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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% ***Judgment reserved on: 05.12.2025***
Judgment pronounced on: 17.12.2025
Judgment uploaded on: 17.12.2025

\+ RFA(OS) 55/2024, CM APPL. 60014/2024, CM APPL. 60016/2024

M/S SANGEETA LEASINGS & ANR. .....Appellant
Through: Mr. Sandeep P. Agarwal Sr. Adv. with Mr. Varun Shankar, Ms. Ishita Dhaiya, Advs.

versus

HEM MANOHAR & ORS. .....Respondents
Through: Mr. Arjun Singh Bawa, Mr. Sahil Gupta, Ms. Apoorva Pradhan, Advs. for R-1 & 2.

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. The present Appeal, filed by the Appellants [Defendant Nos. 2 and 3 in the suit], assails the correctness of the judgment dated 28.06.2024 [hereinafter referred to as 'Impugned Judgment'] in CS(OS) 600/2019 whereby the learned Single Judge decreed the suit while allowing the application under Order XII Rule 6 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC']. It was held that the Defendants were unauthorised occupants of the property bearing No. E-12/4, Vasant Vihar, New Delhi [hereinafter referred to as 'suit property'] since the demise of late Shri Manohar on 06.04.2017, and directed delivery of possession to the Plaintiffs. The

learned Single Judge further directed the Defendants to render accounts and pay *mesne profits* from the date of demise of late Shri Manohar till the date of recovery of possession.

2. The following substantial questions arise for consideration in the present Appeal:

i. Whether the learned Single Judge was justified in decreeing the suit under Order XII Rule 6 of the CPC, notwithstanding the fact that the Defendants had seriously contested the Plaintiff's claim in their pleadings.

ii. Whether, in a highly contested matter, it is permissible to record findings of fact and grant relief without affording the parties an opportunity to lead evidence to substantiate their respective contentions at the stage of Order XII Rule 6 of the CPC.

FACTUAL MATRIX

3. In order to appreciate the controversy involved, it is necessary to briefly notice the relevant facts. For the sake of convenience, the parties are being referred to as they were arrayed in the suit.

4. The Plaintiffs, Smt. Hem Manohar and her daughter, Smt. Vivita Tayal, instituted CS(OS) 600/2019 seeking eviction of the Defendants, rendition of accounts, payment of *mesne profits*, damages for loss of rent, and injunction in respect of the suit property against the Defendants. Plaintiff No.1 and Defendant No.1, Smt. Rachna Gupta, are real sisters. Defendant No.1 is married to Shri Rajendra

Gupta, whereas Smt. Hem Manohar was married to late Shri Manohar. The Defendant Nos.2 and 3, the present Appellants, are members of the family business concern M/s. Sangeeta Leasings, which was in possession and management of the suit property pursuant to various agreements executed by the parties over several decades.

5. The suit property was initially allotted on a leasehold basis in 1969 jointly in the names of Plaintiff No.1 and her husband, late Shri Manohar. The Defendants assert that, upon the Plaintiffs' relocation to Australia, late Shri Manohar executed an irrevocable General Power of Attorney [hereinafter referred to as 'GPA'] dated 17.01.1979 in favour of Shri Rajendra Gupta, authorising him to manage, administer, maintain, and deal with the suit property, including the collection of rents and handling of tenants. According to the Defendants, the said GPA remained operative and was never revoked until the demise of Shri Manohar on 06.04.2017.

6. In the written statement filed by Defendant No.1, the following chronology and assertions were highlighted:

> *"9. That early in the year 1984, Mr. Shri Manohar came to India as his daughter, Vivita Tayal, i.e., Plaintiff No.2 herein, was due to get married in India on 15.01.1984. On 08.01.1984, Mr. Shri Manohar and Mr. Rajendra Gupta along with Ms. Rachna Gupta, i.e., Defendant No.1 herein, had a joint meeting at the latter's residence at R-235, Greater Kailash I, New Delhi 110 048. The marriage of Plaintiff No.2 was arranged and organized jointly by both the families with full co-operation and support by all family members. During his visit to Mr. Rajendra Gupta on 08.01.1984, Mr. Shri Manohar expressed his desire to conclude his affairs in India as he had acquired or was on the verge of acquiring citizenship in Australia. In pursuance to the earlier arrangement between the parties, Mr. Shri Manohar offered to transfer, sell and convey all rights and interests in the subject matter property to Mr. Rajendra Kumar Gupta or Defendant No.1 herein, the wife of Mr. Gupta. Mr. Rajendra Gupta,*

who already enjoyed unhindered possession and beneficial rights over the property, accepted the said offer. In view of the short duration of his visit and other attending circumstances, the terms of the transfer/ Agreement to Sell were agreed orally in the following terms on 08.01.1984:

> *i. That the subject matter property shall be transferred to Mr. Rajendra Gupta, by transferring the title in the name of either Mr. Rajendra Gupta or his wife, Ms. Rachna Gupta, or jointly in the name of both of them for a sale consideration of the suit property which was agreed at INR 20,00,000/- (Twenty Lakhs Only), out of which a sum of INR 4,00,000/- was to be paid as earnest money cum advance sale consideration.*
>
> *ii. That Mr. Rajendra Gupta would continue to make earnest efforts to evict the remaining tenants from the subject matter property, including prosecution of legal proceedings and settlements with the tenants, at his own costs and expenses. That the remaining sale consideration of INR 16,00,000/- was agreed to be paid by Mr. Rajendra Gupta at the time of execution of the sale deed/ transfer documents.*
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> *iii. That the subject matter property shall be transferred by Mr. Shri Manohar in the name of Mr. Rajendra Gupta or Ms. Rachna Gupta, Defendant No.1 herein, or jointly in both their names, as was to be finally decided by Mr. Rajendra Gupta.*
>
> *iv. That the registration and conveyance charges of the property to be met/ effected by Mr. Rajendra Gupta as per the requisite procedure and formalities, including obtaining of necessary approvals from the relevant authorities.*
>
> *v. That the requisite paperwork for the conveyance of the property will be organized by Mr. Rajendra Gupta and then sent to Mr. Shri Manohar. That Shri Manohar will promptly execute the said documents and return them to Mr. Rajendra Gupta for registration.*
>
> *vi. That the complete unhindered exclusive rights, interests, possession and beneficial use and enjoyment of the subject matter property shall continue to remain with Mr. Rajendra Gupta until the proposed conveyance/ transfer of property was completed.*

10. Thus, an Oral Agreement to Sell was entered into between Mr. Rajendra Gupta and Late Mr. Shri Manohar on 08.01.1984 in the presence of Defendant No. 1 herein at the personal residence of Mr.

Rajendra Gupta and Ms. Rachna Gupta, i.e., R-235, Greater Kailash 1, New Delhi 110 048. That as orally agreed between the parties on 08.01.1984, an amount of INR 4,00,000/- as earnest money was duly paid to Mr. Shri Manohar in the presence of the answering Defendant prior to the wedding ceremony of Plaintiff No.2 herein, i.e., Ms. Vivita Tayal.

11. That on 11.09.1987, Mr. Rajendra Gupta, acting through the GPA, let out the subject matter property to his family business concern, namely, M/s. Sangeeta Leasings, which is Defendant No. 3 herein, vide Lease Deed dated 11.09.1987. It may be noted that the Defendant No. 1 and Defendant No.2, the wife and son respectively of Mr. Rajendra Gupta are the partners of the firm, M/s. Sangeeta Leasings. It is submitted that the lease was issued in favour of M/s. Sangeeta Leasings in order to give effect to the aforementioned agreement between Mr. Shri Manohar and Mr. Rajendra Gupta as it was becoming difficult for Mr. Rajendra Gupta to manage and maintain the property alone.

12. It may be noted that the aforesaid Lease Deed dated 11.09.1987 recognised the difficulty in evicting some defaulting tenants, especially M/s. Gandhi Estate Agency, and also the need to properly manage and maintain property among other responsibilities. Vide the said Lease Deed, Defendant No.3 herein (consisting of answering Defendant and the Defendant No.2 herein as partners) was given the omnibus rights, including the right to maintain and develop the property and to make additions/ alterations as well as the right to sublet the property. The tenancy was issued for an initial period of 5 years, subject to periodic renewal. Thereafter, the Defendant No.3, acting at the behest of Mr. Rajendra Gupta, got the remaining tenants evicted from the property at their own costs and expenses, and subsequently put the property for their own benefit, which included sub-letting the subject matter property. It is pertinent to note that Clause 3 of the aforesaid Lease Deed states that "the purpose of the lease is the business of the tenant", i.e., Defendant No.3 herein. It may be noted that an amount of INR 1,50,000/- was paid by Mr. Rajendra Gupta in settlement to M/s. Gandhi State Agency for their eviction from the subject matter property.

