

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

% **Date of decision: 9th April, 2019**

+ **CS(OS) 133/2018 & IAs No.4394/2018 (u/O XXXIX R-1&2 CPC), 4395/2018 (u/O XXVI R-9 CPC) & 10918/2018 (u/O VIII R-10 CPC)**

SATENDER KUMAR JAIN

..... Plaintiff

Through: Mr. A.K. Singla, Sr. Adv. with
Mr. N.K. Kantawala & Mr.
Satyender Chauhan, Advs.

Versus

NIRMAL JAIN & ORS

..... Defendants

Through: Mr. Ankit Jain, Mr. Sarvesh Rai
and Mr. Siddhant Nath, Advs.
for D-1.
Mr. Paritosh, Adv. for D-2 with
D-2 in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit against (i) Nirmal Jain, (ii) Nikhil Jain, (iii) Seema Jain, and, (iv) Suhani Jain, for (a) recovery of possession of portion of immovable property No.A-24-A, Kailash Colony, New Delhi on the basis of title, (b) recovery of *mesne* profits in the sum of Rs.5 lacs for the period with effect from 22nd January, 2018 till the date of institution of the suit, and, (c) recovery of *mesne* profits, *pendente lite* and future.

2. The suit came up before this Court first on 5th April, 2018 when, while issuing summons / notice thereof, vide *ex parte* ad-interim order the defendants directed to maintain *status quo* with respect to

possession and title of the property aforesaid and a commission issued to visit the portion of the property in possession of the defendants and to submit a status report along with photographs. The commission has been executed and report dated 23rd May, 2018 has been filed.

3. Separate written statements have been filed by the defendant no.1 on the one hand and by defendants no.2 to 4 on the other hand.

4. The counsel for the plaintiff, on 20th September, 2018 stated that “without admitting the allegations of defendants as made in their written statement, plaintiff does not wish to file replication to the written statement of defendants”.

5. The suit is ripe for framing of issues. The senior counsel for the plaintiff however states that no issue arises for adjudication from the written statements of the defendants and the plaintiff is entitled to a decree forthwith at least qua the relief of possession, under Order XII Rule 6 and under Order XV Rule 1 of the CPC. The senior counsel for the plaintiff, the counsel for the defendant no.1 and the counsel for the defendants no.2 to 4 have been heard on the said aspect.

6. The plaintiff has instituted this suit pleading, that:

- (i) the plaintiff Satender Kumar Jain along with his brothers Devender Kumar Jain and Rakesh Kumar Jain purchased property No.A-24-A, Kailash Colony, New Delhi from one Smt. Baldevi Bhagat vide registered Sale Deed dated 30th December, 1975;

- (ii) the plaintiff and his two brothers aforesaid, after the death of their father Sunder Lal Jain continued to carry on several businesses acquired by succession and / or established by them by their own efforts, in various forms, jointly and / or individually;
- (iii) Smt. Phoolwati Jain, mother of the plaintiff and his two brothers aforesaid, died intestate on 16th April, 2004;
- (iv) in the year 2009, the plaintiff and his two brothers aforesaid, mutually entered into / reached an oral Family Settlement dividing / partitioning their shares in respect of movable and immovable properties including various companies and partnership firms; the said oral Family Settlement was acted upon and recorded vide registered Memorandum of Family Settlement dated 31st March, 2009;
- (v) in furtherance of the Family Settlement aforesaid, the entire property No.A-24-A, Kailash Colony, New Delhi fell to the exclusive share and ownership of plaintiff;
- (vi) the two brothers aforesaid of the plaintiff viz. Devender Kumar Jain and Rakesh Kumar Jain, acting in consonance with the Family Settlement, relinquished their share in the property aforesaid in favour of the plaintiff through registered Relinquishment Deed dated 31st March, 2009 and the property mutated in the exclusive name of the plaintiff in the records of

Municipal Corporation of Delhi (MCD) on 10th June, 2010;

- (vii) at the time of the Family Settlement aforesaid, the family of the plaintiff as well as the family of Devender Kumar Jain, brother of the plaintiff was residing in the said property, though in separate demarcated portions thereof;
- (viii) Devender Kumar Jain, brother of the plaintiff, requested the plaintiff to allow him and his family to continue residing in the property aforesaid till they find alternate suitable accommodation and the plaintiff, on account of brotherly relations, allowed his brother Devender Kumar Jain and his family to, notwithstanding the property having fallen to the exclusive share of the plaintiff under the Family Settlement, temporarily continue residing in the property;
- (ix) Devender Kumar Jain, brother of the plaintiff died in the year 2015; and,
- (x) the plaintiff, on account of his expanding family requirements, required the portion of the property in occupation of the family of his deceased brother Devender Kumar Jain, in the year 2017 requested them to vacate the said portion of the property; though they assured the plaintiff that they would vacate the said portion in January, 2018 but have not done so.

