



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

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*Reserved on: 13th May, 2026
Pronounced on: 11th August, 2026*

CNR No: DLNE010031312025

+ **RSA No. 15/2026, CM APPL. 3771/2026, CM APPL. 3774/2026**

ALI FATIMA

W/o Mohd. Raza

D/o Sh. Sadakat Ali

R/o D-265, Gali No. 4,

Noor Illahi, North Ghonda,

Delhi-110053

....Appellant

Through: Mr. Gurjeet Singh, Advocate.

versus

1. **SAFDAR RAZA**

S/o Mohd. Hussain

R/o D-265, Gali No. 4, Noor Illahi,

North Ghonda, Delhi-53

....Respondent No.1

2. **MOHD. RAZA**

S/o Sh. Safdar Raza

R/o B-288-A, Lajpat Nagar, Sahibabad,

Chauki Karan Gate, Ghaziabad,

Uttar Pradesh-201005

...Respondent No.2

3. **POONAM RANI @ SANA**

W/o Mohd. Raza

D/o Rattan Singh

R/o B-28A, Lajpat Nagar, Sahibabad

Chauki Karan Gate, Ghaziabad,

Uttar Pradesh-201005.

....Respondent No. 3

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



J U D G M E N T

NEENA BANSAL KRISHNA, J.

CM APPL.3772/2026 (Exemption), CM APPL.3773/2026 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Applications stand disposed of.

RSA No. 15/2026

3. Second Regular Appeal under Section 41 Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed against the Judgment dated 06.01.2026 passed by the learned District Judge, ***upholding the Judgment and decree dated 27.08.2025 directing the Appellant to hand over vacant possession of the suit property to the Respondent.***

4. The Plaintiff/Respondent, Mr. Safdar Raza, had filed a **Civil Suit No. 116/2018** for *decree for Possession, and Permanent Injunction to restrain the Defendants from creating third party rights and from entering into any other part of the Property in question.*

5. ***The facts in brief are*** that the Plaintiff is a retired School Teacher, who is the owner of Property bearing No. D-265, Khasra No. 640/4 and 304, situated at Gali No. 4, Noor Ilahi, Maujpur, Village Maujpur, Ilaka Shahdara, now known as North Ghonda, Delhi-53, admeasuring 50 square yards, having purchased it *vide General Power of Attorney, Agreement to Sell, Will, Receipt etc. on 15.01.2011.* The Property has been mutated in his name in the Municipal Records. The Plaintiff submitted that his property has a Ground Floor and a First Floor. The Plaintiff is residing with his wife and unmarried children on the Ground Floor.



6. The Defendant No. 1 Sh. Mohd. Raza, his elder son, got *first married* to Smt. Poonam Rani @ Sana, the Defendant No. 3. Thereafter, he got married to the *Defendant No. 2, Smt. Ms. Ali Fatima*, according to the Muslim Sharia and Customs Law, on 04.10.2009 and has no children from the second wedlock. The Plaintiff *disowned and disinherited* the Defendant No. 1 and his two wives from all his movable and immovable properties orally, on several occasions and also issued the **Legal Notice dated 22.02.2018**.

7. It was further stated that the Defendant No. 1 along with his wife, Smt. Poonam Rani @ Sana, the Defendant No. 3, are residing at Ghaziabad. As per the knowledge of the Plaintiff, the Defendant No. 1 is having marital disputes even with the Defendant No. 3.

8. The Defendant No. 2, the second wife is *residing on the First Floor* of the Property in question (*hereinafter referred to as suit property*) and has made the life of the Plaintiff and all other family members, hell as not even a day passes when she does not threaten or quarrel with the Plaintiff and the other members. She has even threatened to commit suicide and implicate the entire family of the Plaintiff in the false cases. She also got an FIR registered against the Defendant Nos. 1 and Defendant No. 3 and has made several Complaints in CAW Cell wherein the Plaintiff has been called, aside from filing a Maintenance Petition against the Defendant No. 1, which is pending.

