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

% ***Reserved on: 25th August, 2026***
Pronounced on: 10th September, 2026
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 # CNR No. DLHC010184142025

\+ **RFA 315/2025, CM APPL. 19777/2025**

1. ANIL KUMAR
S/o Sh. Rangi Lal
R/o H.No. 180-A, Ground Floor,
Kewal Park, Azadpur,
Delhi110033. .....Appellant No.1

2. **RAM ASHISH**
S/o Sh. Rangi Lal
R/o H.No. 180-A, First Floor,
Kewal Park, Azadpur,
Delhi-110033 ...Appellant No.2

Through: Mr. Peeyush Ranjan, Mr. Rajiv Ranjan & Mr. Varun Mor Advocates.

versus

RANGI LAL
Late Setu Ram
R/o H.No. 180-A, Third Floor,
Kewal Park, Azadpur,
Delhi-110033. .....Respondent

Through: Mr. Durgesh Gupta, Mr. Yogender Tomar, Advocates. Ms. Kirti Bhardwaj and Ms. Nikita Kaur, Advs. (through VC).

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 of the Code of Civil Procedure, 1908 *(hereinafter referred to as 'CPC')*, has been filed on behalf of the Appellants/Defendants assailing the impugned Order and Preliminary Decree dated 27.07.2024,whereby the Application filed by the Respondent/Plaintiff under Order XII Rule 6 of the CPC ***was allowed and the Suit was decreed qua possession*** *of the Ground Floor and First Floor of Property bearing No.180-A, Kewal Park, Azadpur, Delhi,* ***along with Permanent Injunction*** *restraining the Defendants from interfering with the peaceful enjoyment thereof or creating any third-party interest therein.*

2. The Plaintiff had instituted **Civil Suit bearing CS No.662/2019*****seeking Possession, Permanent Injunction and recovery of mesne profits/damages against the Defendants.***

3. The ***facts in brief,*** are that the Plaintiff, Sh. Rangi Lal, father of the two Defendants, namely, Anil Kumar and Ram Ashish, is the owner of Property bearing No.180-A, Kewal Park, Azadpur, Delhi, admeasuring 50 square yards *(hereinafter referred to as the 'suit property')*, which was purchased by him from Sh. Satish Garg and Smt. Santosh Garg,*vide* registered Sale Deed dated 29.03.2004.

4. The Plaintiff asserted that the suit property had been purchased by him from his own funds, for which he had also taken a loan, and was thereafter, constructed up to the Third Floor. The Defendants had neither contributed towards the purchase of the suit property nor towards its construction.

5. After the marriage of Defendant No.1,Sh. Anil Kumar the Plaintiff permitted him to reside on the *Ground Floor* of the suit property, as a licensee. Likewise, after the marriage of Defendant No.2, Sh. Ram Ashish, he was permitted to occupy the *First Floor* thereof, as a licensee.

6. However, with the passage of time, the relations between the Plaintiff and his sons became strained. The Defendants started quarrelling with the Plaintiff, used abusive and filthy language and also behaved disrespectfully towards his relatives and other persons visiting the house.

7. The Plaintiff, being a senior citizen, repeatedly requested the Defendants to maintain peace in the house and mend their conduct, but to no avail. The discord between the parties continued and the Plaintiff was also threatened and assaulted by the Defendants, on several occasions.

8. The Defendants also started pressurising the Plaintiff to execute documents in respect of the *Ground Floor* in favour of Defendant No.1, Anil Kumar and the *First Floor* in favour of Defendant No.2, Ram Ashish. On 26.09.2019, they again pressurised him to execute the said documents and threatened him with dire consequences and creation of third-party interest in the suit property, in case he failed to accede to their demand.

9. On account of the conduct of the Defendants, the Plaintiff severed his relations with them and disowned and debarred them from his movable and immovable properties, through Public Notices published in the newspapers *'Rashtriya Sahara'* dated 16.10.2019 and *'The Sikh Times'* dated 17.10.2019.

