



2026:DHC:7581



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

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Reserved on: 01st September, 2026

Pronounced on: 07th September, 2026

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CNR No. DLHC010408652026

+ **RFA No. 925/2026, CM APPL. 58610/2026**

1. **SMT. SHALLY GUPTA**

W/o Sh. Mahesh Gupta
R/o B-27, Tagore Road,
Adarsh Nagar, Delhi.

....Appellant No.1

2. **SH. ASHISH GUPTA**

S/o Sh. Mahesh Gupta
R/o B-27, Tagore Road,
Adarsh Nagar, Delhi.

...Appellant No. 2

Through: Mr. S K Sharma and Mr. Tejas
Singh, Advocates.

versus

SMT. STUTI AGARWAL

W/o Sh. Sajal Agarwal
R/o House No. K-1/46,
Model Town-II, Delhi.

....Respondent

Through: Mr. Sujeet Beniwal, Advocate
and Mr. Hitesh Kumar,
Advocate and Mr. Tushar
Rohmetra, Advocate and Mr.
Devansh Jain, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

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1. **Regular First Appeal** under Section 96 read with Order XLI read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed on behalf of the Appellants against the **Judgment and Decree dated 20.07.2026**, whereby the **Suit bearing CS DJ No.269/2022** filed by the Plaintiff/Respondent for **Possession, Mesne Profits/Damages and Permanent Injunction**, has been decreed.
2. The **facts in brief**, as stated in the Plaint, are that **Defendant No.1, Ms. Shally Gupta and Defendant No.2, Mr. Ashish Gupta**, being the *joint owners* of the **entire Second Floor of Property bearing No.27, Block-B, ad measuring 238 sq. yards, situated in Village Bharola, popularly known as Tagore Road, Adarsh Nagar, Delhi** (*hereinafter referred to as the "suit property"*), sold it to the Plaintiff, for a sale consideration of Rs.48,51,000/-, *vide* registered Sale Deed dated 25.01.2019, registered on 29.01.2019.
3. The Plaintiff asserted that after purchase of the Property, she got the *electricity connection* in respect of the suit property **changed in her name**. Her name was also recorded in the **MCD records** and she has been paying the **House Tax**, thereafter.
4. The Defendants however, expressed *their inability to immediately vacate* the suit premises and *sought permission* to continue therein, till they were able to make alternate arrangements. They undertook to hand over the physical possession on or before 25.02.2019, failing which they would be liable to pay Damages/Mesne Profits at the market rate. The Plaintiff stated that it was only on **humanitarian grounds** that she gave the Defendants **one month to vacate the Property**. However, they failed to do so, despite repeated requests.



5. The Plaintiff thus, served a **Legal Notice dated 10.03.2022**, seeking peaceful possession, but to no avail. Hence, she filed the *Suit for Possession, Damages/Mesne Profits @ Rs.40,000/- per month, excluding water, electricity and other charges, w.e.f. 25.02.2019*. She also sought *Permanent Injunction for restraining the Defendants from creating third party rights in the suit property*.
6. The Defendants, **in their Written Statement**, took the *preliminary objection* that the Plaintiff had not approached the Court with clean hands and had suppressed material facts.
7. It was denied that Defendant Nos.1 and 2 had sold the suit property to the Plaintiff. They claimed that they had merely transferred the documents for the **purpose of securing a loan availed by them** from the Plaintiff and that the Sale Deed had been executed in favour of the Plaintiff, **only as security for the loan**.
8. The loan amount was to be **refunded by 31.12.2021**, but on account of **Covid-19 Lockdown**, the Defendants were unable to repay the entire amount, as per the terms of the Settlement. However, the Plaintiff allegedly *turned dishonest and despite receiving major part of the loan amount*, filed the present Suit for Possession.
9. The Defendants asserted that **there was no relationship of licensee and licensor between the parties** nor did they ever seek time for vacating the suit property.
10. The **Defendants claimed** that it was only a loan transaction and, to secure the same, the ***Sale Deed had been executed, in terms of a Mutual Agreement***, allegedly executed in the presence of witnesses, including the



father-in-law of the Plaintiff, but the original Mutual Agreement was in possession of the Plaintiff.

11. It was further asserted that the Plaintiff had executed a balance confirmation, acknowledging an outstanding amount of **Rs.63,00,000/-** and Undertaking to **return the original Sale Deed** and previous title documents, upon receipt of the entire loan amount. The Defendants claimed that subject to reconciliation of the interest charged, they were ready and willing to pay the remaining amount of approximately **Rs.52,00,000/-**. According to them, instead of seeking recovery of the alleged balance loan amount, the Plaintiff had filed the present Suit for Possession, **merely to pressurise** the Defendants and, therefore, the Suit was not maintainable.