9. The Plaintiff claimed that because of the conduct and constant quarrel by the Defendant No. 2 and in order to resolve the disputes, he bought **House bearing No. G-234, Gali No. 13/7, Bhagirathi Vihar, Delhi-94**, built up to Second Floor in the name of the Defendant No. 2 so that she could shift to the said premises and the Plaintiff and his family could reside peacefully.



However, instead of shifting out, the Defendant No. 2 has *rented the said house to tenants*, on a monthly rent of about **Rs.6,000/-** and has refused to vacate the Property of the Plaintiff.

10. The Plaintiff asserted that despite first agreeing to vacate the house of the Plaintiff, she has gone back on her promise. The Defendant No. 2 *derives* her rights from the Defendant No. 1, her husband alone and *has no right, title and interest in the Properties and the assets of the Plaintiff*.

11. The Plaintiff further asserted that he does not want to keep the Defendant No. 2 in the suit premises and had given a **Legal Notice dated 22.02.2018**, which was duly served upon her, *to vacate the suit premises*, but she has failed to do so. The license of the Defendant No. 2 already stands terminated and she be directed to vacate the Property and hand over the possession and also be *restrained* from creating third party rights and to occupy any other portion of the Property in question.

12. ***The Defendant Nos. 1 and 3 in their Written Statement***, claimed that the averments made in the Plaint, were *fabricated and concocted*. It was asserted that the Plaintiff has not approached the *Court with clean hands and has concealed all material and true facts*. The Plaintiff has filed the Suit to harass and humiliate the Defendants and is liable to be rejected under **Order VII Rule 11 CPC**. The Defendants admitted that they have been debarred by the Plaintiff and have *already vacated* the suit property. It was further stated that the Defendant Nos. 1 and 3 are residing together and have *no concern* with Defendant No. 2.

13. The Defendant No. 2, in her **Written Statement**, asserted that the suit property had been purchased by the Plaintiff, after selling the Property in **Gali No. 7, Vijay Park, Maujpur, Delhi**. The Defendant No. 2 has been



residing in the suit property as it is *her matrimonial home/shared household*.

14. She denied having made the life of the Plaintiff and his family members, miserable. She claimed that when Defendant No. 1 got married to her, he and the family members, failed to disclose the factum of his previous marriage with the Defendant No. 3. She admitted having filed the Petition under **Section 125 of the Code of Criminal Procedure, 1973** (*hereinafter referred to as 'Cr.PC'*), against the Defendant No. 1, her husband. She also admitted having made a Complaint in CAW Cell.

15. She asserted that the present Suit has been filed as a counter-blast by the Plaintiff, in collusion with the Defendant Nos. 1 and 3 and other family members, to pressurize, harass and humiliate her. The Defendant No. 2 further claimed that the Plaintiff was having other properties, which he has purchased in the name of his sons. The family members of the Plaintiff are residing separately, and it has been wrongly alleged that he requires the suit property for his children, which is contradictory.

16. She *denied that the Property was self-acquired* property of the Plaintiff and claimed that even if there is any disownment of the Defendant No. 1 by the Plaintiff, it has no value in the eyes of law. The plaintiff and Defendant Nos. 1 and 3 are in *collusion and in conspiracy* with each other, published the alleged Public Notice in the Newspaper for disownment. No such Notice has been received by the Defendant No. 2 and thus, no question of giving a reply to the said Notice, arises.

17. She has further asserted that the House No. G-234, Gali No. 13/7, Bhagirathi Vihar, Delhi, admeasuring 20 square yards, was purchased in her name by her maternal Uncle, when they came to know about the first marriage of the Defendant No. 1 and 3. It is denied that the House has been purchased for her, by the Plaintiff. She also stated that she is getting a rent of



Rs.2,000/- per month and not Rs.6,000/-, as asserted by the Plaintiff. She denied that her residence is only permissive in nature but claimed that she has a right of residence being the daughter-in-law of the Plaintiff and the suit property is her matrimonial home/shared household, in which she has been residing since her marriage in her own right and not as a licensee.

18. She denied all the allegations made in the Written Statement and asserted that the Suit is liable to be dismissed.

19. *The Plaintiff in her Replication*, reaffirmed the assertions as made in the Plaint and denied the allegations made in the Written Statement.