10. The Plaintiff also approached the local Police in respect of the disputes with the Defendants, however no action was taken on the ground that the dispute was civil in nature. The Plaintiff no longer wished the Defendants to continue residing in the suit property. Moreover, since the

Defendants had no right, title or interest therein, he apprehended that they may create third-party interest or part with possession of the portions occupied by them.

11. Thereafter, the Plaintiff issued a Legal Notice dated 18.11.2019 to both the Defendants, whereby their licence to occupy the Ground Floor and First Floor respectively, was terminated with effect from 20.11.2019 and they were called upon to hand over the peaceful and vacant possession of the respective portions in their occupation.

12. Despite termination of their licence, the Defendants failed to vacate the suit property and continued to remain in possession thereof. Their occupation, consequently became unauthorised, with effect from 20.11.2019.

13. The Plaintiff, thus, instituted the **present Suit seeking possession** of the Ground Floor and First Floor of the suit property; **permanent injunction** restraining the Defendants from transferring, alienating, parting with possession or creating any third-party interest in the said portions; and ***mesne* profits/damages @ Rs.10,000/- per month** from each Defendants, with effect from 20.11.2019 till handing over of the vacant possession thereof.

14. The Defendants, in their joint ***Written Statement***, contested the Suit and took *preliminary objections* that the Suit was not maintainable and was an abuse of the process of law.

15. It was stated that the Plaintiff had no *locus standi* to maintain the present Suit and that no cause of action had arisen in his favour. The objections were also taken that *material facts had been concealed,* the Site Plan filed by the Plaintiff was incorrect and the Suit had *not been properly*

valued for the purposes of Court Fee and jurisdiction. The market value of the suit property was stated to be more than Rs.1 crore.

16. The principal defence of the Defendants was that *they had contributed substantially towards the* ***construction and renovation*** *of the suit property.* Defendant No.1, Anil Kumar, stated that he had been working since the year 2004 and had been handing over his earnings to the Plaintiff, which were utilised towards construction of the suit property. He claimed to have earned about Rs.5,000/- to Rs.6,000/- per month since the year 2007 and about Rs.15,000/- per month, from the year 2008 onwards.

17. Defendant No.1, Anil Kumar, further stated that at the time of purchase of the suit property in the year 2004, only the Ground Floor and First Floor were constructed. The Second Floor was thereafter, constructed in the year 2007 and the Third Floor in the year 2019, from the earnings contributed by him to the Plaintiff. He had also incurred an expenditure of Rs.2,50,000/- towards the marriage of his younger brother Rahul on 29.11.2017. On the basis of these financial contributions, Defendant No.1 claimed a right, title and interest in the suit property.

18. Defendant No.2, Ram Ashish, likewise stated that he had started earning in the year 2004 and had earned about Rs.6,000/- to Rs.7,000/- per month since the year 2007, and about Rs.17,500/- per month from the year 2008 onwards. He too, had handed over his earnings to the Plaintiff, which were utilised towards construction and renovation of the suit property. He further pleaded that he had spent Rs.1,50,000/- towards the marriage of his younger brother Deepak, on 05.03.2019 and claimed a right, title and interest in the suit property on account of his financial contribution.

19. The Defendants further referred to the disputes which had arisen amongst the family members. The Plaintiff had lodged complaints dated 07.12.2018, 15.12.2018 and 03.01.2019 against the Defendants and their mother, which were made only to harass and humiliate them. A complaint was also stated to have been made against the Defendants by the father-in-law of their younger brother, Deepak in collusion and connivance with the Plaintiff.

20. The wives of the Defendants had also made a Complaint dated 22.09.2019 against the Plaintiff, pursuant to which officials from Police Station Adarsh Nagar had visited the suit property. The dispute was stated to have been amicably resolved and the parties agreed not to harass, humiliate or quarrel with each other.

21. According to the Defendants, the relations between the parties deteriorated after the marriage of their younger brother, Deepak, which eventually led to the institution of the present Suit on account of the family discord.

