



2026:DHC:152-DB



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

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*Judgment reserved on: 16.12.2025*

*Judgment pronounced on: 09.01.2026*

*Judgment uploaded on: 09.01.2026*

+ RFA(OS) 5/2017, CM APPL. 6715/2019, CM APPL. 2105/2021, CM APPL. 54875/2024 & CM APPL. 30790/2025

SANDEEP SETHI & ANR

.....Appellants

Through: Mr. Anil Sapra, Sr. Adv. with Mr. Amrit Pal S. Gambhir & Mr. Dalip Mehra, Advs. with Mr. Sandeep Sethi/Appellant in person

versus

RAJINDER KUMAR SETHI DECEASED THROUGH LRS

.....Respondent

Through: Mr. Ashish Mohan, Sr. Adv. with Ms. Manisha Singh, Adv.

+ RFA(OS) 10/2017, CM APPL. 6808/2017 & CM APPL. 6721/2019

SANDEEP SETHI & ANR

.....Appellants

Through: Mr. Anil Sapra, Sr. Adv. with Mr. Amrit Pal S. Gambhir & Mr. Dalip Mehra, Advs. with Mr. Sandeep Sethi/Appellant in person

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RAJINDER KUMAR SETHI DECEASED THROUGH LRS

.....Appellant



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Through: Mr. Ashish Mohan, Sr. Adv.  
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SANDEEP SETHI & ANR

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Through: Mr. Anil Sapra, Sr. Adv. with  
Mr. Amrit Pal S. Gambhir &  
Mr. Dalip Mehra, Adv. along  
with R-1 in person.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**

## **J U D G M E N T**

### **ANIL KSHETARPAL, J.**

1. Through the present Appeals, the Appellants [Defendants before the learned Single Judge] in RFA (OS) No. 05/2017 and in RFA (OS) No. 10/2017, and the Appellant [Plaintiff before the learned Single Judge] in RFA (OS) No. 06/2017, assail the correctness of the common judgement dated 28.11.2016 [hereinafter referred to as 'Impugned Judgement'] passed by the learned Single Judge [hereinafter referred to as 'LSJ'] in CS(OS) 2134/2006 & CC No. 990/2017, wherein the Plaintiff's suit was decreed against the Defendants in the said suit, directing the Defendants to handover the possession of the entire first floor and two rooms along with one bathroom on the second floor of the Property bearing No. A-8, Vishal Enclave, New Delhi [hereinafter referred to as 'Suit Property'], as shown in the site plan, within two months of receipt of this order. The Counter Claim filed by the Defendant stood dismissed in view of the Impugned Judgement passed in the suit.



2. Since the parties to the disputes are common, as is the Impugned Judgement, and the appeals arise out of an identical factual matrix involving overlapping parties and common questions of law, this Court deems it appropriate to dispose of all the appeals by way of a common judgement. The discussions, however, shall be bifurcated, wherever necessary, while referring to the parties in the same manner.

3. Nevertheless, for the ease of reference and with the consent of the parties, RFA (OS) No.5/2017 is considered as a lead case. For the sake of convenience, the parties before this court shall be referred to in accordance with their respective status before the LSJ.

### **FACTUAL MATRIX**

4. For a comprehensive consideration of the issues involved, it is apposite, at the outset, to delineate the attendant factual matrix, which are set out in the ensuing paragraphs.

4.1 The Plaintiff is the registered owner of the Suit Property, which was originally leased from the Municipal Corporation of Delhi [hereinafter referred to as 'MCD'] pursuant to a perpetual lease dated 11.05.1971. It is stated that the Plaintiff thereafter constructed a three-storey building on the said plot from his own funds and resources.

4.2 It is further stated that the aforesaid property was subsequently converted into free-hold in favour of the Plaintiff *vide* a conveyance deed dated 05.01.2011. The Plaintiff bore all the expenses relating to the conversion, and on that basis, asserts exclusive ownership over the Suit Property as his self-acquired property.



4.3 The Defendant, elder brother of the Plaintiff, was allowed to use and occupy the first floor, and two rooms along with one bathroom on the second floor of the Suit Property, purely out of natural love and affection. No consideration was ever charged from the Defendant for such use or occupation.

4.4 The Plaintiff states that the oral licence granted in favour of the Defendant was revoked in September 2006. Upon revocation, the Defendant sought 15 days' time to shift, remove his belongings, and hand over the physical possession of the premises. However, despite such assurance, the Defendant failed to vacate the Suit Property. Consequently, a legal notice dated 26.10.2006 was issued to the Defendant.

4.5 Despite due service of the aforesaid notice, the Defendant neither replied thereto nor complied with its terms. In terms of the notice, the licence to occupy the Suit Property stood revoked, and the Defendant was granted seven days time to vacate the premises, and handover vacant and peaceful possession to the Plaintiff.

4.6 Since the Defendant did not comply with the same, the present suit was instituted, seeking the following reliefs:

*“A. A decree of possession be passed in favour of the Plaintiff and against the Defendant in respect of the entire first floor and two rooms and one bathroom on the Second Floor, as shown within red lines in the site plan attached with the plaint, of the property bearing No. A-8, Vishal Enclave, New Delhi.*

*B. That a further decree of Rs. 2000/- on account of damages and mene profits be also passed in favour of the Plaintiff and against the Defendant, for the period of 04.11.2006 till the date of filing of the Suit.*



*C. That a further decree @Rs. 1,000/- per day on such rate at which this Hon'ble Court may arrive at after holding enquiry under Order XX Rule 12 of the CPC be also passed in favour of the Plaintiff and against the Defendant as damages and mene profits pendente lite and future till handing over of its physical and vacant possession of the property in question. The Plaintiff undertakes to pay deficient court fee at the time of decree.*

*D. Cost of the suit may also be awarded in favour of the Plaintiff against the Defendant.*

*E. Any other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the Plaintiff and against the Defendant."*

5. The Defendant filed a written statement and also raised a counter- claim on the following grounds:

5.1 While the execution of the lease deed dated 11.5.1971 is not disputed, the Defendant denies that the Plaintiff is the exclusive owner of the Suit Property.

5.2 The ground floor of the Suit property was constructed out of the joint funds of the Plaintiff and the Defendant, whereas the first and the second floors were constructed solely by the Defendant using his own resources, pursuant to a family arrangement under which those floors were to belong exclusively to him.

5.3 The Defendant disputes the Plaintiff's assertion that the entire expenditure for conversion of the property from leasehold to freehold was borne exclusively by the Plaintiff.

5.4 It is further pleaded that the suit is not maintainable, is not properly valued, is barred by limitation, and is also barred by the law of adverse possession.