13. That on 20.12.1987, Mr. Shri Manohar addressed a letter to Mr. Rajendra Gupta acknowledging the work done by the Defendant No.2 and Defendant No.3 herein. In the same letter, Mr. Shri Manohar states that the Defendant No.3 herein may use the property to their best advantage and that Defendant No.1 and Defendant No.2 herein may continue to take interest in the property and use the same for their maximum benefit. This was a clear exposition of the earlier agreed arrangement between the parties, to transfer and convey the suit property in favour of Mr. Rajendra Gupta/ and the answering Defendant. Thereafter, Mr. Rajendra Gupta, his family concern, i.e., *Defendant No.3 herein were using the subject matter property for their own benefit as beneficial owners thereof.*

14. That on 20.06.1989, Mr. Shri Manohar addressed another letter to Mr. Rajendra Gupta, referring to the aforementioned Oral Agreement to Sell dated 08.01.1984, requesting Mr. Rajendra Gupta to organize the paperwork for execution of the transfer deed. The letter specifically states:

> *"As we have agreed before I would like to transfer the ownership of the home to you or to any member of your family.*
>
> *Please organize the paper work and send it to me for my signature."*
>
> *"Dear Rachna/ Rajjan.*
>
> *The house is yours!! Why not transfer it in your name.*
>
> *Hope you understand that now I am getting old.*
>
> *With love & best wishes to you all*

That on 28.06.1989, Mr. Rajendra Gupta replied to the aforesaid letter dated 20.06.1989 acknowledging and accepting the wishes of Mr. Shri Manohar to transfer the property in his name. At this point, the parties contemplated the option of conveying the property through Mr. Shri Manohar's will.

15. On 21.03.1995 and on 12.04.1995, Mr. Rajendra Gupta sent letters to Mr. Shri Manohar discussing the dilapidated condition of the structure in the subject matter property. Since the building was beyond repair, he suggested the demolition of the structure and complete rebuilding of the same in terms of the earlier arrangement arrived at between the parties in terms of the irrevocable GPA dated 17.01.1987 and thereby attached the plans for reconstruction in the said letters. Since the building was beyond repair and since the property was to be transferred in the name of Mr. Gupta or his family members, Mr. Gupta suggested reconstruction and renovation of the property at his own expense. It may also be noted that all the house tax dues on the subject matter property from 1989 has been duly paid by Mr. Rajendra Gupta to Municipal Corporation of Delhi. It may be noted that a net amount of INR 38,85,928/- (Rupees Thirty Eight Lakhs Eighty Five Thousand Nine Hundred and Twenty Eight only) has been paid by Mr. Rajendra Gupta/ Defendants No.1 and 2 as house tax from the year 2000 to 2020, which included house tax arrears from years prior to the year 2000.

16. On 31.03.1997, Defendant No.3 entered into a Property Development Agreement with one M/s. Kalyani Builders to reconstruct and redevelop the whole property. Further, on 22.04.1999, the Lease Deed in favour of Defendant No.3 herein was *renewed for a period of 10 years, subject to periodic renewal, on the similar terms and conditions as the original lease deed dated 11.09.1987.*

17. That around 1999, pursuant to the arrangement between Mr. Shri Manohar and Mr. Rajendra Gupta in 1979 and in accordance with the subsequent express agreement dated 08.01.1984 between them for transferring the property to Mr. Rajendra Gupta or his family members, all parties concerned started the deliberations for the mode and manner of conveying the property in the name of Defendant No.1 herein. In the meantime, on 03.06.1999, a law firm based in Australia, namely Gibson & Gibson, issued a letter of legal opinion to Mr. Shri Manohar and Ms. Hem Manohar, i.e., Plaintiff No.1 herein. The said letter is titled "Conveyance to Rachna Gupta". In the said letter, the aforesaid law firm advised their clients to convey the subject matter property to Defendant No.1 herein through two consecutive Gift Deeds, i.e., a first Gift Deed transferring the entire interest of Mr. Shri Manohar to his wife, i.e., Plaintiff No.1 herein and a second Gift Deed transferring the whole of the interest on the property of Plaintiff No.1 to her sister, i.e., Defendant No.1 herein. As mentioned in the letter, such a route for conveyance was adopted in order to minimize the tax liability on the transaction as a gift between blood relatives attracted lesser tax. The said letter of the law firm specifically states:

> *"To effect that, Shri has agreed to transfer his interest in the Plot to Hem prior to Hem transferring the whole of the Plot to her sister."*

This letter makes it abundantly clear the intention of the parties to convey the subject matter property in the name of Defendant No.1 herein, though the mode of transfer was still being deliberated upon.
18. That in continuation of the aforesaid scheme of events, on 09.08.1999, in response to a request dated 05.07.1999 by Mr. Shri Manohar, the Delhi Development Authority, New Delhi ("DDA") issued a letter, bearing no. F1(395)/78/CS/DDA/364, conveying the permission of DDA for the gift in favour of Plaintiff No.1 herein by Mr. Shri Manohar.

19. That subsequently on 22.02.2000, the first Gift Deed was executed by Shri Manohar in favour of his wife, i.e., Plaintiff No.1 herein, transferring the entirety of his interest in the subject matter property to Plaintiff No. 1 herein. The said Gift Deed was duly executed and the same was witnessed and notarized by one Mr. Peter J Griffin, Notary Public, Western Australia. Hence, it is clear that the Plaintiffs have concealed this crucial information in present suit with the sole intent of misleading this Hon'ble Court. Further, the Plaintiffs have submitted inaccurate and wholly fabricated claims as to their rights to the subject matter property. Consequently, the Letter of Mutation dated 06.06.2019 issued by DDA, was obtained by the Plaintiffs upon *misstatement of facts and fraudulent concealment of documents, and hence the same is liable to be quashed. Further, the present bogus suit has been preferred by the Plaintiffs on the strength of the aforesaid Letter of Mutation, which itself stands on shaky legal foundation.*

It may be noted that the aforesaid Notary Public, Mr. Peter J Griffin, is the same Notary Public who witnessed and notarized the Special Power of Attorney executed by the Plaintiffs in favour of Ms. Uma Shankar Seth, on the strength of which the present suit has been filed.

20. That on the same day, i.e., 22.02.2000, Mr. Shri Manohar also executed a Special Power of Attorney in favour of Mr. Rajendra Gupta to authorize the latter to present the aforesaid Gift Deed dated 22.02.2000 for registration in Delhi. This Special Power of Attorney again was witnessed and notarized by Mr. Peter Griffin, Notary Public, Western Australia.

21. That in addition, the terms of the GPA dated 17.01.1979 read with the numerous communications exchanged between Shri Manohar and Mr. Rajendra Gupta as well as terms of the Oral Agreement dated 08.01.1984, it becomes clear that Mr. Shri Manohar had contracted to transfer the subject matter property to Mr. Rajendra Gupta upon lawful consideration. Consequently, Mr. Rajendra Gupta has enjoyed continuous, unhindered and exclusive possession of the property for more than 40 years in accordance with the said agreement. In view of the same, the Plaintiffs are barred from enforcing any right in the subject matter property. As per well-established legal principles, whether the transfer was consummated through an instrument of transfer is immaterial as the terms of the proposed transfer between Mr. Shri Manohar on the one hand and Mr. Rajendra Gupta and Defendant No.1 herein on the other hand can be easily ascertained. In the present case, the terms of the transfer are abundantly certain from the terms of the irrevocable GPA dated 17.01.1979 as well as the written communications between the parties. In view of the same, the present suit is not maintainable as Section 53A of the Transfer of Property Act, 1882 explicitly bars the Plaintiffs, who are claiming under late Mr. Shri Manohar, from enforcing any right in respect of the subject matter property."

7. The Defendants asserted that, during a visit to India in January 1984, late Shri Manohar and Shri Rajendra Gupta (in the presence of Defendant No.1) entered into an oral Agreement to Sell dated 08.01.1984 whereby late Shri Manohar allegedly agreed to transfer the suit property to Shri Rajendra Gupta or his wife (Defendant No.1) for a total consideration of Rs.20,00,000/-, of which Rs.4,00,000/- was

paid as earnest money. It was pleaded that the balance consideration was to be paid on execution of the sale documents and that, until transfer, Shri Rajendra Gupta would continue to have exclusive possession and to prosecute eviction proceedings at his expense.