22. ***On merits***, the Defendants admitted their relationship with the Plaintiff. In response to the averments relating to ownership of the suit property, the *registration of the Sale Deed was stated to be a matter of record*. However, the averments that the suit property had been purchased from the Plaintiff's own hard-earned money, that he had taken a loan for its purchase and that the Defendants had made no financial contribution, were denied.

23. The Defendants specifically denied that they were inducted into their respective portions of the suit property as licensees, after their marriages. It was asserted that there was no documentary evidence evidencing creation of

any licence in their favour and, therefore, their occupation could not be treated as that of licensees.

24. The allegations that the Defendants had been disrespectful towards the Plaintiff, had quarrelled with or abused him, or had threatened or assaulted him, were specifically denied. The Defendants maintained that they had always respected the Plaintiff being their father and that the allegations had been concocted, merely to create a cause for institution of the Suit.

25. In regard to the Public Notices dated 16.10.2019 and 17.10.2019, the Defendants asserted that the publication thereof had no legal effect and could not divest them of the right, title and interest claimed by them in the suit property.

26. The Defendants further denied having pressurised the Plaintiff to execute documents in respect of the Ground Floor and First Floor in their favour or having threatened him with death or with creation of third-party rights.

27. In reply to the Plaintiff's apprehension that the Defendants may create third-party rights or part with possession of the suit property, it was stated in the Written Statement *that the Plaintiff was the **"absolute owner"** of the suit property and that the said fact was duly admitted by the Defendants.* It was consequently pleaded that there was no question of the Defendants creating any third-party interest or parting with possession thereof.

28. The Defendants denied that the Plaintiff had validly terminated any licence in their favour, with effect from 20.11.2019. They also denied receipt of the Legal Notice dated 18.11.2019 and consequently disputed

their alleged status as unauthorised occupants and their liability to pay damages/*mesne* profits @ Rs.10,000/- per month each.

29. The Defendants thus, sought dismissal of the Suit on the ground that no cause of action had arisen in favour of the Plaintiff and that, having contributed financially towards the construction of the suit property, they had a right and interest therein.

30. The Plaintiff filed a ***Replication***, wherein the assertions made by the Defendants were denied and the averments made in the Plaint were reiterated.

31. During the pendency of the Suit, **the Plaintiff filed an Application under Order XII Rule 6 of the CPC seeking a decree of possession and damages/*mesne* profits on the basis of the admissions contained in the Written Statement.**

32. It was stated that in their *reply to paragraph 3 of the Plaint*, the Defendants had not disputed the registered Sale Deed dated 29.03.2004 executed in favour of the Plaintiff by the erstwhile owners. The Plaintiff, therefore, asserted that the Defendants having admitted his title, no further adjudication was required *qua* the relief of possession.

33. The **Defendants opposed the Application** and reiterated that although the Plaintiff was the owner of the suit property, *they had also contributed substantial amounts towards raising construction thereon.* Significantly, in reply to paragraph 3 of the Application, they stated that the Plaintiff was the owner of the suit property under the registered Sale Deed and that there was, therefore, no question of denying the same.

34. In *reply to paragraph 5 of the Application*, the Sale Deed and ownership of the Plaintiff were again stated to be matters of record.

However, it was denied that the Defendants were occupying the suit property as licensees, on the ground that no Licence Agreement had ever been executed between the parties.

35. It was additionally asserted that *the suit property was ancestral property* in which the Defendants had a right, title and interest and that the Plaintiff was, therefore, not entitled to dispossess them therefrom.

36. The **learned District Judge, *vide* the impugned Order dated 27.07.2024,** observed that the Defendants had admitted that the Plaintiff was the owner of the suit property by virtue of registered Sale Deed dated 29.03.2004. The learned District Judge further took note of the Public Notice dated 17.10.2019, whereby the Plaintiff had disowned and debarred the Defendants from his movable and immovable properties, as also the Legal Notice dated 18.11.2019 whereby their licence to occupy the suit property had been terminated, w.e.f. 20.11.2019.

