2026:DHC:6120

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

% ***Judgment reserved on: 21st May, 2026***
Judgment pronounced on: 31st July, 2026

\# **CNR No. DLHC014453832017**

\+ **RFA 908/2017, CM APPL. 54504/2023 & CM APPL. 69017/2025**

RAJINDER KUMAR .....Appellant
Through: Mr. Raman Kapur, Sr. Advocate with Mr. Siddhant Nath, Mr. Amaan Khan, Mr. Bhavishya Makhija and Mr. Divyansh, Advocates.

versus

SEWA RAM (SINCE DECEASED) THR HIS LRS & ANR .....Respondents
Through: Mr. Atul Shankar Mathur and Mr. Shubhankar, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 ('CPC') has been preferred by the appellant against the judgment and preliminary decree dated 29th August, 2017 passed by the Additional District Judge-09 (Central), Tis Hazari Courts, Delhi in Civil Suit No.613977/2016 (Old No.167/2011) titled as '***Shri Sewa Ram* v. *Shri Rajinder Kumar & Anr***'.

2. Parties in the present appeal shall be hereinafter referred to as per the nomenclature in the Trial Court. The appellant shall hereinafter be referred

to as 'defendant no.1' and the respondent no.1 shall hereinafter be referred to as 'original plaintiff' and the respondent no.2 shall hereinafter be referred to as 'defendant no.2'.

BRIEF FACTS

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

3.1. The property being *Shop Nos.7 and 8, Esplanade Road, Chandni Chowk, Delhi* ("suit property") was originally under the tenancy of Shri Devi Singh, the father of the original plaintiff, Shri Sewa Ram (since deceased). Upon the demise of Shri Devi Singh in the year 1986, the tenancy devolved upon the original plaintiff, who continued as the tenant under the then landlords, Smt. Suman Devi and, thereafter, Shri Preet Kumar Gupta.

3.2. The original plaintiff and defendants entered into a partnership deed dated 3rd August, 1989 for carrying on the business of photography under the name and style of *Mona Studio* from the suit property.

3.3. Under the partnership deed, the original plaintiff held a 50% share in the partnership, whereas the defendants held 25% share each. The original plaintiff was the sleeping partner, whereas the defendants were entrusted with the conduct of the partnership business and maintenance of the books of account. The partnership deed stipulated that the partnership would continue for a period of ten (10) years, unless extended by mutual consent of the partners.

3.4. Upon expiry of the aforesaid period of 10 years, the partnership came to an end on 2nd August, 1999. The original plaintiff issued a notice dated 20th June, 1999 expressing his intention not to continue the partnership business and called upon the defendants to settle the partnership accounts and hand over possession of the suit property.

3.5. The defendant no.1 instituted a civil suit for permanent injunction against the original plaintiff before this Court but the same was dismissed as withdrawn on 11th March, 2002. The counter claim of the original plaintiff was directed to be registered separately.

3.6. After the change of jurisdiction, the suit was transferred to the Court of Additional District Judge. Since there was some formal defect in the suit, the original plaintiff moved an application to withdraw the said suit with liberty to institute fresh suit on the same cause of action, which was allowed *vide* order dated 7th September, 2005.

3.7. Thereafter, the original plaintiff instituted the present suit against the defendants seeking dissolution of partnership, rendition of accounts and mandatory injunction directing the defendants to hand over possession of the suit property.

3.8. The defendants and original plaintiff filed their respective written statements. While admitting the execution of the partnership deed dated 3rd August, 1989, the defendants contended that original plaintiff had executed an *Ikrarnama*/Memorandum of Understanding (MoU) dated 29th April, 1995 acknowledging certain loan transactions and agreeing that, in the event of failure to repay the outstanding amount by 1st January, 1999, he would cease to be a partner and surrender his tenancy rights in the suit property in favour of the defendants.

4. By order dated 7th August, 2006, the Civil Judge framed issues in the suit.

5. Issue nos.4 to 7 were treated as preliminary issues.

6. *Vide* order dated 9th May, 2007, the Civil Judge decided the preliminary issue nos.4 to 6. With regard to issue no.4, the Civil Judge rejected the objections regarding non-joinder of parties. With regard to issue no.6, the Civil Judge rejected the bar under Order II Rule 2 of the CPC. With regard to issue no.5, the Civil Judge directed original plaintiff to appropriately value the relief relating to possession for the purposes of court fees and jurisdiction. With regard to issue no.7, the Civil Judge observed that the objection regarding maintainability would be decided after the parties had led evidence.

