



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

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***Reserved on: 26th May, 2026
Pronounced on: 31st August, 2026***

CNR No : DLHC010050402025

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RFA 104/2025, CM APPL. 7134/2025

RAHUL CHAUDHARYAppellant
Through: Mr. Arun Sharma and Mr. Sandeep
Tyagi, Advocates.

versus

RAJ RANI UPPALRespondent
Through: Mr. Sanjiv Bahland Mr. Sumit Ahuja,
Advocates.

CNR No : DLHC010113802025

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RFA 222/2025, CM APPL. 13353/2025, CM APPL. 13355/2025

KAMAL KANT SHARMAAppellant
Through: Mr. Arun Sharma and Mr. Sandeep
Tyagi, Advocates.

versus

RAJ RANI UPPAL & ANR.Respondents
Through: Mr. Sanjiv Bahland Mr. Sumit Ahuja,
Advocates.

**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 Appeals under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as the "CPC"*) have been preferred against the Judgments and Decrees dated 09.10.2024 and 15.10.2024, passed by the learned District Judge-01, Delhi.
2. *The RFA-104/2025* has been preferred by the Appellant/Defendant, **Rahul Chaudhary** against the Judgment and Decree dated 09.10.2024 passed in CS No.328/2021, whereas *RFA-222/2025* has been preferred by the Appellant/Defendant No.1, **Kamal Kant Sharma** against the Judgment and Decree dated 15.10.2024 passed in CS No.460/2021.
3. The learned District Judge, *vide* the respective impugned Judgments and Decrees, decreed the Suits *qua* the relief of **Possession against the Appellants, under Order XII Rule 6 CPC.**
4. Since both the Suits pertain to different portions of same Property bearing No.36/7, East Punjabi Bagh, New Delhi-110026 and arise out of an interconnected set of facts, including a common defence founded upon an Agreement to Sell dated 16.11.2016, the two Appeals are being decided by this common Judgment.

Civil Suit No. 328/2021: Filed by Raj Rani Uppal against Rahul Chaudhary for Possession, Arrears of Rent, Damages/Mesne Profits and Permanent and Mandatory Injunction:

5. The **Plaintiff, Raj Rani Uppal** filed the Civil Suit against the **Defendant, Rahul Chaudhary** for *Recovery of Possession, Arrears of Rent, Damages/Mesne Profits and Permanent and Mandatory Injunction* in respect of the Upper Ground Floor of Property bearing No. 36/7, East



Punjabi Bagh, New Delhi-110026 (*hereinafter referred to as the "Suit Property"*).

6. The ***facts in brief***, as narrated in the Complaint, are that the Defendant, Rahul Chaudhary was inducted as a tenant *vide* Rent Agreement dated 31.08.2016, at a monthly rent of Rs.32,000/-, excluding electricity, water and other charges, for the period commencing from 10.09.2016 till 09.09.2019, in respect of the **Upper Ground Floor** of the suit property.

7. The Defendant for the *first eleven months of the tenancy*, from September, 2016 to July, 2017, paid the monthly rent of Rs.32,000/- through cheques. During this period, in the month of February, 2017, the Defendant deposited Rs.5,00,000/- on 08.02.2017 and Rs.2,50,000/- on 13.02.2017 in the bank account of the Plaintiff, which were towards the advance rent payable upto June, 2019. The Defendant thereafter, requested that the security deposit of Rs.64,000/- be adjusted towards the rent for the months of July and August, 2019, as the tenancy was due to expire in September, 2019.

8. Upon the request of the Defendant, the tenancy was orally extended in September, 2019, at an enhanced rent of Rs.37,000/- per month. On 06.09.2019, the Defendant transferred a sum of Rs.1,50,000/- into the account of the Plaintiff by way of bank transfer, towards rent for the period from September to December, 2019.

9. Thereafter, a **fresh Rent Agreement dated 06.12.2019** was executed between the parties, whereby the rent was fixed at Rs.37,000/- per month for next eleven months i.e. from 01.01.2020 to 30.11.2020 and was further enhanced to Rs.40,700/- per month for the period from 01.12.2020 to 31.10.2021, excluding electricity, water and other charges. During this



period, on 12.12.2019, the Defendant paid a sum of Rs.1,00,000/- in cash to Mr. Manoj Kumar Uppal, son of the Plaintiff, towards rent for the months of January and February, 2020 and part rent of March, 2020.

10. However, the Defendant defaulted in making the payment of rent regularly. Consequently, *a sum of Rs.4,67,800/- became due towards arrears of rent upto March, 2021, which remained unpaid despite repeated requests and reminders.*

11. The Plaintiff further stated that the relations between the parties were cordial and like a family, therefore, it had been orally agreed that one room in the suit property would remain dedicated for the use of the Plaintiff and her family members, during their visits to India from USA. The Plaintiff had also kept some of her original documents and articles in the almirah, in the said room. On account of the said arrangement, the suit property had been let out at a rent which was about 25% lower than the prevailing market rent.

12. The Plaintiff was shocked to find that on 23.01.2021, the Defendant did not allow Mr. Manoj Kumar Uppal, son of the Plaintiff, to enter the premises to inspect the documents and articles of the Plaintiff lying therein. The Plaintiff thereafter, returned to India from USA on 20.02.2021, but was unable to stay in the said room and had to make alternative arrangements for her stay.

13. The Plaintiff thus, *issued a Legal Notice dated 01.03.2021*, terminating the tenancy of the Defendant and demanding arrears of rent of Rs.4,67,800/- along with interest @ 24% per annum. The Defendant was also called upon to pay damages/*mesne* profits @ Rs.55,000/- per month along with interest @ 24% per annum.



