



2026:DHC:8153



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 31st August, 2026

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CNR No. DLHC010319592025

+ RFA 453/2025

SMT. CHANDRAWATI SHAH
W/O LATE SH. ANIRUDH SHAH
R/O 1/2494, MOTI RAM MARG
MUKHERJEE MARG, G.T. ROAD
SHAHDARA, DELHI-110032

.....Appellant

Through: Mr. O. P. Mishra, Adv.

versus

SMT. RAJINDER KAUR
W/O LATE SH. JOGA SINGH

.....Respondent

Through: Mr. Himanshu Buttan, Mr. Shivam
Handa and Mr. Ojasvi Annadi
Shambhu, Advs.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The 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 Appellant/Defendant assailing the Judgment and Decree dated 09.07.2024, whereby the learned District Judge ***decreed the Suit of the Respondent/Plaintiff for possession and awarded a sum of Rs.1,00,000/- towards damages/mesne profits along with future interest @ 6% per annum, till handing over of possession.***



2. The Plaintiff had instituted **Civil Suit bearing CS No.363/2018** for **Possession along with damages/compensation of Rs.5,00,000/-** for its *alleged unauthorised occupation, further damages @ Rs.15,000/- per month* till handing over of the vacant possession thereof, and costs of Rs.1,00,000/- against the Defendant.

3. The **facts in brief**, as narrated in the Plaint, are that the Plaintiff, *Smt. Rajinder Kaur*, is the owner of Property bearing No.1/2494, Moti Ram Marg, Mukherjee Marg, G.T. Road, Shahdara, Delhi-110032, forming part of Khasra No.2854/21-120-104, situated in the area of Village Chandrawali @ Shahdara, Delhi (*hereinafter referred to as the 'suit property'*), having purchased the same from Sh. Sarwan Singh vide Receipt, General Power of Attorney and Agreement to Sell, dated 18.07.1988.

4. The husband of the Defendant, *Sh. Anirudh Shah*, had initially joined the Plaintiff, as a domestic help. Subsequently, on his request, the Defendant also started assisting the Plaintiff and her family in the domestic work, in the suit property. It was asserted that salary was being paid to the Defendant and her husband for the services rendered by them and that no amount remained outstanding towards either of them.

5. The Plaintiff had been residing in the suit property along with her husband, *Late Sh. Joga Singh* and after his demise, she temporarily went to Canada, to reside with her son. Since the Defendant and her husband had been rendering services to the Plaintiff and had represented that they had no other place to reside, they were permitted to reside in the suit property without payment of rent, damages or other charges, with the understanding that they would take care of the property and would hand over its peaceful possession to the Plaintiff, as and when called upon to do so. It was also



made clear that the arrangement was temporary and did not create any right, title or interest in their favour.

6. The Plaintiff continued to visit India from time to time and also resided in the suit property, on various occasions. The electricity connection, the water connection and house tax charges in respect of the suit property, were in her name and the bills were being paid by her.

7. In January, 2018, the Plaintiff returned to India, and decided to reconstruct the suit property and to raise *pucca* construction over the suit property, for her own use and convenience. She, therefore, requested the Defendant to vacate the suit property.

8. By that time, the husband of the Defendant, *Sh. Anirudh Shah* had expired and, upon learning of his demise, the Plaintiff expressed her sympathy to the Defendant, but nevertheless requested her to hand over possession of the suit property. *The Defendant, however, declined to vacate the suit property.* Instead, she threatened the Plaintiff that in case she persisted with her demand for vacation of the suit property, she would be implicated in a false case.

9. Consequently, the Plaintiff sent a Legal Notice dated 21.02.2018 to the Defendant through Speed Post as well as Courier, asking her to vacate the suit property.

10. Subsequently, in the first week of March, 2018, the Plaintiff learnt from persons in the locality that the Defendant had approached a builder with a view to dispose of the suit property.

11. The Plaintiff, thus, instituted the *present Suit seeking possession of the suit property, damages/compensation of Rs.5,00,000/- for its unauthorised*



occupation along with further damages @ Rs.15,000/- per month till handing over of the vacant possession thereof; and costs of Rs.1,00,000/-.

12. The Defendant, in her **Written Statement**, took the *preliminary objections* that the Plaintiff had suppressed material facts; that the Suit *disclosed no cause of action* and was liable to be rejected under Order VII Rule 11 of the CPC, and that the *requisite Court Fee had not been affixed*.

13. **On merits**, The Defendant admitted that she and her husband, had been assisting the Plaintiff and her husband in their domestic work and had also been paying the electricity charges in respect of the suit property, since last about 40 years and, after the demise of the husband, she along with her children, had continued to reside therein.

14. The *principal defence* of the Defendant was that **about thirty five years ago**, the Plaintiff and her husband, *Late Sh. Joga Singh*, **had orally gifted** the suit property to the Defendant and her husband out of love and affection, on account of the care and assistance rendered by them to the Plaintiff and her family. It was claimed that during the Sikh riots of 1984, the Defendant's husband had saved the lives of the Plaintiff and her family members, and that the aforesaid circumstances formed part of the background in which the suit property came to be gifted to the Defendant and her husband.

