintiff.***

37. *The learned District Judge also granted **mesne profits, Rs. @ 600/- per month** from 01.10.2011 till delivery of possession, with an annual increase of 10% with effect from 01.01.2012, till the possession was delivered.*

38. *A Decree of Permanent Injunction restraining the Defendants from creating any third-party interest in the suit property, was also granted.*

39. Accordingly, ***the Suit was decreed***, vide the impugned Judgment and Decree dated 13.02.2026 granting the following reliefs:

- (i) *recovery of possession of the two rooms on the first floor of property bearing No. B-27, Road No. 2-3,*



Gazipur Dairy Farm, Delhi-110096, as shown in red colour in the site plan Ex. PW-1/1;

(ii) mesne profits at Rs. 600/- per month from 01.10.2011 with an annual increase of 10% effective from 01.01.2012, till delivery of possession;

(iii) Decree of Permanent Injunction restraining the Defendants from creating any third-party interest in the suit property

(iv) costs of the Suit.

40. *Aggrieved by the said Judgment and Decree, the Appellant/Defendant No. 1 has preferred the **present Regular First Appeal.***

41. The **grounds of challenge** raised on behalf of the Appellant/Defendant No. 1 are that upon the demise of Plaintiff No. 1 in the year 2016, the Suit stood abated under Order XXII CPC for want of substitution of his legal representatives, and could not have been continued by Plaintiff No. 2 on the strength of the General Power of Attorney alone; that the agency created under the irrevocable General Power of Attorney dated 26.03.2010 stood terminated upon the death of the principal under Section 201 of the Indian Contract Act, 1872, and that a Power of Attorney creates only a principal-agent relationship, without transferring any right, title or interest in immovable property. Reliance is placed on Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656; M.S. Ananthamurthy v. J. Manjula, 2025 INSC 273; and Mahnoor Fatima Imran v. Visweswara Infrastructure Pvt. Ltd., SLP (C) No. 1866/2024.

42. It is further contended that the *alleged unregistered Will dated 26.03.2010* was placed on record for the first time only on 15.01.2024, i.e.



nearly fourteen years after its alleged execution and nearly eight years after the demise of the testator. **PW-3 Sh. Shyam Vir Singh** admitted in his cross-examination that he had been called as a witness by Plaintiff No. 2, who was himself the beneficiary under the said Will; the said Will has not been proved in accordance with law, and the propounder has not discharged the heavy onus arising from the suspicious circumstances.

43. It is contended that Plaintiff No. 1 was never subjected to cross-examination, having remained absent on 02.07.2015, 28.09.2015 and 06.01.2016 before expiring in the year 2016, and that the learned District Judge committed a grave error, in relying upon his uncross-examined testimony.

44. It is further asserted that the *licensor-licensee relationship pleaded by the Respondents/Plaintiffs*, was unsupported by any Rent Agreement, receipt or documentary proof. Moreover, the *mesne* profits at Rs. 600/- per month with an annual increase of 10%, is unsupported by any evidence on record.

45. Further, the decree of possession is being sought to be executed by the Respondents/Plaintiffs in respect of the entire first floor of the suit property, though the operative decree is confined to two rooms only.

46. *Written Submissions have been filed on behalf of the Appellant/Defendant No. 1, reiterating the grounds raised in the Memorandum of Appeal.*

47. **On behalf of the Respondents/Plaintiffs**, it is contended that the impugned Judgment and Decree, does not warrant any interference. The Appellant/Defendant No. 1 along with Defendant Nos. 3 and 4, in their own **Written Statement**, have unequivocally acknowledged Plaintiff No. 1 to be



the original owner of the suit property. They cannot be permitted to resile from the said admission.

48. The plea of ownership set up by the Appellant/Defendant No. 1 on the basis of an alleged oral purchase for Rs. 10,50,000/- in the year 2006, is wholly unsupported by any registered conveyance, any independent witness or any receipt of payment. Further, DW-1, Smt. Saroj had volunteered in her cross-examination, the case of an antecedent tenancy at Rs. 500/- per month, which is entirely at variance with her plea of ownership, set up in her Written Statement.