14. Hence, the *Suit* was filed seeking Possession, Arrears of Rent, Damages/Mesne Profits and Permanent and Mandatory Injunction.

15. The Defendant, Rahul Chaudhary, in the **Written Statement** took the preliminary objection that there existed ***no relationship of landlord and tenant*** between the parties and that the Plaintiff had approached the Court with a concocted and false story. It was further submitted that *Mr. Kamal Kant Sharma* was a necessary and proper party in the absence of whom, the Suit was *bad for non-joinder of necessary parties*.

16. The Defendant, Rahul Chaudhary admitted that he was inducted as a tenant in the suit property *vide* Rent Agreement dated 31.08.2016. The vacant possession was handed over to the Defendant by the Plaintiff on 10.09.2016.

17. He further stated that the Plaintiff is a USA citizen and used to frequently visit India. He denied that one room was kept locked for the stay of the Plaintiff or that she used to reside in that one room whenever she came to India. It was asserted that after 10.09.2016, whenever she visited India, she resided at the residence of her relative, Ms. Dolly Sapra at East Punjabi Bagh.

18. In the last week of October, 2016, i.e. barely after a month, the Plaintiff conveyed her intention of selling the ***Upper Ground Floor as well as Third Floor with roof rights of the Suit Property*** as she was in dire need of money and thus, wanted to sell the properties.

19. She also informed that a litigation connected to the said Property, *vide* CS (OS) 1817/2007 titled "*Smt. Raj Mohini & Ors. vs. Smt. Raj Rani Uppal & Ors.*", was pending in this Court. She stated that there was every



likelihood of her succeeding in the litigation, as it had already been directed to be listed in the list of '*Finals*'.

20. The Defendant conveyed the wishes of the Plaintiff to Mr. Kamal Kant Sharma and eventually, the Defendant and Mr. Kamal Kant Sharma, ***Defendant No.1 in Civil Suit No.460/2021***, jointly agreed to purchase the aforesaid property from the Plaintiff. Subsequently on 02.11.2016, they gave Rs.7,50,000/- in cash *vide* Receipt dated 02.11.2016 as token money to the Plaintiff.

21. The Plaintiff, entered into an Agreement to Sell dated 16.11.2016, which was *notarized on 21.11.2016*, with *the Defendant and Mr. Kamal Kant Sharma* in respect of *the Upper Ground Floor and Third Floor with roof rights of the property in question*. The total sale consideration as agreed between the parties was Rs.1,50,00,000/-. The Plaintiff, on the date of execution of Agreement to Sell dated 16.11.2016, had received a total sum of Rs.15,00,000/- from the Defendant and Mr. Kamal Kant Sharma.

22. The Defendant claimed that on execution of Agreement to Sell dated 16.11.2016, *the Rent Agreement dated 31.08.2016 got mutually cancelled and the tenancy was terminated*. It was also agreed by the Plaintiff that the remaining 10 post-dated cheques, which were given towards monthly rent to the Plaintiff by the Defendant, would be presented for encashment by her and the total amount of those cheques i.e. Rs.3,20,000/- shall be adjusted towards the sale consideration. The Plaintiff also handed over her self-attested copies of PAN Card, Aadhaar Card and USA Passport. The security amount of Rs.64,000/- was returned by the Plaintiff to the Defendant, on 16.11.2016 itself.



23. On the request of the Plaintiff, *Mr. Kamal Kant Sharma paid a part amount of Rs.2,00,000/- on 23.11.2016*, through cheque bearing no. 145423 drawn on Indian Bank, Laxmi Nagar, which was encashed on 23.11.2016, in terms of the Agreement to Sell.

24. The Plaintiff came to India in November, 2018 and met the Defendant and Mr. Kamal Kant Sharma and requested for further payment of Rs.5,00,000/-. The Defendant and Mr. Kamal Kant Sharma enquired about the status of *Civil Suit (OS) 1817/2007* and were informed that it was still pending and that she was waiting for the final hearing by this Court. On the request of the Plaintiff, the said amount of Rs.5,00,000/- was paid in cash on 05.11.2018 against a Receipt executed by the Plaintiff.

25. Thereafter in January, 2019, the Plaintiff again made a request for further part payment of Rs.5,00,000/-. The Plaintiff stated that she was ready and willing to hand over the vacant and physical possession of the Third Floor with roof rights of the Suit Property in terms of the Agreement to Sell dated 16.11.2016, if a further payment of Rs.5,00,000/- was made. The said amount was paid on 10.01.2019 and *the vacant possession of the Third Floor with roof rights was given* to the Defendant and Mr. Kamal Kant Sharma, *vide* Receipt-cum-Possession Letter dated 10.01.2019.

26. In February, 2019, on the request of the Plaintiff, the Defendant and Mr. Kamal Kant Sharma made an additional payment on 04.02.2019. Mr. Kamal Kant Sharma transferred Rs.1,00,000/- through online transfer to the bank account of the Plaintiff, while the Defendant paid Rs.7,50,000/- in cash. The Defendant also agreed to pay a sum of Rs.1,00,000/- through online bank transfer, and the Plaintiff executed a Receipt dated 04.02.2019 acknowledging the receipt of Rs.9,50,000/-.