20. The Issues were framed on 07.12.2018, which are as under:

(i) *Whether the plaintiff is entitled to the decree of possession as prayed for? OPP*

(ii) *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*

(iii) *Whether the suit of the plaintiff is liable to be dismissed under Order 7 Rule 11 CPC? OPD 1 & 3*

(iv) *Relief.*

21. The Plaintiff in support of his case, examined himself as PW-1. He proved the documents, Ex.PW-1/1 to Ex.PW-1/9 in support of his evidence.

22. Defendant No. 2 Smt. Ali Fatima examined herself as DW-1 and deposed on similar lines as her defence in the Written Statement.

23. No evidence was led by the Defendant Nos. 1 and 3, which was closed vide Order dated 26.03.2025.

24. The learned Civil Judge, on consideration of the evidence, held that the Plaintiff had proved his ownership, as well as physical possession over the property in question, out of which, one room on the First Floor as shown in Site Plan Ex.PW-1/6, was in the possession of the Defendant No. 2. It was held that though the Defendant No. 2 had claimed that this was a *Joint Family*



Property/ancestral Property but had failed to adduce any evidence to this effect. The Plaintiff being the exclusive owner, was entitled to the possession of the suit property. **Hence, the Suit was decreed, and the Defendant No. 2 was directed to hand over the Possession to the Plaintiff and also restrained from entering into any other part of the Property in question.**

25. Aggrieved by the said Judgment and decree against herself, the Defendant No. 2 preferred **RCA DJ No. 52/2025** wherein in the Judgment dated **06.01.2026**, the learned Appellate Court considered the evidence again and found that the Defendant No. 2 being a daughter-in-law, was in occupation of the suit property. It was also noted that she has another Property in her name; irrespective of whether purchased by the Plaintiff or by her maternal Uncle, from which she was getting Rs.2,000/- per month, *as per her own admissions.*

26. It was further observed that she had not been able to establish her claim for residence under Domestic Violence Act, 2005 (*hereinafter referred to as 'D.V. Act'*) and she has already filed the Petition, which is pending consideration. The unrebutted testimony of the Plaintiff established that he had purchased the Property in his own name and had allowed her to stay in the suit property, being the wife of his elder son. It was not her shared household and consequently, **the Judgment of eviction and injunction, was upheld.**

27. Aggrieved by the said dismissal of her Appeal, the Defendant No. 2, Ms. Ali Fatima has filed the present **Second Regular Appeal under Section 100 CPC.**



28. ***The grounds of challenge are*** that the ***burden of proving*** that the suit property was purchased by selling the ancestral property, had been erroneously placed on the Defendant. It is the Plaintiff, who claimed that the suit property was a self-acquired property and the onus of proving the same, was exclusively on the Plaintiff.

29. It is further stated that the ***Suit falls within the Family Court jurisdiction*** being a dispute between a father-in-law and daughter-in-law and it was the matrimonial right of the Appellant of her residence in the matrimonial home/shared household that was involved and the Civil Court had no jurisdiction.

30. It was claimed that there is a ***statutory right of residence*** under **Section 17 of the D.V. Act**. Admittedly, the Appellant married Defendant No. 1 in 2009 and immediately thereafter, came to reside in the suit property, which has since remained her matrimonial home. The Plaintiff admitted in his cross-examination that following the marriage, Defendant No. 1 and Defendant No. 2 (the Appellant herein) came to reside in the suit property. The suit property belongs to the Plaintiff's Joint Family, of which Defendant No. 1 is a family member. It therefore, squarely falls within the definition of a “*shared household*”, under Section 2(s) of the D.V. Act.

31. Furthermore, **Section 17(2) of the D.V. Act**, mandates eviction in accordance with the *procedure established by law*. A *Civil Suit for Possession* does not meet this requirement because the D.V. Act provides for a specific procedure for dealing with *shared household rights*. The Magistrate has the power under D.V. Act, to pass an Order of Residence and the Civil Court cannot bypass the provisions of the D.V. Act. The eviction through the Civil Suit, amounts to denial of statutory protection.