49. It is further submitted that the *ratio of Suraj Lamp (supra)* has no application to the facts of the present case, inasmuch as the case of the Respondents/Plaintiffs is not founded on any transfer of title by virtue of the General Power of Attorney to a stranger, but on the *licensor-licensee relationship*, which stands established on the record.

50. *On the plea of abatement*, it is submitted that Plaintiff No. 2 stood duly permitted to represent the estate of the deceased Plaintiff No. 1, *vide* Order dated 03.08.2023 of the learned District Judge, and that Order was never assailed by the Defendants, which has attained finality.

51. It is further submitted that the *mesne* profits at Rs. 600/- per month is a modest figure, which is anchored in the Order dated 27.05.2016 of the learned District Judge under Order XV-A CPC, and *is consistent with the rent of Rs. 500/- per month admitted by the Appellant/Defendant No. 1 herself*, and with the rate of Rs. 600/- per month pleaded by Defendant No. 2 in Civil Suit No. 104/2010.

52. *Written Submissions have been filed on behalf of the Respondents/Plaintiffs, reiterating the aforesaid contentions.*



Submissions heard and record perused.

53. The Respondents/Plaintiffs instituted the *Suit for Possession, Mandatory Injunction, Permanent Injunction and Mesne Profits* in respect of the two rooms on the first floor of property bearing No. B-27, Gazipur Dairy Farm, Delhi, shown in red colour in the site plan Ex. PW-1/1.

54. The claim of possession was based on Plaintiff No. 1, being the original owner, who had transferred the property in question to Plaintiff No. 2, by a **registered irrevocable GPA dated 26.03.2010 Ex. PW-1/2**, and sought possession from the the Appellant/Defendant No. 1, who were in occupation of the said two rooms as a licensee, and were permitted by Plaintiff No. 1, to look after his dairy work.

55. The Appellant/Defendant No. 1, per contra, claimed ownership on the basis of an alleged purchase from Plaintiff No. 1 in the year 2006 for Rs. 10,50,000/- paid in cash.

I. Maintainability of the Suit:

56. The Appellants took objection to the maintainability of the Suit which rests on *four premises: firstly*, that the agency under the registered irrevocable General Power of Attorney dated 26.03.2010 stood terminated under Section 201 of the Indian Contract Act, 1872, upon demise of plaintiff No.1; *secondly*, that the GPA in favour of Plaintiff No.2 was not duly proved; *thirdly*, that the Plaint was not signed by Plaintiff No. 1; and *fourthly*, that the Suit stood abated under Order XXII CPC upon the demise of Plaintiff No. 1 in the year 2016.

(a) Whether the Agency stood Terminated under Section 201 of the Indian Contract Act:



57. An objection had been taken by the Appellants that on demise of Plaintiff No.1, the GPA ceased to be of any effect and the agency created in favour of Plaintiff No.2, got automatically terminated.

58. *Section 202 of the Indian Contract Act, 1872* carves out an exception in respect of an agency coupled with an interest, which cannot be terminated to the prejudice of the interest so created. *The mere use of the expression "irrevocable" is not, by itself, determinative.*

59. The GPA Ex. PW-1/2 records execution for valuable consideration and contemporaneous delivery of possession, in favour of Plaintiff No. 2. The authority so created was not a bare agency, but was coupled with an interest within the meaning of Section 202 of the Indian Contract Act, having been created for valuable consideration, to secure the interest transferred to Plaintiff No. 2 in the suit property.

60. The Supreme Court, in the case of P. Seshareddy (D) v. State of Karnataka, 2022 INSC 1191, has reaffirmed that Section 201 Indian Contract Act cannot be read in isolation of Section 202, and has authoritatively held that where an interest has accrued in favour of the holder of a Power of Attorney in the subject-matter of the agency, *the said agency is not terminated to the prejudice of such interest, even upon the demise of the principal.*

61. The principle is traced back to the settled exposition in Seth Loon Karan Sethiya v. Ivan E. John, AIR 1969 SC 73, wherein it was authoritatively laid down that *"where the agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked."*



62. Applying the said principles to the facts of the present case, the GPA Ex. PW-1/2 having been executed for *valuable consideration*, contemporaneously with delivery of possession of the suit property in favour of Plaintiff No. 2, constitutes an agency coupled with an interest, and is *not brought to an end* by the operation of Section 201, upon the demise of Plaintiff No. 1.