8. It is admitted in the record that, on 11.09.1987, Shri Rajendra Gupta, acting through the GPA, executed a lease in favour of M/s Sangeeta Leasings/Defendant No.3. Clause 3 of that lease granted the lessee omnibus rights to maintain, develop, alter and sub-let the premises. The Defendants pleaded that, pursuant to that lease and at Shri Rajendra Gupta's instance, the earlier encroachers/tenants, including M/s Gandhi Estate Agency, were evicted at an outlay (allegedly Rs.1,50,000/-) borne by Shri Rajendra Gupta, and thereafter the Defendants placed the premises to their use, including sub-letting parts of the property.

9. The Defendants placed reliance on a series of communications and documents said to reflect the consensus and course of conduct between the parties. Among these were: (i) a letter dated 20.12.1987 from late Shri Manohar acknowledging the efforts of Shri Rajendra Gupta and indicating that the lessee, M/s Sangeeta Leasings, might further sub-let the property and "use the property to their best advantage"; (ii) a letter dated 20.06.1989 in which late Shri Manohar is said to have urged Shri Rajendra Gupta to "organise the paperwork" for transfer and stated "The house is yours!! Why not transfer it in your name"; (iii) correspondence in the 1990s relating to the condition of the building and proposals for reconstruction; and (iv) a legal opinion dated 03.06.1999 from a firm identified as Gibson & Gibson

(Australia) advising a two-step gift route to convey interest to Defendant No.1, together with subsequent steps taken *vis-à-vis* the DDA.

10. The Defendants have asserted that M/s Sangeeta Leasings continued in occupation of the suit property under renewed lease arrangements and that, during the subsistence of such arrangements, the premises were further dealt with by way of development agreements and sub-leases. The Plaintiffs disputed the legal effect and enforceability of these assertions.

11. On the other hand, the Plaintiffs asserted title on the basis of the perpetual sub-lease executed in 1969 in favour of Plaintiff No.1 and late Shri Manohar, and denied that any conveyance or lawful transfer of title in favour of the Defendants had ever taken place. The Plaintiffs further averred that, upon the demise of late Shri Manohar on 06.04.2017, any authority claimed by the Defendants to manage the property or collect rent stood terminated, and that the Plaintiffs were thereafter entitled to exercise all incidents of ownership.

12. Pertinent procedural steps in the litigation were as follows. The Plaintiffs filed the suit on 19.11.2019. By order dated 17.02.2020 passed in interlocutory proceedings under Order XXXIX Rule 10 of the CPC, the Defendants were directed to deposit a sum of Rs.1,00,000/- in Court. Thereafter, on 19.02.2021, an application under Order I Rule 10 of the CPC was filed by Shri Rajendra Gupta seeking impleadment; notice was issued on that application. On 24.04.2023, the Plaintiffs filed I.A. 7952/2023 under Order XII Rule 6

of the CPC. In the course of these proceedings, the Plaintiffs pressed the contention that the Defendants had admitted the tenancy and its periods and that, in any event, the tenancy stood terminated with effect from the demise of late Shri Manohar.

13. The pleadings before the learned Single Judge disclosed serious disputes, *inter alia*, regarding title to the suit property, the scope and legal effect of the GPA, the existence and enforceability of the alleged oral Agreement to Sell dated 08.01.1984, and the Defendants' plea of protection under Section 53A of the Transfer of Property Act, 1882 [hereinafter referred to as 'TP Act'].

14. On 28.06.2024, It was held that the Defendants were unauthorised occupants of the suit property since 06.04.2017, the date of demise of late Shri Manohar, and directed delivery of possession to the Plaintiffs; further directions were issued for rendition of accounts and payment of *mesne profits* from 06.04.2017 till recovery of possession. Aggrieved thereby, the present Appeal was filed.

15. <u>CONTENTIONS OF THE APPELLANTS</u>

15.1 Learned Senior Counsel for the Appellants contended that the learned Single Judge gravely erred in exercising jurisdiction under Order XII Rule 6 of the CPC, as the pleadings on record disclosed serious and substantial disputes going to the very root of the matter, including disputes relating to title to the suit property, the scope and legal effect of the GPA, the existence and enforceability of the alleged oral Agreement to Sell dated 08.01.1984, and the Appellants' plea of protection under Section 53A of the TP Act. It was submitted that such disputes, by their very nature, could not have been adjudicated without trial.

15.2 It was further submitted that the decree under Order XII Rule 6 of the CPC could have been passed only upon a clear, categorical and unequivocal admission, which was wholly absent in the present case. On the contrary, the Appellants had consistently disputed the Plaintiffs' claim of unauthorised occupation and had traced their possession to long-standing arrangements pleaded in the written statement, including the GPA, the alleged oral Agreement to Sell, and subsequent conduct of the parties. The learned Single Judge, it was urged, selectively relied upon certain averments while ignoring the pleadings as a whole.