Section 26 of the D.V. Act, provides that, “*the provisions of this Act, are in addition to, and not in derogation of the provisions of any other law for the time being in force.*” Therefore, the protections given under the D.V. Act, are in addition to other rights, and cannot be defeated by a Civil Suit. As per **Section 3 read with Section 2(q) of the D.V. Act**, includes “*economic abuse*” i.e. “*deprivation of all or any economic or financial resources....or right to reside in the shared household; eviction from the shared household amounts to economic abuse.*”

32. The learned Appellate Court stated in the impugned Judgment that **CT No. 702/2018** under D.V. Act, is pending. However, pendency of the D.V. Petition does not mean that the Civil Court can ignore the protection under the D.V. Act. It was noted that the Appellant had another property in her name, but that in itself is irrelevant while deciding her right of shared household, since the right conferred under Section 17 of the D.V. Act, is statutory and absolute.

33. The Hon’ble Supreme Court of India in S.R. Batra vs. Taruna Batra, (2007) 3SCC 169 has held that the definition of ‘*shared household*’ is very wide and would include the house belonging to the Joint Family of which the husband is a member.

34. This Court in Satish Chander Ahuja vs. Sneha Ahuja, (2021) 1 SCC 414, has held that the right under Section 17 is an independent statutory right, which cannot be defeated by ownership claims.

35. The eviction of the Appellant from the suit property, is a collusion of the Plaintiff and his son. The Defendant No. 1 admitted that he had failed to disclose about his previous marriage to the Appellant. He also admitted that he has no share in the suit property and that he has nothing to do with the suit property. He intentionally did not defend the rights of the Appellant and supported his father against her. Moreover, he lives with his wife in



Ghaziabad and has denied to pay maintenance to the Appellant. His admissions and conduct, reflect the collusion between the Plaintiff and the Defendant No. 1.

36. It is further asserted that the Appellant had been residing peacefully from 2009 to 2018 and the Suit has been filed only after she had filed matrimonial cases. The Suit has been filed to harass and evict her.

37. The complicity of the Plaintiff, is also evident from his own admission that though he claimed to have disowned both the sons and the Appellant, but he admitted that he did not publish any Notice about disowning in Gazette Notification. He also admitting having continuous visiting and talking terms with the Defendant Nos. 1 and 3. Her has participated in the proceedings favouring the Defendant No. 3.

38. It is asserted that both the Courts had failed to address this plea of collusion despite specific pleadings and evidence. Both the Courts have not appreciated the evidence correctly.

39. The Plaintiff had relied upon *unregistered GPA*, Ex.PW-1/2 as proof of ownership, when **Section 54 of the Transfer of Property Act, 1882** (for short 'TPA Act'), clearly provides that a Sale Deed is required to be executed for an immovable property above Rs.100/- and unregistered GPA cannot create any title as has been held in Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana, (2012) 1 SCC. The learned Courts have failed to consider that the Plaintiff failed to produce any registered Sale Deed, loan documents from Delhi Nagrik Sahkari Bank, Bank Statements, Income tax Returns and documents regarding previous family properties, in order to establish his ownership in the suit property and adverse inference under Section 114 of the Evidence Act, be drawn against him. The contradictions in the evidence have thus, not been noticed. **It is submitted that the substantial questions of law, which have arisen are:**



- (i) Whether unregistered GPA can be relied upon as proof of ownership for granting decree of possession; whether adverse inference should be drawn for non-production of documents.*
- (ii) Plaintiff has completely failed to prove his case on its own legs as per the judgement of various superior courts.*
- (iii) That the decree was obtained by respondents fraudulently by playing manipulations and by misrepresentation and concealing the true facts just to evict the appellant from her matrimonial home which is admittedly not a property of the plaintiff himself.*
- (iv) That the impugned order passed by Ld. Trial Court is based on surmises and conjectures.*
- (v) In the case in hand, the above noted case for appeal is squarely applicable as the herein.*
- (vi) It is also submitted that the respondents for their greed and lust and for their illegal and malafide intentions to Evict the appellant being a destitute wife of respondent No.2, filed the present suit by concealing the material facts and obtained the decree on the basis of false presentation of facts and in collusion. Hence, the Judgment and Decree passed in the said suit is liable to be set aside and quashed and not maintainable.*



