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

% ***Reserved on: 08th September, 2026***

Pronounced on: 17th November, 2026

Uploaded on: 17th November, 2026

 # CNR No. DLHC010422862026

\+ **RFA 969/2026, CM APPL. 60640/2026**

MOHD. TAQI
S/o Late Mohd. Suleman
R/o 404, Gali Matiamahal,
Jama Masjid, Delhi-110006.
Through SPA holder Mr. Mohd. Saleem
S/o Mohd. Taqi
R/o 404, Gali Matiamahal,
Jama Masjid, Delhi-110006.

....Appellant

Through: Appellant with Counsel.

versus

SHUJAUDDIN
S/o Late Mohd. Farooq
R/o 404-B, Gali Matiamahal,
Jama Masjid, Delhi-110006.

....Respondent

Through: Mr. Rishu Singh, Advocate along with Respondent in person.

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 Section 151 of the Code of Civil Procedure, 1908 *(hereinafter referred to as*

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

"CPC"), has been preferred by the Defendant/Appellant against the Judgment and Decree dated 30.04.2026, whereby the learned District Judge ***decreed the Suit of the Plaintiff/Respondent for recovery of possession of the suit property and awarded mesne profits*** at the rate of ₹8,000/- per month with effect from 01.11.2021 till the handing over of possession, with an enhancement of 10% after six weeks from the date of the Decree and a further enhancement of 10% every three years thereafter, till the vacation of the Suit Property.

2. The Plaintiff/Respondent had instituted **Civil Suit bearing CS DJ No. 165/2022,** seeking recovery of possession, damages and *mesne* profits, in respect of portions of the second and third floors of property bearing No. 404, Gali Matia Mahal, Jama Masjid, Delhi, more particularly shown in red in the Site Plan annexed with the Plaint *(hereinafter referred to as the "suit property").*

3. The ***facts in brief, as stated in the plaint*** are that the Plaintiff was the owner of the suit property, by virtue of a registered Sale Deed dated 08.06.1989. It was asserted that Defendant, *Mohd. Taqi,* being the paternal uncle of the Plaintiff, had been permitted to reside in the suit property, along with his family members *out of love and affection*, without payment of any license fee. The Plaintiff claimed that the occupation of the Defendant was *merely permissive* and that neither the Defendant nor his family members had any independent right, title or interest in the suit property.

4. However, owing to certain acts and conduct of the Defendant and his family members, the Plaintiff was no longer willing to permit their

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

continued occupation, and he also required the suit property for his own use, and that of his family members.

5. Accordingly, the Plaintiff terminated the license of the Defendant with effect from 31.10.2021, *vide* Legal Notice dated 16.09.2021. Despite termination of the license, the Defendant failed to vacate and hand over possession of the suit property.

6. Consequently, the Plaintiff instituted the present Suit seeking recovery of *possession, along with ₹30,000/- towards use and occupation charges* for the period November 2021 to January 2022, along with *pendente lite* and future damages/*mesne* profits at the rate of ₹10,000/- per month from the Defendant until the handing over of vacant possession of the suit property.

7. The Defendant, in his ***Written Statement***, denied the claim of the Plaintiff, and asserted that *he was never a licensee under the Plaintiff*, but was occupying the suit property in his own right, as its owner.

8. The *Preliminary objections* were taken that the Suit was barred under Section 19 of the Slum Areas *(Improvement and Clearance*) Act, 1956, as the suit property was situated in a notified Slum Area and no prior permission of the Competent Authority, had been obtained. It was further asserted that the Suit was *barred by limitation*, and was *bad for non-joinder of necessary parties*, as all the legal heirs of *Late Mohd. Sulaiman* had not been impleaded.

9. ***On merits,*** the Defendant explained that *Late Mohd. Sulaiman*, his father and the grandfather of the Plaintiff, had acquired the plot of land from its erstwhile owner in or around 1947 and had raised construction thereon,

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

from his own funds. *Mohd. Sulaiman* expired in the 1980s, leaving behind four sons, namely *Mohd. Rafiq, Mohd. Islam, Mohd. Farooq and Mohd. Taqi (the defendant)*, of whom the first three had since expired. The Plaintiff, being the son of *Late Mohd. Farooq*, was the nephew of the Defendant.