15. The Plaintiff shifted to Canada, and there was no one to look after the suit property, which had already been gifted to the Defendant and her husband. She and her husband had thereafter, been residing in the suit property as its owners and that the Plaintiff had no right to seek recovery of its possession.



16. The Defendant further alleged that the present Suit had been instituted at the instance of local property dealers, who had an evil eye upon the suit property and had instigated the Plaintiff to recover the same for its sale. With the increase in the value of the property, the intention of the Plaintiff had also become *mala fide* and she was seeking to dispossess the Defendant and her children, despite having already gifted the suit property to them.

17. The Defendant, also disputed the title of the Plaintiff by asserting that the documents relied upon by her, namely the General Power of Attorney, Agreement to Sell and Receipt, dated 18.07.1988 were unregistered and notarised documents and did not confer ownership, in view of the decision of the Supreme Court in Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana(2012) 1 SCC 656. It was also alleged that the Plaintiff had not produced the complete chain of title documents and that the documents relied upon by her, were forged and fabricated.

18. ***On merits***, the assertion that *the Defendant and her husband were being paid salary for their domestic work, was specifically denied*. The Defendant also denied that the suit property had been entrusted to her and her husband, merely for its care or that their occupation thereof, was temporary. It was reiterated that the suit property had been gifted to them and the Defendant was residing therein along with her children, in her own right.

19. It was also denied that the Plaintiff had continued to reside in the suit property from time to time or had regularly paid the electricity, water and house tax charges. According to the Defendant, she and her husband had been paying the electricity charges, and the Plaintiff had paid the electricity



bill only for the month of January, 2018 with a view to create a cause of action for institution of the Suit.

20. The Defendant denied that she had been called upon to vacate the suit property for its reconstruction or that she was in unauthorised occupation thereof. The allegations of threats having been extended to the Plaintiff, were also denied. The receipt of the Legal Notice dated 21.02.2018, was also denied. The Defendant further denied having approached any builder for disposal of the suit property.

21. *The Defendant, thus, prayed for dismissal of the Suit with exemplary costs.*

22. On the basis of the pleadings of the parties, **the following Issues, were framed on 05.12.2018:**

“(i) Whether the Plaintiff is entitled to a decree of possession of the suit property? OPP

(ii) Whether the Plaintiff is entitled for mesne profits and damages as prayed for? OPP

(iii) Whether the Plaintiff is entitled to cost of the Suit as prayed for? OPP

(iv) Relief.”

23. In support of her case, the Plaintiff examined herself as **PW-1** and tendered her evidence by way of Affidavit **Ex.PW1/A**. She relied upon the Receipt, General Power of Attorney and Agreement to Sell, all dated 18.07.1988, collectively exhibited as Ex.PW1/1; Electricity Bill as Mark PW1/2; Legal Notice dated 21.02.2018 as Ex.PW1/3; Postal and Courier Receipts collectively as Ex.PW1/4; and Tracking Reports collectively as Ex.PW1/5.



24. The Plaintiff further examined **PW-2, Sh. Babu Shankar Yadav**, Assistant Personnel Officer, BSES Yamuna Power Ltd., Dilshad Garden, Delhi, who produced the record pertaining to the electricity connection in respect of the suit property, exhibited as Ex.PW2/A.

25. **PW-3, Sh. Dhan Pal Singh**, Assistant Zonal Inspector, Shahdara North Zone, produced the original Rectification/Assessment Order dated 26.02.2018 in respect of the suit property bearing municipal No.1/2494, Ground Floor and First Floor, Ram Nagar, Shahdara, Delhi, passed in favour of the Plaintiff.

26. **PW-4, Sh. Nitin Tomar**, LDC from the Zonal Revenue Office, Shahdara, Delhi, produced the *computer-generated Water Bill Ex.PW4/A, for the period July to September, 2019 in the name of Sh. Jagjeet Singh, son of son of the Plaintiff and Late Sh. Joga Singh*, in respect of the suit property.

27. The Defendant examined herself as **DW-1** and tendered her evidence by way of Affidavit **Ex.DW1/A**. She relied upon her Aadhaar Card Ex.DW1/1 (OSR), the Birth Certificates of her children, Water Bills, educational record of her son and Electricity Bills in support of her possession and residence in the suit property.

28. The Defendant further examined, **DW-2, Sh. Sunil**, her son, **DW-3 Ms. Sunita**, daughter of the Defendant, and **DW-5 Ms. Sangeeta**, daughter of the Defendant, in their respective testimony, supported the case of the Defendant regarding their long possession of the suit property and the alleged oral gift thereof, in favour of his parents, when the Plaintiff and her family shifted to Canada.



29. **DW-4, Sh. Deepak Sharma**, *childhood friend of DW-2 Sunil*, in his evidence of Affidavit Ex.DW4/A, deposed that he used to visit the suit property and had been told by Sh. Sunil that the Plaintiff and her family had orally gifted the suit property to the Defendant and her family, before shifting to Canada.

