



2026:DHC:5705



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

% ***Judgment reserved on: 15th May 2026***
Judgment pronounced on: 17th July 2026

+ RFA 353/2015, CM APPL. 9570/2015, CM APPL. 12112/2016 &
CM APPL. 9473/2020

ASHOK KUMAR & ORS

.....Appellants

Through: Mr. Sandeep Sharma, Senior
Advocate with Mr. Hunny Singh &
Mr. Ankit Parindiyal, Advocates.

versus

PREM NATH

.....Respondent

Through: Mr. Shalabh Gupta & Ms. Suhani
Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

CM APPL. 9570/2015, CM APPL. 12112/2016

1. The appellants have filed two applications, being CM APPL. 9570/2015 and CM APPL. 12112/2016, under Order XLI Rule 27 of the Code of Civil Procedure, 1908, for taking on record additional documents.
2. Through these applications, the appellants seek to place on record various applications made by the appellants under the Right to Information Act, 2005 with the statutory authorities along with the replies thereto.
3. No replies have been filed to the aforesaid applications.
4. For the reasons stated in the applications, the applications are allowed



and the documents are taken on record.

RFA 353/2015

5. The present appeal under Section 96 of the Code of Civil Procedure, 1908 is directed against the judgment and decree dated 28th February 2015 passed by the Additional District & Sessions Judge, Central District, Tis Hazari Courts, Delhi, whereby the suit instituted by the respondent/plaintiff for mandatory injunction, permanent injunction and recovery of damages was decreed.

6. The appeal and the underlying suit arise from a dispute concerning property bearing no.23/7 *Pant Nagar, Jangpura, New Delhi, i.e.* the ground floor and property bearing no.23/8, *Pant Nagar, Jangpura, New Delhi, i.e.* the first floor (hereinafter collectively referred to as ‘suit property’).

BRIEF FACTS

7. The appellants no.1 and 2/defendants no.1 and 3 are the sons of Late Sh. Banarasi Das. The appellants no.3 to 5 are the legal representatives of Sh. Surinder Singh (defendant no.2 in the suit, since deceased), who was the third son of Sh. Banarasi Das. Smt. Om Kumari, wife of Sh. Banarasi Das, passed away on 3rd October 2004.

8. The respondent/plaintiff is the son of Late Smt. Lilawati and Sh. Tirath Ram. Late Sh. Banarasi Das was the brother of Late Smt. Lilawati and maternal uncle of the plaintiff. The mother of the respondent, Smt. Lilawati died on 18th September 1983.

9. The suit property was allotted in the name of Sh. Tirath Ram by the Slum Wing, Delhi Development Authority (DDA) in the year 1956 under the Slum Clearance Scheme. Sh. Tirath Ram went missing and



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subsequently, Smt. Lilawati became the owner of the suit property. Upon the demise of Smt. Lilawati, the plaintiff, being the only legal heir, became the sole owner of the suit property.

10. The suit property was subsequently transferred in favour of the plaintiff by way of a perpetual lease deed and conveyance deed dated 5th February 1992.

11. The defendants were given possession of the ground floor and first floor of the suit property by Smt. Lilawati for permissive use and the plaintiff has been residing at the terrace floor of the suit property, *i.e.*, the second floor. It was agreed upon that the plaintiff would not receive any rent or charge or licence fee for permissive use of the said suit property and only the electricity and water charges were to be paid by the defendants as per their requirement.

12. The permission to occupy the suit property for permissive use was revoked by legal notice dated 19th October 2002 and the defendants were directed to hand over the physical and vacant possession of the suit property.

13. The plaintiff accordingly instituted the suit seeking recovery of possession by way of mandatory injunction, permanent injunction restraining alienation or creation of third-party interests, and damages for use and occupation.

14. The defendant no.1 and the defendants no.2 and 3 filed separate written statements. The contents of both are identical. In the written statement, it is stated that Sh. Banarasi Dass was the owner of the property no.23/7 *Pant Nagar, Jangpura, New Delhi*. After the demise of Sh. Banarasi Dass in February 1988, his wife, Smt. Omwati, became the owner. After the death of Smt. Omwati, the defendants no.2 and 3 became the sole owners in



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respect of the ground floor of the suit property, i.e. property no.23/7. For the property no.23/8 *Pant Nagar New Delhi*, the defendant no.1 had applied for allotment in his favour. It is stated that the mother of the plaintiff was allowed to stay on account of permissive use. Therefore, it is the defendants' case that the defendant no.1 is the owner of the first floor of the suit property, i.e. property no. 23/8, while the defendants no.2 and 3 are the owners of the ground floor, being the property no. 23/7.