10. It was asserted that the Plaintiff had no superior right or title over the suit property, which originally belonged to their common predecessor, Mohd. Sulaiman.

11. The Defendant further claimed that during his lifetime, Mohd. Sulaiman had executed a *Hibanama/Gift Deed*, whereby the property had been divided amongst his sons in the following manner:

(a) First Floor: Mohd. Farooq and Mohd. Rafiq.

(b) Second Floor: Mohd. Taqi and Mohd. Islam. (The roof rights were kept common.)

12. Furthermore, it was averred that the aforesaid *Family Arrangement* had been acted upon since the 1980s and had remained undisturbed for more than 40 years. Neither the Gift Deed nor the arrangement had ever been challenged by any family member. The Defendant, therefore, claimed that he had been occupying the portion falling to his share *as its owner and not as a licensee under the Plaintiff.*

13. The Defendant disputed the ownership claimed by the Plaintiff on the basis of the registered Sale Deed dated 08.06.1989, alleging that the same was forged and fabricated. The alleged vendor, *Smt. Mehmood Jahan Begum*, or her predecessors, had never been the owners of the suit property and, therefore, could not have conveyed any title to the Plaintiff.

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

14. It was further contended that despite the Sale Deed having been registered in 1989, the Plaintiff had taken no action to assert his alleged ownership, for nearly 33 years. *The Suit was, therefore, claimed to be barred by limitation.*

15. In the alternative, the Defendant *claimed to have perfected his title by way of adverse possession*, asserting that his possession had been open, continuous and hostile to the Plaintiff for several decades. He also disputed the correctness of the Site Plan filed by the Plaintiff. He also denied having received the Legal Notice dated 16.09.2021, terminating the alleged licence.

16. Denying the remaining averments in the Plaint, he sought dismissal of the Suit with costs.

17. The **Issues on the pleadings** were framed on 25.11.2022, as under:

> *"(i)Whether the defendant is in permissive possession of the suit property i.e. portions at second and third floor of property bearing no. 404, Gali Matia Mahal, Jama Masjid, Delhi as shown in red colour in the site plan as a licensee under the plaintiff ? OPP*
> *(ii) Whether the aforesaid licence of the defendant has been terminated by the plaintiff w.e.f 31.10.2021 vide legal notice dated 16.09.2021? OPP*
> *(iii) Whether the suit of plaintiff is barred under Section 19 of the Slum Areas (Improvement and Clearance) Act 1956 ? OPD*
> *(iv) Whether the suit of the plaintiff is barred by limitation ? OPD*
> *(v) Whether the defendant is in possession of the suit property as an owner thereof in terms of gift deed of Late Mohd. Suleman? OPD*
> *(vi) Whether the defendant has become the owner of the suit property by way of adverse possession? OPD*

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

(vii) Whether the plaintiff is entitled to decree for recovery of possession of the suit property in his favour? OPP
(viii) Whether the plaintiff is entitled to the user charges in respect of the suit property to the extent of Rs. 30,000/- for the period November 2021 to January 2022 ? OPP
(ix) Whether the plaintiff is entitled to pendente lite and future damages/mesne profits, if so, at what rate and for what period? OPP
(x) Relief ?"

18. The Plaintiff, *Sh. Shujauddin*, in support of his case, examined himself as **PW-1** and proved the following documents:

Sr. No.	**Name of the Document**	**Exhibit/Mark**
1.	Site Plan	Ex.PW1/1
2.	Sale Deed dated 08.06.1989	Ex.PW1/2
3.	Legal Notice dated 16.09.2021, postal receipt and delivery/tracking report.	Ex.PW1/3 (Colly.)