30. **The learned Trial Court**, after considering the *rival pleadings and evidence*, noted that the Receipt, General Power of Attorney and Agreement to Sell dated 18.07.1988, collectively exhibited as Ex.PW1/1, stood in favour of the Plaintiff. The electricity connection and the municipal assessment record also stood in her name, while the Water Bill stood in the name of her son, *Sh. Jagjeet Singh*. The plea that the suit property had been orally gifted to the Defendant and her husband, was not accepted, as no document in respect thereof, had been executed by the Plaintiff or her husband in their favour.

31. As regards the nature of possession, though the Plaintiff had admitted that there was no document showing payment of salary or appointment of the Defendant and her husband as caretakers, the Defendant herself had stated in the Written Statement that she and her husband used to assist the Plaintiff and her husband, in their domestic work.

32. *The plea of adverse possession*, raised during final arguments, was also rejected, as no such plea had been taken in the Written Statement and no evidence had been led to establish that the possession of the Defendant was hostile to the rights of the Plaintiff, for the requisite period. ***The Plaintiff was, accordingly, held entitled to recover possession of the suit property.***

33. Insofar as the claim for damages/*mesne* profits was concerned, the learned Trial Court noticed that no specific evidence had been led to



establish the quantum claimed. Relying upon Suman Verma v. Sushil Mohini Gupta, (2014) 140 DRJ 595, a lump sum amount of Rs.1,00,000/- was awarded towards damages/*mesne* profits, along with future interest @ 6% per annum till handing over of possession. **The Suit was, accordingly, decreed for possession and damages/*mesne* profits, along with costs.**

34. *Aggrieved by the impugned Judgment and Decree dated 09.07.2024, the Defendant has preferred the Regular First Appeal.*

35. The **grounds of challenge** are that the learned Trial Court failed to appreciate the evidence, in its correct perspective. The Plaintiff, in her *cross-examination*, admitted that the Defendant had been residing in the suit property since the year 1988. Though she also stated that the Defendant had earlier vacated the suit property and was again permitted to reside therein in the year 2008, there was no material to establish when or in what manner, the Defendant had allegedly vacated the property.

36. It is asserted that the Defendant and her family members had remained in *peaceful, continuous and uninterrupted possession of the suit property for about 40 years and that the documents produced by them also established their possession for a period exceeding 12 years, without any interruption*. Such possession, being open and within the knowledge of the Plaintiff, *had become hostile and adverse to her*, and with the passage of the statutory period, the Defendant had *perfected her title by adverse possession*.

37. It is further asserted that the Defendant and her family had, for several decades, looked after the suit property and attended to its renovation, construction and maintenance and had, therefore, acquired rights therein.

38. Though the Plaintiff pleaded that the Defendant and her husband were working as domestic helps and were being paid salary, she admitted in her



cross-examination, that she had no document evidencing payment of any such salary.

39. The Defendant has further relied upon the payment of electricity charges, to contend that she and her husband had been maintaining the suit property. According to her, the Plaintiff had paid the electricity bill only for the month of January, 2018 to create a cause of action for institution of the Suit. The Plaintiff having herself stated that she returned to India from Canada in January, 2018, her assertion of having regularly paid the electricity charges, was stated to be unsupported by the record.

40. The Defendant stated in her cross-examination that after the riots of the year 1984, the suit property had been gifted to her husband, who had saved the family of the Plaintiff during the said riots. According to the Appellant, the learned Trial Court failed to appreciate the said circumstance and the long-standing possession of her family, while rejecting her claim over the suit property.

41. *The Appellant has also questioned the very title of the Plaintiff.* The General Power of Attorney, Agreement to Sell, Receipt all dated 18.07.1988 relied upon by her had been executed by Sh. Sarwan Singh, who himself was stated to be only a General Power of Attorney holder of Sh. Jai Bhagwan, without any pleading or evidence, to show that he was authorised to execute a further General Power of Attorney or transfer the suit property. The Agreement to Sell relied upon by the Plaintiff also did not, by itself, confer any title.

42. It is thus, asserted that the Plaintiff had neither established her title nor her prior possession and could not succeed merely on the basis of any weakness in the case of the Defendant or any admission made by her.



43. It is, therefore, contended that the impugned Judgment and Decree is liable to be set aside.

44. The **Appellant in its Writtem submissions**, in addition to the aforesaid grounds, has submitted that the documents relied upon by the Plaintiff, could not acquire the character of title documents, merely because the Defendant had not challenged them.

45. Whether the General Power of Attorney, Agreement to Sell and Receipt dated 18.07.1988 relied upon by the Plaintiff conveyed any title in her favour was stated to be a question of law, which had to be independently determined by the learned Trial Court. Reliance has been placed upon Brahma Nand Puri v. Neki Puri, AIR 1965 SC 1506, to contend that in a Suit for possession founded on title, the Plaintiff must succeed on the strength of her own title and cannot derive any advantage merely from the weakness of the Defendant's case.

46. It has further been submitted that the learned Trial Court erred in treating the statement in the Written Statement that the Defendant and her husband used to assist the Plaintiff and her husband in domestic work, as an admission of an employer-employee relationship. According to the Appellant, mere assistance in domestic work, did not establish such a relationship, particularly when the payment of salary had been specifically denied in the Written Statement and the Plaintiff admitted in her cross-examination that she had no documentary proof of having paid any salary to the Defendant or her husband. The Written Statement was required to be read as a whole and could not be accepted in part, while disregarding the accompanying denial.