27. However, the Defendant was unable to pay the said Rs.1,00,000/-, through online bank transfer. After a few months, when the Plaintiff reminded the Defendant and Mr. Kamal Kant Sharma that the said amount had not been transferred, Mr. Kamal Kant Sharma made the payment of Rs.1,00,000/- by way of bank transfer into the account of the Plaintiff on 10.07.2019, *in lieu* of Receipt dated 04.02.2019.

28. On 06.09.2019, on the request of the Plaintiff, the Defendant made a further payment of Rs.1,50,000/- by way of bank transfer. On 19.11.2019, Mr. Kamal Kant Sharma made another part payment of Rs.2,00,000/- by way of bank transfer. Further payments were also made on the request of the Plaintiff. In all, a total sum of Rs.43,20,000/- was paid to the Plaintiff against the total sale consideration of Rs.1,50,00,000/-.

29. The Defendant claimed that he and Mr. Kamal Kant Sharma were always ready and willing to perform their part of the Agreement to Sell dated 16.11.2016. ***It was specifically denied that there was any relationship of landlord and tenant between the parties*** or that there were any arrears of rent due from the Defendants. It was submitted that the Suit was liable to be dismissed.

Civil Suit No. 460/2021:Filed by Raj Rani Uppal against Kamal Kant Sharma and Ritesh Kumar for Possession, Arrears of Rent, Damages/Mesne Profits and Permanent Injunction:

30. Similar Suit for recovery was filed by the Plaintiff, **Raj Rani Uppal** against **Kamal Kant Sharma, Defendant No. 1** and **Ritesh Kumar, Defendant No. 2** for Recovery of Possession, Arrears of Rent,



Damages/*Mesne* Profits and Permanent Injunction in respect of the **Third Floor of the suit property** bearing No. 36/7, East Punjabi Bagh, New Delhi-110026.

31. The Plaintiff averred that the Third Floor of the suit property was let out to Defendants No. 1 and 2 for residential purpose on 01.01.2018 at a monthly rent of Rs.45,000/-, excluding electricity, water and other charges, w.e.f. 10.01.2019. However, it took some time for the Defendants to shift to the tenanted premises and therefore, with mutual consent, the tenancy was agreed to have commenced w.e.f. 10.02.2019.

32. It was also agreed between the parties that there would be an increase in monthly rent by 10% after every one year, meaning thereby the rate of rent was to be Rs.45,000/- per month upto 09.02.2020, thereafter Rs.49,500/- per month from 10.02.2020 upto 09.02.2021, and further Rs.54,450/- per month from 10.02.2021 upto 09.02.2022.

33. According to the Plaintiff, Defendant No. 1, Kamal Kant Sharma made the following payments towards rent in respect of the Third Floor of the suit property:

Amount (Rs)	Dated	Mode
(a) Rs.60,000/-	January/February 2019	Cash
(b) Rs.1,00,000/-	04.02.2019	Bank Transfer
(c) Rs.1,00,000/-	09.07.2019	Bank Transfer
(d) Rs.1,00,000/-	19.11.2019	Bank Transfer
(e) Rs.1,00,000/-	19.11.2019	Bank Transfer
(f) Rs.50,000/-	14.07.2020	Amt. Deposited in Bank A/c
(g) Rs.2,000/-	19.08.2020	Through Paytm
(h) Rs.20,000/-	28.08.2020	Amt. Deposited in Bank A/c



(i) Rs.60,000/-	18.09.2020	Amt. Deposited in Bank A/c
(j) Rs.70,000/-	29.10.2020	Amt. Deposited in Bank A/c
(k) Rs.50,000/-	21.11.2020	Amt. Deposited in Bank A/c
(l) Rs.50,000/-	16.12.2020	Amt. Deposited in Bank A/c
(m) Rs.50,000/-	12.01.2021	Amt. Deposited in Bank A/c
(n) Rs.63,000/-	27.01.2021	Cash
(o) Rs.40,000/-	04.02.2021	Amt. Deposited in Bank A/c
(p) Rs.25,000/-	08.02.2021	Amt. Deposited in Bank A/c
(q) Rs.35,000/-	12.02.2021	Amt. Deposited in Bank A/c
(r) Rs.55,000/-	25.02.2021	Amt. Deposited in Bank A/c
(s) Rs.45,000/-	27.02.2021	Cash

34. It was asserted that the total payments made towards monthly rent by Defendant No. 1 *amounted to Rs.10,80,000/-*, and as on March, 2021, there was a balance of Rs.2,52,900/- which the Defendants were liable to pay, which they neglected to pay. The Plaintiff issued a Legal Notice dated 24.03.2021 for termination of tenancy of the Third Floor and demanded peaceful possession along with arrears of rent in the sum of Rs.2,52,900/- upto March, 2021 and a sum of Rs.54,450/- as rent for the month of April, 2021, along with interest @ 24% per annum. The said Legal Notice was served on 27.03.2021.

35. Since the Defendants failed to comply with the notice or make the payment, the Plaintiff instituted the Suit seeking recovery of possession of



the Third Floor of the Suit Property and Rs.3,07,350/- towards arrears of rent upto April, 2021 with interest @ 24% per annum, *mesne* profits of Rs.55,000/- for the month of May, 2021 and future damages and *mesne* profits @ Rs.55,000/- per month from the Defendants.

36. Defendant No. 1, Kamal Kant Sharma in his *Written Statement denied the relationship of landlord and tenant* between him and the Plaintiff. He asserted that Defendant No. 2, Ritesh Kumar used to be his servant and had no concern with the suit property.