19. The Defendant, *Mohd. Taqi*, examined himself as **DW-1** and proved the following documents:

Sr. No.	**Name of Document**	**Exhibit/Mark**
1.	*Hibanama*/ Gift Deed dated 03.01.1974	Ex.DW1/1
2.	Copy of Passport of Smt. Hanida Begum	Ex.DW1/2
3.	Copy of Passport of Mohd. Waseem	Ex.DW1/3
4.	Copy of Passport of Mohd. Nadeem	Ex.DW1/4
5.	Copy of Birth Certificate of Mohd. Saleem	Ex.DW1/5
6.	Copy of Birth Certificate of Mohd. Nadeem	Ex.DW1/6

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

7.	Copy of Birth Certificate of Mohd. Rehan	Ex.DW1/7
8.	Copy of Birth Certificate of Kamran	Ex.DW1/8
9.	Copy of cement receipt	Ex.DW1/9

20. The **learned Trial Court**, on appreciation of the evidence, held that the Plaintiff had established his ownership over the suit property, by virtue of the registered Sale Deed dated 08.06.1989 Ex. PW1/2, executed by *Smt. Mehmood Jahan Begum* in his favour. It was observed that a registered Sale Deed carries a presumption of valid execution, which the Defendant had failed to rebut. Though the title of the vendor was disputed, the Defendant, in his cross-examination, was unable to admit or deny whether *Smt. Mehmood Jahan Begum* was the owner of the suit property.

21. In regard to the claim of ownership of the Defendant under the *Hibanama*/Gift Deed dated 03.01.1974 Ex. DW1/1, the learned Trial Court observed that the Defendant had failed to establish that his father, *Late Mohd. Sulaiman,* was ever the owner of the suit property. In his cross-examination, the Defendant admitted that he had no document to establish his father's ownership and that his knowledge was based upon what his father had told him. In the absence of proof of title in favour of *Mohd. Sulaiman*, the Defendant could not claim ownership on the basis of the alleged Gift Deed executed by him. *Accordingly, the ownership of the Plaintiff, was held to be established.*

22. The learned Trial Court also rejected the Defendant's objection regarding the identity of the suit property. While the Sale Deed mentioned property No. 404-B, the Suit had been filed in respect of property No. 404.

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

The Plaintiff clarified in his cross-examination that property No. 404 comprised two portions, Part A and Part B, and that the suit property formed part of 404-B. The Defendant had not filed any contrary Site Plan, and his description of the portions in his occupation, was substantially consistent with the Site Plan Ex. PW1/1 filed by the Plaintiff. The learned Trial Court, therefore, rejected the objection regarding the identity of the suit property.

23. The plea of adverse possession was likewise, rejected. It was held that mere long and continuous occupation, without any clear and unequivocal assertion of hostile title to the knowledge of the true owner, could not constitute adverse possession. *The Defendant's possession was, therefore, held to be permissive in nature.*

24. The objection under Section 19 of the Slum Areas *(Improvement and Clearance)* Act, 1956 was also rejected. Relying upon the decisions of this Court in *Punnu Ram v. Chiranji Lal Gupta* and *Satender Jain v. Satya Narain Sanjiv Gupta HUF*, the learned Trial Court held that the protection under Section 19 was available to tenants in law and not to occupants generally. Since the Defendant had never claimed to be a tenant under the Plaintiff, but had asserted independent ownership on the basis of the Gift Deed and adverse possession, the bar under Section 19 was held to be inapplicable.

25. It was further held that the license stood validly terminated with effect from 31.10.2021, *vide* Legal Notice dated 16.09.2021 Ex. PW 1/3. The postal receipt and tracking report Ex. PW1/3 established that the Notice had been delivered to the Defendant on 20.09.2021. Consequently, the

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

Defendant's continued occupation was held to be unauthorized, entitling the Plaintiff to a decree for recovery of possession.

26. The learned Trial Court further observed that while the Plaintiff had claimed *mesne* profits at the rate of ₹10,000/- per month, no documentary evidence had been produced to establish the prevailing rental value of the suit property. However, considering its location, residential use and accommodation, the reasonable mesne profits were assessed at ₹8,000/- per month.

27. Accordingly, the Suit was *decreed for possession* and *mesne profits* at the rate of ₹8,000/- per month with effect from 01.11.2021 till the handing over of possession, with an enhancement of 10% after six weeks from the date of the Decree and a further enhancement of 10% every three years thereafter.

28. *Aggrieved by the aforesaid Judgment and Decree dated 30.04.2026, the Defendant/Appellant has preferred the present Appeal.*

29. The ***ground of challenges,*** raised by the Defendant/Appellant are that the learned Trial Court failed to appreciate the evidence in its correct perspective, particularly regarding the identity of the suit property.