47. The Appellant has also referred to an Application under Order VIII Rule 1A(3) read with Section 151 of the CPC filed on 16.05.2024, for bringing on record certain documents stated to demonstrate the harmonious relationship between the families, including documents in which the Plaintiff's son, *Sh. Jagjeet Singh*, had allegedly acted as guardian of *Ms. Sunita*, daughter of the Defendant. The said Application was dismissed, *vide* Order dated 18.05.2024 by the learned Trial Court.

48. *Per contra*, in the **Written Submissions filed on behalf of the Respondent**, it was submitted that the Defendant herself had set up a case of an oral gift of the suit property in her favour and, therefore, the burden was upon her to establish the same. However, in her cross-examination, DW-1 categorically admitted that she had no documentary proof of ownership; that no written document or Gift Deed had ever been executed in respect of the suit property; and that the suit property continued to stand in the name of the Plaintiff.

49. It has further been pointed out that the documents relied upon by the Defendant, also did not support her claim of ownership, inasmuch as the water bills stood in the name of *Sh. Jagjeet Singh*, son of the Plaintiff, while the electricity bills stood in the name of the Plaintiff.

50. Reliance has been placed upon Section 123 of the Transfer of Property Act, 1882 to contend that the alleged oral gift could not create any right, title or interest, in favour of the Defendant.

51. *It is, therefore, submitted that the learned Trial Court has rightly, decreed the Suit in favour of the Plaintiff.*



52. During the pendency of the present Appeal, *the Plaintiff initiated Execution Petition No.124/2024, and the possession of the suit property already stands delivered to the Plaintiff, on 26.11.2024.*

Submissions heard and record perused.

53. The rival contentions of the parties give rise to the following questions for consideration:

- (i) *Whether the Defendant has established ownership by the alleged oral gift;*
- (ii) *Whether the Long possession of the Defendant created any proprietary Rights in the suit property;*
- (iii) *Whether the Defendant has acquired ownership by adverse possession; and*
- (iv) *Whether the grant of Rs.1,00,000/- towards damages/mesne profits, is sustainable.*

I. Whether the Defendant has established ownership by the alleged oral gift:

54. The defendant's first line of defence is that the Plaintiff has claimed the ownership on the basis of notarised GPA, Agreement to Sell, etc. dated 18.07.1988, which are incapable of conferring ownership on the plaintiff.

55. The Plaintiff traces her right in the suit property on the basis of the Agreement to Sell, General Power of Attorney and Receipt, all dated 18.07.1988, Ex.PW1/1 (colly.), executed in her favour, by *Sh. Sarwan Singh*.

56. The proprietary rights of the Plaintiff, on the basis of Agreement to Sell, etc. 18.07.1988 Ex.PW1/1 (colly.) are corroborated by **PW-2**, *Sh. Babu*



Shankar Yadav, who proved that the electricity connection of the suit property is in the name of the Plaintiff; **PW-3**, Sh. Dhan Pal Singh, Assistant Zonal Inspector, who proved the Rectification/Assessment Order dated 26.02.2018, Ex.PW3/A (OSR), in favour of the Plaintiff; and by **PW-4**, Sh. Nitin Tomar, who proved that the water connection is in the name of the Plaintiff's son, *Sh. Jagjeet Singh*.

57. *These electricity, water and municipal records are,* relevant corroborative circumstances reflecting the proprietary rights of the Plaintiff and her family with the suit property.

58. *Significantly, the Defendant also claims her occupation of the suit property was through the Plaintiff and has* admitted that she and her husband, had been assisting the Plaintiff and her husband in their domestic work.

59. The Defendant has assailed the aforesaid documents on the ground that they are not registered instruments of conveyance and, therefore, do not confer ownership upon the Plaintiff, relying upon *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana*, (2012) 1 SCC 656.

60. *At the outset, it may be noted that the very defence set up by the Defendant, is fatal to this contention.* The Defendant's claim to ownership does not rest on any independent or competing source, but is claimed by virtue of Oral Gift of suit property to her and her husband, *Late Sh. Anirudh Shah*, by none other than the Plaintiff and her husband, *Late Sh. Joga Singh*. Therefore, the very premise of her defence is that the Plaintiff and her husband were owners of the suit property, who possessed an ownership, capable of being transferred. Having thus, founded her own case upon an alleged transfer made from the Plaintiff, the Defendant cannot, in the same



breath, contend that the very documents by which the Plaintiff traces her title, are *non-est* or confer no right whatsoever.

61. The judgement of Suraj Lamp (supra), does not render an Agreement to Sell, General Power of Attorney or Receipt void, *non-est* or devoid of all legal and evidentiary significance; *what it precludes is treating such documents as a substitute for a registered conveyance so as to confer absolute ownership.* Equally, however, such documents cannot be discarded as legally irrelevant, while determining the origin and comparative rights in the property, asserted by the parties.