63. Therefore the assertion of the Appellants that plaintiff lost any right to continue the Suit after the demise of Plaintiff No.1, is without any merit.

(b) Whether the GPA in favour of Plaintiff No.2 was duly proved:

64. PW-2 Sh. Surender Singh, plaintiff NO.1 deposed that he had executed the registered GPA dated 26.03.2010 Ex. PW-1/2, in favour of the plaintiff No.2. The cross-examination of PW-2 was deferred at the request of the learned counsel for the Defendants. Plaintiff No. 1 expired in the year 2016, and the cross-examination could not be completed before the demise of PW-2. Nothing has been shown on record to suggest that the Respondents/Plaintiffs were responsible for the said eventuality.

65. In Krishan Dayal v. Chandu Ram, ILR (1969) II Delhi 1090, this Court held that where death of a witness prevents his cross-examination under circumstances not attributable to the witness or his party, the testimony in examination-in-chief remains admissible, subject to the appropriate weight being attached to the same.

66. Therefore, the testimony of PW-2, was not unreliable especially when the defendants have not questioned the execution of GPA, but only its validity to transfer ownership rights to Plaintiff No. 2, on its basis. The GPA was duly proved also by the independent evidence of Plaintiff No.2 and the admissions of the Appellant herself.



(c) Whether the Suit stood Abated on the Demise of Plaintiff No. 1:

67. The plaintiff no.1 died in the year 2016. The learned District Judge, vide Order dated 03.08.2023, permitted Plaintiff No. 2 to represent the estate of the deceased Plaintiff No. 1. The said Order was never assailed by the Defendants and has attained finality. The plea cannot be reagitated in the present Appeal.

(d) Whether the Non-Signing of the Plaint by Plaintiff No. 1, Renders the Suit Defective:

68. The Plaint was instituted by Plaintiff No. 2 on the strength of the registered irrevocable GPA dated 26.03.2010 Ex. PW-1/2, executed in his favour by Plaintiff No. 1. Plaintiff No. 1, having already transferred his interest in the suit property to Plaintiff No. 2, was thus, not a necessary party to the present Suit. At best, he could have been a witness to support the case, to prove that the transfer had been made in favour of Plaintiff No. 2. The Plaint was thus not, in the first instance, required to be signed by him.

69. Even otherwise, the Plaint was duly signed by Plaintiff No.2 who was also the GPA holder of plaintiff No.1. ***Therefore, the Plaint was duly signed and instituted on behalf of the Plaintiffs.***

70. The objections to the maintainability of the Suit, on all the aforesaid grounds, is accordingly held to be *without any merit*.

II. Whether the Respondents/Plaintiffs established a Better Right to Possession of the Suit Property than the Appellant:

71. The Suit instituted by the Respondents/Plaintiffs is not a Suit for Declaration of Title, but a *Suit for Possession, Mandatory Injunction, Permanent Injunction and Mesne Profits*, founded on the assertion of a



licensor-licensee relationship between the parties. The enquiry, therefore, is not directed to the absolute ownership of the suit property, but to the relative rights of the parties in relation to the suit property, shown in red colour in the site plan Ex. PW-1/1.

72. The Appellant/Defendant No. 1 along with Defendant Nos. 3 and 4, in paragraph No., 3 of their Written Statement, had themselves stated as under:

*"the defendants are the owner of the property and they have **already paid Rs. 10,50,000/- to the plaintiff no.1** after selling property situated in Khoda Village and the plaintiff no.1 executed the various documents in favour of the defendant no.1".*

73. The said averment clearly acknowledges Plaintiff No. 1 to be the original owner of the suit property, and traces the alleged title of the Appellant/Defendant No. 1, to a transaction of purchase from Plaintiff No. 1. The enquiry, therefore, narrows down to two questions: (a) *whether the plea of purchase set up by the Appellant/Defendant No. 1 is proved, and (b) whether the licensor-licensee relationship asserted by the Respondents/Plaintiffs, has been proved.*