12. The Defendants also contended that *they had never sought permission to continue in possession* of the suit property nor *undertaken to pay damages*. According to them, they continued to occupy the suit property as owners and not as licensees and were **therefore, not liable to pay Rs.40,000/- per month, towards use and occupation charges**.

13. It was their case that **the transaction was, in fact, a loan transaction** and the Sale Deed had been executed only as security for the loan advanced by the Plaintiff and her family members. **Owing to their urgent financial requirement**, they had agreed to execute a nominal Sale Deed on the understanding recorded in the Mutual Agreement, that upon repayment of the loan, the suit property would be re-conveyed in their favour, at their cost.

14. It is, therefore, submitted that the Suit of the Plaintiff, is liable to be dismissed.

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



16. The **Issues on the pleadings** were framed on 28.02.2024, which are as under:

“1. Whether the plaintiff is entitled for decree of possession qua suit property i.e. entire second floor of property bearing No. 27, Block B, Area measuring 238 Sq. Yards in area of village Bharola, Adarsh Nagar, Delhi, as prayed in the plaint? OPP

2. Whether the plaintiff is entitled for a decree for a sum of Rs. 14,40,000/- towards arrears of Mesne Profits, as prayed for? OPP

3. Whether plaintiff is entitled to pendente lite and future damages@Rs.40,000/- per month alongwith interest@ 18% per annum? OPP

4. Whether the plaintiff is entitled for decree of permanent injunction restraining defendants or their agents from entering into agreement or passing over possession of suit property, as prayed in the plaint? OPP

5. Whether the plaintiff is entitled for costs? OPP

6. Whether the suit is not properly valued for the purpose of Court fees? OPD

7. Whether the plaint is liable to be dismissed on ground of concealment and suppression of material facts?OPD

8. Whether the suit is under-valued for purposes of pecuniary jurisdiction? OPD

9. Relief.”

17. The Plaintiff, Ms. Stuti Agarwal, examined herself as **PW-1**.

18. **PW-2, Mr. Yashpal Singh**, Executive, CRD Bhargarh, TPDDL Office, Roshanara Road, Delhi-110007, proved the record pertaining to the electricity connection as **Ex.PW-2/1 and Ex.PW-2/2**.



19. **PW-3, Mr. Sudeep Kumar**, *Junior Secretariat Assistant, A & C Department, Civil Lines Zone*, produced the House Tax Payment Record for the years 2021-2024, which stood in the name of the Plaintiff, Ms. Stuti Agarwal, and the Property Tax documents were proved as **Ex.PW-3/1**.
20. **PW-4, Mr. Manish Kumar**, *Junior Assistant, Sub-Registrar-VIA, Pitampura, Delhi*, proved the registered Sale Deed in favour of the Plaintiff as **Ex.PW-4/1**.
21. The Defendants examined **DW-1, Mr. Ashish Gupta**, who deposed in terms of the defence taken in the Written Statement and proved the WhatsApp conversations between the parties as **Ex.DW-1/1** and the Certificate under **Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023**, as **Ex.DW-1/2**. The screenshots of the listing, were **Ex.DW-1/3**.
22. **DW-2, Mr. Mahesh Gupta** and **DW-3, Mr. Ashok Kumar Jindal** also deposed in support of the defence of the Defendants.
23. The **learned District Judge**, on appreciation of the evidence, concluded that the **Sale Deed dated 25.01.2019, registered on 29.01.2019**, in favour of the Plaintiff, Ms. Stuti Agarwal, had been **duly proved**.
24. **DW-1, Mr. Ashish Gupta**, in his cross-examination admitted *that he and his mother had been informed*, before going to the Office of the Sub-Registrar, that they were going for execution of the Sale Deed. He further admitted that **the consideration mentioned in the Sale Deed** had been received by him and his mother and that no force or pressure had been exerted upon either of them for execution thereof.
25. The Property Tax Receipts, **Ex.PW-3/1**, established that after execution of the Sale Deed, the House Tax was being paid by the Plaintiff,



while **DW-1, Mr. Ashish Gupta**, admitted that neither he nor his mother had been paying the same.

26. Likewise, **PW-2, Mr. Yashpal Singh from TPDDL**, proved that the electricity connection had been changed in the name of the Plaintiff. **DW-2, Mr. Mahesh Gupta**, also admitted in his cross-examination that the Sale Deed had been executed by his wife and son in favour of the Plaintiff without any pressure.

27. **On appreciation of the evidence**, it was concluded that after execution of the Sale Deed, the Defendants continued in possession of the suit property, on the assurance that they would vacate it within one month. Their defence that the Sale Deed was *merely a transaction* executed as security for the loan under the Mutual Agreement, Ex.PW-1/D-1, **was rejected**.

