



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

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*Reserved on: 4th May, 2026
Pronounced on: 9th July, 2026*

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RFA 455/2026, CM APPL. 29712/2026

MANISH GUPTA ALIAS MANISH KUMAR

S/o Shiv Dhan Gupta,
R/o 308, Nawada Bazar Main,
Najafgarh, New Delhi- 110043

.....Appellant

Through: Mr. Munawwar Naseem and Ms.
Sanjna Dua, Advocates

versus

1. **SHIV RATAN GUPTA**
S/o Late Shiv Dhan Gupta

2. **SMT. URMILA GUPTA**
W/o Late Shiv Dhan Gupta

..... Respondents

Through: Mr. Abhishek Seth, Mr. Achal Gupta,
Ms. Ashima Markendey, Mr. Gaurav
Singh and Ms. Widaphi, Advocates..

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CM APPL. 29713/2026

1. Application under Section 151 of the Code of Civil Procedure, 1908 (CPC) has been filed seeking condonation of delay of 16 days in refilling the Appeal.



2. In view of the reasons given, the *delay of 16 days is condoned* and the Application stands disposed of.

RFA 455/2026, CM APPL. 29712/2026

3. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) has been preferred by the Appellant assailing the Judgment and Decree dated 20.01.2026, whereby the Application preferred by the Respondents/Defendants under Order VII Rule 11 CPC was ***allowed and the Suit instituted by the Plaintiff/Appellant for Declaration, Possession and Permanent Injunction, was rejected.***

4. The Plaintiff/Appellant filed Civil Suit bearing *DJ ADJ No. 906/2023* for *Declaration, Possession and Permanent Injunction*.

5. **The facts in brief** are that late Sh. Basheshar Dayal, grandfather of the Plaintiff was the absolute owner of the property bearing No. 1510, admeasuring 350 sq. yards out of Khasra No. 52, Najafgarh, New Delhi.

6. The Plaintiff claimed that the grandfather executed a GPA, Agreement to Sell, Receipt, etc., dated 07.01.1998 in favour of the Plaintiff in respect of 145 sq. yards from the total land for which he paid a consideration of Rs.4,05,000/- and became an exclusive and absolute owner of 145 sq. yards out of the total property.

7. The Plaintiff explained that he had earlier filed Civil Suit *DJ ADJ No. 677/2020* titled *Manish Gupta v. Shiv Dhan Gupta and Ors.* for *Partition, Possession, Permanent and Mandatory Injunction* against Shiv Dhan Gupta, his father. However, the Suit got rejected under Order VII Rule 11 CPC *vide* Order dated 31.10.2022.



8. The Plaintiff filed **RFA No. 58/2023** before this Court, but withdrew the same on 05.03.2023 with *liberty to file any appropriate proceedings in accordance with law*.

9. The Plaintiff claimed that he and the Defendants are in joint possession of the entire property No. 1510. Sh. Shiv Dhan Gupta, the father of the Plaintiff and Defendant No. 1 and husband of Defendant No. 2, died on 22.08.2022 leaving behind Plaintiff and Defendants as the legal heirs.

10. However, after demise of their father Shiv Dhan Gupta, Plaintiff asked the Defendants for possession of all the properties left behind by father in equal proportion, but Defendant No. 1 & 2 refused by claiming that the Plaintiff has no right, title or interest in the Suit Property.

11. The Plaintiff claimed that he was the absolute owner of the Suit Property admeasuring 145 sq. yards on the basis of GPA, Agreement to Sell, Affidavit, Receipt, all dated 07.01.1998 executed in his favour by late Sh. Basheshar Dayal, grandfather out of the total plot of 350 sq. yards.

12. The Plaintiff thus, *filed the present Suit for Declaration* of being an owner of 145 sq. yards of the area in the total plot by virtue of GPA, Agreement to Sell, etc., dated 07.01.1998; *Possession* of the subject property, *and Permanent Injunction* to restrain the Defendants from creating third party rights.