30. It is contended that while the Plaintiff claimed ownership of property bearing No. 404-B, Gali Matia Mahal, Jama Masjid, Delhi, by virtue of the Sale Deed dated 08.06.1989, the Suit was filed for possession of property bearing No. 404. According to the Appellant, the Plaintiff was himself in possession of property ***No. 404-B***, whereas the Appellant was occupying ***property No. 404.*** It is asserted that these were distinct portions and that the

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

Plaintiff had failed to establish that the property covered by the Sale Deed, was the same as the suit property.

31. It is further contended that the Plaintiff deliberately withheld the site plan referred to in the registered Sale Deed, which formed an integral part thereof, and was necessary to establish the identity and extent of the property purchased. Instead, the Plaintiff relied upon a separate Site Plan Ex. PW1/1, which did not correctly depict the suit property.

32. Another objection raised is that the Sale Deed Ex. PW1/2 pertained to the first and second floors of the property, whereas the Suit sought possession of portions of the second and third floors. It is contended that even if the Sale Deed were accepted as genuine, it did not establish the Plaintiff's ownership over the portion on the third floor, and consequently, a Decree for possession of that portion could not have been granted.

33. The Appellant has also questioned the title of the Plaintiff on the ground that the Sale Deed did not disclose the complete chain of ownership or establish the title of the vendor, *Smt. Mehmood Jahan Begum*. It is further contended that the recitals in the Sale Deed referred to common staircases and owners of other portions of the property, while the description of the boundaries also indicated the existence of adjoining portions belonging to other owners. These recitals, according to the Appellant, raised doubts regarding the extent of the vendor's ownership and did not rule out the possibility of *Late Mohd. Sulaiman* being owner of another portion of the property. *These aspects were contended to have been not properly considered by the learned Trial Court.*

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

34. The Appellant has further challenged the finding that he was occupying the suit property as a licensee, under the Plaintiff. It is submitted that the Plaintiff himself admitted in his cross-examination that the Appellant and other family members had been residing in the property for more than 60 years, much before the Plaintiff acquired the alleged ownership in 1989. The Plaintiff had also deposed that his father was earlier a tenant in the property and that the Appellant had been brought there by his father and grandfather. *It is, therefore, contended that the Appellant could not have been inducted as a licensee, by the Plaintiff.*

35. Moreover, the Plaintiff had neither specified the date on which the alleged license was created, nor produced any evidence to establish that he had ever asserted his ownership against the Appellant, or demanded possession prior to the issuance of the Legal Notice dated 16.09.2021. It is further asserted that no notice intimating the Appellant of the change in ownership, had been issued. The learned Trial Court, therefore, erred in treating the Appellant's long-standing occupation as permissive possession under the Plaintiff.

36. It is further contended that, notwithstanding the ownership asserted by the Plaintiff, the Appellant *had perfected his title by adverse possession* on account of his open and continuous occupation of the suit property, for more than 60 years.

37. The Appellant has also disputed the service of the Legal Notice dated 16.09.2021, allegedly terminating the license. It is contended that the Appellant had categorically denied receiving the Notice and that the Plaintiff was required to establish its service upon him. Since both parties resided at

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

the same address, it was possible that the Notice had been received by the Plaintiff himself. It is submitted that the learned Trial Court failed to consider this aspect, while holding that the license had been validly terminated.

38. It is further contended that the Suit was barred under Section 19 of the Slum Areas *(Improvement and Clearance)* Act, 1956, as the suit property was situated in a notified Slum Area and the Plaintiff had not obtained prior permission from the Competent Authority. According to the Appellant, the protection under Section 19 was not confined to tenants but extended to other occupants, including licensees and trespassers. The learned Trial Court, therefore, erred in holding that the said provision was inapplicable.

39. ***The learned counsel for the Plaintiff/Respondent***, who had appeared on advance Notice, on the other hand, has supported the impugned Judgment and submitted that the Appellant had been occupying the suit property along with other family members, under a permissive family arrangement. The Appellant had failed to establish any ownership under the alleged Gift Deed/*Hibanam*a executed by Late Mohd. Sulaiman. The Plaintiff, having acquired ownership under the registered Sale Deed dated 08.06.1989, was entitled to recover possession and mesne profits, as rightly held by the learned Trial Court.

40. It is further submitted that, despite the Decree in his favour, the Plaintiff has not initiated Execution proceedings in view of the close relationship between the parties. Accordingly, dismissal of the Appeal has been sought.