(a) Whether the Appellants Proved their Proprietary rights by Purchase of Suit Property:

74. The defendant no.1, though had asserted that they had purchased the suit property from Plaintiff No.1 on payment of Rs. 10,50,000/-, and that this money was arranged by sale of the Khoda property, but no document whatsoever in favour of the Appellant/Defendant No. 1, has been claimed to have been executed or placed on record; no independent witness to the alleged execution of any document has been examined; no receipt of



payment of the alleged consideration of Rs. 10,50,000/- has been produced; and no particulars as to the date, place or manner of execution of the alleged documents, or of payment of the alleged consideration, have been furnished.

75. The Appellant/Defendant No. 1, in her cross-examination dated 23.12.2025, has admitted that *"We have not inspected the ownership documents of Sardar Surender Singh"*, and that *"I do not remember when I paid the alleged amount to Sardar Surender Singh"*. Even the alleged source of the sale consideration, i.e. the sale of the Khoda property, is not supported by any document placed on the record, and on being questioned, the Appellant/Defendant No. 1 was unable to state from where such documents could be produced.

76. The plea of the Appellant/Defendant No. 1 that the alleged title documents in her favour, were forcibly snatched by Plaintiff No. 2, and that FIR No. 191/2011 Ex. DW-1/2 was registered against him, is not borne out from the record. The FIR contains no allegation of the snatching of any title documents. More significantly, in the said FIR, the Appellant/Defendant No. 1 has herself *described her occupation as one of a tenant for the last four to five years*, which averment is inconsistent with the plea of ownership since the year 2006, set up in the Written Statement.

77. The said inconsistency is reinforced by the admissions of the Appellant/Defendant No. 1 in her cross-examination dated 16.10.2025, wherein she has volunteered that ***"Firstly, we took the property on rent from Surender Singh (plaintiff no.1) and then I purchased the same from him"***, and that *"The rent was around Rs. 500/- per month"*. She has further admitted that *"There was no rent agreement"* and that *"I have not any written proof that I had taken the suit property on rent"*.



78. No such plea of an antecedent tenancy is to be found in the Written Statement or in her evidence by way of affidavit Ex. DW-1/A, and the same has surfaced for the first time in the cross-examination. Similarly, when a portion of the said FIR was read over to her during her further cross-examination dated 23.12.2025, wherein she is recorded as having stated that she was residing on the first floor of the suit property on rent from four to five years, she denied having made the said statement; even though the said FIR Ex. DW-1/2 had been produced and affirmed by her and admitted by her in her own cross-examination to contain "*true facts*".

79. On a preponderance of probabilities, the plea of purchase set up by the Appellant/Defendant No. 1 admits of no other conclusion, than that of being an afterthought, unsupported by any documentary evidence and contradicted by her own testimony and by the contents of the FIR relied upon by her.

80. The *next plea of the Appellant/Defendant No. 1* that the entire first floor of the suit property is in her possession, and not merely the two rooms in question, also requires consideration. In his cross-examination dated 12.07.2025, PW-1 has admitted that "*There are approximate 6-7 rooms on the first floor which in possession of the defendant*". The said admission, however, goes only to the *factum* of physical occupation of these rooms unauthorizedly by the Appellants without any right or permission, and does not in any manner, establish any right, title or interest of the Appellant/Defendant No. 1, in the said rooms. *Physical possession, without more, does not ripen into lawful entitlement.*

81. The pleaded case of the Appellant/Defendant No. 1 rests wholly on the alleged purchase of the suit property in the year 2006; she has led no



evidence, and set up no independent plea, of any other basis on which her occupation of the additional rooms, could be justified in law. Once the said plea of purchase is disbelieved, the said additional rooms stand on no better footing than the two rooms in question, and the Appellants stand established to be in unauthorized occupation of the entire premises.

82. *The Appellants have miserably failed to establish any proprietary rights in the suit property.*

(b) Whether there Existed a Relationship of the licensor-licensee:

83. *On the question of the licensor-licensee relationship*, the case set up by the Respondents/Plaintiffs is that the Appellant/Defendant No. 1 was permitted by Plaintiff No. 1 to occupy the said two rooms for the purpose of looking after his dairy work, and that Defendant Nos. 2 to 4, being her sons, were also residing therein on the same permissive basis.

