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

***Judgment reserved on: 14th May, 2026***
***Judgment pronounced on: 6th August, 2026***

\# **CNR No. DLHC010106752019**

\+ **RFA 128/2019 & CM APPL. 6667/2019, CM APPL. 17536/2020, CM APPL. 8014/2021, CM APPL. 31022/2023**

PADAM CHAND JAIN & ANR .....Appellants
Through: Ms. Radhika Chandrashekhar and Ms. Parul Sharma, Advocates

versus

ARUN JAIN .....Respondent
Through: Ms. Nidhi Mohan Parashar, Mr. Vikrant Kumar, Mr. Aman Bajpayee and Mr. Parthak Awasthi, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE AMIT BANSAL**

**JUDGMENT**

**AMIT BANSAL, J.**

1. The present appeal has been filed under Section 96 of the Code of Civil Procedure, 1908 ('CPC') impugning the judgment and decree dated 3rd January, 2019 (hereinafter 'Impugned Judgment'), passed by the Additional District Judge, Patiala House Courts, New Delhi (hereinafter 'Trial Court') in C.S. No. 58556/2016 titled '***Shri Arun Jain*** **v.** ***Shri Padam Chand and Anr***.'. *Vide* the Impugned Judgment, the Trial Court has passed a decree of declaration of

ownership and permanent injunction in favor of the plaintiff, by allowing the plaintiff's application under Order XII Rule 6 CPC.

2. The parties shall hereinafter be referred to by their original nomenclature before the Trial Court.

3. Brief facts necessary for the adjudication of the present appeal are as follows:

3.1. The plaintiff is the elder son of the defendant no.1. The defendant no.2 is the younger son of the defendant no.1.

3.2. The present dispute pertains to Flat No. 3389, 2nd Floor, Category 2, Pocket 3, Sector D, Vasant Kunj, New Delhi, along with one scooter garage ('suit property').

3.3. The suit property was originally allotted to the defendant no.1 by Delhi Development Authority, and converted into a freehold property in favor of the defendant no.1 *vide* Conveyance Deed dated 28th August, 2003.

3.4. Subsequently, the defendant no.1 executed a registered gift deed dated 5th February, 2007 ('Gift Deed'), transferring rights, title, and interest in the suit property in favor of the plaintiff.

3.5. The plaintiff concurrently executed a General Power of Attorney ('GPA') on 5th February, 2007 in favor of the defendant no.1 to manage and look after the suit property.

3.6. Disputes arose between the parties, pursuant to which the plaintiff revoked the GPA *vide* letter dated 5th December, 2013.

3.7. The defendant no.1 instituted CS No. 160/2013 for cancellation of the Gift Deed. At the stage of proceedings under Order VII Rule 11, CS No. 160/2013 was unconditionally withdrawn on 6th June, 2015.

3.8. Following subsequent disputes, the plaintiff instituted the underlying civil suit seeking a decree of declaration of ownership of the suit property and a permanent injunction restraining the defendants from alienating or creating third-party rights in the same.

3.9. During the pendency of the underlying civil suit, the plaintiff preferred an application under Order XII Rule 6 CPC, seeking summary disposition of the suit on the basis of alleged admission of the defendant no.1 admitting to the execution of the Gift Deed.

3.10. In response, the defendants filed a reply contesting the abovesaid application on the grounds of maintainability and new facts raised in the application.

3.11. On 3rd January, 2019, the Trial Court passed the Impugned Judgment, allowing the plaintiff's application under Order XII Rule 6 CPC and passing a decree of declaration of ownership and permanent injunction in favor of the plaintiff.