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

Submissions heard and record perused.

41. The Plaintiff/Respondent has sought recovery of possession of the suit property on the basis of his ownership acquired *vide* registered Sale Deed dated 08.06.1989 **Ex. PW1/2.** The Defendant/Appellant has challenged the said Sale Deed, alleging that it is forged and fabricated and that the vendor had no title to convey the suit property.

42. A perusal of the Sale Deed Ex. PW1/2 shows that it was executed by *Smt. Mehmood Jahan Begum*, wife of Abdul Khaliq, in favour of the Plaintiff, *Shujauddin*. It specifically records that the vendor had acquired ownership of the first and second floors, along with roof rights, of property bearing *Municipal No. XI/404, Gali Matia Mahal*, Jama Masjid, Delhi, by virtue of a registered Partition Deed dated 13.01.1978. She sold the aforesaid portion, together with the existing construction, to the Plaintiff, which was described in the ***Sale Deed as property bearing No. 404-B.***

43. Thus, the source of the vendor's title was clearly disclosed as the registered Partition Deed dated 13.01.1978, in the Sale Deed. The contention of the Defendant/Appellant that the Sale Deed did not disclose any previous ownership is, therefore, *factually incorrect.* Merely because the complete chain of earlier ownership was not set out in the Sale Deed would not, by itself, render the document invalid.

44. *Secondly*, even if it was accepted that the names of erstwhile owners was not mentioned in the Sale Deed, that in itself would not render the Sale Deed invalid, especially when the Defendant/Appellant has not been able to produce any evidence to show that the property was owned by any person other than *Smt. Mehmood Jahan Begum.*

Signature Not Verified
Digitally Signed
By:VIKAS AKORA
Signing Date:17.11.2026
19:43:24

45. Furthermore, the Sale Deed Ex. PW1/2 is a registered document, which carries a rebuttable presumption of valid execution under the Indian Evidence Act, 1872. In *Prem Singh v. Birbal*, (2006) 5 SCC 353, the Apex Court held that a registered document is presumed to have been validly executed and that the onus of rebutting this presumption lies upon the person challenging it.

46. In the present case, though the Defendant alleged that the Sale Deed was forged and fabricated, *no evidence was produced to substantiate the said allegation.*

47. Significantly, the Defendant, in his cross-examination, could neither admit nor deny whether *Smt. Mehmood Jahan Begum* was the owner of the suit property. Despite alleging that the Sale Deed was forged and fabricated, the Defendant failed to produce any cogent evidence, to substantiate this allegation. *In these circumstances, there is no ground to disbelieve the registered Sale Deed Ex. PW1/2 relied upon by the Plaintiff.*

48. The ***next ground of challenge*** raised by the Appellant is that the Sale Deed pertains to property bearing No. 404-B, whereas the suit property bears No. 404, thereby suggesting that there was another portion bearing No. 404-A.

49. *This contention is based purely on conjectures and is not supported by the evidence on record*. In fact, a perusal of the Sale Deed clearly shows that the erstwhile owner had sold the entire first and second floors, along with roof rights and the existing construction thereon, and it also specifically

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

recorded that the property had been renumbered as No. 404-B. Not only this, even the address of the Plaintiff was mentioned in the Sale Deed, as 404-B.

50. It is evident from the contents of the Sale Deed and the evidence of the parties that there were shops on the ground floor, and only the first and second floors, along with roof rights, were sold to the Plaintiff, which was re-numbered as 404-B, of which the suit property forms a part. While the Defendant/Appellant has sought to create confusion regarding the identity of the suit property, he has failed to produce any cogent evidence to establish that the Sale Deed did not pertain to the suit property or that the Site Plan Ex. PW1/1 proved by the Plaintiff, was incorrect.

51. Though the Site Plan annexed to the Sale Deed has not been separately proved, the identity of the Suit Property stands established from the recitals in the Sale Deed itself, the Site Plan Ex. PW1/1, and the Defendant's own description of the portions in his occupation, which substantially corresponds with Ex. PW1/1. The Defendant also did not file any contrary Site Plan. The non-production of the Site Plan annexed to the Sale Deed is, therefore, of no consequence.