5.5 According to the Defendants, upon the demise of the father of the parties, both the sons i.e. the Plaintiff and the Original Defendant, inherited his estate and business, a substantial portion of which was joint in nature. It is stated that the Plaintiff, Defendant, and their father jointly participated in the auction, and upon being declared successful, the property was purchased in the name of the Plaintiff, at the instance of their father, in order to circumvent the terms and conditions of the auction, which prohibited participation by a person already owning property in Delhi. The initial amount of Rs.10,300/-, as well as the subsequent instalments, are stated to have been paid out of joint funds.

5.6 The counter-claim further avers that the Plaintiff mortgaged the Suit Property to obtain a loan, and thereafter in November 1976, applied for sanction of building plans for construction of the ground floor. Upon approval, a dwelling unit was built using joint funds, as reflected in the occupancy certificate dated 16.05.1981. Both the families are stated to have shifted to the newly constructed ground floor on 04.11.1979. Prior thereto, the parties were residing together in another property bearing No. B-1, Radhey Puri, Delhi, which admittedly belongs to the Defendant, and whose ownership and possession are not in dispute. Under the alleged family arrangement, the Plaintiff was to assist the Defendant in securing sanction of building plans, and in the installation of water and electricity meters in the name of Defendant.

5.7 It is further stated that it was agreed between the parties that the first and second floors of the Suit Property would be constructed by the Defendant from his own funds, and that, in the event of sale of the



Suit Property, the sale proceeds would be divided equally between the two brothers. The Defendants claimed to have utilised the funds received from the sale of Vivek Vihar Property, as well as the drawings from his business, towards the construction of the first and second floors, for which sanction was allegedly granted on 24.03.1988.

5.8 The Defendants plead that the records of the MCD reflected his name and that of his son, i.e. the Sandeep Rathi, were got noted as owners and occupants of the first and second floors of the Suit Property, since they alone interacted with municipal authorities. The reliance is placed on a notice dated 13.10.1989, which is stated to confirm their use and occupation of the said portions. In mid- 2003, at the request of the Plaintiff, the Plaintiff's son was permitted to use a part of the second floor, for the purpose of storage.

5.9 The Defendants also provide a detailed narrative of the family's movements, stating that after partition, the family initially stayed at Jammu with their maternal uncle, thereafter, moved to Karnal and subsequently settled in Delhi. During this period, several premises were taken on rent, following which, the parties shifted to Radhey Puri and throughout, the parties are said to have lived jointly as a family.

6. The following issues were framed on 04.07.2007 in the suit-

*"1. Whether the plaintiff is entitled to a decree of possession in respect of A-8, Vishal Enclave, New Delhi, as claimed?"*

*2. Whether the plaintiff is entitled to damages/mesne profits of Rs.2000/-from the defendant till the period of filing of the suit*



*and @ Rs.1000/- per day for the period after filing of the suit from the defendant as claimed or damages/mesne profits at any other rate? OPD*

*3. Whether the suit is barred by limitation? OPD*

*4. Whether the suit has not been properly valued and liable to be dismissed for want of court fee? OPD"*

7. The following issues were framed in the counter claim:

*"1. Whether the defendant is entitled to decree of declaration that he was the owner of 1st and 2<sup>nd</sup> floor and proposed owner of land underneath A-8, Vishal Enclave, New Delhi?*

*2. CS(OS)No.2134/2006 Whether the defendant is entitled to mandatory injunction as claimed in the counter claim for removal of obstructions of plaintiff and his agents and servants etc in use and occupation of 1st and 2<sup>nd</sup> Floor of the property by the defendant?*

*3. Whether there was any family settlement as claimed by the defendant dated 25.10.1970 and 4.11.1979? OPD.*

*4. Whether the counter claims have not been properly valued and are liable to be dismissed for want of proper court-fee?*

*5. Whether the counter claims of the defendant are barred under Benami Transaction Act? OPD*

*6. Relief"*

8. The Plaintiff placed reliance on the partnership deed (Ex. DW1/1) to demonstrate that the original parties were partners in a firm, thereby seeking to negate the existence of any Joint Hindu Family [hereinafter referred to as 'JHF'].

9. During cross-examination, DW1 admitted that, on the date of auction, no registered property stood in the name of Sh. Trilok Chand Sethi. The Defendant also placed on record, a letter issued by MCD concerning unauthorised construction [Ex. DW1/16]. DW1 further



acknowledged that the Vivek Vihar property had been sold by his father, who thereafter purchased a flat in Mumbai. DW1 also admitted that he was unable to produce any document to show that his father had ever paid house tax in respect of the Suit Property or borne any charges for converting the property from leasehold to freehold. The only document produced by DW1 in support of construction, was an invoice for 200 bags of cement, issued in his own name.

10. DW1 deposed that the Suit Property was purchased in an auction, conducted in the year 1970. According to him, the original parties, their father, and an old friend of the Plaintiff, went for the MCD auction. The father was allegedly made aware of the terms and conditions of bidding, including the stipulation that a bidder should not own any other property in Delhi. A copy of these terms and conditions has been exhibited as Ex.DW1/2.

11. DW1 further stated that the property bearing No. D-253 Vivek Vihar, which was in the name of the original Defendant, was sold after the parties shifted to the Suit Property on 04.11.1979. A copy of the passbook, exhibited as Ex. DW1/3, was relied upon, to show that funds from their joint account were used to pay household expenses relating to the Suit Property. A copy of the ration card of the Plaintiff has been exhibited as Ex. DW 1/8.

12. DW1 further deposed that, pursuant to an alleged agreement of 1970, and subsequent family arrangements of 1974, and 04.11.1979, the first and second floors of the Suit Property were always intended to belong to the original Defendant.



13. The Plaintiff filed his evidence by way of an affidavit, exhibited as Ex.PW1/A, wherein it was deposed that the Suit Property was purchased by the Plaintiff in an auction conducted by the MCD for a sum of Rs.41,200/-, which was paid entirely from his own earnings. The original perpetual lease deed dated 11.05.1971, has been exhibited as Ex. PW1/2, and the Conveyance Deed dated 05.01.2001, executed in favour of the Plaintiff, has been exhibited as Ex.PW1/3. The documents pertaining to house tax, assessment orders, and various notices issued in the Plaintiff's name have been exhibited as Ex.PW1/5 to Ex. PW1/12. The site plan marking the portion in possession of the Defendant, in red, was exhibited as Ex.PW1/1. The copy of legal notice dated 26.10.2006, has been exhibited as Ex.PW1/15, postal documents such as UPC, have been exhibited as Ex.PW1/16, and the postal receipts, have been exhibited as Ex.PW1/17, respectively.