7. The defendant no.1 contested the suit by filing written statement, pleading that:

- (a) in terms of the Family Settlement dated 31st March, 2009, property bearing No.6554, Qutab Road, Delhi which is a joint property was to be used for charitable purposes; however subsequent to the execution of the Family Settlement, the plaintiff who is at the helm of affairs of M/s Mahavir International, Delhi started using major portion of the Qutab Road property for his personal use and use of his immediate family members and no charitable activities were carried out from the major portion of the Qutab Road property; the charitable activities being carried out by M/s Mahavir International, Delhi were restricted to a very small portion of the Qutab Road property;
- (b) the plaintiff continued to use the Qutab Road property for his own purposes inspite of repeated requests and reminders of Devender Kumar Jain, husband of defendant no.1;
- (c) in the circumstances, Devender Kumar Jain, husband of the defendant no.1, in January-February, 2013 requested the plaintiff to give to Devender Kumar Jain, Devender Kumar Jain's share of Qutab Road property;
- (d) as the plaintiff wanted to continue to use the Qutab Road property for his personal use, he requested Devender

Kumar Jain that the 1/3rd share of the Qutab Road property of Devender Kumar Jain be given to the plaintiff and in lieu thereof Devender Kumar Jain could have the ownership of 1/3rd share in property No.A-24-A, Kailash Colony, New Delhi along with portions of the superstructure that were already in possession of Devender Kumar Jain and his family members; the plaintiff also represented that this was beneficial to both himself and Devender Kumar Jain and that the market value of 1/3rd share of Devender Kumar Jain in Qutab Road property and of 1/3rd share of property No.A-24-A, Kailash Colony, New Delhi was about the same; the said oral Family Settlement was entered into between the plaintiff and the said Devender Kumar Jain somewhere in January-February, 2013;

- (e) under the aforesaid oral Family Settlement, the plaintiff became the owner of Qutab Road property to the extent of 2/3rd undivided share and Devender Kumar Jain became the owner of property No.A-24-A, Kailash Colony, New Delhi to the extent of 1/3rd undivided share along with portions of superstructure already in possession of Devender Kumar Jain and his family;
- (f) Devender Kumar Jain and his family continued to reside in property No.A-24-A, Kailash Colony, New Delhi since

January-February, 2013 under the oral Family Settlement of January-February, 2013; and,

- (g) even otherwise, the defendant no.1 being a widow and having disputes with her son and daughter-in-law, i.e. defendants no.2 and 3 respectively, does not have any other place to go to.

8. The defendants no.2 to 4 have contested the suit filing a written statement running into 51 pages but with the facts below-mentioned once in the preliminary objections and thereafter again in the reply on merits:

- (i) the site plan of the property filed by the plaintiff is defective and a site plan showing the portions in occupation of the defendants is being filed with the written statement;
- (ii) defendants no.2 to 4 are living separately from the defendant no.1 and their relations *inter se* are strained;
- (iii) the suit property has not been valued properly for the purpose of court fees and jurisdiction;
- (iv) Sunder Lal Jain, father of the plaintiff was first married to Sarjo Devi Jain and had one daughter namely Shakuntla Mittal and one son namely J.K. Jain from the said marriage; after the death of Sarjo Devi, Sunder Lal Jain married Phoolwati Jain and from the said marriage three sons i.e. the plaintiff, Devender Kumar Jain and Rakesh

Kumar Jain, three daughters viz. Nirmal Agarwal, Indra Vaish and Madhu Mittal were born;

- (v) Sunder Lal Jain, upon his death in the year 1969, was thus survived by four sons, four daughters and a widow and since he died intestate, all the said nine heirs succeeded to his estate in equal share;
- (vi) at the time of purchase of property No.A-24-A, Kailash Colony New Delhi in the name of plaintiff, Devender Kumar Jain and Rakesh Kumar Jain, all of them were living together along with other family members in the family house at 6549, Qutab Road, Delhi;
- (vii) In the sale deed vide which property No.A-24-A, Kailash Colony, New Delhi was purchased, all the three brothers i.e. the plaintiff, Devender Kumar Jain and Rakesh Kumar Jain were described as vendees, without specifying their individual shares;
- (viii) at the time of purchase of property No.A-24-A, Kailash Colony, New Delhi, Devender Kumar Jain, being the eldest, had been carrying on the family business since the lifetime of the father and the plaintiff had joined the business only four years prior thereto and Rakesh Kumar Jain was only 24 years of age and had not joined the business; the only source of earning was the businesses and properties left behind by Sunder Lal Jain;