37. He further asserted that the Plaintiff had concocted a false story of landlord-tenant relationship. He endorsed that Rahul Chaudhary @ Ram Kumar was inducted as a tenant *vide* Rent Agreement dated 31.08.2016, in respect of the Upper Ground Floor of the suit property, but stated that the said Rent Agreement was mutually cancelled upon the Plaintiff expressing her intention to sell the property, pursuant to which an Agreement to Sell dated 16.11.2016 was executed.

38. Defendant No. 1, Kamal Kant Sharma set up the same defence as was taken in Civil Suit No. 328/2021, asserting that the Plaintiff had entered into the Agreement to Sell dated 16.11.2016 with himself and Rahul Chaudhary for a total sale consideration of Rs.1,50,00,000/- in respect of the Upper Ground Floor and Third Floor with roof rights of the Suit Property. He stated that the Rent Agreement dated 31.08.2016 stood mutually cancelled and the tenancy stood terminated by virtue of the said Agreement to Sell.

39. He further stated that the possession of the Third Floor with roof rights was handed over to himself and Rahul Chaudhary, on 10.01.2019 *vide* Receipt-cum-Possession Letter, in furtherance of the Agreement to Sell, and that total payments of Rs.43,20,000/- had been made to the Plaintiff towards



the sale consideration. The Third Floor was never let out to the Defendants as alleged. It was submitted that there was no relationship of Landlord-tenant, but the defendant was entitled to Specific performance of Agreement to Sell Dated 16.11.2016.

40. Defendant No. 2, Ritesh Kumar in his **Written Statement** stated that he was a domestic servant-cum-cook of Defendant No. 1 and Rahul Chaudhary at the Upper Ground Floor of the Suit Property till February, 2021.

41. He stated that he had nothing to do with the Plaintiff or the Third Floor of the Suit Property and that there ***was no relationship of landlord and tenant between him and the Plaintiff at any point of time.*** He further stated that the alleged Rent Agreement was forged and fabricated and did not bear his signatures. He stated that the Plaintiff had taken his photograph and copy of identity proof under the garb of "*servant police verification*" and had misused the same for the purpose of fabricating the alleged Rent Agreement. The Legal Notice dated 24.03.2021 was never served upon him. He denied being in possession or there being any relationship of landlord-tenant between him and the plaintiff.

Counter-Claim for Specific Performance of Agreement to Sell dated 16.11.2016 by Rahul Chowdhary and Mr. Kamal Kant Sharma:

42. The Defendants, Rahul Chowdhary and Mr. Kamal Kant Sharma also filed a **Counter-Claim for Specific Performance of Agreement to Sell dated 16.11.2016.** It was claimed that the intention of the Plaintiff had turned *mala fide* and she was not willing to perform her part of the Agreement to Sell. The Defendant further claimed that he and Mr. Kamal



Kant Sharma were in lawful physical possession of the suit property and that the Plaintiff had concocted the false story of landlord-tenant.

43. *It was thus, submitted that the Suit of the Plaintiff, was liable to be dismissed.*

44. The ***Plaintiff in the Replication in the two Suits***, reaffirmed the case as made out in the Plaint and denied the allegations made in the Written Statement.

45. The Plaintiff denied the execution of any Agreement to Sell either with the Defendant or Mr. Kamal Kant Sharma and claimed it to be a forged and fabricated document. She asserted that she was only a 1/3rd co-owner of the suit property, the remaining 2/3rd share being owned by her two sons, and that she had no authority to sell the entire property.

46. She further asserted that whatever payments she had received from the Defendant and Mr. Kamal Kant Sharma, were only towards the rentals in respect of the Upper Ground Floor and Third Floor of the Suit Property.

47. ***An Application under Order XII Rule 6 CPC was filed on behalf of the Plaintiff.***

48. The ***learned District Judge***, *vide* the impugned Judgment and Order dated 09.10.2024, observed that the Defendant had filed on record a copy of the Agreement to Sell dated 16.11.2016 which was an unregistered document and held that as per Section 17(1A) of the Registration Act, documents containing contracts to transfer immovable property for the purposes of Section 53A of the TPA, 1882 are required to be registered, and if not registered, they shall have no effect for the purposes of Section 53A TPA.



49. As regards Defendant No. 2, Ritesh, the learned District Judge observed that Ritesh Kumar had clearly stated in his Written Statement that he was a domestic servant-cum-cook and had nothing to do with the Plaintiff or the Suit Property, and there was no relationship of landlord and tenant between him and the Plaintiff. The learned District Judge accordingly, held that the possession of the Defendants on the basis of the unregistered Agreement to Sell, could not be protected.

50. **The relief of Possession was accordingly, granted in favour of the Plaintiff under Order XII Rule 6 CPC.** The suit was decreed *qua* Possession against Rahul Chaudhary *vide* Judgment and Decree dated 09.10.2024, while the suit against Kamal Kant Sharma and Ritesh Kumar was decreed *qua* Possession *vide* Judgment and Decree dated 15.10.2024.

51. ***Aggrieved by the said Judgments and Decrees dated 09.10.2024 and 15.10.2024, the Defendants/Appellants, Rahul Chaudhary and Kamal Kant Sharma have filed the present Regular First Appeals.***

52. The ***grounds taken in the two Appeals*** are that the learned District Judge committed a grave error in observing that the Agreement to Sell dated 16.11.2016 executed between the Plaintiff and the Defendants is an unregistered document and therefore, the possession of the Appellants cannot be protected under Section 53A TPA. It is asserted that Section 53A TPA protects the possession of persons who have acted on a contract of sale, but in whose favour no Sale Deed has been executed or registered, as observed by the Supreme Court in Union of India and Anr. v. M/s K.C. Sharma & Co., AIR OnLine 2020 SC 686.