**FINDINGS OF THE TRIAL COURT**

4. The Trial Court decreed the suit in favour of the plaintiff on the basis of the findings below:

4.1. The execution of the Gift Deed stands squarely and expressly admitted by the defendant no.1. The preparation of the legal documents and procurement of stamp papers by defendant no.1 was undisputed, proving voluntary execution. (*Ref. Para 7.6 and 7.9 of the Impugned Judgment*)

4.2. The registered Gift Deed is absolute and unconditional. The close relationship between the parties further substantiates the voluntary nature of the gift. (*Ref. Para 7.7 and 7.8 of the Impugned Judgment*)

4.3. The concurrent execution of the GPA does not indicate that the Gift Deed was temporary. The GPA explicitly notes that it was executed because the plaintiff was residing in the USA and could not manage the property locally. (*Ref. Para 7.10 of the Impugned Judgment*)

4.4. Under Sections 91 and 92 of the Indian Evidence Act, 1872, no oral evidence or contrary oral arrangements can be admitted to contradict, vary, or subtract from the terms of a written registered document. (*Ref. Para 7.11 of the Impugned Judgment*)

4.5. The recitals of the registered Gift Deed explicitly record the handing over of possession. In any case, actual physical delivery of possession is not an essential pre-requisite for the legal validity of a gift. (*Ref. Para 7.14 and 7.15 of the Impugned Judgment*).

4.6. The plaintiff's right in the suit property, which devolved upon him on account of execution and registration of the Gift Deed, would not be affected merely because the original documents were with the defendant no. 1 (*Ref. Para 7.27 of the Impugned Judgment*).

4.7. Since the material fact of the execution of the registered transfer document stands admitted, no triable issue survived, making it a fit case for passing a judgment on admissions to avoid protracted trial. (*Ref. Para 7.25 of the Impugned Judgment*).

## PROCEEDINGS BEFORE THIS COURT

5. Notice in the present appeal was issued on 13th February, 2019, and a stay against the operation of the impugned judgement was granted.

6. The defendant no.1 expired on 23rd December, 2019, and subsequently, the daughter of defendant no.1 was impleaded as the respondent no.2.

7. On 23rd January, 2025, the defendant no.2 (appellant no.2) expired, and accordingly, on 6th March, 2025, the Ms. Nehal Jain and Komal Jain, the daughters of the appellant no. 2 were impleaded in the present appeal.

8. Oral submissions on behalf of the parties commenced on 23rd April, 2026. The submissions of the parties stood concluded on 14th May, 2026, on which date the judgment was reserved.

## SUBMISSIONS ON BEHALF OF THE APPELLANTS

9. The Trial Court committed an error in law by invoking the discretionary power under Order XII Rule 6 CPC. A judgment on admissions can only be passed where admissions are clear, unambiguous, and unequivocal. In the present case, several triable issues and disputed facts existed regarding the intent behind the Gift Deed.

10. The Gift Deed was a makeshift arrangement on the assurance that the plaintiff would serve his old aged parents. This is evidenced from the fact that on the same date a GPA was executed by the plaintiff in favour of the defendant no.1 as a back-to-back arrangement for keeping the defendant no.1's ownership over the suit premises intact and undisturbed.

11. The Gift Deed was never acted upon since the title deeds and the physical possession property of the suit property was never handed over to the plaintiff and always remained with the defendant no.1. Since neither the physical possession was handed over nor the original documents were handed over, the title in the property continues to vest with the defendant no.1.

12. The Gift Deed stood cancelled in light of the notice of revocation issued by the defendant no.1 dated 6th December, 2013. In terms of section 126 TPA the said cancellation was valid and the Gift Deed is no longer valid or subsisting. Further, the Gift Deed stood superseded by the Will dated 10th June, 2015.

13. The plaintiff introduced new facts through the application filed under Order XII Rule 6 CPC, which could not have been acted upon without a proper trial.

14. Registered gift deeds are liable to challenge under Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 ('Senior Citizens Act'), which came into force on 1st September, 2008. Accordingly, if the defendant no.1 sought cancellation of the Gift Deed after 1st September, 2008, such challenge would have a statutory basis under the said provision.

**SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

15. The status of the plaintiff as the sole and absolute owner of the suit property is premised on the Gift Deed. The execution and registration of the Gift Deed is not disputed by the defendants. The unconditional nature of the Gift Deed may be inferred from the terms of the Gift Deed, including clauses 1 to 7

of the Gift Deed. The Gift Deed was duly acted upon, as reflected from the mutation of utility records and payment of property taxes by the plaintiff.