15. The plaintiff filed a replication to the written statements of all the defendants, controverting therein the objections raised by the defendants, and reaffirmed his own averments.

16. Based on the pleadings, the following issues were framed on 6th November 2006:

*"1. Whether the suit is bad for non-joinder and mis-joinder of parties?
OPD*

2. Whether the suit is not properly valued for the purpose of court fees and jurisdiction? OPD

3. Whether the plaintiff is entitled to a decree of mandatory injunction as prayed in the plaint? OPP

4. Whether the plaintiff is entitled for a decree of permanent injunction as prayed in the plaint? OPP

5. Whether the plaintiff is entitled for damages as prayed in the prayer (C) of the plaint? OPP

6. Relief."

17. On 15th July 2008, an additional issue was framed as under:

Whether the defendant was the licensee in the suit property under the plaintiff and if so, to what effect? OPP

18. On behalf of the plaintiff, the following two (2) witnesses were



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examined before the Trial Court:

- i. PW-1, who is an official of JJ and Slum Department, MCD
- ii. PW-2, Sh. Prem Nath, who is the plaintiff himself.

19. On behalf of the defendants, the following three (3) witnesses were examined before the Trial Court:

- i. DW-1, Sh. Ashok Kumar, being the defendant no.1
- ii. DW-2, Sh. Neeta Bajaj, being the legal representative of the defendant no.2
- iii. DW-3, Sh. Sanjay Bajaj, being the defendant no.3.

Impugned Judgment and Decree dated 28th February 2015

20. The Trial Court held that the defendants had failed to establish any document conferring title or proprietary interest in their favour in respect of the suit property. It was further held that the documents relied upon by the appellants merely indicated applications and correspondence with the concerned authorities and did not constitute documents vesting ownership or leasehold rights in their favour. On the other hand, the Trial Court found that the plaintiff had succeeded in establishing a better title in respect of the suit property on the basis of the documents produced by him.

21. Issue nos.1 to 6 and the additional issue were decided in favour of the plaintiff and against the defendants. Consequently, the Trial Court granted the following reliefs:

- i. Mandatory Injunction in favour of the plaintiff and against the defendants, directing the defendants to vacate the suit property.
- ii. Restraining the defendants from alienating, selling, parting with possession, and creating third party interest in respect of the suit



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property.

iii. Damages for use and occupation of the suit property amounting to Rs. 5000 per month with effect from 1st November 2002 till vacation of the property in favour of the plaintiff.

iv. Costs in favour of the plaintiff.

22. Aggrieved by the impugned judgment, the appellants instituted the present appeal under Section 96 of the Code of Civil Procedure, 1908.

PROCEEDINGS BEFORE THIS COURT

23. *Vide* order dated 22nd May 2015, notice was issued in the present appeal and the appellants undertook to hand over possession of the ground floor of the suit property to the respondent within three (3) months, without prejudice to their rights and subject to the outcome of the appeal. Subject to compliance with the undertaking, the operation of the impugned judgment and decree was stayed.

24. The appeal was admitted *vide* order dated 16th March 2016. This Court directed the appellants to deposit use and occupation charges at the rate of Rs.5,000/- per month for the period from 1st November, 2002 to September, 2015 in terms of the judgment passed by the trial court. However, for the subsequent period from October 2015 onwards, a direction was passed to deposit Rs.2,500/- per month. In the event of default in making the aforesaid deposits, the respondent was given liberty to execute the impugned decree.

25. The appeal was heard on 23rd April 2026 and 16th May 2026 after which the matter was reserved for judgment.



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SUBMISSIONS ON BEHALF OF THE APPELLANTS

26. Both the ground floor as well as the first floor of the suit property were allotted in the name of late Sh. Tirath Ram only due to respect, as he was the eldest in the family and as he was married to the sister of late Banarsi Das. The respondent himself had admitted the appellants' rights by applying jointly for registration of property no.23/8.