53. It is further contended that registered deeds are not required for safeguarding the possession under Section 53A TPA, when the transferee is



already in possession and has done acts in furtherance of the Agreement to Sell. The impugned Judgments are, therefore, bad in law.

54. The Agreement to Sell dated 16.11.2016 was duly executed between the parties. In furtherance of the terms and conditions thereof, the Appellants had paid a total sum of Rs.43,20,000/- by way of part payments towards the sale consideration, which had been completely ignored by the learned District Judge. It is asserted that a grave injustice has been committed in observing that on the basis of the unregistered Agreement to Sell dated 16.11.2016, the possession of the Appellants *qua* the suit property, cannot be protected.

55. The learned District Judge further erred in not appreciating that after the execution of the Agreement to Sell dated 16.11.2016, the earlier Rent Agreement dated 31.08.2016 stood cancelled and the tenancy stood terminated, as expressly stipulated in the Agreement to Sell itself. The documentary evidence including the Agreement to Sell; the receipts of cash payments and the online payments received in the bank account of the Respondent, were not duly appreciated.

56. The Appellants have further challenged the exercise of jurisdiction under Order XII Rule 6 CPC. It is contended that there was no clear, unequivocal and unconditional admission on the basis of which a decree for Possession could have been passed. Rahul Chaudhary, though admitting his initial induction as a tenant under the Rent Agreement dated 31.08.2016, specifically pleaded that the tenancy came to an end upon execution of the Agreement to Sell dated 16.11.2016.

57. Kamal Kant Sharma, on the other hand, denied having ever been inducted as a tenant and claimed possession of the Third Floor pursuant to



the Agreement to Sell and the Receipt-cum-Possession Letter dated 10.01.2019.

58. Furthermore, the Supreme Court in S.M. Asif v. Virendra Kumar Bajaj, AIR 2015 SC 3678 had observed that the words "may" and "make such order" in Order XII Rule 6 CPC reflect that the power is discretionary and cannot be claimed as a matter of right for judgment on admissions. Where the Defendants have raised objections which goes to the root of the case, it would not be appropriate to exercise the discretion under Order XII Rule 6 CPC.

59. The Appellants have also filed a *CS DJ No. 929/2024, for Specific Performance, which is contested by the Plaintiff*. When such issues arise between the parties, they ought to be decided on merits and the mere admission of the initial relationship of landlord and tenant by defendant Rahul Choudhary, cannot be said to be an unequivocal admission under Order XII Rule 6 CPC.

60. In RFA 222/2025, it is additionally asserted that the Suit was bad for non-joinder of necessary party, as the Agreement to Sell dated 16.11.2016 was executed between the Respondent, the Appellant and Rahul Chaudhary @ Ram Kumar, who has not been made a party to CS No. 460/2021.

61. *On the aforesaid grounds, it is prayed that the impugned Judgments and Decrees dated 09.10.2024 and 15.10.2024 be set aside.*

62. The Appellants in their **Written Submissions** relied upon Karan Kapoor v. Madhuri Kumar, Civil Appeal No. 4645/2022, wherein it was held that Order XII Rule 6 CPC cannot be invoked, by rejecting a substantive defence of an Agreement to Sell.



63. Reliance was also placed on S.M. Asif v. Virendra Kumar Bajaj, Civil Appeal No. 6106-6108/2015, wherein it was observed that admissions must be unconditional and unequivocal, for decreeing the Suit under Order XII Rule 6 CPC.

64. Further reliance was placed on Vayyaeti Srinivasarao v. Gaineedi Jagajyothi, 2026 INSC 59 and Himani Alloys Ltd. v. Tata Steel Ltd., Civil Appeal No. 5077/2011, wherein it was held that judgment on admissions under Order XII Rule 6 CPC, is a discretionary relief.

65. ***Per Contra***, learned Counsel for the Respondent/Plaintiff, **Raj Rani Uppal**, supported the impugned Judgments and also stated in his **Written Submissions** wherein it was stated that the Suits had been instituted for recovery of possession on the basis of the landlord-tenant relationship and that the tenancies had been duly terminated before institution of the Suits.

66. The tenancy of Rahul Chaudhary stood terminated *vide* Legal Notice dated 01.03.2021, while the tenancy of Kamal Kant Sharma and Ritesh Kumar stood terminated *vide* Legal Notice dated 24.03.2021, which was duly served on 27.03.2021.

67. It was pointed out that the Appellants had claimed about a notarised Agreement to Sell dated 16.11.2016 and claimed to have paid substantial amounts thereunder, and that Kamal Kant Sharma along with Rahul Chaudhary had been handed over the vacant physical possession of the Third Floor with roof rights *vide* Receipt-cum-Possession Letter dated 10.01.2019. However, the Respondent denied the execution of the Agreement to Sell with either with the Appellants and claimed it to be a forged and fabricated document.



68. Even otherwise, the sole defence of the Appellants by which they seek to protect their possession is the unregistered Agreement to Sell dated 16.11.2016, which is not permissible under law. It was contended that the defence of part performance for protecting possession under Section 53A TPA is not available, as the document requires compulsory registration if executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, in view of Section 17(1A) of the Indian Registration Act. *The learned District Judge had rightly held that the Appellants are not entitled to the protection under Section 53A TPA.*

69. It was further contended that it is settled law that a mere Agreement to Sell of immovable property, does not create any right in the property, save the right to enforce the Agreement. In the present case, a Suit for Specific Performance being CS DJ No. 929/2024 is already pending adjudication, in which Suit alone the rights and claims of the Appellants *qua* the suit property, can be decided.