16. The execution of the GPA on the same day does not dilute the legal effect of the Gift Deed. The GPA itself records the plaintiff as the absolute owner of the suit property and was executed only to enable the defendant no.1 to manage the property during the period when the plaintiff was residing abroad.

17. The defendant no.1 had instituted CS No. 160/2013 for cancellation of the Gift Deed. The said suit was unconditionally withdrawn on 6th June, 2015 and thereafter no proceedings for cancellation of the Gift Deed were instituted. It is pertinent to note, CS No. 160/2013 filed by the defendant no.1 was premised on the ground of fraud and misrepresentation, which is at variance with the reliance placed upon the GPA by the defendants in the present proceedings.

18. Once the signature and execution of a registered Gift Deed stand admitted, any plea of an underlying "oral understanding" or "makeshift arrangement" is barred by Sections 91 and 92 of the Indian Evidence Act, 1872. Reliance in this regard is placed on ***Promila Gulati* v. *Anil Gulati***[1].

19. The subsequent notice purporting to revoke the Gift Deed is legally untenable. Under Section 126 of the Transfer of Property Act, 1882, an unconditional gift can be revoked only in the circumstances expressly contemplated therein. As the Gift Deed contains no stipulation reserving any right of revocation, the unilateral notice dated 11th May, 2015 could not divest the plaintiff of the rights already vested in him.

[1] 2015 SCC OnLine Del 7406.

20. Delivery of physical possession is not an essential requirement for the validity of a registered gift under Section 123 of the Transfer of Property Act, 1882. The retention of possession or original documents by the donor, particularly when the plaintiff had executed a GPA in his favour for management of the property, does not affect the plaintiff's title. Reliance in this regard is placed on ***Sehdev Singh Verma* v. *J.P.S. Verma***[2].

21. The registered Gift Deed continues to remain valid and operative unless it is set aside by a competent court. Since no proceedings challenging the Gift Deed are pending, the defendants cannot question its validity in the present proceedings. Reliance in this regard is placed on ***Ramti Devi v. Union of India***[3].

22. The purpose of Order XII Rule 6 CPC is to expedite justice and the Trial Court correctly passed the Impugned Judgement in the present case. Reliance is placed on ***Charanjit Lal Mehra v. Kamal Saroj Mahajan***[4] for the proposition that admissions can be easily inferred from the pleadings and attending circumstances, and on ***Mohinder Singh Verma v. J.P.S. Verma***[5] to state that subsequent claims of oral conditions accompanying a registered gift deed are legally impermissible.

23. The reliance sought to be placed by the defendants upon Section 23 of the Senior Citizens Act is misconceived. The Gift Deed was executed prior to the enactment of the said Act and the donor never invoked the provisions thereof during his lifetime. The plaintiff's rights, having vested under a registered Gift

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[2] 2015 SCC OnLine Del 11654.
[3] 1995 (1) SCC 198.
[4] 2005 (11) SCC 279.
[5] 2014 SCC OnLine Del 2565.

Deed executed prior to the commencement of the Act, cannot be retrospectively defeated. Reliance in this regard is placed on ***Charanjit Singh Ahluwalia* v. *Union of India***[6], ***Human Rights and Social Welfare Forum* v. *Union of India***[7] and ***M.M. Ramesh* v. *M.S. Manikavasagam***[8].

## ANALYSIS AND FINDINGS

24. I have heard the learned counsel for the parties at length, examined the grounds of appeal, and carefully scrutinized the Trial Court record.

25. In the present case the plaintiff claims ownership of the suit property on the basis of the registered gift deed dated 5th February, 2007 executed by his late father, late Shri Padam Chand Jain, the defendant no.1. To be noted, neither the execution nor the registration of the Gift Deed has been denied by the defendants in their respective written statements. This amounts to an admission of the execution and registration of the Gift Deed.

26. It is evident from a perusal of the Gift Deed, that the Gift Deed was absolute and unconditional. In this regard, reference may be made to clause 3 the gift deed.