27. As per the Slum Clearance Scheme, only one house could be allotted to one family, not having more than five (5) members. In case a family consisted of more than five (5) members, then the entire plot consisting of two houses was allotted to the family in the name of the family head. The family of Sh. Tirath Ram consisted of only four (4) members, including himself. Therefore, in no manner whatsoever, the Slum Wing, DDA would have allotted both the houses in favour of the father or mother of the respondent as claimed by the respondent before the Trial Court. The said fact can be inferred from the letters dated 16th February 1990, 11th August 1992 and 22nd November 2001 written by MCD, Slum and JJ Wing to the mother of the appellants no.1 to 2 and to the appellant no.1 which are annexed as Annexure A-3 Colly.

28. The additional documents placed on record by the appellants by way of CM APPL.12112/2016 show that there is no conveyance deed executed in respect of the property bearing no.23/7, *Ground floor, Pant Nagar, Jangpura, New Delhi-110014*. The concerned department has rightly not issued a conveyance deed as the same is against the policy of allotment of the Delhi Urban Shelter Improvement Board.

29. The respondent had fraudulently procured the transfer of the properties in his sole name behind their back. The perpetual lease deed and



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conveyance deed dated 5th February 1992 are false and fabricated documents.

30. The Trial Court only went into the better title of the plaintiff and failed to appreciate the documentary material indicating joint residence and joint applications for leasehold rights and further erred in treating the respondent as the exclusive owner of the properties.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

31. *Per contra*, counsel for the respondent submitted that as per perpetual lease deed and conveyance deed dated 5th February 1992, the respondent is the owner of the suit property.

32. The appellants failed to produce any document evidencing title in their favour and that the respondent had established a superior title over the suit property.

33. The documents relied on by the appellants are mere enquiries or inter-departmental communications which cannot override the title documents in favour of the respondent.

ANALYSIS

34. I have heard the counsel for the parties and perused the record.

35. The principal submission of the appellants is that the Trial Court erred in holding that the plaintiff had established a better title over the suit properties. In support thereof, reliance has been placed upon various applications, affidavits and correspondence exchanged with the Slum & JJ Department to contend that the appellants were entitled to leasehold rights in the suit properties.



36. On behalf of the plaintiff, an official from the JJ and Slum Department, MCD was examined as PW-1. He deposed that initially the suit property were allotted to Sh. Tirath Ram by the Delhi Empowerment Trust. He also produced the following documents:

- i. Certified allotment records, including Allotment Letter in favour of Sh. Tirath Ram dated 15th December 1956 in respect of the suit property. (Ex. PW 1/A);
- ii. Original perpetual Lease Deed dated 5th February 1992 in the name of Sh. Premnath (plaintiff) in respect of property no.23/7 *Pant Nagar, Jangpura, New Delhi* (Ex. PW-1/2);
- iii. Original Conveyance Deed of allotment dated 5th February 1992 in the name of Sh. Premnath (plaintiff) in respect of property bearing no.23/8 *Pant Nagar, Jangpura, New Delhi* (Ex. PW-1/3).

37. The plaintiff/respondent was examined as PW-2. PW-2 deposed that he is the owner of the suit property. PW-2 proved his Voter Identity Card (Ex. PW-2/2), Ration Card (Ex. PW-2/3), House Tax Receipt (Ex. PW 2/4) to establish that he was residing in the suit property.

38. The defendant no.1 appeared as DW-1 before the Trial Court. He admitted, in the cross-examination, that he was unaware as to in whose name the title documents stood and further admitted that neither he nor his father had challenged the perpetual lease deed or conveyance deed executed in favour of the respondent.

39. The defendant no.2 was examined as DW-3 and he admitted in cross-examination that neither his father nor any member of the family had ever instituted proceedings challenging the allotment or title documents standing in favour of the respondent.



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40. The evidence led before the Trial Court demonstrates that the respondent proved the original allotment records as well as the perpetual lease deed and conveyance deed in his favour in respect of the suit property. Even though the conveyance deed is only in respect of property bearing no.23/8 *Pant Nagar, Jangpura, New Delhi*, there is a perpetual lease deed in favour of the respondent in respect of the property bearing no.23/7 *Pant Nagar, Jangpura, New Delhi*. The aforesaid documents granted leasehold/ownership rights to the respondent. In contradistinction, the defendants did not produce any documents evidencing the conferment of any proprietary right in respect of the suit property in their favour.