28. *Accordingly, the Plaintiff was held entitled to possession, Mesne Profits @ Rs.40,000/- per month with interest @ 18% p.a., and Permanent Injunction restraining the Defendants from creating third party rights in the Suit Property.*

29. Aggrieved by the said Judgment and decree, the **Regular First Appeal has been filed**.

30. The **principal ground of challenge** is that the learned Trial Court committed a *material error* in not framing a specific Issue with respect to the **Mutual Agreement executed on the stamp paper dated 04.01.2019**, despite a specific plea having been raised by the Appellants.

31. It is further contended that the learned Trial Court failed to appreciate the specific defence of the Appellants that the **Sale Deed dated 25.01.2019 was not an outright sale, but had been executed merely as security for**



the loan transaction *inter se* the parties. The Mutual Agreement was, therefore, central to their defence and its execution, contents and effect were material to the adjudication of the Suit. The failure to frame a specific Issue in this regard, is asserted to be contrary to **Order XIV Rule 1 CPC**.

32. The Appellants further claimed that the **original Mutual Agreement was in the possession of the father-in-law of the Respondent** and therefore, its *non-production had been sufficiently explained*. It is contended that the secondary evidence ought to have been considered under **Section 60 of the Bharatiya Sakshya Adhiniyam, 2023**, particularly when **PW-1 had admitted her signature at Point ‘A’ on the Mutual Agreement, Ex.PW-1/D1**.

33. Moreover, the loan transaction and the Mutual Agreement stood corroborated by the **WhatsApp communications exchanged with Mr. Rajinder Kumar Aggarwal**, which have not been duly appreciated by the learned Trial Court.

34. Lastly, it is contended that the Appellants had instituted **CS DJ No.246/2025** seeking *Declaration and Cancellation of the Sale Deed* dated 25.01.2019 and *Permanent and Mandatory Injunction*. **Since the validity of the Sale Deed was directly in issue**, the learned Trial Court ought to have considered consolidation of the two Suits and a joint trial, to avoid conflicting decisions. ***The failure to do so, has caused serious prejudice to the Appellants.***

35. The Impugned Judgment is, therefore, sought to be set aside.

Submissions heard and record perused.

36. The Plaintiff had instituted the present ***Suit for Possession and Mesne Profits*** claiming ownership over the suit property, on the basis of the



registered Sale Deed dated 25.01.2019, registered on 29.01.2019. The execution of the Sale Deed by the Appellants is not in dispute and the same was duly proved through the official from the Office of the Sub-Registrar, as **Ex.PW-4/1.**

37. Significantly, **DW-1, Sh. Ashish Gupta**, in his cross-examination admitted that *he and his mother had been informed before going to the Office of the Sub-Registrar* that they were going there for the purpose of execution of a registered Sale Deed. He further admitted that the sale consideration mentioned therein had been received by them and that there *was no force or pressure upon* either him or his mother for execution of the Sale Deed.

38. It is further established from the evidence of **PW-3** that after execution of the Sale Deed, the suit property stood mutated in the name of the Plaintiff and the Property Tax was being paid by her. **DW-1, Sh. Ashish Gupta admitted that neither he nor his mother, had been paying House Tax**

39. Likewise, **PW-2, Sh. Yashpal Singh from TPDDL**, proved the change of the electricity connection in the name of the Plaintiff. **DW-2, Sh. Mahesh Gupta**, also admitted in his cross-examination that the registered Sale Deed had been executed in favour of the Plaintiff without any pressure. **The execution of the registered Sale Deed, therefore, is not merely proved from the official record but is also admitted by the Defendants themselves**

40. It was further the case of the Plaintiff that, after purchase of the suit property, the Appellants were permitted, ***at their request***, to continue in possession for **one month** to enable them to arrange alternate



accommodation. ***However, they failed to vacate the suit premises, thereafter.***

41. The entire defence of the Defendants/Appellants, however, is that notwithstanding the execution of the registered Sale Deed, the transaction was in substance a loan transaction, and the Sale Deed had been executed only as security. The foundation of this defence, is the alleged **Mutual Agreement, Ex.PW-1/D1.**

42. According to the Appellants, a loan in the sum of **Rs.1,65,00,000/- carrying interest @ 21% per annum** had been taken from the Plaintiff, for a period of three years and the Sale Deed had been executed only to secure repayment thereof.

43. The Mutual Agreement relied upon by the Appellants records that a registered Sale Deed had been executed in favour of the Plaintiff. The relevant terms relied upon by the Appellants are as under:

“1. That the first party shall pay the said loan amount on or before 31.12.2021 to the second party.

2. That the first party shall pay the interest of 21% per annum of the said amount to the second party. Which will pay by the first party in every month in monthly ratio to the second party.

3. That the expenses of the execution and registration of Sale Deed in Favour of the second party in respect of the said property shall be borne and paid by the first party.