> *"3. <u>The DONEE-PARTY NO.2 has now become the absolute and exclusive owner with all rights of Ownership etc.</u> in the aforesaid only One freehold Flat on Second Floor alongwith One Scooter Garage on Ground Floor, fitted with Water and Electric connections with necessary fixtures and fittings, bearing Flat No.: 3389, Category 2nd, in Pocket – 3, Sector-D, situated at Vasant Kunj, New Delhi, from to-day and shall also enjoy all rights of Ownership etc. therein hereinafter including the sale thereof."*
>
> (emphasis supplied)

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[6] 2023 SCC OnLine Del 2730.
[7] 2021 SCC OnLine Ker 12268.
[8] 2026 SCC OnLine Mad 3006.

27. Clause 2 of the Gift Deed also records that actual physical possession of the subject property has been delivered to the defendant no.1 by the plaintiff. Clause 2 of the Gift Deed is set out below:

> *"That the actual, physical, vacant and peaceful possession of the aforesaid FLAT/PROPERTY UNDER DONATION shall be handed-over/ delivered to the DONEE PARTY NO.2 by the DONOR PARTY NO.1 at the Spot and the DONEE PARTY NO.2 has also accepted the same."*

28. A perusal of the recitals to the Gift Deed clearly shows that the defendant no.1 has voluntarily, out of love and affection made the gift in favour of his elder son, i.e., the plaintiff. The same are set out below:

> *"AND WHEREAS the DONOR PARTY NO.1 have voluntarily great love and affection with the DONEE NO.-2 Shri Arun Jain being HIS Real elder Son.*
>
> *AND WHEREAS the DONOR PARTY NO.1 <u>has agreed to voluntarily donate/gift</u> the aforesaid only One Free-hold Flat on second Floor alongwith One Scooter Garage on Ground Floor, fitted with Water and Electric connections with necessary fixtures and fittings, bearing Flat No.: 3389, Category 2nd, in Pocket-3, Sector-D, situated at Vasant Kunj, New Delhi, (hereinafter referred to as the FLAT/PROPERTY UNDER DONATION/GIFT) <u>UNTO</u> the DONEE PARTY NO.2 <u>on account of HIS great love and affection</u> with HIM who has also agreed to accept the same."*
>
> (emphasis supplied)

29. On the day of the execution of the Gift Deed, the plaintiff, who was residing abroad, executed a GPA in favour of the defendant no.1 for the purposes of management of the suit property. The said GPA also records that the plaintiff is the absolute owner of the suit property.

30. In the year 2013, the defendant no.1 had instituted a suit bearing CS (OS) No.160 of 2013 seeking cancellation of the Gift Deed. In the said suit, the

defendant no.1 alleged that he was fraudulently made to execute the Gift Deed. However, the said suit was unconditionally withdrawn by the defendant no.1 on 6th June, 2015. Subsequently, the defendant no.1 has not filed any further legal proceedings for cancellation of the gift deed.

31. The defence taken by the defendants in the written statements was that the gift deed was in the nature of a makeshift arrangement on the assurance that the plaintiff would serve his old aged parents. The GPA was executed on the same date by the plaintiff as a back-to-back arrangement for keeping the defendant no.1's ownership over the suit premises intact and undisturbed.

32. The aforesaid contention of the defendant no.1 is completely contrary to the terms of the Gift Deed as well as the GPA. In terms of the Gift Deed, as noted above, the plaintiff was to become the sole and absolute owner of the suit property. This fact is reiterated in the GPA executed on the same date. The aforesaid plea is also contrary to the case set up by the appellants in the earlier suit filed by him, i.e., CS (OS) No. 160 of 2013, wherein it was stated that the defendant no.1 was fraudulently made to enter into the Gift Deed.

33. In terms of Section 91 of the Indian Evidence Act, 1872, in respect of a written document, the document itself has to be admissible as a whole. Section 92 of the Indian Evidence Act, 1872 provides that no oral evidence can be led which is contrary to the written text of a document. In this regard reference may be made to the judgment of the Supreme Court in ***Roop Kumar v. Mohan Thedani***[9], followed by this Court in ***Promila Gulati* v. *Anil Gulati***[10]. Further, in

[9] (2003) 6 SCC 595.
[10] 2015 SCC OnLine Del 7406.

terms of section 94 of the Indian Evidence Act, 1872 when language used in a document is plain in itself and applies to existing facts, no evidence can be given to show that it was not meant to apply to such facts. Therefore, the Trial Court has correctly held that the defendants are barred from taking the aforesaid plea of 'oral understanding' or of 'makeshift arrangement' as the same is completely contrary to the written text of the Gift Deed.