37. The registered Sale Deed dated 29.03.2004 in favour of the Plaintiff was held to establish his right over the suit property. The Defendants having themselves admitted the ownership of the Plaintiff in their Written Statement, it was observed that they had no *locus* to continue in possession thereof.

38. The plea of the Defendants that the suit property was ancestral property, was rejected on the ground that the same had been purchased by the Plaintiff from the erstwhile owners *vide* registered Sale Deed dated 29.03.2004. The suit property was, therefore, held to be the self-acquired property of the Plaintiff, of which he was the absolute owner. **The Plaintiff was thus, held entitled to recover possession of the suit property from the Defendants.**

39. Insofar as the claim for damages/*mesne* profits was concerned, the learned District Judge declined to grant the same at that stage, observing that the alleged contribution of the Defendants as also the question whether the suit property could fetch damages/*mesne* profits/user charges @ Rs.10,000/- per month ,required evidence.

40. Consequently, the Application under Order XII Rule 6 of the CPC was allowed and a **decree of possession** of the Ground Floor and First Floor of the suit property was passed in favour of the Plaintiff**. A decree of Permanent Injunction** was also passed restraining the Defendants from interfering with the peaceful enjoyment of the said portions and from creating any third-party interest therein.

41. *Aggrieved by the impugned Order and Preliminary Decree dated 27.07.2024, the Defendants have preferred the present Regular First Appeal.*

42. The ***grounds of challenge*** are that the impugned Order suffers from perversity and has been passed mechanically, without proper appreciation of the pleadings and the settled principles governing exercise of jurisdiction under Order XII Rule 6 of the CPC.

43. It is contended that the Application filed by the Plaintiff, did not disclose any clear, categorical, unequivocal and unconditional admission on the part of the Defendants so as to justify passing of a decree without trial.

44. It is asserted that the Written Statement had to be read as a whole and that the admission regarding existence of the registered Sale Deed in favour of the Plaintiff, could not have been considered in isolation from the other pleas raised by the Defendants.

45. The Defendants had specifically disputed the nature of their possession and asserted that they had *financially contributed towards renovation of the Ground Floor and First Floor and construction of the Second Floor and Third Floor of the suit property*. These contributions clearly give rise to an equal right and interest in the suit property, and the said plea required adjudication after evidence.

46. The Defendants further contend that the learned District Judge itself observed that their plea regarding contribution towards construction/ purchase of the suit property, was a matter of trial. Having so observed, the learned District Judge could not have proceeded to decree possession under Order XII Rule 6 of the CPC without first adjudicating the effect of the said contribution upon the rights claimed by the Defendants in the suit property.

47. It is further contended that the *relationship of licensor and licensee between the parties had been specifically denied in the Written Statement*. The Plaintiff had not produced any Licence Agreement or other document to establish that the Defendants had been inducted into possession of the Ground Floor and First Floor respectively, as licensees. The existence of the alleged jural relationship itself being in dispute, required trial.

48. The Defendants assert that the objections raised by them went to the root of the matter and were not inconsequential pleas which could be ignored, while exercising discretion under Order XII Rule 6 of the CPC.

49. A decree on admissions could not have been passed merely on the basis of certain isolated statements in the pleadings, particularly when the defence, read in its entirety, disputed the entitlement of the Plaintiff to recover possession.

50. Reliance has been placed upon *Razia Begum v. Sahebzadi Anwar Begum & Ors.,* 1959 SCR 1111, to contend that even where an admission is found in the pleadings, the Court is not bound to dispense with proof and may still require the Plaintiff to establish the fact so admitted. Reference has also been made to Section 53 of the Bharatiya Sakshya Adhiniyam, 2023, which preserves the discretion of the Court to require proof of an admitted fact.

