



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

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*Reserved on 13th July, 2026
Pronounced on: 28th September, 2026
Uploaded on: 28th September, 2026*

CNR No. DLHC010170072026

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RFA 393/2026

SH. GOPAL GUPTA

S/o Late Sh. Shiv Dayal
R/o H.No.417, Pocket-D-16,
Sector-7, Rohini, Delhi-110085.

Also at:

SH. GOPAL GUPTA
Proprietor of M/s Gupta Stores,
B-4A/3, Rana Pratap Bagh,
Delhi-110007.

.....Appellant

Through: Ms. Seema Tiwari, Advocate.

versus

SH. MAHAVIR PRASAD

S/o Late Sh. Bishambar Dayal
R/o B-4A/3, Rana Pratap Bagh,
Delhi-110007.

.....Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



1. The present **Regular First Appeal**, under **Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908** (hereinafter referred to as “CPC”), assails the **Judgment and Decree dated 07.02.2026** passed by the learned District Judge, Delhi, whereby the **CS-DJ/1149/2023** of the plaintiff for *Declaration of Ownership* in respect of a shop forming part of property bearing **No. B-4A/3, Rana Pratap Bagh, Delhi** (hereinafter referred to as the “suit shop”) *and a Permanent Injunction*, was rejected under **Order VII Rule 11 CPC**.
2. The **facts**, as stated in the **Plaint**, are that the **Appellant/Plaintiff, Sh. Gopal Gupta**, and the **Respondent/Defendant, Sh. Mahavir Prasad**, are cousins and grandsons of **Late Sh. Roop Ram**. The Plaintiff is carrying on business under the name and style of *M/s Gupta Stores*, from the suit shop situated on the ground floor of the aforesaid property.
3. The Plaintiff stated that, under the **Will dated 28.02.1964** executed by Late Sh. Jai Narain, his mother, *Smt. Kesar Devi*, and *Smt. Jarawali Devi*, wife of Late Sh. Jai Narain, together owned two-thirds of property bearing No. B-4A/3, Rana Pratap Bagh, Delhi. *Smt. Revati Devi*, wife of late Sh. Bishambar Dayal, was the owner of the remaining one-third share in the property in question.
4. He asserted that he was a co-owner through his mother until October 1992 and according to him, the original Will was in the possession of the Defendant.
5. A **Partition Deed dated 19.10.1992** was executed amongst **Smt. Revati Devi**, wife of late Sh. Bishambar Dayal and *Smt. Jarawali Devi*, mother of the Defendant, and *Smt. Kesar Devi*. The Deed divided the



property measuring 213.3 square yards; the front portion fell to the share of Smt. Revati Devi, while the rear portion was allotted jointly to Smt. Jarawali Devi and Smt. Kesar Devi.

6. The Plaintiff had further averred that he was the youngest among his cousins and had been kept **unaware** of his asserted share in the property. His father had died in 1982 and his mother, Smt. Kesar Devi, on 16.02.1993. According to him, the family had given him the suit shop in **1990**, when he was about 17 years of age, as his share and as a source of livelihood. He had **accepted** the small shop, to avoid discord in the family.

7. It was further stated that, over time, the Plaintiff's elder brother, Late Sh. Mani Ram Gupta, and the Defendant sought to deprive Smt. Jarawali Devi and the other co-sharers of their respective interests. Smt. Jarawali Devi had resided with the Plaintiff until her demise on 08.01.2008. Whenever the Plaintiff sought his share in the property, the Defendant and his elder brother would rebuke him, by saying: ***"Faltu Kamo Mei Dhyan Mat De, Tujhe Dukan De Rakhi Hei, Tu Use Chala, Aur Bado Ke Beech Mei Dakhalndaji Karna Band Kar."***

8. The Plaintiff had also pleaded that, upon learning of The Partition In October 1992, He Told Smt. Revati Devi In **November 1992**: ***"Tai Aage Ka Hissa To Tere Pass Hei, Lekin Dukan Khali Na Karunga, Dukan To Meri Roz-Roti Hei."*** According to him, she replied: ***"Dukan To Bhai Teri Hei, Koi Na Khali Karwa Raha Tujhse, Bol Kaha Gutha Lagaun, Mahre Pass Birla Mill Wali Dukan Hein, Yo To Tere Vaste Hi Kholi Thi."*** The Defendant then stated: ***"Bhai Tu Sabse Chhota Hei, Lekin Maa Ne Tujhe To Dukan Ka Malik Bana Diya."***