41. The entire case of the appellants rests upon the Government of India notification dated 11th June 1984, the applications submitted pursuant thereto and correspondence exchanged with the Slum & JJ Department including the letters dated 16th February 1990, 11th August 1992 and 22nd November 2001 issued by MCD to the mother of the defendants as well as the additional documents placed on record pursuant to the RTI applications. The said documents do not, in any manner, demonstrate that any leasehold and/or ownership rights were ever granted in favour of the appellants or their predecessor in interest. These documents do not affect the right, title or interest of the plaintiff in the suit property and merely establish that the appellants or their predecessors had sought grant of leasehold rights under the policy of regularisation. An application seeking regularisation or correspondence exchanged during the process of consideration cannot, by itself, constitute a document of title or create proprietary rights in immovable property.

42. The Trial Court has, therefore, correctly held that while the plaintiff



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succeeded in proving a legally recognised title to the suit property, the appellants failed to establish any corresponding proprietary right. It was specifically recorded that the defendants have failed to bring anything on record during cross-examination of PW-1 and PW-2 which may contradict the credibility of their testimonies. The findings in paragraphs 21 and 22 of the impugned judgment are set out below:

“21. On appreciation of evidence led by PW-1 and PW-2, I find that the plaintiff has been able to substantiate his case that he is the lessee/allottee of the suit properties bearing no. 23/7 and 23/8, Pant Nagar, New Delhi by virtue of the perpetual lease and the conveyance deed of allotment both dated 05.02.1992. Whereas on the other hand defendants have not been able to prove any document before the court which may show the title/ownership in their favour over the suit property. Further, I find that the defendants have also failed to bring any thing on record during the cross examination of PW-1 and PW-2 which may contradict or lessen the credence of their testimonies. Besides as per the case of defendants suit property no. 23/7, Pant Nagar was allotted in the name of Banarsi Dass, father of defendants, and the property no. 23/8, Pant Nagar was allotted in the name of Ashok Kumar, defendant no. 1 in September, 1984. However, defendants have not proved any such document/allotment letter which may substantiate their version. Besides above, DW-1 Sh. Ashok, during his cross examination stated that he did not know of which property he was the owner. He also did not know whether there was any title document of, property in the name of his father Late Banarsi Dass. He also stated that he had not challenged the conveyance deed of PPA executed in favour of Suit No. 122/11 Prem Nath Vs. Omwati & Anr. Similarly, DW-3 Sanjay Bajaj, during his cross examination stated that he was not aware whether the suit property bearing no. 23/7 and 23/8, Pant Nagar, Jariqpura were ever allotted in the name of his father Late Banarsi Dass or in the name of his sons. He further stated that neither he nor his father ever challenged the allotment of both the property in any court of law or in any proceedings by filing suit nor any notice was served in this respect.

22. In the light of above discussion, it is apparent that plaintiffs have



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***been able to show the better title over the defendants' rights in respect of both floors of the suit property,** thus, I observe that they are entitled to get a decree of mandatory injunction against the defendants. However, the counsel for defendants further contended that plaintiff cannot get the relief of possession by way of seeking the relief of mandatory injunction.”...*

(emphasis supplied)

43. Once the plaintiff produced documents of title in his favour, the burden of establishing ownership or a better entitlement to remain in possession rested upon the defendants. The defendants admittedly did not produce any allotment letter, perpetual lease deed, conveyance deed, mutation order, or any other document conferring proprietary rights upon them.

44. The letters/correspondences relied on by the appellants are mere enquiries or inter-departmental communications and cannot override a registered perpetual lease deed or conveyance deed. At best, the material relied upon by the appellants may indicate long possession or an expectation of obtaining leasehold rights under the 1984 policy.

45. The appellants' case principally rests on long residence and familial relationship. Mere residence in the property or permissive occupation, even if longstanding, cannot mature into ownership in the absence of legally recognisable title.

46. Though it is the contention of the defendants that the respondent had fraudulently procured the transfer of the suit properties in his sole name, behind their back and that the perpetual lease deed and the conveyance deed are false and fabricated documents, the defendants did not take any step to seek cancellation of the said documents. This fact had been admitted by the



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defendants in their cross-examination.

47. The aforesaid documents confer title in favour of the plaintiff in the suit property and were executed as far back as 1992. In the absence of any challenge to the validity of the aforesaid documents by the defendants, the defendants cannot question the rights of the plaintiff to the suit property.

48. In view of the discussion above, there is no error in the impugned judgment of the trial court which requires interference by this Court.

49. Accordingly, the present appeal is dismissed.

50. Pending application stands disposed of.

**AMIT BANSAL
(JUDGE)**

JULY 17, 2026

at