52. During the cross-examination of the Plaintiff, various documents were put to him, namely, *passports of Smt. Hanida Begum, Mohd. Waseem and Mohd. Nadeem* Mark PW1/D2 to PW1/D4; *birth certificates of Mohd. Saleem, Mohd. Nadeem, Mohd. Rehan and Kamran* Mark PW1/D5 to PW1/D8; a cement receipt Mark PW1/D9; an electricity bill in the name of *Mohd. Islam* Mark PW1/D10; and a Loan Application made by *Mohd. Salim* Mark PW1/D11, to establish that the address mentioned in these documents was property No. 404 and not 404-B.

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

53. However, it has emerged from the Plaintiff's testimony that the Defendant and his family members had been residing in the suit property along with the Plaintiff's father and grandfather, for several decades. The Plaintiff also clarified in his cross-examination that his father was initially a tenant in the property and had brought the other family members to reside with him. There is no cogent rebuttal to this evidence, which establishes that even prior to the purchase of the property by the Plaintiff in 1989, the Defendant and other family members were residing therein along with the Plaintiff's father, who was a tenant.

54. It is also not disputed that the property was originally numbered 404, which referred to the entire property. However, upon the sale of the first and second floors along with roof rights, the portion purchased by the Plaintiff was identified as property No. 404-B, in the Sale Deed.

55. The Appellant has also contended that the Sale Deed Ex. PW1/2 pertained to the first and second floors, whereas the Suit has been filed in respect of portions of the second and third floors. However, the Sale Deed conveyed the first and second floors along with the roof rights. Significantly, even the Hibanama Ex. DW1/1 relied upon by the Defendant, records the construction as comprising only the ground, first and second floors. Any construction raised over the second floor is, therefore, referable to the roof rights conveyed to the Plaintiff, and the portion on the third-floor, forms part of the property purchased by him.

56. The Defendant has also vaguely claimed that his father, *Late Mohd. Sulaiman*, may have been the owner of another portion of the property. However, such a speculative assertion, without any cogent evidence, cannot

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

confer ownership rights upon the Defendant/Appellant. The learned District Judge has rightly appreciated the contents of the Sale Deed, the Site Plan and the evidence of the parties, to conclude that the suit property was the very property covered by the Sale Deed and that the Defendant, along with his family members, was occupying the same with the permission of the Plaintiff.

57. Though the Plaintiff and his family members may initially have occupied the property as tenants or occupants, the Plaintiff subsequently acquired ownership rights by virtue of the registered Sale Deed dated 08.06.1989 Ex. PW1/2. Thereafter, the continued occupation of the Defendant, who had no independent right, title or interest; was only with the leave of the Plaintiff, who allowed his paternal uncle to continue residing therein. A licence in favour of a family member arising in such circumstances, need neither be reduced to writing nor be traced to a specific date. The Plaintiff has, therefore, been rightly held entitled to recover possession of the suit property from the Defendant/Appellant.

58. The Defendant/Appellant has claimed ownership of the suit property by virtue of the ***Hibanama*/Gift Deed** dated 03.01.1974 Ex. DW1/1, allegedly executed by his father, *Late Mohd. Sulaiman*. Though the execution of a Gift Deed was pleaded in the Written Statement, *its date was not disclosed, nor was the document filed along with the Written Statement.* The *Hibanama* was brought on record for the first time during the cross-examination of PW-1, when it was marked as Mark PW1/D1, and was subsequently exhibited as Ex. DW1/1, during the evidence of the Defendant.

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

59. Section 123 of the Transfer of Property Act, 1882, provides that a gift of immovable property must be effected through a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. However, Section 129 of the Transfer of Property Act expressly saves the rules of Mohammedan Law relating to gifts from the application of the said provisions. Consequently, a gift under Mohammedan Law, commonly known as a Hiba, is governed by the principles of Mohammedan Law and is not necessarily required to be executed through a registered instrument.