15.3 It was contended that the learned Single Judge exceeded the permissible limits of Order XII Rule 6 of the CPC by recording findings on disputed questions of fact, including the nature of possession and the legal consequences flowing from the demise of late Shri Manohar on 06.04.2017. It was submitted that the Appellants had specifically pleaded that their possession was not that of trespassers or unauthorised occupants, and whether any authority or right stood extinguished upon such demise was itself a matter requiring evidence.

15.4 It was further contended that the Appellants' plea of protection under Section 53A of the TP Act, founded upon the alleged oral Agreement to Sell dated 08.01.1984, continuous possession, and part performance, raised mixed questions of law and fact, which could not have been summarily rejected at the stage of Order XII Rule 6 of the

CPC. The learned Single Judge, it was urged, effectively non-suited the Appellants on this defence without affording them an opportunity to establish the same through evidence.

15.5 Learned senior counsel lastly contended that, notwithstanding the existence of the aforesaid contested issues, the learned Single Judge proceeded to grant final and substantive reliefs, including a decree for possession, rendition of accounts, and *mesne profits*, which could only have followed a full-fledged trial. Such an approach, it was submitted, runs contrary to the settled principles governing the scope and object of Order XII Rule 6 of the CPC and has resulted in serious prejudice to the Appellants.

16. CONTENTIONS OF THE RESPONDENT NOS. 1 & 2

16.1 *Per contra*, learned counsel for the Respondent Nos.1 & 2 supported the Impugned Judgment and contended that the learned Single Judge had rightly exercised jurisdiction under Order XII Rule 6 of the CPC, as the material facts necessary for grant of a decree of eviction stood admitted by the Defendants. It was submitted that the relationship of landlord and tenant, execution of the lease deeds dated 11.09.1987, 22.04.1999 and 01.10.2013, and the occupation of the suit property by the Appellants and their sub-tenants were not in dispute, and that the suit did not raise any triable issue warranting a full-fledged trial.

16.2 It was contended that the title of the Respondent Nos. 1 & 2 to the suit property stood established on the basis of the perpetual sub-lease deed dated 08.08.1969 executed in favour of late Shri Manohar and Respondent No.1, coupled with the mutation effected by the DDA on 06.08.2019 in favour of Respondent No.1 (75% share) and Respondent No.2 (25% share). The Respondents submitted that the scope of an eviction suit could not be enlarged into a title dispute, particularly when the Appellants were estopped in law from denying the title of their lessors.

16.3 Learned counsel further contended that the authority of Shri Rajendra Gupta under the GPA stood terminated upon the demise of late Shri Manohar on 06.04.2017, and that thereafter the Appellants had no lawful authority to continue in possession or to collect rents. It was submitted that the Appellants had admittedly failed to pay any rent to the Respondent Nos. 1 & 2 after 06.04.2017 and, in any event, after the filing of the suit on 19.11.2019, thereby forfeiting the tenancy.

16.4 It was further argued that the tenancy of the Appellants and the sub-tenancies created by them stood duly terminated by service of notices dated 10.06.2019 and 17.07.2019, and that, in law, the institution of the suit itself constituted sufficient notice to quit. The Respondents submitted that no separate notice under Section 106 of the TP Act was required in the facts of the case, and that service of summons of the suit was adequate to convey the intention to terminate the tenancy.

16.5 The Respondents emphatically disputed the Appellants' reliance on the alleged oral Agreement to Sell dated 08.01.1984 and the plea under Section 53A of the TP Act. It was contended that a mere agreement to sell does not create any right, title or interest in immovable property, and that, in any event, Section 53A protection is unavailable in the absence of a written agreement. It was further submitted that the Appellants, not being parties to the alleged oral agreement (which was claimed only by Shri Rajendra Gupta), could not derive any rights therefrom, and that the plea was barred by law.

ANALYSIS & FINDINGS

17. This Court has considered the submissions advanced by learned counsel for the parties at length and with their able assistance, carefully perused the pleadings, documents and material placed on record, as also the Impugned Judgment dated 28.06.2024 passed by the learned Single Judge.