13. **The Defendants filed a Written Statement** wherein *preliminary objection was taken that the plaint did not disclose any cause of action*. The Plaintiff sought declaration on the basis of unregistered Agreement to Sell, etc., dated 07.01.1998 on which the Plaintiff cannot claim any relief. Furthermore, *as per his own averment, the Suit is barred by limitation*.



14. Further *objection* was taken that the Suit was also barred by *resjudicata* in view of the earlier Suit CS DJ ADJ 677/2020 filed by the Plaintiff, which got rejected on 31.10.2022 under Order VII Rule 11 CPC by learned ADJ.

15. It was further asserted that the RFA filed by the Plaintiff before this Court was withdrawn without seeking permission to file a Suit on the same cause of action. It was withdrawn with liberty to seek appropriate relief and thus the present Suit is not maintainable.

16. It is explained that grandfather had executed a Will dated 12.08.1981 bequeathing all the immovable property including the subject property, to his son late Shiv Dhan Gupta, father of the Plaintiff, who further bequeathed the subject property in favour of Shivam Mittal, the grandson of Shiv Dhan Gupta, who is living in the subject property along with his parents and Defendant No. 2, by virtue of a registered Will dated 03.02.2022. It is claimed that they are also necessary party to the Suit.

17. Further *objection* was taken that the Plaintiff was not in possession of any part of the subject property, which he had left in December, 2020 and shifted to property bearing No. RZ-418/1, Aggarwal Dharamshala Road, Gupta Part Colony, Najafgarh, Delhi where he is residing with his wife and children on the first floor, and doing business on the ground floor.

18. It has been explained that this property of Gupta Park Colony, was bought by late Shiv Dhan Gupta, the father. All the expenditure for construction was also incurred by Shiv Dhan Gupta. The Plaintiff was living in the subject property as a licensee and he unauthorizedly put locks on a room and kothari.



19. Subsequently, the *Civil Suit No. 677/2020* filed by the Plaintiff *has been dismissed on 31.10.2022*, after which he made frivolous complaints to the Police, though it refused to take any action.

20. The Plaintiff contacted the Defendants and he was permitted on or around 02.01.2023 to remove his locks from the room and the kothari, from where he shifted his articles. The Plaintiff is not in possession of any portion of the property and even the kothari where he had dumped some waste articles, is in possession of Sh. Shivam Mittal.

21. It is further explained that Sh. Shvi Dhan Gupta, their father had issued a paper citation in daily Dainik Jagran dated 28.09.2021 disowning the Plaintiff, his wife and daughter from all his movable and immovable properties.

22. It is further claimed that the *Suit was barred under Sections 38 and 41 Specific Relief Act*, as the Plaintiff has no interest in the Suit Property. It was also asserted that the Plaintiff had not approached the court with clean hands and was guilty of suppressing material facts.

23. **On merits**, the facts as already detailed in preliminary objections were reiterated and it was stated that the *Suit be dismissed*.

24. **The Plaintiff had filed a Replication** wherein he reaffirmed the assertions made in the *Plaint*.

25. Thereafter, the **Defendants filed an Application under Order VII Rule 11 CPC** and sought *Rejection of the Suit on the preliminary objection that had been taken in the Written Statement*.

26. The **learned District Judge vide Order dated 20.01.2026** held that the *Suit was barred by the resjudicata in view of the Order dated 31.10.2022 in the previous Suit No. 677/2020*, filed by the Plaintiff



claiming partition wherein *categorically a finding was given that the Plaintiff had no right, interest in view of the Will dated 12.08.1981 of late Sh. Basheshar Dayal and the subsequent Will of the father dated 03.02.2022.* Therefore, in view of the earlier Order dated 31.10.2022 there was no right, title, interest in the Plaintiff and thus, ***the Suit was liable to be rejected as barred by resjudicata.***

27. It was also observed that by way of the Suit, the Plaintiff was seeking a declaration of ownership on the basis of Agreement to Sell, etc. dated 07.01.1998, but he himself had stated in the plaint that soon thereafter, Defendants and their father had been questioning his ownership on the basis of these title documents, which reflected that the challenge was since after the execution of the Agreement to Sell, etc on 07.01.1998. The present Suit was filed in September, 2023 and **was patently barred by limitation.**

28. ***Thus, the present Suit was rejected under Order VII Rule 11 CPC.***

29. Aggrieved by the Order of the learned District Judge, the Plaintiff/Appellant filed the present Appeal.

30. ***The main grounds of challenge are*** that the learned District Judge has at the initial stage, conducted a full trial on merits and has examined disputed questions of title, limitation, *resjudicata*, and also the legal effect of the documents, *which is a mixed question of fact and law* which required evidence.