9. It was the Plaintiff's case that neither Smt. Revati Devi nor the Defendant had asked him to vacate the suit shop after execution of the Partition Deed, and that the Deed contained no stipulation treating him as a tenant. He claimed that an **oral family arrangement** in 1990, had made him the **absolute owner** of the suit shop. He further asserted that his possession had become ***open, hostile and uninterrupted from November 1992***, and that the suit shop remained the source of livelihood for him and his family.

10. The Plaintiff had stated that the Defendant issued a **Legal Notice dated 28.01.2022** seeking possession of the suit shop and rent for the period from **January 2019 to January 2022**, while alleging that rent had remained unpaid since January 2004. By **reply dated 05.02.2022**, the Plaintiff **denied** the existence of any landlord-tenant relationship. He also asserted that the Notice **did not disclose** when he had allegedly been inducted as a tenant, whereas the Defendant's *Eviction Petition* referred to an alleged tenancy commencing about 25 years earlier, without specifying the initial rate of rent.

11. The Plaintiff had further stated that the Defendant instituted an **RC-ARC/133/2022 (E-29/2022)** *Eviction Petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958* The Plaintiff's Application for Leave to Defend was allowed by Order dated 17.07.2023, and the Petition was pending before the learned Rent Controller. The Defendant had also filed another **RC-ARC/311/2022** *Eviction Petition under Section 14(1)(a) of the Act*.

12. According to the Plaintiff, he had been running the suit shop without interference, until **16.06.2022**. Since September 2002, he had been using



commercial electricity connection bearing CA No. 60004014738, which stood in the **Defendant's name**. As the relations between the parties were cordial, he had not sought a connection in his own name and had paid the electricity charges, according to his consumption. Prior to September 2002, he had used electricity through connection bearing CA No. 60008200770, on a sharing basis.

13. It was alleged that, during the pendency of the Eviction Petition, the Defendant got the **commercial meter removed** on 16.06.2022 through TPDDL personnel, thereby disrupting the electricity supply to the suit shop. The Plaintiff claimed that the Defendant threatened to remove him from the shop and that his requests for restoration of the connection went unheeded.

14. Consequently, the Plaintiff instituted **CS/SCJ/1728/2022**, seeking Mandatory and Permanent Injunctions. *Vide Order dated 27.08.2022, the learned Civil Judge directed restoration of the electricity supply, which was restored on 27.11.2022.* The Defendant's Appeal, **RCA/137/2022**, was dismissed on 13.04.2023.

15. The Plaintiff, in the present suit, has sought a **Declaration** that he had become the owner of the suit shop by **adverse possession**, and **Permanent Injunction** for restraining the Defendant and persons claiming through him, from forcibly dispossessing him. In support of his claim, he relied upon Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729; Gurtej Singh v. Zora Singh (Dead) through LRs, Civil Appeal No. 8424/2009, decided on 26.02.2020; Des Raj v. Bhagat Ram, (2007) 9 SCC 641; and Nair Service Society v. K.C. Alexander, AIR 1968 SC 1165.



16. In the **Written Statement**, the Defendant raised *preliminary objections* of concealment of material facts, non-payment of rent and absence of a cause of action. He asserted that he was the owner of the suit shop; that the Plaintiff was his tenant, and that the suit was barred under **Section 50 of the Delhi Rent Control Act**.

17. The Defendant alleged that, before execution of the Partition Deed dated 19.10.1992, the Plaintiff had executed a **registered Relinquishment Deed dated 15.10.1992** in favour of his mother, Smt. Kesar Devi. He further relied upon a **registered Sale Deed dated 06.12.1995**, stated to have been executed by the Plaintiff and other co-sharers, in favour of Smt. Saroj Goel, for a consideration of **Rs.2,60,000/-**. According to the Defendant, the Plaintiff had thereby **acknowledged** the Defendant's exclusive rights over the property.