- (ix) from the 1983, onwards the family incorporated Victoria Foods Pvt. Ltd., Tower Leasing and Finance Ltd. and Rajdhani Nurseries Ltd., Super Quick Holdings Pvt. Ltd., Super Prompt Holdings Ltd., Urgent Holdings Ltd. and Monsoon Finance Ltd.; these companies along with two other associated companies viz., German Gardens Ltd. and Rajdhani Securities Ltd., held more than 175 acres of prime land on the Delhi-Jaipur National Highway;
- (x) the defendant no.2 has recently discovered irregularities and illegalities in the shareholding of Rajdhani Nurseries Ltd. and has lodged complaint with the police and a complaint under Section 200 of the Cr.P.C. against the defendant no.1, plaintiff and Rakesh Kumar Jain;
- (xi) on demise of Phoolwati Jain on 16th April, 2004, her three sons and three daughters succeeded to her estate in equal share;
- (xii) in the year 2006-07, Rakesh Kumar Jain shifted out of property No.A-24-A, Kailash Colony, New Delhi to another house in the same locality, again bought from joint funds succeeded from the estate of Sunder Lal Jain;
- (xiii) the present suit is an outcome of the complaints lodged by defendant no.2 *inter alia* against the plaintiff of various irregularities in relation to the companies aforesaid committed by the plaintiff along with others;

- (xiv) the defendant no.2, only on service of summons of the present suit, has come to know of the opportunistic and illegal mutual division and distribution of all common family businesses, properties, shareholdings, firms etc. inherited from Sunder Lal Jain and the defendant no.2 has written a letter to all signatories and witnesses to the Family Settlement including the plaintiff, asking them to provide all details and documents with respect to properties / businesses;
- (xv) the defendants no.2 to 4 intend to challenge the Memorandum of Family Settlement and to have it cancelled and reserve their right therefor; and,
- (xvi) the Relinquishment Deed executed by Devender Kumar Jain and Rakesh Kumar Jain in favour of the plaintiff with respect to their shares in property No.A-24-A, Kailash Colony, New Delhi has also come to the notice of the defendant no.2 only on receipt of summons of this case and the said Relinquishment Deed is also liable to be set aside and the defendants no.2 to 4 reserve their rights in this respect also; similarly the mutation of the property No. A-24, Kailash Colony, New Delhi in the sole name of the plaintiff is also liable to be cancelled; mere payment of property tax as claimed by the plaintiff does not vest any right in the plaintiff.

9. The plaintiff, along with the plaint has *inter alia* filed (a) photocopy of the registered Sale Deed dated 30st December, 1975 executed by Smt. Baldevi Bhagat in favour of Devender Kumar Jain, plaintiff and Rakesh Kumar Jain, of land ad-measuring 1004.90 sq. yds. bearing No.A-24-A, Kailash Colony, New Delhi, (b) photocopy of the registered Memorandum of Family Settlement dated 31st March, 2009 executed by (i) Devender Kumar Jain, (ii) plaintiff, and, (iii) Rakesh Kumar Jain; (c) photocopy of Registered Relinquishment Deed dated 31st March, 2009 executed by Devender Kumar Jain in favour of plaintiff of his share in property No.A-24-A, Kailash Colony, New Delhi; and, (d) photocopy of the letter dated 10th June, 2010 of Municipal Corporation of Delhi to the plaintiff, of mutation of property in the name of the plaintiff.

10. As would be evident from the narration above of the defence of the defendants, neither of the defendants have denied the documents aforesaid and defendants no.2 to 4 have rather stated that they intend to institute proceedings for cancellation of the said documents.

11. The defendants no.2 to 4, along with their written statement, besides the site plan of the property, have filed screen shots of website www.rajdhanigroup.com and certificates of incorporation of various companies mentioned in their written statement.

12. Per Order XIV Rule 1 of the CPC, issues arise (i) when a material proposition of fact or law is affirmed by one party and denied by the other; and, (ii) material propositions are those propositions of law or fact which a plaintiff must allege in order to

show a right to sue or a defendant must allege in order to constitute his defence.