14. To facilitate better comprehension and enable ready reference for all stakeholders, including the Appellate courts, the tabulated charts are incorporated hereinafter, summarising the witnesses examined and the documents exhibited.

**List of Plaintiff Witnesses examined-**

<b>Plaintiff Witness No.</b>	<b>Name of witness</b>	<b>Description</b>
1.	Rajinder Kumar Sethi	Plaintiff



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**List of Exhibited Documents by Plaintiff-**

<b>Exhibit No.</b>	<b>Description of the Exhibit</b>	<b>Proved by/Attested by</b>
P-1	Original letter dated 13.10.1989 by MCD	Plaintiff
P-2	Original Perpetual Lease Deed dated 11.5.1971	Plaintiff
P-3	Original letter dated 04.11.1970 of acceptance of the bid of the plot in question written by the MCD	Plaintiff

**List of exhibited documents by PW-1**

<b>Exhibit No.</b>	<b>Description of the Exhibit</b>	<b>Proved by/Attested by</b>
1.	Copy of Site plan showing the plot of the Suit Property	PW-1
2.	Original perpetual Lease Deed dated 11.5.1971	PW-1
3.	Copy of a conveyance Deed dated 05.01.2001	PW-1
4.	Copy of Occupation Certificate obtained by the Plaintiff from MCD	PW-1
5.	Assessment Order dated 02.09.97	PW-1
6.	House Tax paid by the Plaintiff	PW-1
7-12	A copy of proposals to make some amendment in the assessment list by the MCD, seeking objection from the	PW-1



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	claimant	
14.	Reply to show cause notice dated 13.10.1989 against the Suit property by the Plaintiff dated 23.10.1989	PW-1
15.	Copy of the notice dated 26.10.2006 sent by the Advocate to the Defendant, asking to shift from the premises	PW-1
16.	Postal Documents	PW-1
A.	Affidavit of PW-1	PW-1
P-6	Photograph	PW-1

**List of Defendant Witnesses examined-**

<b>Defendant Witness No.</b>	<b>Name of Witness</b>	<b>Description</b>
1.	Sandeep Kumar Sethi	Defendant No.1(a)
2.	Deepak Yadav	LDC Land and Estate Department
3.	Mahesh Nepali	Data Entry Operator at Delhi Public School
4.	Raj Kumar Rana	Dealing Assistant in Lab (res.) DDA
5.	Ranbir Singh	Dealing Clerk, Assessment & Collection Deptt., MCD
6.	Pawan Kumar Tekriwal	Cement Stockist



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7.	Gurbachan Singh Jaggi	Ex-civil contractor
8.	Vijay Handa	Ex-Electrician
9.	Babu Lal Gupta	Iron & Steel Business
10.	Shree Ram Dandona	Architect
11.	Vijay Verma	Chartered Accountant
12.	O.P. Maggon	Retd. Addl. Dy. Commissioner
13.	Satish Kohli	Businessman
14.	Krishan Kumar Nagpal	Architect
15.	Abdul Malik	Accountant
16.	Ashok Kumar Sahani	Business
17.	Anand Kumar Chopra	Consultant
18.	Qayam Ali	ASI
19.	Ritu Suri	House-wife
20.	Surender Singh	Maura Clerk

**List of exhibited documents by Defendants–**

**Defendant Witness-1**

Exhibit No.	Description	Proved by/Attested by
P-2	Photograph	DW-1
P-3	Photograph of Marriage	DW-1



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P-3	Photograph of Vandana Sethi	DW-1
P-5	A letter dated 04.11.1970 by MCD to the Plaintiff, directing him to pay the balance amount of Rs.30,900/-	DW-1
P-7	Photograph of cement bags	DW-1
P-I	A letter dated 18.02.97 written by Sandeep Sethi to the Deputy Assessor & Collector, requesting to fix next date of hearing citing the reason that Sh. Rajinder Kumar Sethi is not available at that time i.e. on 19.02.97	DW-1
1.	A partnership deed dated 06.04.1964 between Sh. Rajinder Kumar Sethi and Sh. Sushil Kumar Sethi, mutually agreeing that now the business will be carried under the name and style of M/S. Tara Rubber Industries	DW-1
2.	Terms & Conditions for the sale by auction by the MCD of perpetual lease hold rights in residential plots	DW-1
3.	Copy of the passbook enclosing the details that a joint saving bank was opened by the Plaintiff, in the names of both the Plaintiff and Defendant	DW-1
4.	Copy of one bill of the cement purchased	DW-1
5.	Documents issued under the RTI	DW-1
6.	Copy of an affidavit of terms and conditions that the party should not own any other property in Delhi at the time of auction.	DW-1
7.	Copies of the documents like Drafting and Executing the relinquishment deed	DW-1



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	etc.	
8.	Ration card of the Plaintiff	DW-1
9	Copy of letter with previous changed address	DW-1
11.	Death certificate of Sh. Tilak Chand Sethi, father of the parties.	DW-1
12.	Death certificate of the mother of the parties	DW-1
13.	Indemnity bond of original Defendant dated 23.05.1978	DW-1
14.	Relinquishment Deed dated 20.05.1978, whereby the property bearing No. B-1, Radhey Puri, Delhi-51, was released by the Plaintiff in favour of the Defendant	DW-1
15.	A copy of the documents, disclosing the correspondence assisted by the Plaintiff	DW-1
16.	Copy of MCD notice dated 13.10.1989 issued to the Defendant	DW-1
17.	Conversion from Lease Hold to Free hold of the Suit Property	DW-1
18.	Photograph of gymnasium	DW-1
19.	Copy of FIR dated 13.12.2000 u/s 323/365/511/34 IPC	DW-1
20.	Photographs of driveway leading up to the stair as well as to be used for parking of cars by the Defendants	DW-1
21 and 22	Photographs of main stair ways as well as the alternate one, leading from	DW-1



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	1st floor to second floor.	
23	Photo of advertisement of the gymnasium	DW-1
24.	Photograph	DW-1

**Defendant Witness-2**

Exhibit No.	Description	Proved by/Attested by
1.	Application dated 25.10.70 by the Highest Bider for the purchase of the perpetual lease hold rights	DW-2
2.	A letter dated 04.11.1970 by MCD to the Plaintiff, directing him to pay the balance amount of Rs.30,900/-	DW-2
3.	No objection certificate to mortgage the plot no.8, Sector B&C on Najaf Garh Road near Tagore Garden, New Delhi-27.	DW-2
4.	Request by the Plaintiff for grant of mortgage in respect of the aforestated plot.	DW-2
5.	Mutation of Plot No. D-203, Jhilmil Tahirpur Residential Scheme	DW-2
6.	Regarding carrying the mentioned development works in the construction of the building.	DW-2
7.	Ration card of the Plaintiff	DW-2
8.	Ration card of the Defendant	DW-2