51. Reliance has also been placed upon *S.M. Asif v. Virender Kumar Bajaj*, (2015) 9 SCC 287, wherein the Supreme Court observed that the power under Order XII Rule 6 of the CPC is discretionary and that where objections raised by the Defendant go to the root of the matter and require appreciation of evidence, it would not be appropriate to decree the Suit on admissions.

52. The Defendants have further relied upon *Vijay Kumar Jain (Since Deceased Through LRs) v. Suresh Kumar Jain,* 2022 SCC OnLine Del 2229, to contend that while considering an Application under Order XII Rule 6 of the CPC, the Court must remain conscious that the Suit is being decreed without trial and that where an issue raised by the Defendant requires adjudication, passing of a decree on admissions would deprive the Defendant of an opportunity to have such issue tried.

53. It is thus, contended that the learned District Judge erred in exercising discretion under Order XII Rule 6 of the CPC and in granting the reliefs of possession and permanent injunction, without permitting the Defendants to establish their defence by leading evidence.

54. During the course of arguments, the ***Learned Counsel also relied upon Section 60(b) of the Indian Easements Act, 1882*** to contend that,

even assuming the Appellants to be licensees, the licence had become irrevocable on account of the permanent construction raised with their financial contribution.

55. Additionally, it was argued that since Issues had already been framed *vide* Order dated 02.08.2023, the disputes raised in the Written Statement necessarily required adjudication after evidence and could not thereafter, have been concluded by invoking Order XII Rule 6 of the CPC.

56. *Per contra*, **Learned Counsel for the Respondent/Plaintiff** supported the impugned Order and submitted that the learned District Judge had rightly decreed the Suit on the basis of the clear admissions contained in the pleadings.

Submissions heard and the record perused.

57. The essential question which arises for consideration is: *whether the admissions contained in the pleadings were clear and unequivocal so as to entitle the Plaintiff to a decree of possession under Order XII Rule 6 of the CPC.*

58. The registered Sale Deed dated 29.03.2004 in favour of the Plaintiff and the ownership of the Plaintiff in the suit property, have not merely remained undisputed, but stand admitted by the Defendants at more than one place in their pleadings.

59. The Defendants stated in paragraph 3 of the Written Statement, that "……***the contents of para no. 3 of the plaint are matter of record to the extent of registration of sale deed*** *and rest of the para is wrong, false and hence denied……".*

60. In paragraph 11 of the Written Statement, the Defendants categorically stated as under:

> *"It is submitted that when **the Plaintiff is the absolute owner of the suit property and said fact was duly admitted by the defendants**, hence the question of creating third party interest or part with possession in the suit property does not arise at all."*

61. *The same admission was made i*n their Reply to the Application under Order XII Rule 6 of the CPC, the Defendants once again stated that *"when the Plaintiff is the owner of the suit property, as per the registered sale deed, hence the question of denied the same does not arise at all."*The Sale Deed and ownership of the Plaintiff were again stated to be matters of record, in *reply to paragraph 5* of the said Application.

62. The aforesaid pleadings, when read conjointly, constitute clear and categorical admissions on the part of the Defendants that the registered Sale Deed dated 29.03.2004 stands in favour of the Plaintiff and that the Defendants admitted that the Plaintiff as the *"absolute owner"* of the suit property. These admissions, made not once but repeatedly across the Written Statement and the Reply to the Application, *leave little room for any ambiguity.*

63. It is equally pertinent that the Defendants have not set up a case that they are the owners of the suit property. Significantly, the Defendants themselves described the Plaintiff as the *"absolute owner"* of the suit property. Their endeavour to claim a right in the suit property, is essentially *founded upon the financial contributions allegedly made by them towards its construction and renovation.*

64. The Defendants have asserted that they had been handing over their earnings to the Plaintiff and that the same were utilised towards the construction and renovation of the suit property. On the strength of such contribution, they seek to claim a right, title and interest therein.

65. Even if the said assertion of financial contribution is taken at its highest, there is no plea of any joint acquisition, transfer, conveyance, family arrangement or other arrangement by which any proprietary interest in the suit property was intended to be or was created in favour of either of the Defendants.