34. It was further stated in the written statement that the defendant no.1 did not hand over the possession of the suit premises to the plaintiff. Since neither the physical possession was handed over nor the original documents were handed over, the title in the property continues to vest with the defendant no.1.

35. The aforesaid contention is contrary to the terms of the Gift Deed wherein it is clearly stated that possession has been handed over to the plaintiff. (*Ref. Clause 2 set out above*).

36. The defendants could not show any provision of law to support their contention that the handing over of the original title deeds or physical possession of the suit property is a mandatory requirement for making a valid gift.

37. Pertinently, in terms of section 123 of the Transfer of Property Act, 1882, (hereinafter 'TPA') the essential requirement for making a gift of an immovable property is execution of a registered document signed on behalf of the donor and attested by two witnesses. There is no requirement with regard to physical delivery of possession or handing over of the original title documents of a property. This Court, in ***Mohinder Singh Verma* v. *JPS Verma and Anr.***[11] has

[11] 2014 SCC OnLine Del 2565.

held that delivery of possession of gifted property is not an essential requirement for making a valid gift of immovable property. The relevant observations of the Court in this regard are set out below:

> *"35. **Significantly, Section 123 of the Transfer of Property Act while providing "Transfer how effected", for gift of immovable property, prescribes only execution of a registered document by the Donor and does not prescribe delivery of possession.** In fact it has been held by this Court in Wg. Cdr. (Retd.) R.N. Dawar v. Shri Ganga Saran Dhama AIR 1993 Delhi 19 that mere delivery of possession without registered document cannot tantamount to gift of immovable property. A Division Bench of the Punjab & Haryana High Court in Indar Singh v. Nihal Kaur AIR 1968 Punjab & Haryana 495 has held that the rule of Hindu Law that delivery of possession is essential to the validity of the gift is abrogated by Section 123, under which deliver of possession is no longer necessary to complete a gift except in case of movable property. Observations to the said effect can also be found in Nirshi Dhobin v. Dr. Sudhir Kumar Mukherjee AIR 1969 SC 864. Section 122, only requires acceptance of the gift on the part of the Donee and which has been done in the present case by the Donee being a party to the Gift Deed. **The argument raised of possession having not been delivered is thus misconceived as there is no requirement of delivery of possession.**"*
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> (emphasis supplied)

38. The aforesaid judgment was affirmed in appeal by a Division Bench of this Court in ***Sahdev Singh Verma vs. JPS Verma***[12] . The Trial Court has correctly placed reliance on the judgment of the Single Bench in ***Mohinder Singh Verma* v. *JPS Verma and Anr.***[13] and the Division Bench in ***Sahdev Singh***

[12] 2015 SCC OnLine Delhi 11654.
[13] 2014 SCC OnLine Del 2565.

***Verma vs. JPS Verma***[14] to hold that delivery of possession of gifted property is not an essential requirement for making a valid gift of immovable property.

39. The defendants have also placed reliance on section 126 TPA to contend that the Gift Deed had been revoked by the defendants *vide* communication dated 6th December, 2013.

40. As per section 126 TPA, a gift can be suspended or revoked only with a joint consent of the donor and the donee. The donor cannot unilaterally revoke the gift by issuance of a letter. In the present case there is no clause in the gift deed which provides for the revocation of the gift upon breach of a condition. The language of the gift deed clearly conveys that the same is absolute.

41. The Trial Court has correctly placed reliance on ***Asokan* v. *Lakshmi Kutty***[15], wherein the Supreme Court has held that a gift deed cannot be revoked under Section 126 TPA for failure of the donee to maintain the donor as there was no agreement between the parties that the gift could be suspended or revoked and the revocation could not be dependent on the will of the donor.