70. The Appellants, therefore, cannot be permitted to hold onto the possession under the garb of unregistered Agreement to Sell in a Suit for possession on the basis of the relationship of landlord and tenant, after due termination of tenancy.

71. Reliance was placed on R. Hemalatha v. Kasthuri, Civil Appeal No. 2535/2023 decided on 10.03.2023, wherein it was held that as per the proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required to be registered, may be received as evidence of a contract in a Suit for Specific Performance or as evidence of any collateral transaction, but it is subject to Section 17(1A) of the Registration Act.



72. Reliance was also placed on Dinesh Sharma v. Krishn Kainth in RFA No. 293/2021 decided on 19.04.2022, wherein similar observations were made.

Submissions heard and record perused.

73. The Plaintiff, Raj Rani Uppal had specifically averred that she had let out the *Upper Ground Floor to Rahul Chaudhary vide* Rent Agreement dated 31.08.2016, on a monthly rent of Rs.32,000/- excluding water and electricity charges for a period commencing from 10.09.2016 till 09.09.2019, *a fact which is not denied by Rahul Chaudhary*. However, it is the specific case of Rahul Chaudhary that soon thereafter, in October, 2016 the Plaintiff expressed a desire to sell the Suit Property.

74. *In CS DJ No. 460/2021*, according to the Plaintiff, the Third Floor was let out to Kamal Kant Sharma and Ritesh Kumar *vide* Rent Agreement dated 01.01.2018. *The said Rent Agreement has been categorically denied by Kamal Kant Sharma*. The perusal of the said Rent Agreement reflects that it was an Agreement intended to be executed for the Third Floor by the Plaintiff with **one Ritesh Kumar**, who according to Kamal Kant Sharma, was his servant and Ritesh never entered into the premises as a tenant.

75. Ritesh Kumar has also denied the alleged tenancy. In his Written Statement, he asserted that he was merely working as a domestic servant-cum-cook with Kamal Kant Sharma and Rahul Chaudhary and had never entered the Third Floor as a tenant. He further denied his signatures on the Rent Agreement dated 01.01.2018 and claimed that his photograph and identity documents, obtained for the purpose of servant police verification, had been misused.



76. Furthermore, there is no rent Agreement with Kamal Kant Sharma and there is a moot question of whether he came into the possession, *vide* Agreement to Sell dated 16.11.2016.

77. In fact, *the common defence set up by Rahul Chaudhary and Kamal Kant Sharma* is founded upon the Agreement to Sell dated 16.11.2016, stated to have been executed by the Plaintiff, in their favour. Rahul Chaudhary admits that he initially entered the Upper Ground Floor as a tenant on 10.09.2016, but claims that upon execution of the Agreement to Sell dated 16.11.2016, the tenancy stood terminated and his possession thereafter, became that of a prospective buyer by virtue of Agreement to Sell dated 16.11.2016.

78. Kamal Kant Sharma, on the other hand, denies having ever been a tenant and claims that the possession of the Third Floor was delivered to him and Rahul Chaudhary subsequently, *vide* Receipt-cum-Possession Letter dated 10.01.2019, in furtherance of the Agreement to Sell dated 16.11.2016.

79. Thus, while the initial induction of Rahul Chaudhary as a tenant is admitted, the continuation of that tenancy after 16.11.2016 is specifically disputed. In the case of Kamal Kant Sharma, even the very inception of his possession as a tenant, is denied.

80. The Respondent, Raj Rani Uppal, has relied upon a Rent Agreement dated 01.01.2018, allegedly executed with Defendant No.2, Ritesh Kumar. However, Ritesh Kumar, in his Written Statement in CS No.460/2021, categorically denied having been inducted as a tenant and stated that he was merely working as a domestic servant-cum-cook with Kamal Kant Sharma and Rahul Chaudhary at the Upper Ground Floor till February, 2021. He further asserted that the alleged Rent Agreement was forged and fabricated



and did not bear his signatures, and that his photograph and identity proof, obtained under the pretext of “*servant police verification*”, had been misused for preparing the said document. Ritesh Kumar claimed no independent right, title or interest in the Suit Property.

81. The controversy, therefore, is not merely whether an unregistered Agreement to Sell can confer protection under Section 53A TPA. The anterior question, in the context of Order XII Rule 6 CPC, is whether the pleadings contain a clear, unequivocal and unconditional admission that the Appellants continued to occupy their respective portions as tenants, *notwithstanding the specific defence founded upon the Agreement to Sell dated 16.11.2016.*

82. The most pertinent document is the Agreement to Sell dated 16.11.2016. The relevant part of Clause (b) reads as under :