66. The *mere fact* that a son may have contributed his earnings towards the construction or renovation of a property standing in the name of his father, though not supported by any cogent details, does not, in itself, confer upon him any right of ownership in the property. Though the averments in this regard are omnibus, vague and bereft of any details, even if it is accepted that they made contribution by giving salary to the Plaintiff, but that does not, under law make them the co-owners. It cannot be overlooked that even if it is accepted that they made some contribution, but there is not a single detail of what amount and when it was given. Such omnibus defence, does not create any proprietary right in favour of the defendants.

67. Thus, the observation of the learned District Judge that the alleged contribution of the Defendants may be a matter of evidence, cannot be understood to mean that such contribution, even if ultimately established, would *ipso facto* confer any ownership right upon them. The question whether such contribution was in fact, made may require evidence; however, ***proof of contribution simpliciter is distinct from proof of a proprietary interest in the suit property.*** In the absence of any pleaded legal foundation

for creation of such proprietary interest, the alleged contribution *cannot be permitted to dilute, much less displace, their own categorical and repeated admission that the Plaintiff is the* ***absolute owner*** *of the suit property.*

68. The Defendants have also sought to assert a right in the suit property, by contending that the same is *ancestral in nature.* An ancestral property, in Hindu law, is one in which a coparcener acquires an interest by birth by reason of its devolution through the paternal line. The said plea, however, is wholly inconsistent with the admitted document namely the sale deed in favour of the plaintiff.

69. Admittedly, the suit property was purchased by the Plaintiff from the erstwhile owners, Satish Garg and Santosh Garg, *vide* registered Sale Deed dated 29.03.2004. There is no factual foundation as to the ancestor from whom the suit property devolved, the manner of such devolution, or as to how a property acquired by the Plaintiff from third parties under a registered Sale Deed , to acquire the character of ancestral or joint family property.

70. It is well settled that a *mere assertion* that a property is ancestral or joint family property, without the requisite factual details as to when and in what manner it acquired such character, is insufficient.

71. The Supreme Court in *C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar,* AIR 1953 SC 495, recognised the distinction between ancestral property and the separate or self-acquired property of a Hindu male, over which he has full powers of disposition. The Court further emphasised that, in determining whether a property is ancestral, regard must be had not merely to the relationship between the parties, but also to the mode by which the property came to be held.

72. Thus, a property acquired by the Plaintiff from third parties under a registered Sale Deed *cannot acquire an ancestral character, merely by reason of the relationship of father and sons.*

73. The burden to establish that the suit property is ancestral, also lies upon the Defendants who assert such character. In *Govindbhai Chhotabhai Patel & Ors. v. Patel Ramanbhai Mathurbhai*, Civil Appeal No.7528 of 2019, decided on 23.09.2019, the Supreme Court held that the burden of proving that a property was ancestral lay upon the party asserting the same and, in the absence of the necessary averment or proof, the property cannot be treated as ancestral.

74. In the present case, the Defendants have neither pleaded the ancestor from whom the suit property allegedly devolved nor the manner in which such devolution took place. There is also no fact explaining how a property admittedly acquired by the Plaintiff from third parties under the registered Sale Deed dated 29.03.2004 came to acquire an ancestral character. The bare assertion that the suit property is ancestral, therefore, does not discharge the burden resting upon the Defendants and cannot create a triable issue contrary to the admitted documentary position.

75. The plea raised for the first time without any factual moorings, is a bald assertion masquerading as a defence and cannot be permitted to create a triable issue where none exists, on the admitted record. It does not survive scrutiny once tested against the admitted facts.

76. The Defendants have further contended that they were not the Licensee as *no written Licence Agreement* had been executed between the parties. The absence of a formal written instrument, is not determinative of the nature of possession. Admittedly, the defendants, being the sons, had

been permitted to reside in the specific portions, along with their family, and their possession was only permissive, in the nature of Licensee of the plaintiff.