13. Per Order XV Rule 1 of the CPC, where at the first hearing of the suit, it appears that the parties are not at issue on any questions of law or fact, the Court may at once pronounce judgment.

14. The contention of the senior counsel for the plaintiff is, that none of the defences in the written statement of the defendants invite framing of any issue. Of course, the counsels for the defendants controvert, referring to the pleas in their written statement and also contending that the suit has been filed belatedly, after nine years from the date when the plaintiff claims to have acquired exclusive title to the property.

15. I have in *Kawal Sachdeva Vs. Madhu Bala Rana* 2013 SCC OnLine Del 1479 and *Abott Healthcare Pvt. Ltd. Vs. Raj Kumar Prasad* (2018) 249 DLT 220 dealt at length with what constitutes material proposition of law or fact, which a defendant must allege in order to constitute his defence and need to reiterate the same is not felt. Suffice it is to state that if plea taken in the defence does not constitute a defence in law, it is not a material proposition on which an issue arises or is to be framed.

16. In my opinion, none of the pleas, neither in the written statement of the defendant no.1 nor in the written statement of the defendants no.2 to 4, constitute a defence to the suit for recovery of possession on the basis of title, as filed by the plaintiff.

17. My reasons therefor qua the written statement of the defendant no.1 are:

- A. The only plea in the written statement of the defendant no.1 is of a subsequent oral settlement of January-February, 2013 between the plaintiff on the one hand and the Devender Kumar Jain on the other hand and whereunder the 1/3rd share of Devender Kumar Jain in the Qutab Road property vested in the plaintiff in lieu of 1/3rd share of Kailash Colony property which vested in Devender Kumar Jain.
- B. The test to be applied is, whether the said plea in the written statement, in law entitles the defendants no.1 to defeat the claim of the plaintiff for recovery of possession of immovable property on the basis of title.
- C. Needless to state that the aforesaid plea of the defendant no.1 is in admission of the registered Memorandum of Family Settlement dated 31st March, 2009 and the Relinquishment Deed also dated 31st March, 2009, executed by Devender Kumar Jain, predecessor in interest of defendant no.1, of his share in Kailash Colony property in favour of the plaintiff.
- D. Clause 5 of the registered Memorandum of Family Settlement dated 31st March, 2009, in which Devender Kumar Jain is described as Group-I, plaintiff as Group-II and Rakesh Kumar Jain as Group-III, is as under:

“5. Group-II Will look after the property listed at D-2 namely property bearing Nos.6549 to 6554, Qutab Road, Delhi which is a family property meant to be and being used for charitable purpose only and presently given to and is in possession of M/s Mahavir International Delhi, an NGO. If this property is not used for charitable purposes than the same shall be the matter of joint property owned by the Group-I, Group-II and Group-III and they will remain solely the beneficiaries.”

- E. It is thus evident that Qutab Road property described in Clause 5 aforesaid, was left joint by plaintiff and his two brothers, with the agreement that either the same be used for charitable purpose and if not so used, all three will be beneficiaries thereof.
- F. What has to be seen is whether there could be exchange in law of 1/3rd share in Kailash Colony property, of which the plaintiff was the sole owner under the Memorandum of Family Settlement and Relinquishment Deed, and of 1/3rd share of Devender Kumar Jain in Qutab Road property jointly held by the plaintiff, Devender Kumar Jain and Rakesh Kumar Jain, without any registered instrument.
- G. Section 54 of the Transfer of Property Act, 1882 is clear, that such transfer/exchange of immovable property can be made only by a registered instrument and without a registered instrument there is no transfer / exchange.

H. Though members of a family are entitled to settle / partition / distribute the family properties between themselves even without a registered instrument but in January-February, 2013 i.e. after the registered Memorandum of Family Settlement dated 31st March, 2009, neither were the plaintiff and Devender Kumar Jain members of any joint family nor could they by a family settlement so exchange their immovable properties. It cannot also be lost sight of, that the plaintiff, Devender Kumar Jain and Rakesh Kumar Jain even when were members of a joint family having joint businesses and joint residence, though entitled to in law to effectuate a Family Settlement without a registered document, took care to register the memorandum of Family Settlement executed by them as well as execute and register Relinquishment Deeds with respect to immovable properties, share wherein was being relinquished in favour of other family members. Ordinarily such persons can be imputed with the knowledge and understanding in effect of a registered document and would not be expected to, with the said knowledge and understanding, thereafter not act in consonance therewith.