4. That in case the first party will fail to pay the said loan amount to the second party in respect of the said stipulated period i.e. 31.12.2021, then the second party has right to take the possession of the said property on the



basis of sale deed and the first party shall have no objection for the same and shall not file any case in any court of law.

5. *That the same way if the first party will pay the said loan amount to the second party in the said stipulated period i.e. on or before 31.12.2021 then the second party shall return their original documents in respect of the said property and the second party shall also execute the sale deed in respect of the said property in Favour of the first party on the cost and expenses of the first party.*

6. *That the first party assure the second party that neither they and nor their any legal heir have any objection for the same.”*

44. According to the Defendants/Appellants, the Plaintiff had also executed a *Balance Confirmation* acknowledging that a sum of Rs.63,00,000/- remained outstanding and had undertaken to return the original Sale Deed and previous title documents, after receiving the entire loan amount.

45. In the Written Statement, the Defendants had asserted that they were ready and willing to pay approximately **Rs.52,00,000/-**, subject to reconciliation of the interest, allegedly charged by the Plaintiff.

46. **The entire defence of the Appellants / Defendants was therefore, around the mutual Settlement Ex.PW-1/D1.**

47. The terms as reproduced above clearly show that even as per this mutual Settlement Agreement, *the parties had agreed that loan of Rs.1,65,00,000/- along with interest @ 21% per annum*, taken by the Defendants, shall be repaid **within three years**, and if the loan amount is returned within the **stipulated period, i.e. on or before 31.12.2011**, then the



Plaintiff shall execute a Sale Deed in respect of the suit property, in favour of the Defendants / Appellants.

48. It is the case of the Defendants themselves ***that there was a balance loan amount***, which was to be repaid along with interest. Once the entire alleged loan amount of Rs.1,65,00,000/- along with interest had not been paid till 31.12.2011, the covenant of mutual Agreement was not complied with, **the Defendants could not have claimed the right to reside in the suit property, without the repayment of alleged loan as well as execution of the Sale Deed in respect of suit property, in their favour.**

49. It is significant to note that the **Mutual Settlement, Ex.PW-1/D1, is undated**, though the e-stamp paper on which it was prepared was purchased on **04.01.2019**. The stamp paper for the Sale Deed was subsequently purchased on **23.01.2019** and the Sale Deed was executed on **25.01.2019**. However, the recitals of the Mutual Settlement themselves, refer to the Sale Deed as having already been executed, ***indicating that the Mutual Settlement came to be executed, thereafter.***

50. **The Appellants' claim that they are entitled to continue to reside in the suit premises, is defeated by their own Settlement Agreement**, on which heavy reliance has been placed.

51. It is also significant that while the **sale consideration was Rs.48,51,000/-**, the alleged loan amount was **Rs.1,65,00,000/-**. The disparity between the two amounts, by itself, does not establish that the Sale Deed was executed, merely as security. In any event, even under the terms of the Mutual Settlement relied upon by the Appellants, re-conveyance of the suit property was conditional upon repayment of the entire loan amount by **31.12.2021**, which admittedly was not done.



52. Much emphasis has been placed by the Appellants on the alleged admission of the **Mutual Settlement, Ex.PW-1/D1**, by the Plaintiff in her testimony as PW-1. *However, even if the said document is taken into consideration, its own terms do not advance the case of the Appellants.*

53. The Appellants have also relied upon **WhatsApp conversation Ex.DW-1/1** exchange between the Defendants and Sh. Rajendra Kumar Aggarwal, which also *records the payment of interest and the penal interest*, which is in consonance with the Settlement Agreement, ***but it does not, in any way, nullify the Sale Deed, which admittedly had been duly executed in favour of the Plaintiff.***

54. Not only this, no avoidance of Sale Deed is warranted in the circumstances, ***which the Defendants / Appellants could have sought only on complying with the terms of the Mutual Settlement.***

55. The Appellants have subsequently instituted **CS DJ No.246/2025** seeking *Declaration and Cancellation of the registered Sale Deed dated 25.01.2019 and Mandatory Injunction for re-transfer of the suit property in their favour, upon payment of the alleged balance loan amount of Rs.47,00,000/-.*

56. The Appellants are at liberty to pursue the said Suit in accordance with law. However, ***its pendency does not affect*** the present Suit of the Plaintiff, which is founded upon the **registered Sale Deed dated 25.01.2019**, admittedly executed in her favour by the Appellants.

57. The Appellants had continued in possession of the suit premises beyond the period of one month allowed to them and thereafter, became unauthorized occupants. The learned Trial Court, therefore, rightly passed



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the Decree of **Possession, Mesne Profits and Permanent Injunction** against them.

58. There is **no merit** in the present Appeal, which is accordingly **dismissed**. The pending Applications are also disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 07, 2026/RS