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9.	Letter to the Defendant to deposit Rs.156 for 78 documents in reference to his application dated 30.11.2010 under RTI Act, 2005	DW-2
10.	Auction sheet dated 25.10.1970	DW-2
11.	Letter by the Plaintiff in reference to the direction of payment issued by the Assistant Commissioner	DW-2
12.	Copy of site plan showing the plot of the Suit Property	DW-2
13.	Letter dated 04.10.75, issued by the MCD to the Plaintiff, with regards to the possession of plot no. A-8, Sector B, Najafgarh Road, Delhi	DW-2
14.	Acknowledgement by the Assistant Commissioner in regard to the receiving of an application from the Plaintiff along with Lease Deed of the said plot.	DW-2
15.	Letter dated 21.11.1976, issued by the MCD to the Plaintiff, with regards to the possession of plot no. A-8, Sector B, Najafgarh Road, Delhi	DW-2
16.	MCD confirms that the lease agreement is registered in the name of the Plaintiff with respect to Plot no. A-8.	DW-2
17.	Letter dated 29.11.1975 affirming that the possession letter is put up for the signatures.	DW-2
18.	Certification that possession of 400 sq. Yds of land bearing plot no. A-8, taken by the Plaintiff.	DW-2



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19.	Copy of Certificate issued by the Zonal engineer that the building no. A-8 has been inspected and declared that it is in conformity with all the requirements and is suitable for occupancy.	DW-2
20.	Copy of Perpetual Lease Deed dated 11.05.1971	DW-2
21.	The Plaintiff intends to transfer by way of mortgage the urban land bearing No. A-I, Radhey Puri, Delhi-51.	DW-2
22.	Copy of Grant of mortgage permission in respect of plot no.8, Sector B &C for which loan has been sanctioned for construction of building thereon.	DW-2
23.	Copy of No objection certificate to mortgage the plot no.8, Sector B&C on Najaf Garh Road	DW-2
24.	Copy of a Letter by the MCD to the Plaintiff, for payment of the outstanding amount of Rs.2064 against the ground floor rent.	DW-2
25.	Assistant Commissioner received the lease deed of the Plaintiff.	DW-2
26.	Copy of Application dated 16.12.1999, filed by the Plaintiff, for conversion of leasehold property into freehold property	DW-2
27.	Copy of Indemnity Bond executed on 13.12.1999.	DW-2
28.	Affidavit filed by the Plaintiff, asserting that no unauthorised property is being	DW-2



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	used only for residential purpose.	
29.	An undertaking by the Plaintiff, to pay the amount in respect of Suit Property, on demand.	DW-2
30.	A letter by the MCD in regard to the application for conversion of the property, stating that it is under process.	DW-2
31.	Copy of Specimen signatures and Passport Size photographs of the person in whose favour conversion is sought duly attested.	DW-2
32.	Copy of letter dated 18.08.97, Govt. Of NCT of Delhi informed the Plaintiff that the property has been free from loan and the documents are returned.	DW-2
33.	Copy of Perpetual Lease Deed dated 11.05.1971	DW-2
34.	Copy of payment of rent amount of ground floor, paid by the Plaintiff [11.05.1996 to 10.05.1997]	DW-2
35.	Copy of payment of rent amount of ground floor, paid by the Plaintiff [11.05.1997 to 10.05.1998]	DW-2
36.	Copy of deficiencies marked by the MCD, in the application of the Plaintiff for the conversion of the property.	DW-2
37.	Copy of the sanctioned plan of the Plaintiff's house submitted by the Plaintiff to the Deputy Commissioner.	DW-2
38.	Copy of the Conveyance Deed	DW-2
39.	Copy of the execution of Conveyance	DW-2



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	Deed in respect of the Suit property.	
40.	Copy of payment of rent amount of ground floor, paid by the Plaintiff [11.05.1998 to 10.05.1999] & [11.05.1999 to 10.05.2000]	DW-2
41.	Copy of payment of rent amount of ground floor, paid by the Plaintiff [11.05.1999 to 10.05.2000]	DW-2

**Defendant Witness-3**

<b>Exhibit No.</b>	<b>Description</b>	<b>Proved by/Attested by</b>
1.	Copy certifying that daughter of Mr. Ajay Sethi is a bonafide student of Delhi Public School and copy of enrolment form of his daughter	DW-3
2.	Copy of Birth Certificate of daughter of Ajay Sethi.	DW-3
3.	Copy of Health Card of the daughter of Mr. Ajay Sethi	DW-3
4.	Copy of ration card of Ajay Sethi	DW-3
5.	Copy of registration form of the daughter of Mr. Ajay Sethi	DW-3
7.	Copy of enrolment form of the daughter of Ajay Sethi	DW-3
8.	Copy of birth certificate of the daughter of Ajay Sethi	DW-3
9.	Copy of health card of the daughter of Ajay	DW-3



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	Sethi	
10.	Copy of Ration Card of Ajay Sethi	DW-3
11.	Copy of I-card of the daughter of Ajay Sethi	DW-3
12.	Copy certifying that daughter of Mr. Ajay Sethi is a bonafide student of Delhi Public School.	DW-3
13.	Copy of summons for producing the admission documents of son and daughter of Mr. Ajay Sethi	DW-3

**Defendant Witness No.-5**

Exhibit No.	Description	Proved by/Attested by
P-I	Copy of property tax assessment	DW-5

**Defendant Witness No.9**

Exhibit No.	Description	Proved by/Attested by
A	Certified copy of Rajasthan Iron Traders, certifying that they had supplied Tor Steel to the Defendant for construction of 1st and 2nd floor.	DW-3

**Defendant Witness No. 10**

Exhibit No.	Description	Proved by/Attested
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		by
A.	Copy of the sanctioned plan of the suit property	DW-10

**Defendant Witness No. 18**

Exhibit No.	Description	Proved by/Attested by
A.	Copy of the cancellation report of FIR sent to concerned Mahila Court, Dwarka, New Delhi	DW-18

**Defendant Witness No.19**

Exhibit No.	Description	Proved by/Attested by
A.	Copy of affidavit of the Defendant No.1(b) i.e. Ritu Suri	DW-19

**Defendant Witness No. 20**

Exhibit No.	Description	Proved by/Attested by
A.	Copy of FIR dated 02.07.2001	DW-20
B.	Copy of in re-complaint by wife Vandana Sethi with CAW cell, filed by Ajay Sethi	DW-20