18. The Defendant also relied upon **rent counterfoils** which, according to him, bore the Plaintiff's signatures and acknowledged rent **@ Rs.500/- per month**. He claimed that the tenancy had commenced about **26 years** earlier and that the Plaintiff had been using the electricity connection in the Defendant's name, with the permission of the Defendant's mother.

19. The Defendant further contended that the Suit was barred under **Order II Rule 2 CPC**, as the Plaintiff could have sought the reliefs claimed herein in the earlier suit, **CS/SCJ/1728/2022**, titled *Gopal Gupta v. Mahavir Prasad*. In the said suit, the Plaintiff had sought restoration of the electricity connection and an Injunction against interference with his use and enjoyment of the suit shop.



20. The Defendant also objected that the site plan ***did not disclose*** the dimensions of the suit shop and that the Suit is hit by **Order VII Rule 3 CPC. Also**, the requisite court fee had not been paid. It was also contended that the Plaintiff had not been properly verified, in accordance with **Order VI Rule 15 CPC**.

21. It was further contended, that the oral family arrangement could not prevail over the registered documents, reliance is placed on Abhishek Gupta v. Shashi Kumar Shukla, 283 (2021) DLT 183, *wherein it was held that a written document shall prevail over oral contentions*.

22. It was asserted that specific allegations have been made against his brother Mani Ram Gupta, though he has not been impleaded as a party, rendering the Suit liable for rejection, *on account of non-joinder of necessary parties*.

23. It was contended that the Plaintiff had not challenged the Relinquishment Deed dated 15.10.1992 or the Sale Deed dated 06.12.1995. Nor had he disputed the counterfoils bearing his signatures, as a tenant. *The Suit was, therefore, barred under Sections 31 and 34 of the Specific Relief Act*.

24. Reliance was placed on Kamleshwar Kishore Singh v. Paras Nath and Others, (2002) 1 SCC 304. It was further submitted that, in Padhiyar Prahladi Chenaji v. Maniben Jagmalbhai, (2022) 12 SCC 128, the Supreme Court held that *no injunction could be granted against the true owner and that the relief of declaration, as sought, was not maintainable*.

25. On **merits**, the Defendant denied that the Plaintiff had been given the suit shop, in 1990. He asserted that the Plaintiff was then a minor and a



student, that the Partition Deed did not allot the suit shop to him, *and that the shop did not exist until 1995*. He denied having removed the electricity connection or threatened the Plaintiff and relied upon the alleged rent counterfoils, to dispute the Plaintiff's denial of tenancy.

26. In the **Replication**, the Plaintiff denied having concealed any material fact. He stated that he ***did not dispute*** the execution of the Relinquishment Deed, Partition Deed or Sale Deed, but maintained that he had been given the suit shop in 1990 and had ***remained in possession*** even after the partition and sale. He denied signing the rent counterfoils or paying rent. He also stated that he was ***not a signatory*** to the Partition Deed and, therefore, could not comment upon whether the suit shop was reflected in the site plan or upon the contents of the Deed. According to him, its terms had been settled by the *Defendant and his late brother, Mani Ram Gupta*, while he was still a teenager. He claimed to have seen the Deed for the first time, in the Eviction proceedings and to have then found its terms, faulty.

27. The Plaintiff reiterated that *CS/SCJ/1728/2022* had been instituted urgently to restore electricity during the summer and arose from a distinct cause of action. He denied that Order II Rule 2 CPC applied and reaffirmed the averments made in the *Plaint*.

28. The Defendant thereafter, filed an Application under ***Order VII Rule 11 read with Section 151 CPC***, seeking rejection of the *Plaint*. The grounds urged therein substantially reiterated the preliminary objections in the Written Statement, including the alleged registered **Partition Deed**, Relinquishment Deed and the Sale Deed, the rent counterfoils, insufficiency of the pleadings of adverse possession, the bar under Order II Rule 2 CPC,



the deficit court-fee and the failure to seek appropriate relief against the registered deeds.