I. The law in this respect is clear. It was held by me, speaking for the Division Bench in ***Harvinder Singh Chadha Vs. Saran Kaur Chadha*** 2014 SCC OnLine Del 3413 that there can be no transfer of properties or shares

in immovable properties between siblings, under the garb of Memorandum of Family Settlement and the Supreme Court in *Yellapu Uma Maheshwari Vs. Buddha Jagadheeswararao* (2015) 16 SCC 787 also followed the said line of reasoning as discussed by me subsequently in *Vijay Kumar Taneja Vs. Raj Kumar Taneja* (2017) 236 DLT 601.

- J. Thus, the plea in the written statement of defendant no.1, of oral Family Settlement of January-February, 2013 whereunder Devender Kumar Jain became the owner of 1/3rd undivided share with portions already in his possession of the property No.A-24-A, Kailash Colony, New Delhi is not a material proposition on which the suit of the plaintiff can be defeated.
- K. The plea of the defendant no.1, of being a widow and having no other accommodation, also does not entitle her to defeat the suit.
- L. If at all the Qutab Road property is not being used for charitable purpose whether for reasons attributable to the plaintiff or for any other reasons, it is always open to the defendant no.1 as an heir of Devender Kumar Jain to claim beneficial interest therein. However, in such an action, the other heirs of Devender Kumar Jain as well as Rakesh Kumar Jain would have to be made a party.

18. Thus, the pleas taken by the defendant no.1 do not invite framing of any issue.

19. My reasons qua the written statement of the defendants no.2 to 4 are as under:

- (A) Mere skillful and lengthy drafting of a written statement and filling the same with pleas which have no relevance to the entitlement of the plaintiff to the relief, cannot be permitted to create a semblance of a defence and to have issues framed thereon and to abuse the process of the Court by delaying the trial to defer the evil day. It is the duty of the Court to tear through such written statement and verbose pleadings and to find out whether they constitute material propositions of fact or law. In the judgments referred to in para 15 hereinabove it was held, i) that it is a notorious fact that to drag the case, a litigant often takes all sorts of false or legally untenable process but the legal process should not be allowed to be misused by such person and only such defence as gives rise to clear and bonafide dispute or triable issues should be put to trial and not illusory or unnecessary or *mala fide* or based on false or untenable pleas to delay the suit; (ii) that an issue need not be framed on a point of law which is perfectly clear; (iii) that the Court is required to apply its mind and understand the facts before framing the issue; (iv) that if the plea is *mala fide* or preposterous or

vexatious and can be disposed of without going into the facts, or is contrary to law or the settled legal position, the Court will not be justified in adopting a hands off policy and allow the game of the defendant to have its sway; (v) that the Courts are not bound to frame an issue on unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable Court time; (vi) that it is also necessary to see whether there is sufficient material placed on record to frame an issue; (vii) that the Court is not under any obligation to frame and remit the issue mechanically, merely on the same being raised in the written statement, without judicial satisfaction of its necessity and justification; (viii) that the Court has a duty to examine the substance and refuse to frame and remit any issue if the same appears to be demonstrably frivolous and *mala fide*; (ix) that the Court should hesitate to frame an issue on a vague plea, unless the party is able to give particulars in support of the plea; and, (x) that it cannot be lost sight of, that framing of an unnecessary issue invites unnecessary evidence and arguments and which protracts disposal of the suits.

(B) The defendants no.2 to 4 also as aforesaid, admit Memorandum of Family Settlement and Relinquishment Deed executed by Devender Kumar Jain of his 1/3rd share in the Kailash Colony property in favour of the plaintiff, and though they claim the same to be irregular / illegal and liable to be cancelled, have not sought the relief of cancellation and have merely reserved their rights therefor. Though correction and release of this judgment after hearing the counsels on 9th April, 2019 also took sometime but in the said interregnum also, no information of having taken any steps for declaration of the said Memorandum of Family Settlement and Relinquishment Deed, on the basis whereof the plaintiff admittedly is the sole and absolute owner of the Kailash Colony property, has been intimated. The reason is quite obvious. A perusal of the registered Memorandum of Family Settlement shows substantial properties and businesses to have fallen to the share of Devender Kumar Jain and whose son and daughter-in-law and granddaughter, the defendants no.2 to 4 are, and must be beneficiaries of. It is quite obvious that the defendants no.2 to 4, while disputing the entitlement of the plaintiff to what had fallen to the exclusive share of the plaintiff under the Family Settlement, are reluctant to put the entire Family Settlement into dispute and jeopardy and which will deprive the defendants no.2 to 4 also of what

had fallen to the exclusive share of their predecessor in interest Devender Kumar Jain. Though from the averments in their written statement, I am also unable to decipher any ground pleaded for challenging the Memorandum of Family Settlement and Relinquishment Deed, but refrain from stating more lest the same prejudices the action in this respect if any taken by the defendants no.2 to 4 in future.