15. Upon consideration of the pleadings and evidence on record, the Suit was decreed in favour of the Plaintiff on the following grounds:

15.1 The Plaintiff successfully proved his ownership of the Suit Property, by virtue of the perpetual lease deed dated 11.05.1971 (Ex.PW1/2), and conveyance deed dated 05.01.2001 (Ex.PW1/3). He has also established that the sanctioned building plans, occupancy certificate, house tax records, electricity and water meters stood in his name. The Defendants failed to adduce any evidence to substantiate the existence or implementation of any family settlement. Furthermore, the Defendant did not place on record any documentary proof, to show that any expenditure was incurred by the original Defendant towards the construction of the ground, 1<sup>st</sup> or 2<sup>nd</sup> floors. Although reliance was placed on a bank passbook, the same did not establish payment of electricity or water charges, as claimed. Consequently, the Plaintiff was held to be the absolute owner of the Suit Property, and entitled to its possession. Accordingly, the issue no.1 in the suit and issue nos. 1 and 3 in the counter-claim were decided in the Plaintiff's favour.

15.2 The LSJ observed that there was no cross-examination or rebuttal by the Defendant with respect to the rate of damages/mesne profits claimed by the Plaintiff. Considering the relationship between the parties, damages/mesne profits @ Rs.30,000/- per month, were granted in favour of the Plaintiff and against the Defendant.

15.3 On the point of limitation, the Defendants failed to establish



adverse possession over the Suit Property. No evidence or anything was produced to show that the suit was barred by limitation. Since, the license of the Defendant was revoked by a legal notice dated 25.10.2006, and the suit was filed on 06.11.2006, the Suit was held to be well within the period of limitation.

15.4 The onus pertaining to the issue no 4 in the suit was on the Defendant, however, the Defendant failed to discharge it. The suit had been valued by the Plaintiff in accordance with the market value of the Suit Property. The issue is, therefore, decided in favour of the Plaintiff and against the Defendant.

15.5 With regard to the issue no.2 in the counter-claim, the Defendant relied on photographs of the gym, allegedly run by Sh. Ajay Sethi, son of the Plaintiff, at the Suit Property, to establish the obstructions in the Defendant's use and occupation of the premises. However, in view of the Plaintiff having established his ownership and the Defendant having failed to prove any right, title, or interest in the Suit property, the said contention was rejected.

15.6 Pertaining to valuation of the Court Fee, in respect of the counter-claim, the LSJ held that the Counter Claims had been properly valued in terms of para 25 thereof. Consequently, this issue was decided in favour of the Defendant and against the Plaintiff.

15.7 Lastly, with regard to the issue no.5 in the counter-claim, in view of the bar contained under Section 4(2) of the Prohibition of Benami Property Transactions Act, 1988 [hereinafter referred to as 'the Benami Act'], this issue was decided in favour of the Plaintiff and



against the Defendant.

16. In light of these findings, the LSJ decreed the suit, in favour of the Plaintiff, and the Counter Claim stood dismissed accordingly.

### **CONTENTION OF THE PARTIES**

17. The learned counsel for the Appellants/Defendants advanced the following submissions:

#### **RFA (OS) NO. 5/2017 & RFA (OS) NO. 10/2017**

17.1 The Defendants aver that the Plaintiff could be said to be holding the Suit Property in a fiduciary capacity only as a member of the Hindu Family, and that the Suit Property was initially purchased, and subsequently developed by construction of various floors, out of common and joint family funds.

17.2 It is further averred that the LSJ has erred in failing to return any findings on a crucial argument raised on behalf of the Defendants, *viz* the averments of the Defendants in the counter-claim, having not been specifically denied or challenged by the Plaintiff, stood admitted, yet were completely ignored in the Impugned Judgement. In this regard, the Appellants specifically rely upon the averments pertaining to utilisation of joint funds, payments allegedly made for acquisition of the Suit Property by Late Sh. T.C. Sethi, from joint funds, expenditure incurred towards construction of the dwelling unit from joint funds, the alleged common business agreement of 1970, and the family arrangement dated 04.11.1979. According to the Defendants, these averments go to the very root of the matter and establish the



counter-claim in their favour.

17.3 The Defendants further submit that it is settled law that the burden of proof to establish the quantum and justification of mesne profits, lies upon the party claiming the same. The Impugned Judgement, it is urged, has awarded mesne profits without any evidence on record, and solely on the ground of suggestion being made by the counsel of the Plaintiff.

17.4 It is also contended that the LSJ erred in awarding interest on an alleged amount termed as mesne profits. It is pointed out that the suit remained pending for several years, partly due to delays occasioned during mediation proceedings, and also because the Impugned Judgement remained reserved for a considerable period, for which the Defendants cannot be faulted.

17.5 The Defendants contend that it was an admitted fact that the land standing in the name of the father of the erstwhile parties stood acquired shortly prior to the date of auction by MCD. This fact assumes significance, in light of the terms of the auction, which stipulated that ownership of any other property would render the bid liable to rejection. It is for this reason, *inter alia*, that the bid was recorded in the name of the younger son, i.e., the Plaintiff. According to the Defendants, this crucial aspect has been completely overlooked by the LSJ.

17.6 The LSJ is also stated to have erred in ignoring the fact that everything including houses/residencies/businesses, income & expenditure etc. were joint and derived from a common source of



funds namely, joint family business. This fact, it is contended, was not denied in the pleadings and stood admitted in evidence.

17.7 The Defendants further contend that the provisions of the Benami Act, and the settled law thereunder, have been ignored by the LSJ. According to the Defendants, the Plaintiff could only be said to be holding the Suit Property in a fiduciary capacity, as part of the Hindu Family, and that the Suit Property was purchased and developed out of common funds.

17.8 It is also argued that the LSJ inequitably noted the sale of the Vivek Vihar property by the Defendant, and the purchase of an alternative property at Dhanu Road, Maharashtra, while completely ignoring the comparative monetary values involved in these transactions.

17.9 The Defendants assert that joint bank account of the business was used for making payment for all property tax, electricity, water, repayments of loan, and construction related payments. This, according to them, was consistent with the understanding that the Suit Property was joint, and that steps would subsequently be taken to record joint ownership in official records, pursuant to the family arrangement.

17.10 It is further pertinent to note that that even the Plaintiff has utterly failed to show any source of his funds for the construction, which he claims to have undertaken from his own resources. It is submitted that the Plaintiff had no known source of income at the relevant time, whereas, the Defendants had demonstrated availability



of funds through sale of properties, constitute facts which were allegedly ignored by the LSJ.