42. It is a settled position of law that for having a document cancelled or void, a declaration has to be given by a competent court of law. Until the document has been cancelled by a competent court, the duly registered document remains valid and binds the parties. Reference in this regard may be made to ***Ramti Devi v. Union of India***[16].

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[14] 2015 SCC OnLine Delhi 11654.
[15] (2007) 13 SCC 210.
[16] 1995 (1) SCC 198.

43. In the absence of any valid cancellation of the Gift Deed, the Gift Deed continues to exist and remains binding on the parties. Resultantly, the Will dated 10th June, 2015 relied upon by the defendants cannot over cannot supersede or subsume the rights that have already been granted under the earlier registered deed. Accordingly, the appellants could not revoke the aforesaid gift deed and the purported revocation is not in accordance with law.

44. During the course of submissions, counsel for the defendants placed reliance on section 23 of the Senior Citizens Act to contend that since the plaintiff did not take care of his father, the defendant no.1 was entitled to cancel the transfer of property made under the Gift Deed.

45. From a perusal of the Impugned Judgment, it appears that this ground was never taken before the Trial Court.

46. This court in ***Charanjeet Singh Ahluwalia vs. Union of India***[17], has held that the Senior Citizens Act, which came into effect on 29th December, 2007, would not affect the rights of the donee which were created earlier. Hence, the aforesaid Act would not have any retrospective operation. The relevant observations of the Court in this regard are set out below:

> *"13. This Court is in agreement with the view expressed by the High Court of Kerala. The Act did not intend to disturb the rights of the donee which has already been created and vested in him. The Legislature is conscious of the fact that vested rights of the donor are not to be given a retrospective operation despite the fact that the object of the Act is to provide for measures for welfare of senior citizens. This is not a case of casus omissus and this Court while exercising its jurisdiction under*

[17] 2023 SCC OnLine Del 2730.

*Article 226 of the Constitution of India cannot make the provision what the Legislature did not intend it to be*."

47. Similar view has also been taken by Kerala High Court in ***Human Rights and Social Welfare Forum Represented through its Chairman Dr. Vijeesh C Thilak*** **v.** ***Union of India Representated by Secretary***[18], and Madras High Court in ***M.M. Ramesh*** **v.** ***M.S. Manikavasagam***[19]**.**

48. Therefore, the reliance placed by the defendants on Section 23 of the Senior Citizens Act is misplaced.

49. In view of the aforesaid discussion, this Court is of the considered opinion that the execution and registration of the Gift Deed stand unequivocally admitted by the defendants. The defences sought to be raised by the defendants are contrary to the terms of the registered Gift Deed and the contemporaneously executed GPA, inconsistent with the stand taken by the defendant no.1 in the earlier suit for cancellation of the Gift Deed, and barred by the provisions of the Indian Evidence Act, 1872.

50. A Division Bench in ***P.P.A. Impex Pvt. Ltd.*** **v.** ***Mangal Sain Metal***[20], has held where the defence is in the nature of a moonshine defence and does not raise any real triable issue, the Court ought not to unnecessarily prolong the litigation by relegating the parties to trial. A coordinate bench of this Court in ***Rajeev Tandon v. Rashmi Tandon***[21], held that admissions for the purposes of Order XII Rule 6 CPC may be gathered not only from express pleadings but also from the

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[18] 2021 SCC OnLine Ker 12268.
[19] 2026 SCC OnLine Mad 3006.
[20] 2009 SCC OnLine Del 3866.
[21] 2019 SCC OnLine Del 7336.

documents placed on record and from constructive admissions arising out of vague and evasive denials.

51. The present case squarely falls within the aforesaid legal principles. The pleas of the defendants are self-contradictory, mutually destructive and do not disclose any *bona fide* or triable issue. The Trial Court, therefore, rightly exercised its jurisdiction under Order XII Rule 6 of the CPC and decreed the suit.

52. Accordingly, there is no merit in the present appeal and the same is dismissed.

53. Pending applications stand disposed of.

**AMIT BANSAL**
**(JUDGE)**

**AUGUST 6, 2026**
*at*