7. Thereafter, the original plaintiff appropriately enhanced the valuation of the suit and deposited the deficient court fees. Consequently, the suit came to be transferred to the Court of the Additional District Judge.

8. During the pendency of the suit, the original plaintiff expired on 6th December, 2009 and his legal representatives were brought on record.

9. By the impugned judgment dated 29th August, 2017, the Trial Court passed a preliminary decree for rendition of accounts of the partnership firm for ascertaining the dues of the original plaintiff for the entire period of partnership firm and appointed a Local Commissioner in this regard. The Trial Court also passed a decree for mandatory injunction directing the Local Commissioner to hand over possession of the suit property to legal representatives of the original plaintiff.

PROCEEDINGS BEFORE THIS COURT

10. Notice in the present appeal was issued *vide* order dated 20th November, 2017. *Vide* order dated 16th March 2018, the Court recorded that

despite service, none appeared on behalf of defendant no.2. Accordingly, defendant no.2 was proceeded *ex parte*.

11. *Vide* order dated 23rd March, 2018, the Court directed the defendant no.1 to pay an interim amount of ₹25,000/- per month to the legal representatives of original plaintiff, subject to restitution in the event the defendant no.1 succeeds in the appeal. The Court further recorded the statement made on behalf of the legal representatives of original plaintiff and directed that no further steps would be taken before the Trial Court for appointment of the Local Commissioner during the pendency of the present appeal.

12. The parties were referred for mediation twice during the pendency of the present appeal, however, the parties could not arrive at a settlement.

SUBMISSIONS ON BEHALF OF THE APPELLANT

13.1 Counsel appearing on behalf of the appellant submits that the impugned judgment has been passed without appreciating documentary evidence placed on record, including the *Ikrarnama*/MoU, the promissory notes, the statement of accounts, the original title deeds allegedly deposited by the original plaintiff, the rent receipts issued by the landlord in favour of the appellant/defendant no.1 and the forensic reports obtained during the criminal proceedings initiated by the original plaintiff, all of which, according to the appellant/defendant no.1, establish the genuineness of the *Ikrarnama*/MoU and the consequent transfer of tenancy in favour of the defendant no.1.

13.2 It is further submitted that the Trial Court failed to appreciate that the original plaintiff had executed the *Ikrarnama*/MoU dated 29th April, 1995 acknowledging the loan of Rs.10,15,940/- advanced by the defendants and agreeing that, upon failure to repay the outstanding amount before 1st January, 1999, he would cease to be a partner of the partnership firm and surrender his tenancy rights in favour of the defendants.

13.3 It is submitted that the original plaintiff admittedly failed to repay the said amount and, consequently, the partnership stood dissolved on 31st December, 1998 in terms of the *Ikrarnama*/MoU.

13.4 It is submitted that pursuant thereto, original plaintiff requested the landlord to transfer the tenancy in favour of the defendant no.1. Consequently, the tenancy stood transferred in favour of the defendant no.1 with effect from 1st January, 1999, whereafter the landlord accepted rent from the defendant no.1 and issued rent receipts in his favour. It is further submitted that no eviction proceedings were ever initiated by the landlord against the defendant no.1.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1

14.1 *Per contra*, counsel appearing on behalf of respondent no.1 submits that the Trial Court has correctly appreciated the pleadings and evidence on record.

14.2 It is submitted that the defendants failed to prove the execution of *Ikrarnama*/MoU dated 29th April, 1995. As per the defendants, *Ikrarnama*/MoU was executed in the presence of attesting witnesses, however, none of the said witnesses were examined. It is further submitted that mere marking of a document as an exhibit does not dispense with the requirement of proving its execution in accordance with the provisions of the Indian Evidence Act, 1872. Reliance is placed on ***Sait Tarajee Khimchand & Ors* v. *Yelamarti Satyam & Ors***[1].

14.3 It is further submitted that the FSL reports relied upon by the defendants were never proved by examining the concerned expert during trial. In any event, the expert opinion by itself cannot constitute conclusive proof of execution of the disputed document. Reliance is placed on ***State of Himachal Pradesh* v. *Jai Lal & Ors***[2], ***S. Gopal Reddy* v. *State of Andhra Pradesh***[3] and ***Chennadi Jalapathi Reddy* v. *Baddam Pratapa Reddy & Anr***[4].