17.11 The Defendants also contend that the LSJ erred in relying upon the judgement in *Hemaji*<sup>1</sup>, as the facts of that case were entirely distinguishable and the law laid down therein was not applicable to the present matter.

17.12 It is further submitted that the LSJ failed to apply the law laid down by the Apex Court in, *Marcel Martins v. M. Printers*<sup>2</sup>. The circumstances, in which the Suit Property was purchased in the name of the Plaintiff, assumes great importance while determining whether the Plaintiff held the property in a fiduciary capacity *vis-à-vis* the Defendants. On this basis as well, the Defendants assert that the Suit property was acquired and developed from common funds.

17.13 The LSJ is also stated to have erred in accepting the Plaintiff's contention that the jewellery belonging to his wife was sold to finance construction of the Suit Property. This claim, according to the Defendants, stood completely demolished, during the Defendant's cross-examination on 25.10.2010, wherein he admitted that no documentary proof such as income tax returns or bank statements was available, to establish the availability of funds or the existence of such jewellery.

17.14 The Defendants further rely upon evidence led by the Defendant No.2 to contend that the only gold in the household was

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<sup>1</sup> AIR 2009 SC 103

<sup>2</sup> AIR 2012 SC 1987



either bought or inherited by the father of the erstwhile parties, and that a portion thereof was sold to repay a loan taken by the father of the parties from one Mr. K.C. Kapoor, at the time of auction bidding.

17.15 It is also highlighted that both the Plaintiff and his son admitted that during matrimonial disputes between son and the daughter-in-law, the daughter-in-law had taken away her entire jewellery/stridhan, as well as the jewellery belonging to the wife of the Plaintiff, sometime during 2007-2008. This fact, supported by police records, clearly demonstrates that no jewellery was available for sale to finance construction, and that any jewellery purchased thereafter, could only have been acquired after completion of construction from funds, allegedly provided by the Defendants.

17.16 The Defendants further contend that the LSJ failed to consider the mandate of the statutory provisions, especially Section 2(15) read with Section 35 of the Code of Civil Procedure, 1908, regarding filing of suit for partition and possession of an immovable property.

### **RFA (OS) NO 06/2017**

17.17 The Appellants further submit that the LSJ ought to have taken judicial notice of the fact that the matter was pending since 2006, and that property prices had increased nearly fourfold during this period. It is contended that damages and mesne profits ought to have been awarded at least at the rate of Rs. 1 lakh per month. Alternatively, reliance is placed on the Delhi Rent Control Act, which permits a 10% increase every three years even for protected tenants, whereas no such restriction applies to the Suit property, which ought to have been



governed by prevailing market rates.

18. *Per contra*, the learned counsel for the Respondent/Plaintiff has made the following submissions:

18.1 It is averred that the Plaintiff has duly proved his ownership of the Suit Property by placing on record the perpetual lease deed [Ex.PW-1/2], Conveyance deed [Ex. PW1/3], Occupancy Certificate [Ex. PW1/4], house tax receipts, assessment orders and various notices [Ex. PW-1/5 to 12]. In contrast, the Defendants failed to produce any document/record or prove the existence of any family settlement qua the Suit Property or otherwise.

18.2 The Plaintiff contends that the Defendants failed to prove that the first and second floors of the Suit Property were constructed by his own funds or that the conversion from leasehold into freehold was not funded solely by the Plaintiff.

18.3 The reliance placed by the Defendants on the Partnership Deed dated 06.04.1964 [Ex. DW-1/1] is misconceive, as the said Partnership Deed itself records that-

*“AND whereas the party No.1 Sh. Rajendra Kumar Sethi was carrying on the business under the sole proprietorship and with effect from 01.04.1964 the party no.2, i.e., Sushil Kumar Sethi has been taken as a partner by Shri Rajendra Kumar in the firm under the name and style of M/s Tara Rubber Industries”.*

18.4 This makes it amply clear that the Plaintiff had an independent source of income and did not require partnership funds to purchase the



Suit Property. It has also been referred in para III (xviii) of the written statement, that the Plaintiff was also involved in the sale and purchase of properties, that further justify the generation of independent funds by the Plaintiff.

18.5 The Plaintiff has also contended that the Appellant also called for the voluminous records through RTI from the MCD [Ex. DW-2/1 Colly.] and a perusal of the same showed that the bid amount was paid by and in the name of Plaintiff. Moreover, the Plaintiff has also been given a no Objection Certificate [Ex. DW-2/3] for mortgaging the Suit Property to Delhi Administration for loan etc.

18.6 With regard to the existence of the family arrangement dated 25.10.1970 and 04.11.1979, neither did the Appellant produce any supporting document nor were the 20 witnesses produced were able to prove any sort of family settlement.

18.7 Furthermore, Sh. Trilok Chand Sethi in his lifetime executed a Will and property bearing no. D-253, Vivek Vihar, Delhi was bequeathed to the original Defendant. Further, in line with the said Will, a release Deed dated 20.05.1978 [Ex. DW-1/4], was executed by the Plaintiff in favour of the Defendant, since at that point of time a Will could not be given any effect, without grant of probate, and hence a relinquishment/ release deed ought to have been executed. This itself negates the existence of any family settlement.

18.8 It is also contended that the Defendant owns multiple properties such as B-1 and 2, Radhey Puri from where it is deriving rent, a plot of land at Vivek Vihar, a flat at Dhanu Road, Mumbai and Appellant



is a member of Varun Co-op. House Building Society, whereas the Plaintiff has in his name only one property i.e. the Suit property, thereby rendering the plea of family settlement improbable.

18.9 Moreover, even prior to the setting up of M/s Tara Rubber Industries *vide* Partnership Deed dated 01.04.1964 [Ex. DW-1/1], the Plaintiff was having his sole proprietorship and even after that he was engaged in the business of buying and selling of properties thereby generating sufficient income and revenue to purchase the Suit Property in auction, through his own funds. The Defendants even though contend, that he along with his father had invested his monies for the said purchase, but the same has not even been proved through any account statements, passbooks or record.

18.10 It is also contended that the Defendants sought to place reliance on the judgement of **Marcel Martins (supra)**, but relying on the said judgements this Hon'ble Court in **Promila Gulati v Anil Gulati**<sup>3</sup>, **Ramesh Advani v Hiro Advani & Anr**, has held that for a party to successfully fall under the exception of Section 4 of the Benami Act, a specific pleading coupled with evidence proving the same ought to be present. It is imperative that a pleading of relationship of trust in a fiduciary capacity is taken and further the Court shall have to take into consideration the factual context in which the question arises for it is only in factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case.