“B. PAYMENT AND CONSIDERATION

*That the VENDEES prior to execution of this agreement has already paid a sum of Rs.7,50,000/- (Rupees Seven Lakhs & Fifty Thousand only) to the VENDOR in cash and on the execution of the present agreement to sell the VENDEES have paid another Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand Only) by way of two different cheques i.e. cheque bearing no.145421 drawn on Indian Bank, Laxmi Nagar Branch of Rs.2,50,000/- (Rupees Two Lakhs and fifty Thousand only) and cheque bearing no.540753 drawn on India Bank, Laxmi Nagar Branch of Rs.5,00,000/- (Rupees Five Lakhs Only) as earnest money/ bayana/ part of agreed sale consideration to the VENDOR/ SELLER and the VENDOR after receiving the earnest money of Rs.15,00,000/- (Rupees Fifteen Lacs Only), **has handed over physical possession of property/ built-up Upper Ground Floor area***



measuring 280 Sq. Yards (approximately) which is built-up on the plot/ property bearing noi.36, Road No.7, East Punjabi Bagh, New Delhi-110026 to the VENDEES on today i.e. 16.11.2016 which is already in possession of Sh. Rahul Choudhary by virtue of rent agreement dated 31.08.2016. It is agreed that the VENDOR shall present the remaining 10 post dated cheques of rent in her account and shall get them encashed in her account and the amount of these cheques i.e. Rs.3,20,000/- shall be adjusted in remaining sale consideration. It is further agreed that on the execution of the present agreement to sell, the rent agreement dated 31.08.2016 shall stand cancelled and the tenancy shall stand terminated. The balance amount of sale consideration i.e. Rs.1,31,80,000/- (Rupees One Crore Thirty One Lakhs and Eighty Thousand only) shall be paid by the VENDEES to the VENDOR as mentioned herein below. Rs.1,31,80,000/- /- (Rupees One Crore Thirty One Lakhs and Eighty Thousand only) i.e. remaining sale consideration shall be paid by the VENDEES to the VENDOR within 6 months from the date of finality of favourable judgment / order in favour of VENDOR in above mentioned Civil Suit (OS) No.1817/2007 titled as "Smt. Raj Mohini & Ors. vs. Smt. Raj Rani Uppal & Ors." pending before the Hon'ble High Court of Delhi and at the time of execution of a sale deed by the VENDOR in favour of VENDEES in respect of DEMISED PROPERTY. It is agreed that the VENDOR shall hand over the physical possession of the property/ built-up third floor area measuring 280 Sq. Yards (approximately) with roof rights and two servant rooms and one toilet and one bath room on the ground floor and rights of parking of four cars on ground floor parking area of the said building, which is built-up on the plot/ property bearing no.36, Road No.7, East Punjabi Bagh, New Delhi – 110026 to the VENDEES/ PURCHASERS before the execution of sale deed in favour of the VENDEES.



However, it is agreed that if the Vendor will be in need of money not exceeding Rs.5,00,000/- (Rupees Five Lakhs Only), then she/ VENDOR can ask for the same from the VENDEES and VENDEES may pay the same to the VENDOR towards a part payment in lieu of the present agreement.”

83. From a bare perusal of the Agreement to Sell, it emerges that the Rent Agreement dated 31.08.2016 stood terminated thereby reflecting that the possession of the Appellant turned into that of prospective buyer and no longer was relatable to the earlier Rent Agreement dated 31.08.2016 of Rahul Chaudhary. Pertinently, Civil Suit No. 929/2024 for Specific Performance of Agreement to Sell dated 16.11.2016 has been separately filed by Rahul Chaudhary and Kamal Kant Sharma, which is already pending adjudication.

84. The Supreme Court in the case of R. Kanthimathi and Anr. vs. Beatrice Xavier (Mrs.) (2000) 9 SCC 339 considered a similar question of *inter-se* rights and jural relationship between the landlord and the tenant, after an Agreement to Sell has been executed and substantial amount of consideration has been paid by the Tenant. In the Agreement to Sell under consideration, the clause stated "*...and shall complete the transaction of sale and conveyance as the property demised as already been surrendered to your possession*". It was held that in the Agreement to Sell executed between the parties, there was an express stipulation that the demised property had already been surrendered to the possession of the tenant which was consciously incorporated, to indicate the willingness of the landlord to effect change in the jural relationship. *The intention of the parties was clearly discernible from the terms of Agreement to Sell itself.*



85. Likewise, in the case of Shah Mathuradas Maganlal & Co. vs. Nagappa Shankarappa Malage and Ors. (1976) 3 SCC 660, it was observed that the surrender of tenancy under Section 111(e) and (f) of the Transfer of Property Act involves yielding of the lessee's interest to the lessor, by mutual agreement. In case of implied surrender, the intention of the parties has to be gathered from the circumstances and the conduct which demonstrates that the earlier relationship no longer exists.

86. *Surrender may thus be express, by agreement of the parties, or may be implied from conduct, wholly inconsistent with the continuance of the existing tenancy. Whether such surrender has taken place, necessarily depends upon the terms of the transaction and the attendant facts and circumstances.*

87. More recently, the Apex Court in the case of Vayyaeti Srinivasarao vs. Gainedi Jagajyothi 2026 SCC OnLine SC 84, while dealing with the similar question, comprehensively examined the concept of express and implied surrender and the consequences flowing therefrom, under Section 111 TPA. It was reiterated that an implied surrender may be inferred where the conduct of the parties and the creation of a new relationship, are inconsistent with the continuance of the pre-existing tenancy.

88. It was further observed that when an Agreement to Sell entered between the parties clearly states that from the date mentioned in the Agreement, the tenant in possession of the suit property, shall not be liable to pay rent and shall alone be in charge of any damage caused to the property in question, it would imply a surrender of rights as a tenant, for which reference was made to B. Paramashivaiah vs. M.K. Shankar Prasad AIR 2009 Kar. 88. The determinative consideration is whether the terms of



the subsequent arrangement and the unequivocal conduct of the parties are inconsistent with the continuation of the earlier tenancy.