31. The Supreme Court has consistently held that under Order VII Rule 11 CPC only the averments made in the plaint, can be considered and the roving inquiry into the merits of the case, cannot be considered for which



reliance is placed on P. Kumarakurubaran v.P. Narayanan(2025) 5 SCC 745.

32. It is further contended that there is misapplication of Order XXIII Rule 1(4) CPC. The withdrawal of the Appeal before this Court, did not address the bar of Order XXII Rule 1(3) and (4) CPC. The withdrawal of the *Appeal No. 58/2023* against the Judgment in the earlier Suit, was not a Suit itself. Moreover, Order XXIII CPC operates only when the Plaintiff voluntarily withdraws a Suit without permission and it cannot apply to a plaint, which has been rejected under Order VII Rule 11 CPC. Even if for the sake of argument, Order XXIII Rule 1 CPC is held to be applicable, it bars a fresh Suit only if it is on the “same” subject matter.

33. The present Suit was confined solely to 145 sq. yards based on independent purchase, while the earlier *Suit No. 677/2020* was for partition of multiple properties, including the subject property. The earlier Suit was based on inheritance and partition, while the present Suit rested on an independent sale transaction, which is a fundamentally different cause of action.

34. A liberty was granted by this Court while permitting withdrawal of *RFA No. 58/2023* wherein it was held “*with liberty to find any other appropriate proceedings in accordance with law*”. Therefore, the Order XXIII Rule 1(4) CPC, was not applicable.

35. It is further contended that the learned District Judge failed to take into consideration *the fresh cause of action* which arose post formulation of Will dated 03.02.2022 and after the demise of his father, late Sh. Shiv Dhan Gupta, whereby the dispute between Plaintiff and Defendants got escalated, ultimately resulting in filing of the *Suit bearing No. 455/2023*.



36. It is further contended that the doctrine of *resjudicata* under Section 11, was not applicable since there were no issues framed, evidence recorded, or adjudication on the merits, in the case of the earlier *Suit No. CS 677/2020*. It is a settled law that where the adjudication is not on merits in the earlier suit, it does not operate as *resjudicata* in the subsequent proceedings.

37. The learned District Judge erred in observing that the substantive findings in the Order dated 31.10.2022 rejecting the claim, was reasoned adjudication of the merits of the Plaintiff's claim, which attained finality upon the withdrawal of the Appeal and thus, constructive *resjudicata* became applicable. It is again reiterated that there were no findings of fact in the earlier Suit and thus, it could not operate as a *resjudicata*. Moreover, the cause of action in the two Suits, is based on different facts.

38. Reliance is placed on *Indian Evangelical Lutheran Church Trust Association v. Shri Bala and Co.* (2025) 1 SCR 542 and *Delhi Waqf Board v. Jadish Kumar Narang*.

39. The rejection of the Suit under Order VII Rule 11 CPC at threshold is a procedural order on the facts of the Complaint and not the final adjudication of substantial rights after evidence and thus, cannot be elevated, "on its own force", to a *resjudicata* barred against the fresh Suit. Reliance is also placed on *Prem Kishore v. Brahm Prakash* (2023) 19 SCC 244.

40. It is also contended that the issue of *resjudicata* was a mixed question of law and fact, which is not ordinarily determinable under Order VII Rule 11 CPC.

41. It is further contended that the conclusion that Suit was barred by limitation under Article 65 Limitation Act at the threshold, is erroneous. The



Article 65 Limitation Act becomes applicable from the date when the possession of the Defendants *became adverse to the Plaintiff*. It was specifically stated by the Plaintiff/Appellant that Respondent's hostile denial of rights of the Plaintiff arose only after the developments in 2022 including the Will dated 03.02.2022, executed by their father late Sh. Shiv Dhan Gupta.