62. Tested on these principles, the reliance upon Suraj Lamp (supra), does not assist the Defendant. The property documents Ex.PW1/1 (*colly.*), read with the electricity, municipal and water records and, significantly, the Defendant's own case tracing her asserted right through the Plaintiff, ***cumulatively establish the ownership of the Plaintiff, superior to that asserted by the Defendant.***

63. The challenge to the Plaintiff's title is, therefore, completely unfounded and without merit. The Plaintiff has established a better right to the suit property *vis-à-vis* the Defendant.

64. The ***principal defence*** of the Defendant is founded upon ***an alleged oral gift of the suit property.*** According to the Defendant, about 35 years prior to the institution of the Suit, the Plaintiff and her husband, *Late Sh. Joga Singh*, out of love and affection and on account of the care and assistance rendered to them, had *orally gifted the suit property* to the Defendant and her husband, *Late Sh. Anirudh Shah*. *The burden to establish the said oral gift, therefore, squarely lay upon the Defendant.*



65. The Defendant, who examined herself as DW-1, however, was unable to produce any document evidencing the alleged gift or any contemporaneous record showing that any right, title or interest in the suit property was ever transferred to her or her husband. Pertinently, in her cross-examination dated 04.01.2024, she categorically admitted that ***“There is no documentary proof in my possession to claim that I am the owner of the suit property.”***

66. She further admitted that ***“It is correct that there is no written document qua the above said averment. It is correct that the suit property is still in the name of the plaintiff It is correct that there no written gift deed executed between the plaintiff as well as defendant”***. The oral gift set up by the Defendant, allegedly spanning a period of over three decades, is thus unsupported by even a *single contemporaneous document*.

67. The Defendant’s explanation for the absence of any mutation in her favour, is equally unconvincing. When questioned on this aspect, DW-1 volunteered that ***“we could not mutate the records of the suit property in our name as we could not find the occasion for it.”***No particulars whatsoever were furnished as to what prevented the Defendant or her husband from seeking mutation, *or from taking any other step to have the alleged transfer reflected in the public or private records concerning the suit property, or otherwise even documenting the alleged transfer in their favour*. The explanation put forth is thus vague, and wholly unsubstantiated. The absence of any such contemporaneous conduct assumes significance, given that the Defendant now seeks to establish an alleged transfer of ownership said to have taken place, more than three decades earlier.



68. More importantly, the admissions elicited in cross-examination, further establish that DW-1 was unable to substantiate even the pleas raised in the Written Statement regarding her possession and maintenance of the suit property. *DW-1 admitted even the documents relied upon by her, do not support her claim of any right in the suit property.* The water bills relied upon by her as **Mark C to Mark K** were admittedly not in her name, but in the name of *Sh. Jagjit Singh*, son of the Plaintiff. Likewise, the electricity bills relied upon as **Mark M to Mark R** were admittedly not in her name, but in the name of the Plaintiff, *Smt. Rajinder Kaur*. The relevant admission is reproduced hereunder:

“It is correct that Mark C to Mark K are not in my name however, the same is in the name of Jagjit Singh. It is also correct that Mark M to Mark R are not in my name however, the same is in the name of the plaintiff namely Rajinder Kaur.”

69. These admissions of DW -1 are not merely her concessions but they corroborate by the evidence led by the Plaintiff. **PW-2**, appearing from BSES Yamuna Power Ltd., proved that the electricity connection in respect of the suit property stood in the name of the Plaintiff, while **PW-4**, from the Zonal Revenue Office, proved that the water connection stood in the name of *Sh. Jagjeet Singh*, son of the Plaintiff.

70. This assumes further significance because the Written Statement specifically pleaded that the Defendant and her husband had been regularly paying the electricity charges in respect of the suit property. However, when confronted with her own evidence affidavit, **DW-1** denied having stated therein that she and her husband had been regularly paying the electricity bill of the suit property, *thereby further eroding the very plea set up by her.* The



Defendant has, therefore, failed to substantiate even the surrounding circumstances relied upon by her, to lend credibility to her claim of ownership.

71. *While these documents, by themselves, do not conclusively establish the Plaintiff's ownership of the suit property, they are, however, relevant as corroborative circumstances, as the electricity and water records relied upon by the Defendant, continue to be in the name of the Plaintiff or her son. They, therefore, lend no support to the Defendant's assertion that ownership had been transferred to her and her husband decades earlier; on the contrary, are consistent with the Plaintiff's assertions of continuing to be the owner of the suit property.*

72. The testimony of the other witnesses examined by the Defendant, also does not establish the alleged gift. **DW-2**, Sh. Sunil, son of the Defendant, admitted that he was born in the year 1988 and that his knowledge that the suit property had been given to his father, was based upon what had been verbally conveyed to him. His testimony regarding the alleged gift was, therefore, evidently not based upon any personal knowledge of the transaction.

73. The other witnesses examined by the Defendant, *fare no better*. **DW-3**, Ms. Sunita, and **DW-5**, Ms. Sangeeta, daughters of the Defendant, merely supported the version of an oral gift, but had no personal knowledge of the alleged transaction. **DW-4**, Sh. Deepak Sharma, a childhood friend of **DW-2**, admitted that he had come to depose at the request of Sh. Sunil and that he had no personal knowledge of the case. **Thus, none of these witnesses could prove the factum or circumstances of the alleged gift.**



74. Thus, while the Defendant sought to assert ownership on the basis of an ***alleged oral gift***, neither she nor any of the witnesses examined by her ***could prove when, how, or in what manner the alleged gift was made and accepted***. No specific date of the alleged gift has been pleaded or proved; nor is there any document evidencing such gift, any record standing in the name of the Defendant or her husband, or any other contemporaneous act evidencing the alleged transfer of the suit property in their favour.