14.4 Counsel further submits that the defendants also failed to establish the alleged loan transactions. The defendant no.1 himself admitted during cross-examination that no loan documents were executed at the time of alleged loans and that the alleged transactions were not reflected in the partnership accounts or income tax returns. Therefore, the Trial Court rightly rejected the defence founded upon the alleged loan transactions.

14.5 Counsel submits that the partnership deed dated 3rd August, 1989 clearly stipulated a fixed tenure of ten years, designated the original plaintiff as the sleeping partner and entrusted the defendants with the maintenance of the books of accounts. Upon expiry of 10 years and issuance of notice by the original plaintiff, the partnership stood dissolved by efflux of time, entitling the original plaintiff to rendition of accounts.

14.6 Lastly, it is submitted that the defendant no.1 failed to establish any lawful transfer of tenancy in his favour. The Trial Court rightly granted the

[1] (1972) 4 SCC 562
[2] (1999) 7 SCC 280
[3] (1996) 4 SCC 596
[4] (2019) 14 SCC 220

consequential relief of mandatory injunction directing restoration of possession of the suit property.

ANALYSIS

15. There is no dispute that the tenancy in respect of the suit property was in favour of the original plaintiff with effect from 1986. There is also no dispute that a partnership deed dated 3rd August, 1989 [Ex. PW1/B] was entered into between the parties. The salient provisions of the partnership deed are set out below:

i. The partnership deed acknowledged that original plaintiff was the tenant of the suit property.

ii. The partnership deed was for a period of 10 years, from 3rd August, 1989 to 2nd August, 1999.

iii. The original plaintiff held a 50% share in the partnership, whereas the defendants held 25% share each.

iv. The original plaintiff would remain the sleeping partner, and the defendants would actively conduct the business and maintain the books of accounts of the partnership firm.

v. Upon dissolution of the partnership, after settlement of the accounts and discharge of the assets and liabilities of the firm, possession of the suit property would be given to the original plaintiff and the assets and liabilities of the partnership would be divided proportionately.

16. The original plaintiff terminated the partnership deed *vide* notice dated 20th June, 1999 and called upon the defendants to settle accounts and hand over the possession of the suit property. Even otherwise, the partnership deed came to an end on 2nd August, 1999 by efflux of time.

17. The defendant no.1 has admitted the receipt of the aforesaid notice from the original plaintiff. However, no reply has been filed by the defendant no.1 to the said notice.

18. The defendants have taken a defence that the original plaintiff has relinquished all his rights as a tenant in the suit property and his rights as a partner in the partnership firm *vide Ikrarnama*/MoU dated 29th April, 1995 [Ex. D1W1/6]. On the other hand, it is the case of the original plaintiff that the said document was manipulated and forged.

19. The *Ikrarnama*/MoU is premised on a loan of Rs.10,15,940/-, taken by the original plaintiff from the defendants. Along with the *Ikrarnama*/MoU, a handwritten document [Ex. D1W1/7] has been filed, giving the details of various amounts of loans given by the defendants to the original plaintiff from time to time. As per the said document, the balance loan on 29th April, 1995, the date on which the *Ikrarnama*/MoU was executed, was Rs.10,15,940/-.

20. In the cross examination of the defendant no.1, he has admitted that no document or receipt was executed at the time of granting of the loan. The defendant no.1 has also admitted that the loan, which was the subject matter of Ex. D1W1/7, was not shown in the income tax returns, nor was any demand notice issued to the original plaintiff for the loan amount.

21. In light of the aforesaid evidence, the Trial Court correctly did not accept the case set up by the defendants with regard to there being a loan given to the original plaintiff. The Trial Court held that even if a loan was given by defendants and/or relatives of the defendants to the original plaintiff, the same was not relevant for the purposes of the suit.

22. The defendants have also placed reliance on the FSL reports dated 15th May, 2009 and 25th March, 2010 to show that the *Ikrarnama*/MoU contained the signatures of the plaintiff.

23. The aforesaid FSL reports were filed in a criminal complaint case bearing CC No.112/1/14 titled *Sewa Ram v. Rajinder Kumar*, instituted by the original plaintiff against the defendant no.1. The aforesaid FSL reports were not proved by the defendants in the present suit by producing any official/expert from FSL.