42. The question of *adverse possession* was a mixed question of fact and law, which requires evidence and could not have been decided under Order VII Rule 11 CPC. Reliance is placed on Malavva v. KalsammanavaraKalamma (2024) 12 SCR 1884.

43. The learned District Judge has failed to consider that a Suit founded on title and accompanied by a claim for possession, has a limitation of 12 years from the date the possession became adverse, under Article 65 Limitation Act and it is a continuing right which cannot be defeated by mechanically applying Article 48 Limitation Act.

44. The learned District Judge has failed to consider that once the Plaintiff was able to establish his title and possession within the preceding 12 years, the burden shifted on the Defendants to prove adverse possession, which would be the starting point for limitation under Article 65 Limitation Act.

45. It is further contended that there is erroneous application of the judgment in Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2012) 1 SCC 656 wherein the enforceable rights and equitable claims for the Plaintiff arising out of the transaction, could be adjudicated only after recording of evidence. The Supreme Court in Suraj Lamp(supra) did not hold that the immovable property cannot be conveyed through unregistered



GPA, Agreement to Sell and that such GPAs do not by themselves create any proprietary title, but it simultaneously recognized that such instruments can be a basis for seeking Specific Performance; to seek protection or possession under 53A TPA and evidence of underlying contractual or family arrangements. They are not completely non-est, for all legal purposes.

46. The Appellant further asserted that his Suit was not premised merely on GPA, Agreement to Sell, but was also grounded on 1998 family transaction by which the Sh.Bashesar Dayal, the grandfather during his lifetime and in addition to 1981 Will, had sold 145 sq. yards of the total land to the Appellant and also on the subsequent denial of those rights in 2021-22. Whether the facts disclosed any legally enforceable right in the Plaintiff titling him to declaration, possession, *is a mixed question of fact and law* and ought not have to be considered under Order VII Rule 11 CPC.

47. Thus, *a prayer is made that the impugned Judgment be set aside and case be remanded back to be tried on merits.*

Submissions heard and record perused.

48. The legal issues on which the Suit was sought to be rejected, are:

- (i) Whether the Suit is barred under Order XXIII Rule 1 CPC;
- (ii) Whether the Suit is barred on the principle of *res judicata*;
- (iii) Whether the Plaintiff did not disclose any cause of action; and
- (iv) Whether the suit is barred by limitation.

49. The admitted facts which are stated by the Plaintiff, are that the property in question was originally owned by late Sh. Bashesar Dayal, the grandfather of the Plaintiff, who was the exclusive owner of the Suit Property.



50. It is further not disputed that late Sh. BashesharDayal had executed Will dated 12.08.1981, wherein he categorically stated that all the immovable properties owned by him, shall devolve upon his son late Shiv Dhan Gupta. He also clearly stated in detail about some movable properties, which were to devolve upon his son and grandchildren. In this Will, there was no bequest of the immovable properties, including the Suit Property in favor of any other person, except Shiv Dhan Gupta. *The Plaintiff did not get any right, title or interest under the said Will dated 12.08.1981, of the grand father.*

51. It is further not disputed that **Sh.Shiv Dhan Gupta, father of the Plaintiff** died on 22.08.2022. During his lifetime, **he had executed a Will dated 03.02.2022**, wherein he had bequeathed his properties to Sh.Shivam Mittal. It was specifically mentioned in the Will that he had disinherited the Plaintiff and his family, from any of his movable and immovable property. The reason therein was also stated, as to the conduct of the Plaintiff and his family who had treated the father Sh. Shiv DhanGupta and his wife badly and caused mental pain and agony to them.