- (vii) *It is submitted that it is well settled that manipulations vitiates everything. It is submitted that in the present case the decree has been obtained by fraud and the same is null and void in the eyes of law.*
- (viii) *That the appellant craves the leaves of this Hon'ble court for raising the other grounds which are available at the time of argument of the present appeal.*
- (ix) *That the proper court fees has affixed on the appeal and the appellant undertakes to pay the deficient court fee if any.*
- (x) *That the whole cause of action has arisen within the jurisdiction of this Hon'ble court at Karkardooma Courts in Northeast District, Delhi, and this Hon'ble court has legal and territorial jurisdiction to entertain the present Regular Second Appeal.*
- (xi) *That the appellant has not filed any similar appeal either before this Hon'ble court or any other court of law over the present subject matter.*
- (xii) *That the present appeal is filed within the period of limitation and appellant prayed to kindly condone the delay if any.*

40. It is, therefore, submitted that the impugned Judgment of the learned District Judge-01, North-East District, as well as the Judgment of the learned JSCC/ASCJ in the Civil Suit, be set-aside.

41. Learned counsel for the Appellant has addressed arguments on the similar lines as the grounds raised in the Appeal.



Submissions heard and record perused.

42. The Second Regular Appeal is maintainable only if there are substantial questions of law raised in the Second Appeal. The merits of the impugned Judgment be considered to ascertain if any substantial questions of law have emerged in this Second Appeal.

43. The Appellant has *firstly claimed* that the suit property was the ancestral property in which her husband/Defendant No. 1 was having a share and, therefore, she could not be evicted therefrom.

44. First and foremost, it has been categorically found by both the Courts that the Property was an ***individually acquired Property*** of the Plaintiff and was not ancestral. Further, the Appellant has asserted the plaintiff was claiming his ownership on the basis of Agreement to Sell, which do not create any ownership in his favour in terms of *Suraj lamp (supra)*, but she is claiming a right in the suit property, since it belongs to the Plaintiff. The contention raised is self-contradictory, for if the plaintiff is not the owner, then her suit to claim right of residence, itself fails.

45. The Appellant has further contended that **there was collusion between the Defendant No. 1 and the Plaintiff**, which was evident from the evidence as has been pointed out in the grounds of Appeal. It is claimed that if actually the Defendant No. 1 had been disowned on account of which he had shifted out of the Property, there would at least have been a publication in the Newspaper, which has not been done. It is further asserted that despite there being an apparent discord, it has been admitted by the Plaintiff that he is on talking terms with the son.

46. Here the question was not whether the Plaintiff was having cordial relationship with his son, but the question was ***whether the Plaintiff had a right to seek the eviction*** of the Appellant from the suit premises. The son along with his first wife, whether due to expulsion by the Plaintiff, his father



or on his own, had shifted to an independent Property, would not be a factor relevant to determine whether the Appellant has a right to reside in the Suit Premises. The material fact, which is held by both the Courts that the Defendant No. 1, the *elder son was not having a right to live in the Property* and once, the father withdrew his permission, the Defendants including the Appellant, lost their rights to continue to reside in the separate Property of the Plaintiff. ***There is a finding of fact in this regard, which cannot be subjected to any challenge in the Second Regular Appeal.***

47. The ***major argument of the Appellant, is her right of residence under Section 17 of the D.V. Act*** and her assertion that the suit property is a *shared household* from which, she cannot be evicted **except by due process of law**, as provided under Section 17(2) of the D.V. Act.

48. In *B.P. Achala Anand vs. S. Appi Reddy and Anr.*, 2005 (3) SCC 313, the right of a deserted woman in respect of the tenanted premises, was considered wherein it was held that once the husband loses a right of residing in the premises as available to him under the law, the wife would also suffer from such disentitlement so long as she resides in the premises.

49. Even otherwise, Section 17(2) of the D.V. Act, 2005 itself contemplates that an aggrieved person may be evicted or excluded from a shared household, ***provided it is done in accordance with the procedure established by law.*** The statutory scheme of the Act, more particularly **Section 19 read with Section 26**, further contemplates grant of alternative remedies to a woman claiming right of residence, including the remedy of alternate accommodation or payment of rent in lieu thereof, and does not bar initiation or continuation of civil proceedings before a competent court.