84. The said case finds support from the following three circumstances proved on the record. **First**, the irrevocable General Power of Attorney dated 26.03.2010 Ex. PW-1/2, executed by Plaintiff No. 1 in favour of Plaintiff No. 2, is a duly registered document carrying a presumption of due execution under the Registration Act, 1908; the said document records the delivery of possession to Plaintiff No. 2 and has not been questioned by the Appellant/Defendant No. 1 by way of any independent proceeding.

85. *Second*, PW-2 Sh. Surender Singh, being Plaintiff No. 1 and the admitted original owner, tendered his evidence on 19.01.2015 by way of affidavit Ex. PW-2/A, wherein he affirmed the transfer of the suit property in favour of Plaintiff No. 2 by virtue of the said GPA, and *further affirmed that the Appellant/Defendant No. 1 was permitted to occupy the said two rooms as a licensee, for looking after his dairy work.*



86. Third, Defendant No. 2 Sh. Leelu, being the son of the Appellant/Defendant No. 1, himself instituted Civil Suit No. 104/2010 against Plaintiff No. 1, wherein he pleaded that his mother was in occupation of the suit property as a tenant at a rent of Rs. 600/- per month exclusive of electricity charges. The said Suit was dismissed by the learned Additional Senior Civil Judge, Karkardooma Courts, *vide* Judgment dated 15.03.2010 Ex. PW-1/36, whereby the plea of tenancy was not accepted and the Suit was rejected for want of cause of action.

87. The aforesaid three circumstances, when read with the Appellant/Defendant No. 1's own admission that she initially took the property on rent and then allegedly purchased the same from Plaintiff No. 1, and with her further admission in the FIR Ex. DW-1/2 that she was residing as a tenant, clearly establishes that the possession of the Appellant/Defendant No. 1 was, at all points of time, referable to the permission of Plaintiff No. 1, and was not adverse to his title.

88. It is pertinent to also observe that though the plea of initial tenancy was taken and payment of rent of Rs.500, was claimed by the defendant, but no cogent evidence of any kind has been produced to corroborate that she entered into the suit property as a tenant.

89. In any case, once the Appellant/Defendant No. 1 herself claimed to have acquired ownership by an alleged subsequent purchase, a claim which has already been disbelieved, her averment of initial permissive occupation, whether characterised as tenancy or licence, does not assist her in resisting the decree. Her possession having originated with the permission of Plaintiff No. 1, and no valid transfer of title in her favour having been proved, she cannot in law set up a title in herself to defeat the possessory claim of the



person under whom her occupation commenced. The plea of initial tenancy, being unaccompanied by any Rent Agreement or documentary proof, and further contradicted by her own subsequent plea of ownership, is of no assistance to her.

90. Once the character of the possession of the Appellant/Defendant No. 1 is established to be that of a licensee, *a licensee is estopped from denying the title of the licensor.*

91. The Supreme Court, in Sant Lal Jain v. Avtar Singh, (1985) 2 SCC 332, has authoritatively laid down that a defendant who is a licensee must be deemed to be always a licensee, and that *it is not open to him, during the subsistence and after the revocation of the licence, to set up a title to the property in himself or in anyone else.*

92. The said principle is an application of the doctrine of estoppel embodied in Section 116 of the Indian Evidence Act, 1872, and operates as a rule of exclusion, precluding the licensee from disputing the title of the licensor.

93. The said principle applies with full force, to the case of the Appellant/Defendant No. 1. Her own admissions establish that her possession originated with the permission of Plaintiff No. 1. *Once the origin of possession is shown to be permissive, the Appellant cannot, in the absence of any proof of transfer of title, dispute the title of the person under whom such possession commenced.* The plea of a subsequent purchase, having remained wholly unsubstantiated, cannot defeat the Respondents/Plaintiffs' claim for possession.