52. *The Plaintiff herein, has not challenged the authenticity of the said Will dated 03.02.2022, of his father, Sh. Shiv Dhan Gupta.*

I. Whether the Suit is barred under Order XXIII Rule 1 CPC:

53. The Plaintiff had filed an earlier **Suit No. 677/2020 for Partition, Possession, Permanent and Mandatory Injunction**. Therein, he had mentioned that he had acquired title in a plot admeasuring 145 sq. yards out of the total plot of 350 sq. yards, which had been sold to him by the grandfather late Sh. BashesharDayalvideAgreement to Sell,GPA, Affidavit and Receipt dated 07.01.1998.



54. The Plaintiff specifically stated that he has become the sole and exclusive owner of 145 sq. yards on the basis of sale Documents and sought partition of the remaining property as well as the other family properties and also possession, permanent and mandatory injunction.

55. It is an admitted fact that the said Suit filed by the Plaintiff was rejected under Order VII Rule 11 CPC *vide* judgment dated 31.10.2022 against which *RFANo.58/2023* was filed but the Plaintiff/Appellant withdrew the same with liberty “*to file any other appropriate proceedings in accordance with law*”.

56. The **question which arises is whether such withdrawal of Appeal with liberty as stated above, amounts to withdrawal with liberty to file a Suit on the same cause of action.**

57. **Order XXIII Rule 1 CPC** deals with withdrawal of Suits and deals with two specific categories of withdrawal. They are:

- (i) *Unconditional withdrawal under sub-rule 1, which the Plaintiff may do as a matter of right but such withdrawal operates as a bar to filing a fresh Suit on the same cause of action.*
- (ii) *the withdrawal may be conditional under sub-rule 3 which requires permission of the Court on satisfaction of either:*
 - a. *existence of a formal defect by reason of which the Suit may fail, or*
 - b. *existence of sufficient grounds for allowing the Plaintiff to institute a fresh Suit only when such permission is granted under sub-rule 3 that the Plaintiff may file a subsequent suit on the same cause of action.*



58. The first aspect is *formal defects or sufficient reasons*, on which the Suit may be withdrawn. Supreme Court in V. Rajendran and Anr. v. Annasamy Pandian (D) through Legal Heirs(2017) 5 SCC 63, explained the scope of *formal defect*. It was observed that the Suit may be withdrawn under Order XXIII Rule 1(3)CPC with the permission to bring a fresh Suit, only when the Court is satisfied that the Suit must fail for some formal defect or for any other sufficient ground. The permission to allow withdrawal of Suit, is discretionary. Therefore, the liberty to file fresh Suit can be granted only if there is a *formal defect or sufficient ground*. This principle was founded on public policy, to prevent institution of Suit again and again, on the same cause of action.

59. In K.S. Bhoopathy v. Kokila (2000) 5, SCC 458, it was explained that the liberty to file a fresh Suit at the time of withdrawal, rests solely on establishing the *formal ground or sufficient ground*, and is not absolute so as to encourage abuse of process of Court; the plaintiff is entitled to abandon or withdraw the Suit or a part of the claim by itself. However, it is no license to the Plaintiff to claim or to do so to the detriment of the legitimate rights of the Defendants.

60. It was explained that formal defect is a *defect of form* prescribed by the rules of procedure, such as *want of notice under Section 80 CPC, improper valuation of the Suit, insufficient Court fee, confusion regarding identification of the Suit Property, misjoinder of parties, failure to disclose a cause of action, etc.* Formal defect must be given a liberal meaning which promotes various kinds of defects not affecting the merits of the plea raised by either of the parties.



61. Similarly, in Chhindov.Mela Singh and others, Civil Revision No. 139/1966, decided on 02.09.1966, it was stated that the grounds contemplated by Order XXIII Rule 1 CPC, must not affect the merits of the case, but it should have the effect of shutting out a fair trial on merits on account of an error, which can only be set aside by a fresh trial.

62. In order to understand the scope of Order XXIII CPC, it would be pertinent to understand the distinction between “*cause of action*” and “relief”.

63. This Court in Chander Prabha v. General Talkies Ltd. in RFA No. 51/2011 decided on 25.01.2011 was faced with similar facts. It was observed that a *cause of action* is a bundle of rights, on which the relief is claimed. A cause of action entitles the person to various reliefs and the requirement of law is that all the reliefs, which flow from such cause of action, must necessarily be claimed in the Suit that is filed.