60. The Supreme Court, in *Hafeeza Bibi & Ors. v. Shaikh Farid* (Dead) by LRs. & Ors., (2011) 5 SCC 654, while examining the interplay between Sections 123 and 129 of the Transfer of Property Act and Section 17 of the Registration Act, 1908, reiterated that the three essential requirements of a valid Hiba are: *(i) declaration of the gift by the donor; (ii) acceptance of the gift by the donee, expressly or impliedly; and (iii) delivery of possession of the subject matter of the gift, either actually or constructively.*

61. The Supreme Court further clarified that merely because a gift under Mohammedan Law has been reduced to writing, it does not become compulsorily registrable. It was observed that *"What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial."*

62. Thus, the validity of a *Hiba* depends upon fulfilment of its substantive requirements and not merely upon the existence or registration of a written instrument.

63. A perusal of the *Hibanama* Ex. DW1/1 shows that *Late Mohd. Sulaiman,* the grandfather of the Plaintiff and father of the Defendant, had

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

allegedly acquired the property on Patta in 1947 and had raised construction comprising the ground, first and second floors. It was further recorded that the shops constructed on the ground floor had already been sold by him during his lifetime, while the first floor was given to his sons, Mohd. Farooq and Mohd. Rafiq, and the second floor to Mohd. Taqi ***(Defendant)*** and Mohd. Islam, with the roof rights remaining common.

64. However, even if the *Hibanama* is accepted as recording the handing over of possession of the first and second floors to the respective sons, there **is no evidence to establish that *Late Mohd. Sulaiman* himself had any ownership rights in the suit property.** The Defendant, in his cross-examination, admitted that he had no document establishing his father's ownership and that his knowledge in this regard, was based merely upon what his father had told him.

65. Consequently, the *Hibanama*, at best, reflects the arrangement regarding possession amongst the sons, but cannot confer ownership rights upon them, in the absence of any title in favour of *Mohd. Sulaiman*. It is indeed the Plaintiff who subsequently acquired ownership rights by virtue of the registered Sale Deed dated 08.06.1989 Ex. PW1/2, and the Defendant cannot claim any independent ownership rights, on the basis of the alleged *Hibanama.*

66. The ***next contention*** raised by the Defendant/Appellant is that he was never served with the Legal Notice dated 16.09.2021 Ex. PW1/3, terminating his license, w.e.f. 31.10.2021. It was asserted that since the Plaintiff was residing in the same premises, he could have manipulated the

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

service of the Notice. However, the learned Trial Court has rightly observed that the postal receipt and tracking report establish service of the Legal Notice upon the Defendant, on 20.09.2021.

67. Even otherwise, the Supreme Court in *Nopany Investments (P) Ltd. v. Santokh Singh (HUF)*, (2008) 2 SCC 728, has held that the institution of a Suit for eviction itself constitutes a notice to quit. Similarly, this Court in *Chhidi Ram v. Ramjas Foundation*, RSA No. 12/2007, decided on 06.04.2011, has held that the filing of a Suit for possession by the licensor itself amounts to an express revocation of the license, even in the absence of service of a prior notice.

68. Therefore, even if the contention of the Defendant regarding non-service of the Legal Notice is accepted, his license would, in any event, stand terminated upon institution of the Suit, and he would have no right to continue occupying the suit property. *The said contention is, therefore, without merit.*

69. The Defendant/Appellant has also claimed that he had acquired ownership rights by way of ***adverse possession*** on account of *his long, continuous and uninterrupted occupation of the suit property for several decades.* However, mere length of possession, howsoever prolonged, does not confer ownership by adverse possession.

70. The Supreme Court in *Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.,* (2019) 8 SCC 729, has reiterated that a person claiming adverse possession must establish that his possession was *nec vi, nec clam, nec precario,* i.e., peaceful, open, continuous and hostile to the title of the true

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

owner, with the requisite *animus possidendi*, for the statutory period of twelve years. Furthermore, in *Narasamma v. A. Krishnappa (Dead) through LRs.*, AIR 2020 SC 4178, it was held that a person claiming ownership under an independent title cannot simultaneously claim adverse possession from the same date. Upon failure of the asserted title, it is necessary to establish when the possession became hostile to the true owner.

71. 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 referrable 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 Apex 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.*

72. In the present case, the Defendant/Appellant has claimed ownership on the basis of the *Hibanama* dated 03.01.1974 and, *alternatively, by adverse possession.* However, there is no evidence to establish when his possession became hostile to the Plaintiff or that he ever openly asserted any title adverse to that of the true owner. The Defendant also admitted in his cross-examination that he had never paid property tax, in respect of the suit property.