75. Even assuming that the Defendant or her husband had paid the consumption charges while residing in the suit property, such payment is an incident of occupation and does not create or evidence ownership. *Significantly, even the electricity and water bills relied upon by the Defendant herself, admittedly stand in the name of the Plaintiff for her son.*

76. The legal position governing a gift of immovable property is contained in **Section 123 of the Transfer of Property Act, 1882**, which provides that such a gift can be effected only by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

77. The distinction between the position under traditional Hindu law and that prevailing after the application of the Transfer of Property Act, 1882 is also noticed in paragraph 358 of Mulla's Hindu Law, wherein it has been observed as under:

(i) A gift under pure Hindu Law need not be in writing; however, such a gift is not valid unless it is accompanied by delivery of possession of the subject matter of the gift from the donor to the donee. Mere registration of a Gift Deed is not equivalent to delivery of possession and is, therefore, not sufficient to pass title in the property from the donor to the donee. Where, from the nature of the



property, physical possession cannot be delivered, it is sufficient to validate the gift if the donor has done all that he could do to complete the gift so as to entitle the donee to obtain possession.

(ii) As regards Hindu gifts to which the Transfer of Property Act, 1882 applies, the rule of pure Hindu Law that delivery of possession is essential to the validity of a gift stands abrogated by Section 123 of the said Act. Under the Transfer of Property Act, delivery of possession is no longer necessary to complete the gift, nor is mere delivery of possession sufficient to constitute a valid gift, except in the case of movable property.

78. It is, therefore, evident that, while under the traditional Hindu law an oral gift accompanied by delivery of possession was sufficient to constitute a valid gift, the position got abrogated by introduction of Section 123 of the Transfer of Property Act, 1882 which requires a gift of immovable property to be effected by a registered instrument. The Supreme Court in Gomtibai v. Mattulal, (1996) 11 SCC 681, observed as under:

“4. Thus, it is seen that the gift of immovable property should be made only for transferring the right, title and interest by the donor to the donee by a registered instrument signed by or on behalf of the donor and must be attested by at least two witnesses. The preexisting right, title and interest of donor thereby stand divested in the donee by operation of Section 17 of the Registration Act only when the gift deed is duly registered and thereafter the donor would lose title to the property. It must also be proved that the donee had accepted the property gifted over under the instrument. In this case, though the transfer of gift was acted upon by Kusturibai as per the correspondence and evidence on record, but, admittedly, there is no written instrument executed by the donor, namely, the plaintiff and the defendant in favour of their cousin sister Kusturibai and it was got attested by at



least two witnesses and registered in accordance with the provisions of the Stamp Act and the Registration Act. In the absence of compliance of these formalities, at best what could be seen from the partition deed is that the original plaintiff and the defendant have expressed their intention to gift over the land to their cousin sister Kusturibai. As held earlier, in the absence of any registered instrument of gift and acceptance thereof by the donee, the said property could not be said to have been legally transferred in favour of their cousin sister; in other words, the gift is not complete in the eye of law. Therefore, the District Court has rightly set aside the decree of the trial court which was later confirmed by the High Court. We do not find any error of law warranting interference.”

79. Likewise, the coordinate Bench of this Court in R.N. Dawar vs. Ganga Ram Saran Dhama 1992 SCC OnLine Del 446 had also held as under :

“.....Under Section 123 of the Transfer of Property Act, a gift of immoveable property which is not registered is bad in law and cannot pass any title to the donee. Any oral gift of immoveable property cannot be made in view of the provisions of Section 123 of the Transfer of Property Act. Mere delivery of possession without written instrument cannot confer any title. The plea of the defendants that defendant No. 2 of this plot of land became owner by virtue of the gift from Pritam Singh is not tenable reject the same.”

80. It is thus the settled position, in respect of a gift of immovable property governed by Section 123 of the Transfer of Property Act, 1882, that the transfer must be effected through a registered instrument executed in the manner prescribed by law. *Admittedly, no such registered gift deed exists in the present case.* Consequently, the assertion of the Defendant/Appellant that she acquired ownership of the suit property by virtue of an alleged oral gift cannot, be sustained.