64. The learned District Judge rightly observed that the basis for ascertaining the scope of Order XXIII CPC is not the relief, but the basic fact disclosing the cause of action.

65. The learned District Judge rightly compared the cause of action in the two Suits and observed that the cause of action rested on absolutely identical paths in respect of property, documents, same transaction of sale of Suit Property by late Sh. Basheshar Dayal to the plaintiff, the legal foundation of his ownership based on unregistered documents, for a sale consideration of Rs.4,05,000 and the denial of the Defendants of the entitlement to a share in the subject property.

66. *The cause of action in the present Suit rested on identical facts with the sole difference of the earlier Suit being for Partition, Possession while*



the present Suit is for Declaration on the basis of title, documents and for Permanent Injunction.

67. The learned District Judge rightly observed that the cause of action in the two Suits, was identical.

68. As has been discussed above, the Plaintiff could have amended the Plaint and sought declaration in the first Suit, which he chose not to do. *The Suit, therefore, not only was barred by Order XXIII CPC, but also under Order II Rule 2 CPC.*

69. Another significant aspect was that while the Appeal was withdrawn on 03.05.2023, the permission taken by the Plaintiff was only to *file the appropriate Suit in accordance with the law*. It has been rightly agitated that it was not permission taken to file the Suit on the same cause of action and therefore, the bar of Order XXIII Rule 1 CPC was clearly applicable to the facts.

70. The learned District Judge further rightly observed that there were no formal defects disclosed while withdrawing the Suit, but the Plaintiff merely *sought permission to file the appropriate proceedings*. Therefore, *the Suit was rightly held to be not maintainable under Order XXIII Rule 1 CPC.*

II. Whether the Suit is barred on the principle of *res judicata*:

71. The **second ground** *whether the Suit of the Plaintiff was barred by *res judicata*.*

72. The Plaintiff/Appellant has contended that the earlier Suit was rejected under Order VII Rule 11 CPC on 31.10.2022 without framing issues or on appreciation of the evidence and the contentions of the parties; therefore, the principle of *res judicata*, was not applicable.



73. The learned District Judge referred to the earlier Order 31.10.2022 wherein specific findings were given as under:

“b. Adjudication Based on Materials: The learned ADJ had before him the plaint with all its averments and the documents relied upon by the plaintiff. Based on these materials, the Court made specific findings on the merits of the plaintiff's claim:

"The Will is clear and movable properties belongs to grandsons and granddaughters of late Sh. Basheshar Dayal and defendant Shivdhan was given exclusively the immovable properties. Plaintiffs suit for partition insofar as immovable properties is concerned, same is liable to be outrightly rejected" "

" Even otherwise if I look at the documents, the same are only unregistered ones and do not in any manner give him title in the property. GPA, Agreement to Sell, affidavit and receipt, all are unregistered. 11

" The plaintiff is trying to sail in two boats simultaneously. The documents are executed on 07.01.1998 and Basheshar Dayal had expired on 03.02.1998 but still till date qua the aforesaid aspect the ownership rights have not at all been exercised."

74. It is evident from the aforesaid observations that the learned ADJ in the previous Suit, had adjudicated the *substantive legal issue* of whether the Plaintiff had any right, title or ownership in the Suit Property based on the unregistered documents. *It was categorically held that he had no right, title, interest and therefore, no cause of action to be maintained the Suit.*



Though, the Suit got rejected under Order VII Rule 11 CPC, but there are clear findings of the Plaintiff not having any right, title and interest on the basis of unregistered documents, namely, ATS, GPA, Receipt, etc. The issue in the present Suit and in the earlier Suit, as has already been discussed on which a finding of title, has been given, are identical. The Appeal that was filed to challenge the rejection of first Suit, was also withdrawn. The findings in the first Suit have thus, attained a finality.

75. In the circumstances, there being a categorical finding that the Plaintiff cannot seek any relief on the basis of unregistered sale document, it cannot be said that there was no finality to the said proceedings or the principle of *res judicata* was not applicable.