18. Upon a perusal of the Impugned Judgment, it becomes apparent that findings on disputed questions of fact have been adjudicated at the stage of consideration of an application under Order XII Rule 6. The record indicates that Defendant Nos. 1, 2 and 3 had seriously contested the claim of the Plaintiffs to ownership of the suit property, and had raised substantial objections to the reliefs sought in the suit.

19. In substance, the case of the Defendants is that the suit property vests in Shri Rajender Gupta and Smt. Rachna Gupta. In support of this plea, reliance has been placed not only on the irrevocable General Power of Attorney dated 17.01.1979, but also on various communications exchanged over the years between late Shri Manohar and Shri Rajender Gupta. The Defendants have further asserted that substantial amounts were paid to late Shri Manohar towards the

consideration of the suit property.

20. In the presence of such pleadings and assertions, which were expressly contested by the Plaintiffs, this Court is of the view that the controversy could not have been conclusively adjudicated without affording the parties an opportunity to lead evidence. In these circumstances, it was not appropriate for the learned Single Judge to decree the suit by invoking the provisions of Order XII Rule 6.

21. Learned counsel for the Respondents sought to contend that the Impugned Judgment has already been upheld in three Appeals arising from the same proceedings. However, the record reveals that RFA(OS) 36/2024 filed by Shri Rajender Gupta, who was not a party to the suit, was withdrawn. Likewise, RFA(OS) 48/2024 preferred by Shri Ranjit Kumar Pachnanda was not pressed on merits, and a similar course was adopted by Shri Alok Brara in RFA(OS) 45/2024. Consequently, there has been no adjudication on the merits of the issues involved in the present case in any of the aforesaid Appeals.

22. A further perusal of paragraphs 62 to 70 of the Impugned Judgment indicates that the learned Single Judge proceeded to adjudicate upon the respective rights of the parties. The learned Single Judge observed that the stand of the Defendants based on the alleged oral Agreement to Sell and the plea of protection of possession under Section 53A of the Transfer of Property Act, 1882, was not substantiated. Even if, in writing, there was no agreement to sell, defendants had relied upon various letters/communications exchanged between the contested parties or their predecessor. In the opinion of

this Court, such an exercise was not warranted at the stage of disposal of an application under Order XII Rule 6 of the CPC.

23. The record further reflects that, at one stage, a Gift Deed was prepared by late Shri Manohar in favour of his wife, Smt. Hem Manohar, with the understanding that a subsequent Gift Deed would be executed by Smt. Hem Manohar in favour of Smt. Rachna Gupta. An email sent by Shri Rajender Gupta dated 30.04.2012 has been placed on record in this regard. However, it is also evident that the Gift Deed sent from Australia could not be registered in India.

24. In the considered view of this Court, the aforesaid circumstances themselves demonstrate that the parties were at serious variance on material issues of fact and law, and that such disputes could not have been resolved without a trial. The approach adopted by the learned Single Judge, therefore, cannot be sustained.

CONCLUSION

25. Accordingly, the Impugned Judgment dated 28.06.2024 is set aside and the present Appeal stands allowed. The application filed by the Plaintiffs under Order XII Rule 6 of the CPC stands dismissed.

26. The suit, CS(OS) No. 600/2019, is restored to the file of the learned Single Judge for adjudication in accordance with law, after affording the parties full opportunity to lead evidence on all issues arising from the pleadings. The parties, through their respective counsels, are directed to appear before Learned Single Judge (Roster Bench) on 18.01.2026.

27. As per the Defendants, in the meantime, the possession of the suit property has been delivered to Plaintiffs while honouring the court decree which stands reversed/set aside. Hence, in exercise of enabling power under Section 144 of the CPC, directions are issued to the Plaintiffs to restore possession of the suit property to the Appellants within a period of next 30 days.

27.1 It is noted that, during the pendency of the present Appeal, possession of the suit property has been stated to have been delivered to the Respondent Nos.1 and 2 pursuant to the Impugned Judgment. In view of the setting aside of the Impugned Judgment, all consequences flowing therefrom shall be governed by law. This Court expresses no opinion on restitution or entitlement to possession.

28. It is clarified that this Court has not expressed any opinion on the merits of the rival claims of the parties, including issues relating to title, nature of possession, validity or effect of the General Power of Attorney dated 17.01.1979, the alleged oral Agreement to Sell dated 08.01.1984, or the applicability of Section 53A of the Transfer of Property Act, 1882. All such issues are left open to be decided while finally deciding the suit.

29. Pending applications also stand disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

DECEMBER 17, 2025

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