29. The learned District Judge, *vide Order dated 29.07.2026*, observed that the Plaintiff had not made a claim of ownership by adverse possession and the Plaintiff also did not disclose when the rightful owner was dispossessed or when the Plaintiff's title allegedly stood perfected by adverse possession. Instead, the Plaintiff claimed absolute ownership on the basis of an *oral family settlement* preceding the Partition Deed dated 19.10.1992. In the absence of the necessary pleadings and particulars, the claim of adverse possession was not made out, and the Order VII Rule 11 application was allowed.

30. The learned District Judge further noted that the Plaintiff had not disputed the execution of the *registered documents concerning the suit shop, including the Relinquishment Deed dated 15.10.1992*.

31. The learned District Judge also considered the Defendant's objection under Order II Rule 2 CPC. Since the Plaintiff had not pleaded that he was unaware of his alleged claim to ownership by adverse possession when he filed the earlier Suit No. 1728 of 2022, for Mandatory and Permanent Injunction, the Court held that he could have sought a Declaration on that basis, in the earlier suit. The present Suit was, therefore, held to be barred under Order II Rule 2 CPC.

32. ***Aggrieved by the rejection of the Plaintiff, the Plaintiff has preferred the present appeal.***

33. The **principal grounds of challenge**, are that the learned Trial Court misapplied *Vasantiben Prahladi Nayak v. Somnath Muljibhai Nayak*, Civil



Appeal No. 6432 of 1998, decided on 09.03.2004, and misunderstood Hanangowda v. Irgowda, AIR 1925 Bom 9.

34. It is contended that the Plaintiff, **particularly in paragraph 8**, specifically pleads an *oral family arrangement in 1990 and hostile possession from November 1992*, pursuant to the Partition Deed dated 19.10.1992. Further, it was contended that, **averments in paragraph 6** of the Plaintiff, concerning the *Partition Deed dated 19.10.1992 and Smt. Revati Devi's taking possession of the front portion*, were not rightly appreciated, as the Plaintiff had remained in exclusive possession of the suit shop.

35. The Appellant further asserted that the finding that the true owner, is contrary to the pleadings, since the front portion had been stated to have come to the share of Smt. Revati Devi and the Plaintiff claimed exclusive possession of the suit shop.

36. It was contended that the learned Trial Court, while deciding the **Application under Order VII Rule 11 CPC**, failed to confine its consideration to the Plaintiff and relied on the Defendant's defence and documents. The Plaintiff had pleaded **long, continuous possession**, but had not alleged wrongful dispossession of the rightful owner. The findings on dispossession and tenancy, including the alleged admission of rent at ₹500 per month, *were therefore disputed*. It was further submitted that the Electricity connection standing in the Defendant's name could not, by itself, establish a tenancy.

37. The Plaintiff also challenged the Trial Court's reliance on the registered documents and its finding of concealment, and submitted that the Partition Deed dated 19.10.1992, had been referred to in the Plaintiff. Their



validity and effect, as well as any adverse inference from their alleged non-disclosure, could not be determined without a trial. Reliance on Hemlata v. Tukaram, 2026 INSC 82, was accordingly stated to be misplaced. Any defects in the Plaint were also said to be curable.

38. As to **adverse possession**, it was contended that the Plaint pleaded possession since 1992 and disclosed the essential elements of the claim. Whether the possession was **open, continuous, exclusive, hostile and uninterrupted**, involved questions of fact and law requiring a trial and that the absence of a specific date on which it became adverse, **could not justify** rejection of the Plaint.

39. The finding under **Order II Rule 2 CPC**, was also challenged. The earlier Suit sought an Injunction against **interference with possession**, while the present Suit sought a Declaration based on **adverse possession and consequential relief**. It was submitted that the suits did not arise from an identical cause of action and that the Plaintiff was unaware of the asserted right when the earlier Suit was filed. Reliance was placed on Rathnavathi v. Kavita Ganashamdas, State of Madhya Pradesh v. State of Maharashtra, (1977) 2 SCC 288, and Inacio Martins v. Narayan Hari Naik.

40. Written arguments were submitted on behalf of the Appellant, wherein the grounds taken in the Appeal, were reiterated.