76. *The learned District Judge rightly held that the principle of res judicata was applicable in the given fact and circumstances of this case.*

III. Whether the Plaint disclosed any cause of action:

77. *Even for the sake of arguments, if it is accepted that the principle of res judicata was not applicable, it may be considered if the Suit discloses any cause of action or if the Suit was liable to be rejected under Order XXIII CPC on this ground, as well.*

78. The Plaintiff has sought the declaration being an owner in respect of 145 sq. yards of the property in question on the basis of unregistered Agreement to Sell, GPA and Receipts dated 07.01.1998.

79. The learned District Judge has rightly referred to the case of Suraj Lamp Industries (P) Ltd. (supra) wherein it has been held that Agreement to Sell, GPA, etc., are not sufficient in themselves to create any right, title or ownership in a Suit Property. *It may give a right to the Plaintiff to seek specific performance of the Agreement to Sell, to seek protection of his*



possession under 53A TPA, but it cannot be a basis for seeking a declaration of ownership.

80. This aspect has been re-informed and re-enforced by the Supreme Court in Ramesh Chand v. Suresh Chand(2025) SCCOnLine SC 1879 wherein it was reiterated that under Section 54 TPA, an Agreement of Sale does not by itself create any right, title or interest in an immovable property. It was emphasized that ownership passes only upon execution of a registered Deed of Conveyance; an Agreement of Sell even if accompanied by possession, cannot amount to transfer of ownership.

81. The Apex Court in Ramesh Chand(supra) further held that GPA merely creates an agency relationship empowering the agent to act on behalf of the principal, but it does not in itself transfer ownership rights.

82. Referring to State of Rajasthan v Basant Nahata (2005) 12 SCC 77, it was clarified that even an irrevocable GPA would not amount to the conveyance. Likewise, the Will needs to be established in accordance with the evidentiary standards laid down in the Succession Act, 1929 and Indian Evidence Act, 1872 before it can be considered as a valid document. The Receipt and Affidavit also are not sufficient documents of title in terms of Section 54 TPA. It is only a Deed of Transfer that can create an ownership in a person.

83. The Plaintiff has based his claim for declaration of ownership only on the Agreement to Sell,GPA, etc. dated 07.01.1998 which is absolutely barred in view of Section 54 PA and the law as explained in Suraj Lamp and reiterated in Ramesh Chand(supra).



84. The Plaintiff not having any other legally valid documents in his favour *cannot claim any cause of action in the present Suit for Declaration of his ownership and consequently, seek possession.*

85. Moreover, on the stated facts and cause of action, various reliefs arise to which the Plaintiff was entitled, even in the first Suit, which he chose not to claim, but withdrew the first Suit, such subsequent Suit would be barred under Order II Rule 2 CPC, as well.

86. The Plaintiff had also sought to base his claim for *possession, on adverse possession*, by asserting that he had a right, which has been denied by the Defendants only in 2022, after the demise of their father Shiv Dhan Gupta. However, this argument is without any basis, because in the light of the aforesaid discussion, it is evident that the Appellant/Plaintiff had been living in the Suit Property as a family member and did not have any independent right, title or interest. There is no averment in the Plaint that he was occupying the property in his own right as an owner, or that his occupation was open, hostile and adverse to that of the actual owner. Mere long stay in the suit premises, is not sufficient to raise the plea of adverse possession. Once no such facts have even been pleaded, the question of adverse possession does not arise. ***The Plaint does not disclose any cause of action and is liable to be rejected.***

IV. Whether the Plaint is barred by limitation:

87. The Declaration is sought by the Plaintiff on the basis of GPA, etc. dated 07.07.1998. He could have filed a Suit for Declaration within 3 years of execution of said documents or when the specific performance of the Agreement to Sell, was contemplated. *However,*



the present Suit filed in September 2023, is patently barred by Limitation.

Conclusion:

88. *The learned District Judge has rightly rejected the Suit of the Plaintiff, vide Order dated 20.01.2026.*

89. **There is no merit in the present Appeal, which is hereby, dismissed.** Pending Applications, if any, are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 9, 2026

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