50. In the case of *Satish Chander Ahuja vs. Sneha Ahuja*, (2021) 1 SCC 414, the right of a woman to reside in the shared household, was considered extensively and it was held that where the shared household of a woman is



in the name of husband/father-in-law or any other relative, the Domestic Violence Act does not operate against such person. The embargo under Section 17(2) of the D.V. Act, is only to save the person from being evicted ***without following due process of law.***

51. The Supreme Court, in the case of Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414, has further authoritatively dealt with this aspect in the following terms:

"127. There can be no dispute with the proposition of law as laid down by this Court in the above two cases. In the present case, although the plaintiff has not claimed any relief against his son, Raveen Ahuja, the husband of the respondent, hence, he was not a necessary party but in view of the fact that the respondent has pleaded her right of residence in shared household relying on Sections 17 and 19 of the 2005 Act and one of the rights which can be granted under Section 19 is the right of alternate accommodation, the husband is a proper party. The right of maintenance as per the provisions of the Hindu Adoptions and Maintenance Act, 1956 is that of the husband, hence he may be a proper party in cases when the court is to consider the claim of the respondent under Sections 17 and 19 read with Section 26 of the 2005 Act."

...

*"133. Section 17(2) itself contemplates eviction or exclusion of aggrieved person from a shared household in accordance with the procedure established by law. The conclusion is inescapable that a proceeding in a competent court for eviction or exclusion is contemplated by the Statutory Scheme of the 2005 Act. **Thus, there is neither any express nor implied bar in initiation of civil proceedings in a court of competent jurisdiction.** Further, Section 26 also contemplates grant of relief of right of residence under Section 19 in any legal proceedings before a civil court or Family Court or criminal court affecting the aggrieved person. The proceedings might be initiated by aggrieved person or against the aggrieved person herself before or after the commencement of the 2005 Act. **Thus,***



initiation of the proceedings in the civil court and relief available under Section 19 of the 2005 Act is contemplated by the statutory scheme delineated by the 2005 Act."

52. Applying the aforesaid principles to the facts of the present case, Defendant No. 2 had pleaded that House No. G-234, Gali No. 13/7, Bhagirathi Vihar, Delhi was purchased by her maternal uncle, not the Plaintiff, and that she drew rent of Rs.2,000/-, not Rs.6,000/-, per month. However, the learned first Appellate Court found that despite this denial in the pleadings, no question or suggestion was put to the Plaintiff challenging his testimony in Ex.PW-1/A para 10, that he had purchased the property in Defendant No. 2's name to resolve the family dispute and that she was letting it out on rent. The first Appellate Court, accordingly, held this part of the Plaintiff's testimony unrebutted and unchallenged.

53. Proceeding on the basis of the aforesaid concurrent finding, it stands established that Defendant No. 2 holds in her own name, a house from which she draws rental income, and that this constitutes alternate accommodation within the meaning of **Section 19(1)(f) of the D.V. Act, 2005**. The object underlying **Sections 17 and 19 of the D.V. Act**, is to ensure that an aggrieved woman is *not rendered shelter-less or destitute*; thus already having been secured, Defendant No. 2 cannot contend that she would be rendered homeless upon eviction from the Suit Property.

54. It has been clearly established in the evidence that the Plaintiff, father-in-law, had revoked his permission to the son and his family from residing in the Suit Premises. Therefore, her rights of residence are *against her husband*, for which she has already filed the Petition under Section D.V. Act and also a Petition under Section 125 Cr.PC. The rights of the Appellant in the house of the Plaintiff, have been extensively considered by the learned Appellate



Court in the Judgment dated 06.01.2026, while upholding the Judgment of the learned JSCC.

55. The challenges in the present Second Regular Appeal, *are essentially on fact and no substantial question of law* has been raised.

56. In view of the foregoing, it is held that **there is no merit in the Appeal, which is hereby dismissed.**

57. Pending Application(s), if any, are also disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 11, 2026/RS