77. Lastly, the learned counsel for the Appellants has sought to invoke *Section 60(b) of the Indian Easements Act, 1882* to contend that even if their occupation is treated as that of licensees, the licence had become irrevocable on account of the permanent construction raised from their financial contribution.

78. Before considering this contention, it is apposite to examine *the nature of a licence and the scope of Section 60 of the Indian Easements Act, 1882.*In classical jurisprudence, *as explained by Salmond, **a licence** is understood as a permission which renders lawful that which would otherwise be unlawful. It does not create any proprietary right in the property, but merely confers a personal privilege to do an act upon the property of another.*

79. The essential attribute of a licence, therefore, is its permissive character. It does not confer any independent right in the property, nor does it create any interest in favour of the licensee. The continuance of such right is wholly dependent upon the will of the grantor, and the licensee derives his authority only so long as such permission subsists.

80. This principle is incorporated in ***Section 52 of the Indian Easements Act, 1882***, which *defines a licence as a right to do, or continue to do, something in or upon the immovable property of the grantor, which would, in the absence of such right, be unlawful, but which does not amount to an interest in the property. **The statutory definition thus, emphasises the absence of any proprietary element in a licence.***

81. In view of its purely permissive nature, a licence is ordinarily revocable at the instance of the grantor. The licensee cannot claim any vested or enduring right to remain in possession, once such permission is withdrawn, unless the case falls within the limited exceptions recognised by law.

82. ***Section 60 of the Indian Easements Act, 1882,*** *embodies these exceptions* by providing that a licence, though generally revocable, may become irrevocable, in certain defined circumstances. These exceptions are in the nature of statutory limitations on the general rule of revocability and are to be applied strictly, having regard to the nature of a licence as a personal and non-proprietary right.

83. ***Section 60(b) of the Indian Easements Act, 1882***reads as under:

> ***"60. License when revocable -*** *"A licence may be revoked by the grantor, unless—*
> …
> ***(b)*** *the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution."*

84. Section 60 carves out two exceptions to the general rule of revocability. Insofar as clause (b) is concerned, the licence becomes irrevocable where the licensee, ***acting upon the licence, has executed a work of permanent character and incurred expenses thereon in its execution.*** Being an exception to the general rule of revocability, the provision must be strictly construed and the burden squarely lies on the licensee to establish its applicability.

85. The essential ingredients of Section 60(b), are ***threefold***:

(i) ***firstly***, the licensee must have executed a work of a *permanent character* on the property;

(ii) ***secondly***, such work must have been executed *"acting upon the licence",* that is, pursuant to and within the scope of the permission granted, and with the knowledge and consent of the licensor; and

(iii) ***thirdly***, the licensee must have *incurred expenses* in the execution of such work. The absence of any one of these conditions is fatal to the plea of irrevocability

86. In *Shankar Gopinath Apte v. Gangabai Hariharrao Patwardhan*, (1976) 4 SCC 112, the Supreme Court explained the expression *"acting upon the licence"* occurring in Section 60(b). It was held that even if a person has executed work of a permanent character, the protection of Section 60(b) would not be available *unless such work was executed in his capacity as a licensee.* Where the work is carried out under some other assertion of right, such as in the belief of being a tenant, prospective purchaser or owner, it cannot be said that the work was done "*acting upon the licence".*

87. Likewise, in *Ram Sarup Gupta v. Bishun Narain Inter College & Ors.,* (1987) 2 SCC 555, the Supreme Court held that the permanent construction must be directly referable to the licence and undertaken in furtherance of the very purpose for which the licence was granted. ***Thus, it is not the mere existence of a permanent construction, but its nexus with the licence, which is determinative.***

88. In *__Mumbai International Airport Pvt. Ltd. v. Golden Chariot Airport,__* (2010) 10 SCC 422, the Supreme Court further explained that mere expenditure or investment, even if substantial, does not *ipso facto* render a licence irrevocable unless the requirements contemplated under Section 60(b) are established. The Apex Court *clarified that the doctrine of irrevocability of a licence is of limited application* and underscored that a licence does not create any interest in immovable property and that irrevocability is not the norm and arises only in limited circumstances.