18.11 Lastly, it is contended that the Defendants have never initiated

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<sup>3</sup> 2015 (149) DRJ 195



any proceedings i.e., suit for implementation of an oral family settlement or any other claim raised by the Defendants in the written statement/counter-claim in spite of lapse of over three decades, clearly indicating that the defence raised is an afterthought, lacking *bona fides*, and intended merely to cloud the real issues in the matter.

### **FINDINGS AND ANALYSIS**

19. Heard learned counsel representing the parties at length and, with their able assistance, perused the paper book, along with the record, and their written submissions.

20. The primary contention of the Defendants that the Plaintiff is not the exclusive owner of the Suit Property is wholly untenable. The Plaintiff has conclusively proved his title, by placing on record the documents like Perpetual Lease Deed dated 11.05.1971 [Ex. PW1/2], Conveyance Deed dated 05.01.2001 converting the property from leasehold into freehold [Ex. PW1/3], Occupancy Certificate [Ex. PW1/4], No Objection Certification, house tax records, assessment orders and statutory notices issued exclusively in his name [Ex. PW1/5 to 12]. These documents constitute unimpeachable evidence of ownership. In contrast, the Defendants have not produced a single title document, conveyance, sanction letter, or statutory record evidencing any ownership rights in their favour, over any portion of the Suit Property.

21. The Defendants' assertion that the Suit Property was purchased from joint family or joint business funds, is equally devoid of merit. Significantly, the Defendant after having taken a stand in his written



statement, that property was not purchased in name of their father, T.C. Sethi, because he was already owner of some other property in Delhi, admitted during cross-examination that no registered property stood in the name of the father of the parties on the date of auction. No bank statements, account books, vouchers, or payment receipts evidencing contribution by the Defendants or their father towards the auction price were produced. Even the passbook relied upon by the Defendant does not reflect any payment towards the auction consideration or construction costs. Mere oral assertions of “joint funds”, unsupported by contemporaneous documentary records, cannot displace registered title documents.

22. It is pertinent to note that the Defendants themselves placed reliance on the Partnership Deed dated 06.04.1964 [Ex. DW1/1]. Ironically, the said document completely undermines their own averment, as it categorically records that the Plaintiff was carrying on business as a sole proprietor prior to the constitution of the partnership and that the Defendant was inducted subsequently as a partner. This clearly establishes that the Plaintiff had an independent source of income even prior to the partnership and negates the existence of any JHF or any joint family nucleus. Joint Hindu Family and Joint Hindu Family property are distinct and separate. The mere existence of a JHF does not necessarily lead to existence of a JHF property. Once the existence of a JHF is not established, the presumption of a Joint Hindu Family Property does not arise.

23. It is well settled that even if there is an existence of JHF, it does not *ipso facto* render all the properties as joint family properties.



Instead, the claimant must establish that the property in question was acquired with the aid of the joint family funds, particularly by demonstrating the existence of a sufficient nucleus capable of supporting such acquisitions. It reinforces the importance of substantiating claims, regarding the nature of property within joint Hindu families. It is clear that without concrete evidence of a joint family nucleus, any presumption of a property as joint family-owned is legally impermissible.

24. The Defendants' case hinges substantially on alleged oral family settlements dated 25.10.1970 and 04.11.1979. However, no written memorandum, contemporaneous document, or corroborative evidence was produced to prove the existence of an oral family settlement. None of the witnesses examined were able to establish either the precise terms, the manner of implementation, or even the very existence of such alleged family settlements. Additionally, the Defendants have failed to produce any documents to prove that they ever asserted themselves as co-owner in the Suit Property, unlike the Plaintiff. Significantly, no suit or proceedings were ever instituted for enforcement of the purported settlements, for more than three decades, which conduct is wholly inconsistent with the existence of any concluded or acted-upon family arrangement.

25. It is a settled principle of law that although a family settlement may be oral, its existence must be proved by cogent, reliable and convincing evidence demonstrating not only *consensus ad idem* but also acceptance and implementation by the parties. The Defendants, however, have failed on all counts. Moreover, the long and



uninterrupted conduct of the parties, coupled with the absence of any mutation, change in possession, or assertion of rights in consonance with the alleged settlement, clearly negates the plea raised. An unsubstantiated oral family settlement cannot be permitted to defeat or override duly executed and subsisting title documents. Accordingly, the plea of family settlement remains a mere bald assertion, unsupported by evidence, and having remained unsubstantiated, was rightly rejected by the LSJ.

26. The assertion that the ground floor was constructed from joint funds, whereas the first and second floors were allegedly constructed exclusively by the Defendants, is wholly unsupported by cogent and credible evidence. Apart from a solitary receipt pertaining to purchase of 200 bags of cement, the Defendants failed to produce any material substantiating the alleged expenditure, such as construction bills, contractor agreements, labour payments records, sanctioned building plans in the Defendant's name, or bank statements evidencing withdrawals for construction purposes. Even the examination of DW-7 does not advance the Defendants' case, as it falls short of establishing either the source of funds or exclusive contribution towards construction.

27. It is trite law that the burden of proving financial contribution towards construction squarely lies upon the party asserting such a claim. Mere assertions, uncorroborated by documentary evidence, do not discharge this burden. Conversely, the sanctioned building plans, electricity and water connections, as well as the municipal records, stand exclusively in the name of the Plaintiff, thereby clearly



indicating both ownership and control over the property. Further, it is well settled that mere occupation, supervision of construction, or participation in management does not, in law, confer any proprietary or ownership rights in immovable property. In the absence of proof of title or demonstrable financial contribution leading to the creation of an enforceable interest, the Defendants' claim is legally untenable. The LSJ, therefore, rightly rejected the said plea, holding that possession or supervision, without more, cannot be elevated to a claim of ownership.

28. With respect to the contention that the Plaintiff did not exclusively bear the expenses of conversion, the Defendants led no evidence to show any contribution on their part. On the contrary, DW-1 categorically admitted in cross-examination that no proof of payment towards conversion charges was available or could be produced by the Defendants, thereby amounting to failure to substantiate their stand. The conveyance deed stands solely in the name of the Plaintiff, and in law, once the conveyance deed stands duly executed and registered solely in the name of the Plaintiff, a strong presumption of legality, title and exclusive financial contribution, arises in favour of the Plaintiff. Mere denial or speculative assertions are insufficient to discharge such onus, particularly, in the absence of documentary evidence. Thus, the Defendants plea remains unsupported and legally untenable.