- (C) On the documents as existing today and to which no challenge is made in this proceeding, the plaintiff has title to the property and the defendants no.2 to 4 have no right thereto. A decree for possession is thus to follow.
- (D) The entitlement today of the plaintiff to a decree for possession against the defendants cannot be kept in abeyance owing to the action threatened by the defendants no.2 to 4 and which is not even initiated till now and on initiation whereof the merits therein will have to be judged before entertaining the same.
- (E) The errors, even if any in the site plan filed by the plaintiff, cannot come in the way of decree for possession being passed forthwith with respect to whichever portion of the property is in possession of the defendants.
- (F) The other heirs of Sh. Sunder Lal Jain, father of the plaintiff, to whom reference is made, have no concern with the property in as much as it is not disputed that the

subject property was purchased vide sale deed in the name of the plaintiff, predecessor of the defendants and Rakesh Kumar Jain only.

(G) Similarly, it is not relevant for the present purposes as to what were the shares of the plaintiff, predecessor of the defendants and Rakesh Kumar Jain in the subject property in as much as the predecessor of the defendants admittedly vide registered relinquishment deed, released all his right, title and interest in favour of the plaintiff.

(H) The irregularities even if any qua the shareholding of the companies, again have no bearing to the right asserted by the plaintiff in this suit and the defendants no.2 to 4 are free to take any action with respect thereto.

20. As far as the plea of the counsels for the defendants, of the suit having been filed after nine years from the date when the plaintiff became the exclusive owner of the property is concerned, on enquiry as to which Article of the Schedule to the Limitation Act, 1963 are the defendants invoking, no answer is forthcoming. However, on further enquiry, whether either of the two sets of defendants were claiming adverse possession and if so from which date, it was stated they are not claiming adverse possession as indeed they cannot along with the plea of legal title / possession, as held in *Anasaheb Bapusaheb Patil vs. Balwant @ Balasaheb Bapusaheb Patel* (1995) 2 SCC 543, *Mohan Lal vs. Mirza Abdul Gaffar* (1996) 1 SCC 639, *Karnataka Board of Waqf vs. Government of India* (2004) 10 SCC 779, *T.*

Ajanappa vs. Somalingappa (2006) 7 SCC 570, *L.N. Aswathama vs. P. Prakash* (2009) 13 SCC 229.

21. The plaintiff is thus entitled to a decree for possession forthwith.

22. Since the defendants have disputed the portion of the property in their possession as shown in the site plan filed by the plaintiff, it is deemed appropriate to pass a decree for possession with respect to whichever portion the property No.A-24-A, Kailash Colony, New Delhi is in possession of the defendants.

23. A decree is thus passed, in favour of the plaintiff and jointly and severally against the defendants, of (i) recovery of possession of ground floor, one room in the basement, two rooms in terrace in main block and basement, ground and first floor of the rear block of built up house No.A-24-A, Kailash Colony, New Delhi shown in red colour in the site plan annexed with the plaint and / or of whatsoever portion of property No.A-24-A, Kailash Colony, New Delhi is in possession, control and occupation of the defendants or any of them; and, (ii) recovery of costs qua the relief of possession, comprising of court fee paid of Rs.2,95,144 and litigation expenses including counsels fee assessed at Rs.1,00,000/-.

24. As far as the relief claimed by the plaintiff of *mesne* profits is concerned, considering the relationship of the parties and further considering that the plaintiff notwithstanding having become the exclusive owner of the property in the year 2009 allowed the defendants to graciously reside in the property till institution of this

suit on 23rd March, 2018 and further considering that the decree for possession has been passed in little over more than a year therefrom, it is deemed appropriate to not order an enquiry with respect thereto. However, if the defendants fail to vacate the property within three months herefrom, it shall be open to the plaintiff to apply for issuance of a commission for enquiry into the *mesne* profits due to the plaintiff from the defendants.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

April 09, 2019

‘gsr’..

(Corrected and released on 4th May, 2019).