94. Learned counsel for the Appellant has contended that the entire case of the Respondents, is based on a registered GPA in favour of the Plaintiff



No. 2. The reliance placed on behalf of the Appellant/Defendant No. 1 on the judgments of the Supreme Court in Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656; M.S. Ananthamurthy v. J. Manjula, 2025 INSC 273; and Mahnoor Fatima Imran v. Visweswara Infrastructure Pvt. Ltd., SLP (C) No. 1866/2024, is misplaced. The said judgments lay down the settled proposition that *a General Power of Attorney, a Sale Agreement, or a Will, whether singly or in combination, does not by itself constitute a completed transfer of title in immovable property*, and that title in immovable property can be conveyed only through a registered deed of conveyance. *The said proposition, however, does not apply to the facts of the case of the Appellant/Defendant No. 1.*

95. The case of the Respondents/Plaintiffs is not that title in the suit property has been conveyed to Plaintiff No. 2 by virtue of the General Power of Attorney; rather, the case is that the possession of the Appellant/Defendant No. 1 is that of a licensee, permissively granted by Plaintiff No. 1 Surender Singh, who is the admitted original owner.

96. Furthermore, the contention that the Plaintiff No. 2 could not have claimed any ownership in the Suit property is completely misplaced as it has already been discussed that Plaintiff No. 2 derives his rights from Plaintiff No. 1, the admitted original owner, through the registered irrevocable GPA Ex. PW-1/2, the validity of which has already been upheld. The Respondents' case is not founded on any purchase by virtue of an Agreement to Sell. Even otherwise, the Respondents have a better proprietary right vis-à-vis the Appellant, who has been unable to establish any better title than that of the Respondents in the suit property.



97. The Plaintiff no doubt had produced the Will dated 26.03.2010, Ex.PW-3/1 but again, as already stated above, the Plaintiff had succeeded on a better proprietary right and not on the basis of Will, Ex.PW-3/1. Therefore, even though, the Will has not been proved by examination of attesting witness, in terms of Section 68 of the Indian Evidence Act, the title of the Plaintiff No. 2 is not based on this Will. Even if the Will is held to be not proved in favour of the Plaintiff No. 2, then too, he has a title superior to that of the Appellants and therefore, entitled to recovery of possession.

98. On a conspectus of the aforesaid, the Respondents/Plaintiffs have established a better right to possession of the suit property *vis-à-vis* the Appellant/Defendant No. 1, who has been unable to establish any right, title or interest in the suit property whatsoever.

III. Whether the Suit was valued properly for the purpose of Court Fees:

99. As regards the plea of undervaluation, the onus to establish improper valuation was on the Defendants; no evidence in support thereof has been adduced. The learned District Judge has, rightly rejected the said objection, and no case for interference is made out.

IV. Whether the Award of Mesne Profits warrants Interference:

100. On the claim of mesne profits, though the Respondents/Plaintiffs had claimed the same at Rs. 5,000/- per month, no independent evidence in the nature of a valuer's report or comparative rent was led in support thereof. The learned District Judge has, however, anchored the mesne profits at Rs. 600/- per month with reference to its own Order dated 27.05.2016 passed



under Order XV-A of the CPC, and has directed an annual increase of 10% with effect from 01.01.2012.

101. The said rate is not disproportionate; it is consistent with the rent of Rs. 500/- per month admitted by the Appellant/Defendant No. 1 herself in her cross-examination dated 16.10.2025. Moreover, in Civil Suit No. 104/2010 in respect of the same suit property, son Defendant No. 2, had himself stated the rent of the premises was Rs. 600/- per month.

102. The Ld. District judge has reasonably assessed the Mesne Profits, on the basis of evidence and the admissions made on behalf of the Appellants. The annual increase of 10% with effect from 01.01.2012 also cannot be said to be arbitrary or excessive so as to warrant interference in appellate jurisdiction.

Conclusion:

103. In view of the foregoing discussion, the impugned Judgment and Decree dated 13.02.2026 passed by the learned District Judge, Karkardooma Courts, Delhi in CS No. 586/2016 is affirmed.

104. Accordingly, ***the present Regular First Appeal is dismissed.***

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

(NEENA BANSAL KRISHNA)
JUDGE

JULY 27, 2026/VA/RS