29. The reliance placed by the Defendants on *Marcel Martins* (*supra*) is misplaced and clearly distinguishable. The decision therein was rendered in the peculiar factual matrix of that case, resting upon



inferences drawn from admitted conduct and surrounding circumstances, none of which are present in the instant case. The ratio of the said judgement, therefore, cannot be mechanically transplanted to the present facts, which are dissimilar and devoid of any foundational evidence warranting such interference. On the contrary, the judgements in *Promila Gulati* and *Ramesh Advani (supra)*, unequivocally mandate strict and specific pleadings, coupled with cogent proof, particularly where exceptions to statutory prohibitions are invoked. These authorities underscore that vague assertions or *omnibus* pleas are insufficient to displace statutory presumptions or to bring a case within the narrow exceptions carved out by law. In the present case, there is a conspicuous absence of any specific pleading or evidence establishing the existence of a fiduciary relationship, circumstances giving rise to trust or confidence, and the legal obligation on the Plaintiff to hold the property for the benefit of the Defendants.

30. It is well settled that in the absence of material pleadings in the written statement, a plea of either an oral family settlement or of the case falling within the exception to Section 4 of the Benami Act is not legally tenable. Mere incantation of the words “trustee” or “fiduciary” cannot, by itself, attract the statutory exception. Notably, despite examining as many as twenty witnesses, the Defendants failed to elicit any credible evidence to substantiate the alleged family settlement, which forms the very bedrock of their defence. The entire defence, therefore, rests on conjecture and unsubstantiated assertions.

31. It is apparent that the said defence taken by the Defendants is



barred by Section 4 of the Benami Act. The operative part of the law reads as under:

*“4. Prohibition of the right to recover property held benami-*

*(1)...*

*(2) No defence based on any right in respect of any property held as benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.”*

In the present case, the Plaintiff cannot, by any stretch of imagination, be said to have been standing in a fiduciary capacity *vis-a-vis* the Defendant, nor can the Plaintiff be construed as a trustee. Even assuming such a plea is raised, the same is required to be established through specific and unambiguous pleadings and proof, both of which are conspicuously absent. However, the bar/prohibition under the Benami Act, cannot be circumvented merely by paying lip service to the concept of fiduciary capacity, as such an approach would defeat the very object and legislative intent of the statute. Permitting such defences, on the basis of bald and unsubstantiated pleas would amount to allowing statutory prohibitions to be rendered illusory, thereby subjecting the ostensible owner to prolonged and vexatious litigation at the instance of a person claiming to be the so-called “real owner”. Such an outcome would not only undermine the sanctity of registered title but would also run counter to the express mandate of section 4 of the Benami Act.

32. In the present case, the Defendants have themselves admitted permissive occupation of the Suit Property. Such permissive



possession, being referrals to a license, can never mature into adverse possession, unless there is clear, cogent and unequivocal evidence of hostile possession brought to the knowledge of the true owner. The licence admittedly stood revoked by notice dated 26.10.2006, and the suit for recovery of possession was instituted on 06.11.2006, well within the prescribed period of limitation. In the absence of any foundational proof, the plea of adverse possession is legally untenable and has rightly been rejected by the LSJ.

33. The Defendant was a licensee, and he must be deemed to be always a licensee. It is not open to him, during the subsistence of the license or in the suit for recovery of possession of the property instituted after the revocation of the license to set up a title to the property in himself or anyone else. The licensee's obligation is to surrender possession upon termination of the license and, if so advised, to pursue any independent remedy for declaration of title through appropriate proceedings. In the present case, despite termination of the license though notice issued [Ex. PW1/15], and institution of the suit, the Defendants failed to surrender possession of the Suit property. The Plaintiff, therefore, became entitled, as a matter of law, to recover possession.

34. Furthermore, the Defendants have relied upon various documents, including a copy of the pass-book [Ex.DW-1/3], which purportedly reflects a joint saving bank account held by the Plaintiff and the Defendant, and seeks to suggest that the common funds were utilised for payment of all the expenses relating to the Suit Property. However, although the said document indicates that the account was



jointly held, but it does not show, nor does it establish, that the funds from the said account were utilised either for the purchase of the Suit property or for the construction carried out thereon.

35. Additionally, the terms and conditions of auction [Ex. DW-1/2], filed along with amended written statement, in fact operate in favour of the Plaintiff. The said document categorically stipulates that, under no circumstances, would a change in the name of the intending purchaser be permitted. This condition clearly negates the Defendant's plea and reinforces the Plaintiff's case. The relinquishment deed executed by the Plaintiff [Ex. DW-1/14], further fortifies the Plaintiff's stand, as the same is executed only to give effect to a Will, under which another property stood bequeathed in favour of the original Defendant. This circumstance, clearly demonstrates that there was no pre-existing family settlement, as alleged by the Defendants. The remaining documents relied upon by the Defendants, such as the ration card of the Plaintiff [Ex. DW-1/8], the death certificates of the father and mother of the parties [Ex. DW-1/11 and 1/12], and other allied documents, are not in dispute, and therefore do not warrant any further consideration. In the considered view of the Court, the remaining documents exhibited by the Defendants, as well as the examination of as many as twenty witnesses, bear no relevance to the core controversy involved in the present dispute and do not carry any persuasive or probative value.

36. The challenge raised by the Defendants to the award of mesne profits, is equally devoid of merit. Once, the Defendants were held to be unauthorised occupants post revocation of licence, the liability to



pay mesne profits followed as a necessary legal consequence. The LSJ exercised judicial discretion in determining the quantum of mesne profits, considering the location of the property, the nature of occupation, and the relationship between the parties. The rate so awarded cannot be characterised as arbitrary, perverse or excessive. Conversely, the Plaintiff's appeal seeking enhancement of mesne profits was also rightly rejected in the absence of evidence to justify a higher rate.

37. There is likewise no infirmity in the findings of the LSJ with respect to the valuation of the suit, the payment of court-fees, and the valuation of counter-claim. These findings are supported by the pleadings and the evidence on record and call for no interference.

38. The defence set up by the Defendants is founded on conjectures, afterthoughts, and unsubstantiated allegations. In sharp contrast, the Plaintiff has established his case through registered title documents, statutory and municipal records, and consistent oral and documentary evidence.

### **CONCLUSION**

39. In light of the foregoing discussion, this Court finds no illegality, perversity or incorrect view arrived at or that an incorrect approach was adopted by the LSJ in the Impugned Judgement, so as to justify appellate interference.

40. The Defendants have failed to establish any right, title or interest therein. The counter-claims were rightly dismissed, and the



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decree of possession and mesne profits warrants no interference. The findings of the LSJ are based on a proper appreciation of evidence and a correct application of law.

41. Hence, having found no merit, all the present Appeals along with the pending applications, stands dismissed.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**  
**JANUARY 09, 2026/sp/ra**