81. In view of the foregoing admissions, the Defendant has failed to discharge the burden to establish the alleged oral gift of the suit property. Apart from her own interested testimony and her children, there is no document or circumstance, however slight, to corroborate the existence of such a gift. ***The plea of oral gift was, accordingly, rightly rejected by the Ld. Trial Court.***

II. Whether the Long possession of the Defendant created any proprietary Rights in the Suit property:

82. Thus, what remains for consideration is whether the Defendant's admitted possession of the suit property, extending over several decades, *independent of the un-proved Gift, confers upon her any ownership right capable of resisting recovery.*

83. The origin of Defendant's occupation, is evident from the pleadings itself. The Defendant admitted in the Written Statement that she and her husband ***"had been assisting the Plaintiff and her husband in their domestic work"***. She further pleaded that the alleged gift had been made ***"due to love and affection, as the defendant and her late husband used to take complete care of the plaintiff and her family members."***

84. PW-1 similarly deposed that the Defendant and her husband, initially engaged for domestic work, were thereafter, permitted to occupy the suit property to look after it during her absence in Canada. *Such assistance even without formal salaried employment, is sufficient to establish the permissive occupation of the Defendant, in the suit property.*

85. What emerges is that the Defendant and her husband came into occupation of the suit property for rendering care and assistance to the



Plaintiff and her family, and not under any independent source of right and their continuation therein for whatever period, was ***as the caretakers and nothing more.***

86. The legal character of possession arising in such circumstances, was considered by the Supreme Court in Maria Margarida Sequeria Fernandes and Others v. Erasmo Jack de Sequeria (Dead) through LRs., (2012) 5 SCC 370. In that case also, the owner, while residing away from the property, had permitted her brother to occupy and look after the premises. Upon recovery of possession being sought after a considerable period, the occupant relied upon long possession and a family arrangement, to resist the claim. *The Supreme Court held that a person who is permitted to occupy property gratuitously or for its care, does not acquire any right or interest therein merely on account of prolonged occupation.*

87. The Apex Court crystallized the governing principles, as follows:

- (i) *No one acquires title to the property if he or she was allowed to stay in the premises gratuitously; even by long possession of years or decades, such person would not acquire any right or interest in the said property;*
- (ii) *A caretaker, watchman or servant can never acquire interest in the property, irrespective of his long possession, and is required to give possession forthwith on demand;*
- (iii) *The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for*



some time either as a friend, relative, caretaker or as a servant;

- (iv) The protection of the Court can only be granted or extended to a person who has a valid, subsisting rent agreement, lease agreement or licence agreement in his favour; and*
- (v) The caretaker or agent holds the property of the principal only on behalf of the principal and acquires no right or interest whatsoever for himself in such property, irrespective of his long stay or possession.”*

88. The Supreme Court in Maria Margarida (supra) thus, held, *inter alia*, that gratuitous occupation, even for years or decades, does not confer title and a caretaker, servant, friend or relative permitted to occupy the premises does not acquire an interest merely by reason of such occupation. A caretaker or agent merely holds the property on behalf of the principal and cannot claim an independent right merely from the duration of possession.

89. The aforesaid principles apply squarely to the present case. The Defendant has established no independent source under which she or her husband, entered the suit property. The only subsequent proprietary right asserted by her was the alleged oral gift, which she has miserably failed to prove. ***Mere continuance in occupation for several decades, therefore, cannot by itself convert the original permissive occupation, into an independent proprietary right.***



90. Consequently, neither the alleged oral gift, which remains wholly unsupported by any surrounding circumstance, nor the Defendant's long possession of the suit property as a caretaker, howsoever protracted, *has conferred upon her any right, title or interest therein.*

III. Whether the Defendant has acquired ownership by way of adverse possession:

91. The next question is: *Whether such permissive possession, subsequently assumed a hostile character and ripened into a right by adverse possession.*

92. The Defendant has also sought to resist the claim for possession on the ground that she and her family have remained in continuous occupation of the suit property for about four decades and have thereby, perfected their title by adverse possession. Significantly, no plea of adverse possession was raised in the Written Statement and *the contention was urged only at the stage of final arguments before the learned Trial Court.*

93. *The law on adverse possession is well settled.* A person claiming title on this basis must establish possession which is *nec vi, nec clam, nec precario*, i.e., peaceful, open and continuous, and which is hostile to the title of the person against whom such possession is asserted. Such possession must commence with the wrongful denial of the rightful owner's title, and must be actual, visible, exclusive, hostile accompanied by the requisite *animus possidendi* throughout the statutory period of twelve years.

94. In Karnataka Board of Wakf v. Government of India, (2004) 10 SCC 779, the Supreme Court further held that the claimant must specifically plead and establish, *inter alia*, when possession commenced, its nature, whether it



was known to the other party, the period for which it continued and that it was open and undisturbed.

95. Equally, mere possession, however long, does not ripen into title unless accompanied by the requisite hostile animus. In Konda Lakshmana Babuji v. Government of A.P., (2002) 3 SCC 258, the Supreme Court has explained that mere possession of land, however long, does not ripen into title unless the possessor has the requisite *animus possidendi* to hold the land adverse to the title of the true owner, and that where, at the commencement of possession, there is no such *animus*, the period for adverse possession commences only from the date when both the fact of possession and the assertion of hostile title are shown to exist.

96. The Supreme Court, in Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729, has reiterated that a claim of adverse possession succeeds only where the claimant establishes *these ingredients of hostility, continuity and openness against the true owner throughout the statutory period*, and that it is only upon completion of that period that even the true owner's right to eject the possessor stands extinguished.