24. The Supreme Court in ***Jai Lal*** (supra) has held that an expert's report does not automatically become evidence merely because it is placed on record. The expert is required to enter the witness box and be subjected to cross-examination. The relevant paragraph of the said judgment is set out below:

> "*19.* ***The report submitted by an expert does not go in evidence automatically***. ***He is to be examined as a witness in court and has to face cross-examination***. *This Court in the case of Hazi Mohammad Ekramul Haq v. State of W.B.' concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons.*"
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> [emphasis supplied]

25. A Coordinate Bench of this Court in ***Novartis AG & Ors* v. *Natco Pharma Ltd.***[5] reiterated the principles laid down in ***Jai Lal*** (supra) and held as follows:

> "*58. In view of the above judgments, it is clear that the report of the expert does not go in evidence automatically. He is to be examined as a witness in court and has to face cross-examination. The scientific opinion, if convincing, becomes an important factor for consideration alongwith other evidence of the case.*"

[5] 2021 SCC OnLine Del 4849

26. A Coordinate Bench of this Court in ***Gautam Saluja* v. *Jitender Kumar Sethi & Anr***[6] has observed that an FSL report is merely an opinion of an expert and cannot be treated as substantive evidence. The relevant paragraphs of the said judgment are set out below:

> "*34. However, it cannot be overlooked that* ***FSL Report is only an opinion and supporting evidence and cannot be treated as substantive piece of evidence.*** *As has been held in S. Gopal Reddy v. State of A.P., (1996) 4 SCC 596 that the expert evidence constitutes opinion rather than direct substantive evidence, and that it must not replace substantive evidence. Furthermore, an expert testimony necessitates corroboration, which can only be gained through clear, direct or circumstantial evidence.*
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> *35. The Apex Court has further emphasized in State of Karnataka v. J. Jayalalitha, (2017) 6 SCC 263 that an Expert witness does not provide factual testimony; rather merely offers advisory insights. The Apex Court has cautioned against complete reliance on expert opinions alone, which was reaffirmed in the case of Jalapathi Reddy v. Baddam Pratapa Reddy, (2019) 14 SCC 220.*"
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> [emphasis supplied]

27. Therefore, this Court is of the view that the FSL reports relied upon by the defendants have not been proved in accordance with law.

28. The *Ikrarnama*/MoU [Ex. D1W1/6] contains signatures of two attesting witnesses present at the time of execution. However, the said witnesses were not produced by the defendants during trial. In fact, in his cross-examination, the defendant no.1 has stated that he does not remember the name of the witnesses, or whether the said document was attested or registered, or by whom and from where the stamp paper was purchased.

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[6] 2025 SCC OnLine Del 895

29. In ***Sait Tarajee Khimchand*** (supra) the Supreme Court has held that mere marking of the document as an exhibit does not dispense with the requirement to prove the said document in accordance with the law.

30. Accordingly, even though the *Ikrarnama*/MoU is marked as an exhibit, the same has not been proved in accordance with law by the defendants.

31. The defendant no.1 contended that the tenancy of the suit property was transferred by the landlord, Mr. Preet Kumar Gupta in the name of the defendant no.1 with effect from 1st January, 1999. Even though receipts have been filed by the defendants [Exhibit D1W1/8 to D1W1/34], the defendants had failed to prove the said receipts by summoning the landlord to appear as a witness.

32. The defendant no.1 in his evidence had stated that the original plaintiff had written a letter to the landlord Preet Kumar Gupta to transfer the tenancy in favour of the defendant no.1. However, in his cross examination, the defendant no.1 has admitted that he does not have the original or a copy of the said letter.

33. In the affidavit filed by PW-1, *i.e.*, son of the original plaintiff, it is stated that the original landlord, Shri Preet Kumar, had sold the suit property to Shri Nepal Giri and Shri Girish Giri. Upon purchase of the property, the said purchasers attorned the tenancy in the suit property in favour of his mother, Smt. Asha Devi. It is further stated that Smt. Asha Devi expired on 5th November, 2010, and thereafter, PW-1 and his brother continued as tenants under Shri Nepal Giri and Shri Girish Giri.

34. Significantly, PW-1 was not cross-examined by the defendants on this aspect, and therefore his testimony remained unrebutted. Hence, the

defendant no.1's plea that the tenancy had been transferred in his favour with effect from 1st January, 1999 was rightly rejected by the Trial Court.

35. In view of the aforesaid discussion, in the opinion of this Court, there is no infirmity in the judgment of the Trial Court which requires interference by this Court. The Trial Court has passed a well-reasoned judgment, after analysing the pleadings of the parties and the evidence led on behalf of the parties.

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

37. Pending applications stand disposed of.

AMIT BANSAL
(JUDGE)

JULY 31, 2026
Vivek/-