73. Mere continuous occupation for several decades, without any clear assertion of hostile ownership to the knowledge of the true owner, cannot

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

mature into adverse possession as reiterated by the Supreme Court in *Bhag Singh (D) through Mahant Kashmir Singh* (supra). The Defendant has failed to discharge this burden. *The learned District Judge has, therefore, rightly rejected the plea of adverse possession.*

74. The last objection raised by the Defendant/Appellant is that the suit property is situated in a notified Slum Area and, therefore, the Suit for Possession was not maintainable without obtaining prior permission of the Competent Authority under Section 19 of the Slum Areas *(Improvement and Clearance)* Act, 1956. The question which, therefore, arises for consideration is whether the protection contemplated under Section 19(1) extends to *every person in occupation of property situated in a notified slum area, irrespective of the legal character of such occupation, or is confined to persons who qualify as tenants in law.*

75. Section 19(1) of the Act reads as under:

> ***"19. Proceedings for eviction of tenants not to be taken without permission of the competent authority****.(1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority,*
> *(a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or*
> *(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the*

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

eviction of a tenant from any building or land in such area, execute such decree or order."

76. Pertinently, Section 19 itself clearly provides that proceedings for eviction of tenants cannot be taken without permission of the Competent Authority. It is, therefore, evident that the bar of Section 19 of the Act is *applicable only in the case of tenants and not the other occupiers.*

77. This distinction was considered by the Full Bench of this Court in *Punnu Ram & Ors. v. Chiranji Lal Gupta & Ors.,* AIR 1982 Delhi 431. While examining the scheme of the enactment, the Full Bench also considered the meaning of the expression *"tenant"*, which, unlike *"occupier"*, has not been separately defined under the Act. Rejecting the contention that every person in occupation of property situated in a slum area was entitled to the protection of Section 19, the Full Bench expressly held:

"The protection contemplated is for a tenant as recognised by law. A mere occupier cannot be equated to a tenant. An occupier may be a trespasser or a licensee or a tenant. ***The concept of welfare State cannot extend to giving protection to trespasser or persons who have no right of occupation.*** *Therefore, when the Legislature used the term 'tenant' in Section 19 as well as in the Preamble of the Act it meant tenant-in-law."*

78. The Full Bench, therefore, drew a clear distinction between a tenant recognized in law and a person who is merely in occupation of the premises. The expression *"occupier"* under Section 2(f), is wider in its scope and may include a licensee, trespasser or tenant. However, the Legislature

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

consciously employed the expression *"tenant"* in Section 19, thereby restricting the statutory protection to persons possessing the requisite legal status. The mere fact that a person continues in physical possession of premises situated in a notified Slum Area does not, by itself, bring such person within the protective ambit of Section 19(1).

79. The said principle was reiterated in *Giri Raj (Since Deceased) Through LRs. v. Deepak Gupta & Ors.*, RSA 151/2012, decided on 12.09.2013, and *Satender Jain v. Satya Narain Sanjiv Gupta HUF*, RSA 139/2019, decided on 09.09.2021.

80. The legal position emerging from the aforesaid decisions is that the applicability of Section 19(1) depends upon the legal character of the Defendant's occupation and not merely upon the location of the suit property within a notified slum area.

81. In the present case, the Defendant has not established any relationship of landlord and tenant with the Plaintiff or the Plaintiff's predecessor-in-interest. On the contrary, the Defendant claims an independent title to the suit property on the strength of a *Hibanama* dated 03.01.1974 and alternatively, on the basis of adverse possession.

82. Having failed to establish any tenancy rights, the Defendant cannot claim the protection under Section 19 merely on account of his occupation of the suit property. *The objection has, therefore, been rightly rejected by the learned District Judge.*

Conclusion:

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24

83. From the aforesaid discussion, it emerges that the learned District Judge has appreciated the evidence in its correct perspective and has rightly decreed the ***Suit for Possession and Mesne Profits*** in favour of the Plaintiff/Respondent and against the Defendant/Appellant. The findings recorded in the impugned Judgment, do not warrant any interference.

84. There is no merit in the present Appeal, which is dismissed.

85. The pending Applications, if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 17, 2026
va

Signature Not Verified
Digitally Signed
By:VIKAS ARORA
Signing Date:17.11.2026
19:43:24