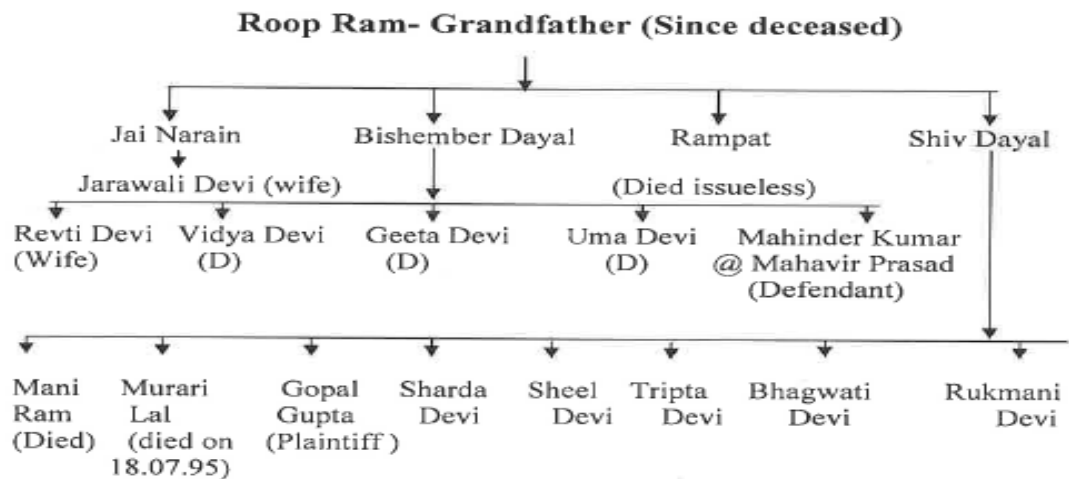
Submissions heard and record perused.

41. The Plaintiff has instituted the suit seeking a **Declaration of ownership** of the property in question, comprising a shop forming part of the built-up property, and a **Permanent Injunction** restraining the Defendant from interfering with his possession.



42. In order to comprehend the controversy, it would be first be pertinent to refer to the transaction through which the property in question, was purchased.

43. It was explained that late Shri Bishambar Dayal, Jai Narayan, Rampat and Shiv Dayal were the real brothers and sons of late Roop Ram. The Family Tree/Pedigree Table of Late Sh. Roop Ram is as under:



44. It is evident from recitals in the **Partition Deed dated 19.10.1992 and Will dated 28.02.1964**, that the plot in question measuring 213.3 sq. yards bearing No. B-4A/3, Rana Pratap Bagh, was purchased by Late Roop Ram, by way of **registered Sale Deed dated 27.03.1953**. Thereafter, construction on the ground, mezzanine, first and Barsati floors had been raised with contributions from Sh. Jai Narain and his brothers, Bishambar Dayal, Ram Pat and Shiv Daya, who all inherited the property in question, on demise of Sh. Roop Ram.

45. Sh. Jai Narain died on **04.01.1966**. *Sh. Ram Pat died unmarried* and issueless on **14.12.1989**, while Sh. Shiv Dayal died on **03.10.1982**. The



Partition Deed recites that Smt. Revati Devi inherited the interest of Late Sh. Bishambar Dayal, while Smt. Jarawali Devi and Smt. Kesar Devi inherited the respective interests of Late Sh. Jai Narain and Late Sh. Shiv Dayal. It further records that the children of Late Sh. Bishambar Dayal and Late Sh. Shiv Dayal relinquished their rights in favour of their respective mothers.

46. The Plaintiff asserted that he had been running the shop peacefully, since 1990. From his own averments, it is evident that he got the shop for his livelihood, at which time no partition had taken place. The relations interse the parties, were admittedly cordial.

47. Thereafter, admittedly, the **Partition Deed dated 19.10.1992**, was executed between the three ladies/co-owners and the front portion of the property, comprising the ground, mezzanine, first and Barsati floors, was allotted to Smt. Revati Devi, while the rear portion was allotted jointly to Smt. Jarawali Devi and Smt. Kesar Devi. The Deed records delivery of separate possession of the respective portions.

48. The rear portion was thereafter, was conveyed by Smt. Jarawali Devi and Smt. Kesar Devi, under the **Partition Deed dated 19.10.1992. These two Ladies sold their share in the suit property by a Sale Deed dated 06.12.1995**, whereas Smt. Revati Devi retained the front portion.