97. The aforesaid position has recently been reiterated by the Supreme Court in Bhag Singh (D) through Mahant Kashmir Singh v. Basant Kaur (D) through LRs., 2026 INSC 983. It was observed that where possession is referable to a lawful or permissive origin, mere lapse of time does not render it adverse; there must be clear and unequivocal evidence of the point at which such possession became hostile to the true owner. Significantly, the Supreme Court further held that *the absence of pleadings identifying the commencement of hostile possession is not a mere technical defect, since*



unless such commencement is pleaded and proved, the statutory period for adverse possession cannot even begin to run.

98. Further, in Narasamma v. A. Krishnappa (Dead) through LRs., AIR 2020 SC 4178, the Supreme Court held that a claim of title from a particular date and a plea of adverse possession from the very same date, cannot simultaneously be sustained. Upon failure of the asserted title, the claimant must independently plead and prove the subsequent point of time from which possession became hostile.

99. *Tested on these principles, the plea fails at the threshold.* Admittedly, adverse possession was not pleaded in the Written Statement and was raised only at the stage of final arguments, before the learned Trial Court. There is consequently no pleading identifying when the Defendant's possession allegedly became hostile, what act constituted such hostile *assertion*, or when it was brought to the knowledge of the Plaintiff.

100. As already discussed above, the Defendant's occupation was ***permissive in origin*** and arose through her association with the Plaintiff and her family. There is no evidence of any subsequent point in time, at which such permissive occupation was repudiated and converted into a hostile assertion of title. *Mere continuance in possession thereafter, even for a considerable period, would not by itself alter its juridical character.*

101. The plea is also inconsistent with the substantive case set up by the Defendant in the Written Statement. Her case throughout, is that the suit property had been orally gifted to her and her husband by the Plaintiff and her husband and that she thereafter, occupied the property as owner. Having asserted ownership derived from the Plaintiff, she could not, from the same point of time, simultaneously claim possession hostile to and in denial of the



Plaintiff's title. Nor has any later date of hostile assertion, been pleaded or proved.

102. This accords with the view of the Supreme Court in Narasamma v. A. Krishnappa (Dead) through LRs, AIR 2020 SC 4178, that a claim of title from a particular date and a plea of adverse possession from the very same date cannot simultaneously be sustained, and that upon failure of the plea of title, it becomes necessary to independently plead and prove the date from which possession turned hostile, ***a burden not even attempted to be discharged here.***

103. Even otherwise, the reliance placed upon the length of possession does not advance the Defendant's case. Long possession, howsoever protracted, does not by itself ripen into title unless shown to have been hostile, to the knowledge of the true owner, for the entire statutory period; mere continuance of possession, without more, remains possession simplicitor.

104. As recently reiterated by the Supreme Court in Bhag Singh (D) through Mahant Kashmir Singh v. Basant Kaur (D) through LRs., 2026 INSC 983, long possession may establish physical occupation, but does not, by itself, establish adverse possession; what must additionally be proved is a conscious and hostile assertion of ownership in denial of the rights of the true owner. *The Defendant has led no such evidence.*

105. Thus, whether the Defendant's possession is examined from its permissive origin, or from the footing of her own pleaded case of an oral gift, as examined hereinabove, no time frame emerges at which such possession can be said to have assumed a hostile character against the Plaintiff, nor has any such point been pleaded or proved.



106. In view of the foregoing discussion, it is held that the Defendant has failed to establish any essential ingredients of adverse possession.

IV. Whether the direction for payment of Rs.1,00,000/- towards damages/mesne profits is sustainable:

107. The learned Trial Court has awarded a lump sum amount of Rs.1,00,000/- towards damages/mesne profits, along with future interest @ 6% per annum till handing over of possession.

108. Admittedly, no evidence whatsoever was led by the Plaintiff before the learned Trial Court to establish the quantum of damages or mesne profits, or the prevailing rental value of the suit property on the basis of which such compensation could be determined.

109. The reliance upon Suman Verma v. Sushil Mohini Gupta, (2014) 140 DRJ 595, also does not carry the matter further. In that case, while observing that assessment of mesne profits necessarily involves some element of estimation, the Court nevertheless proceeded on the basis of the material available on record, including the nature, size and location of the property, the evidence of the parties and the absence of any rebuttal to the rental value asserted.

110. In the present case, however, no evidence has been led as to the prevailing rental value of the suit property, nor is there any other material in regard to Mesne profits. In the circumstances, considering the possession over more than three decades, the Ld. Trial Court was justified in granting a lump sum amount of Rs.1,00,000/-, as damages.

111. During the pendency of the Appeal, vide Order dated 07.05.2025, learned counsel for the Respondent/Plaintiff, on instructions, categorically



stated before this Court that the Respondent was “*not interested in receiving any such damages/mesne profits from the appellant/applicant*”. The Respondent has, thus, given up the monetary relief granted to her under the impugned Decree.

Conclusion:

112. It may be observed that the possession of the suit property has already been delivered to the Plaintiff on 26.11.2024 in the execution proceedings.

113. In so far as grant of Rs.1,00,000/- towards damages/mesne profits along with interest, is concerned, the respondent has given up the right to seek its recovery, as per the statement made in the Court, on 07.05.2025.

114. In view of the foregoing discussion, it is held that there is no merit in the present **Appeal, which is hereby, dismissed.**

115. The pending Application(s), if any, are also disposed of, accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

SEPTEMBER 22, 2026/R