89. This aspect has again been considered in the recent case of Nazim Shaikh Hasan vs. Nasir Mushtaq Shaikh and Ors. 2026 INSC 853, wherein after referring to the aforesaid judgment, the ratio has been distilled into the following propositions:

- “(i) the mere execution of an agreement to sell between a landlord and tenant does not ipso facto bring about a determination of the subsisting tenancy;*
- (ii) it is only when the terms of the agreement or the unequivocal conduct of the parties, inconsistent with the continuance of the existing tenancy, disclose either an express or implied surrender within the meaning of Section 111(e) or (f) of the TP Act, that the lease can be said to have been determined;*
- (iii) the continuous possession of a tenant even after the execution of an agreement to sell does not amount to part performance under Section 53A of the TP Act unless such possession is shown to be directly relatable to and flowing from the agreement to sell; and*
- (iv) any agreement to sell, not being a registered deed of conveyance, does not by itself confer any title or interest in the property.”*

90. In the present case, the Agreement to Sell relied upon by Rahul Chaudhary and Kamal Kant Sharma, contains an express stipulation that the Rent Agreement dated 31.08.2016 would stand cancelled and the tenancy would stand terminated. Rahul Chaudhary has specifically pleaded that his possession thereafter, continued in the capacity of a prospective purchaser.

91. Kamal Kant Sharma has, in turn, denied having ever executed any Rent Agreement with the Plaintiff and claims that possession of the Third Floor was delivered pursuant to the Receipt-cum-Possession Letter dated



10.01.2019 in furtherance of the Agreement to Sell. *These pleas are, undoubtedly, disputed by the Plaintiff; however, their correctness cannot be determined while considering an Application under Order XII Rule 6 CPC by treating the defence itself as non-existent.*

92. A comprehensive reading of the pleadings, it is evident that there is no clear unequivocal, unambiguous admission made by the Defendants in their Written Statements; rather there is a specific defence of Agreement to Sell and their possession being under the said Agreement to Sell has been specifically pleaded. *Not only this, a separate Suit for Specific Performance is also pending.*

93. In S.M. Asif v. Virendra Kumar Bajaj (2015) 9 SCC 287, the Apex Court considered a factual matrix, similar to the present case. The tenant therein, had admitted the relationship of tenancy and the period of the lease agreement, but had resisted the claim for eviction by setting up a defence of an Agreement to Sell and claimed to have paid Rs.82,50,000/- towards the sale consideration, which was stoutly denied by the landlord. A Suit for Specific Performance was also pending.

94. The Apex Court held that the power under Order XII Rule 6 CPC is discretionary and cannot be claimed as a matter of right. *Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order XII Rule 6 CPC.* The said rule is an enabling provision which confers discretion on the Court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim. It was held that the mere admission of relationship of landlord and tenant, cannot be said to be



an unequivocal admission so as to decree the Suit under Order XII Rule 6 CPC.

95. Similarly, in Karan Kapoor v. Madhuri Kumar, Civil Appeal No. 4545/2022 decided on 06.07.2022, the Apex Court considered an identical situation where the tenant had admitted the execution of the lease agreement, but had set up a defence of three successive Agreements to Sell, and a Suit for Specific Performance was pending. The Trial Court had passed a decree of possession under Order XII Rule 6 CPC, which was upheld by this Court.

96. The *Supreme Court set aside the decree* and held that the power to pass judgment on admissions is discretionary and should only be exercised when specific, clear and categorical admissions of facts and documents are on record, otherwise the Court can refuse to invoke Order XII Rule 6 CPC. *Where the tenant has stoutly denied that the landlord continued to be the landlord after entering into an Agreement to Sell and a Suit for Specific Performance is pending, the defence needs to be decided by a full-fledged trial.*

97. In the light of the above discussion, the learned District Judge fell in error in observing that there was an admission of the Appellants being tenants in the suit property or that the subsequent Agreement to Sell did not change their status as that of a tenant.

98. The averments in the Written Statements, when read as a whole, are qualified by a substantive defence of Agreement to Sell, the payment of Rs.43,20,000/- towards sale consideration and the express stipulation in the Agreement to Sell that the Rent Agreement dated 31.08.2016 stood cancelled and the tenancy stood terminated. *Such admissions cannot be said*



to be clear, unequivocal and unconditional, so as to attract the discretionary jurisdiction under Order XII Rule 6 CPC, for a decree of possession.

99. Furthermore, the learned District Judge essentially proceeded on the premise that since the Agreement to Sell dated 16.11.2016 was unregistered and could not afford protection under Section 53A TPA in view of Section 17(1A) of the Registration Act, 1908, a decree for Possession thus, necessarily followed, under Order XII Rule 6 CPC.

100. *The two issues, however, are distinct.* The finding that the unregistered Agreement to Sell dated 16.11.2016 cannot afford protection of possession under Section 53A TPA in view of Section 17(1A) of the Registration Act, does not lead to the conclusion that a decree for possession must follow under Order XII Rule 6 CPC. The proviso to Section 49 of the Registration Act expressly provides that an unregistered document may be received as evidence of a contract in a Suit for Specific Performance.

101. The effect, genuineness and enforceability of the Agreement to Sell and the rival characterisation of the possession are matters requiring adjudication on evidence, and the Suit for Specific Performance is pending; till the rights of the parties are determined, they cannot be dispossessed from the suit property, in exercise of jurisdiction under Order XII Rule 6 CPC.

102. Consequently, the impugned Judgments and Decrees dated 09.10.2024 and 15.10.2024 are set aside and both the matters are remanded back to the learned District Judge, to be adjudicated on merits.

103. The parties are directed to appear before the learned District Judge, West District, Tis Hazari, Delhi on 17.09.2026.



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104. The pending Applications are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 31, 2026
RS/VA