89. In this case, despite the licensee having incurred expenditure in fitting out and commercially utilising the licensed premises, the Court declined to treat the licence as irrevocable, holding that mere investment or expenditure, even if substantial, does not satisfy the requirements of Section 60(b). *It was clarified that unless the construction or expenditure is shown to be authorised and undertaken in pursuance of the licence, the protection of Section 60(b) cannot be invoked.*

90. The plea of the Appellants under Section 60(b) has to be tested in the light of the law, so discussed. Their case in the Written Statement is that they had been handing over their earnings to the Plaintiff and that such earnings were utilised towards the construction and renovation of the suit property. There is, however, no plea that the Plaintiff had permitted either of them, in their capacity as licensee, to execute any particular work of permanent character or that, acting upon such permission, they themselves executed such work and incurred expenditure thereon.

91. Significantly, the licence asserted by the Plaintiff was to permit Defendant No.1 and Defendant No.2 to reside on the Ground Floor and First Floor respectively. *There is* ***no pleaded nexus*** *between the permission to*

occupy their respective portions and the alleged construction relied upon by them, much less any assertion that such construction was undertaken in furtherance of the licence.

92. Thus, even if the alleged financial contribution is taken at its highest, the same does not satisfy the ingredients of Section 60(b). The mere contribution of earnings which may have been utilised towards construction of the property, *cannot be equated with execution of a work of permanent character by the licensee, acting upon and in furtherance of the licence, and incurring expenses in the execution thereof.* Thus, when tested on the aforesaid principles, the plea of irrevocability of licence, does not arise from the case set up by the Defendants.

93. The contention that Issues had already been framed *vide* Order dated 02.08.2023,also does not advance the case of the Defendants. The prior framing of Issues is not, by itself, an absolute bar to the exercise of jurisdiction under Order XII Rule 6 of the CPC. What is material is whether, upon a consideration of the pleadings as a whole, any genuine triable issue survives *qua* the relief sought to be decreed. The framing of Issues, therefore, does not come to their aid *qua* the relief of possession.

94. The position which thus, emerges is that while the Plaintiff is the admitted absolute owner of the suit property, the Defendants have been unable to disclose any independent right, title or interest which would entitle them to continue in possession thereof. Their occupation of the Ground Floor and First Floor respectively could continue only so long as such permission subsisted. Their relationship as sons residing in the property of the admitted owner, does not confer any enforceable right to continue against his wishes.

95. The Plaintiff, by publication of the Public Notices dated 16.10.2019 and 17.10.2019, severed his relations with the Defendants and thereafter, *vide* Legal Notice dated 18.11.2019, specifically withdrew the permission granted to them and called upon them to hand over the vacant possession of their respective portions with effect from 20.11.2019.Once the permission to occupy the suit property stood withdrawn, the Defendants, in the absence of any independent right, title or interest in the suit property, had no subsisting right to continue in its occupation.

96. In light of the aforesaid discussion, the contention that there were no clear and unequivocal admissions warranting exercise of jurisdiction under Order XII Rule 6 of the CPC, ***cannot be accepted.***

Conclusion:

97. The ownership of the Plaintiff under the registered Sale Deed dated 29.03.2004 has been ***expressly and repeatedly admitted by the Defendants***, while none of the pleas raised by them disclose any independent right, title or interest which would entitle them to retain possession of the suit property.

98. The learned District Judge has, therefore, rightly held that the Plaintiff is entitled to recover *possession of the suit property* and *Permanent Injunction* to restrain the Defendants from creating any third-party interest therein.

99. There is no infirmity in the impugned Order and *Preliminary Decree of Possession/Permanent Injunction dated 27.07.2024*, warranting interference.

100. **Consequently, the present Appeal is devoid of merit and is hereby, dismissed.**

101. The pending Application(s), if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 10, 2026/R