49. It has also emerged from the admission of the Plaintiff in the Replication that the portion allotted to Jarawali Devi (his mother) and Smt. Kesar Devi was sold in 1995, vide Sale Deed dated **06.12.1995**.

50. A reading of the Complaint and the Partition Deed dated 19.10.1992, relied upon by the Plaintiff, shows that the suit shop in the possession of Plaintiff, **forms part of the property which came to the share of Revati**



Devi. The Plaintiff may have got this shop in 1990, prior to the Partition, but after the partition, he ceased to have any ownership right, as the property came to the share of Smt. Revati Devi.

51. The Plaintiff has also asserted that before September 2002, he used electricity through *the Defendant's connection on a sharing basis*; a separate commercial meter was installed in the Defendant's name in 2002, through which the Plaintiff consumed the electricity and paid the bills. *He explained that he did not seek a connection in his own name because relations between the parties were cordial.*

52. **These averments show the Plaintiff's long-standing occupation of the shop, but does not, by itself, establish ownership.** Pertinently, his own assertions of electricity connection being in the name of the defendant and even when Meter connection was changed to commercial, it was again installed in the name of the defendant and that he had been enjoying the electricity from the connection in the name of the defendant, establish that plaintiff enjoyed no proprietary rights in the suit property.

53. The Plaintiff's claim to ownership rests substantially on his long possession. Long possession, by itself, does not confer title. To claim ownership by adverse possession, the Plaintiff must plead and establish possession that is not merely continuous, but is hostile to the true owner's title.

54. The Supreme Court, recently in Bhag Singh (Dead) through Mahant Kashmir Singh v. Basant Kaur (Dead) through LR., 2026 INSC 983, reiterated that adverse possession requires **clear and unequivocal** evidence that possession was *actual, open, continuous and hostile*, amounting to a



denial of the true owner's title. Mere long or uninterrupted possession is **insufficient** unless accompanied by hostile animus. Where possession can be traced to a lawful or permissive origin, ***lapse of time*** alone does not make it adverse.

55. The Supreme Court further held that the commencement of hostile possession, must be **pleaded and proved**. There must be a pleaded date from which the true owner's title was openly repudiated, along with an overt assertion of hostility to the owner's knowledge. These are foundational requirements: unless the commencement of hostile possession is established, the statutory period cannot begin to run. ***Long possession cannot be equated with adverse possession; the possession must involve a conscious and hostile assertion of ownership in denial of the true owner's rights***

56. In the present case, the Plaintiff's own pleadings do not establish the required hostile assertion. He pleaded that he had been running the shop peacefully since 1990, that he used the Defendant's electricity connection on a sharing basis, and that he did not obtain a separate connection because relations were cordial. **These pleaded circumstances are inconsistent with the assertion that his occupation constituted an open and unequivocal denial of the title of the defendant, who got the ownership in the property, after the admitted partition, vide the Partition Deed dated 19.10.1992.**

57. Even if all the averments made in the Plaint are admitted, then too, what emerges is that the entire property was owned jointly by his mother Jarawali Devi, Kesar Devi, and Revati Devi. The rear portion of the property in question, which came to the share of his mother Jarawali Devi and Kesar



Devi, has already been sold, and the ***Plaintiff had been running his shop from the portion which came to the share of Revati Devi, mother of the Defendant.***

58. Significantly, neither the Plaint specifically averred the date nor was it claimed that Plaintiff has acquired ownership by adverse possession, as rightly observed by the Id. District Judge. The Plaintiff merely on his long possession, cannot set up a plea of adverse possession, in view of his own admission that the shop is located in the portion of the property, which came to the share of Revati Devi, mother of the Defendant, by virtue of Partition Deed dated 19.10.1992.

59. The Plaintiff has, therefore, failed to disclose a cause of action for a Declaration of ownership or for protection of possession founded on claim of ownership. **The learned Trial Court rightly rejected the Plaint under Order VII Rule 11 CPC.**

60. There is **no merit** in the present appeal, which is hereby, **dismissed**.

61. The pending Applications, if any, are accordingly, disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

SEPTEMBER 28, 2026/VA