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

% ***Reserved on: 16th September, 2026***

Pronounced on: 19th November, 2026

Uploaded on: 19th November, 2026

 # CNR No. DLHC010582132023

\+ **RFA 18/2024, CM APPL. 1335/2024**

SMT. RADHA AGGARWAL
W/o Sh. Anoop Kumar Aggarwal
R/o C-8/16, Model Town, Delhi. ....Appellant

Through: Ms. Zubeda Begum, Ms. Sana Ansari, Mr. I. Ahmed and Mr. Ayush Gandhi, Advocates.

versus

MOHALLA SAMITA (REGD.)
Through Its President Sh. Subhash Kashyap
2097, Chah Indara, Dr. H.C. Sen Road,
Near Fountain, Delhi-110006. ....Respondent

Through: Mr. Ravinder Tyagi, Ms. Kanishka Tyagi, Mr. Sumit Kumar, Advocates .

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present **Regular First Appeal** under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed on behalf of the Plaintiff/Appellant against the Judgment and Decree dated

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26.08.2023, whereby the learned *Additional District Judge*, **had dismissed the Suit for Possession and Mesne Profits, filed by the Plaintiff.**

2. The Plaintiff/Appellant, *Smt. Radha Aggarwal* had filed a Civil Suit, being ***CS DJ No.613301/2016*** for *Recovery of Possession and Mesne Profits @* ***Rs.5,000/-*** *per month with interest @ 15% per annum against the Defendant.*

3. The ***facts in brief***, as stated in the Plaint, are that the Plaintiff, *Smt. Radha Aggarwal* was the sole and absolute owner/landlady of the property bearing MCD No. 2158, Ward No. II, Chah Indara, Dr. H.C. Sen Road, Fountain, Delhi-110006 *(hereinafter referred to as "suit property")*. It was asserted that the *Defendant had been inducted as a licensee on payment of* **Rs.5,000/-** per month for six months by the previous owner/landlord, on the assurance that he would make an arrangement for his alternate accommodation and would vacate the suit property. However, the Defendant failed to vacate the premises, despite several efforts of the erstwhile owner as well as the Plaintiff. It was also asserted that the Defendant failed to pay the license fee of **Rs.5,000/-** per month, since 01.01.2002.

4. The Plaintiff explained that the suit property was owned by *Smt. Bimla Devi,* by virtue of a registered Partition Deed dated **06.07.1962**. She executed a registered General Power of Attorney (GPA) dated **19.07.1979** in favour of *Shri Sunil Mohan*, who sold the property to *Shri Dinesh Kumar* vide registered Sale Deed dated **03.03.2000**.

5. Thereafter, *Shri Dinesh Kumar* filed *Civil Suit bearing No.118/2001, titled 'Shri. Dinesh Kumar vs. MCD & Slum'* for Permanent Injunction in respect of the suit property, to restrain the MCD & Slum Department from demolishing the constructions raised by him. The MCD and Slums filed a

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Written Statement and Status Report, wherein it was claimed that the Suit was without cause of action as they did not intend to demolish the Suit property. Accordingly, the Suit was disposed of on **11.09.2001,** by the Court of the learned Civil Judge, Delhi.

6. Thereafter, *Shri. Dinesh Kumar* executed a registered GPA dated **11.10.2000** in favour of *Shri. Anoop Kumar Aggarwal*, who sold the suit property by virtue of sale deed dated **12.06.2008** to the Plaintiff, *Smt. Radha Aggarwal*, who became the sole and absolute owner of the Suit property.

7. It was asserted that the Defendant was merely an unauthorized occupant in the suit property and was liable to vacate the suit property. The Plaintiff served a Legal Notice dated **18.08.2008** terminating the license of the Defendant and also sought license fees @ **Rs.5,000/-** per month with effect from 01.08.2005 to 31.07.2008, and thereafter, damages @ **Rs.10,000/-** per month for the illegal and unauthorized occupation of the Suit property.

8. The Defendant sent a Reply dated **02.09.2008**, which was *malafide*, and the Defendant intended to grab the property of the Plaintiff, even though he had no right, interest or claim in the Suit property. *Hence, the Plaintiff filed the Suit for Recovery of Possession and Mesne Profits @* ***Rs.5,000/-*** *per month, along with interest @ 15% per annum.*

9. The Defendant***, Mohalla Samiti (Regd.) through its President,*** in its **Written Statement** took the *preliminary objection* that the Suit does not disclose any cause of action. It was asserted that the Plaintiff claims herself to be the owner of the suit property, but in fact, the suit property is situated in a slum area and is covered under the Slum Areas (Improvement and Clearance) Act, 1956 *(hereinafter referred to as "Slum Act")*. Hence, the

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Suit for Possession is not maintainable. The Plaintiff has also not approached the Court with clean hands.

10. It was further asserted that *Shri. Dinesh Kumar* had never came in possession of the suit property. The question of his carrying out construction in the suit property, therefore, did not arise. The Defendant in fact, is a registered Society, registered with the Sub-Registrar of Society in the year 1959, and had been in possession of the suit property since the year **1957**. The possession of the Defendant has been exclusive, undisturbed, continuous, and to the complete ouster and within the knowledge of the real owner, *Chhunamal Saligram*, and thereafter, his legal heirs/successors, *Smt. Bimla Devi* and *Shri. Sunil Mohan*, etc.

11. The Defendant asserted that it had never paid any rent or license fee to any person i.e. *Chhunamal Saligram* or to his legal heirs, since the date it came into possession of the suit property. It was further asserted that *Shri. Dinesh Kumar*, *Shri. Anoop Kumar Aggarwal*, and the Plaintiff had never been in possession of the Suit property and thus, question of raising any construction in the premises does not arise. Also, the question of the suit property having been given on license basis by *Shri. Anoop Kumar Aggarwal*, or of making payment of **Rs.5,000/-** per month as license fee, does not arise. **The possession of the Defendant has been continuous, undisturbed and exclusive, since prior to 1957.**

12. The Defendant asserted that his possession was continuous, undisturbed and within the knowledge of the original owner, hence, it had acquired ownership by way of ***adverse possession***.

13. It was admitted that *Shri. Dinesh Kumar* had filed *Suit No. 118/2001*, but asserted that false averments were made therein that he had carried out

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repairs in the Suit property and the MCD had tried to demolish and dispossess him from the suit property. It was asserted that the Defendant was never impleaded as a party in the said Suit. The Defendant came to know about the filing of the said Suit, only when it received a copy of the Plaint from the Court. The Suit had already been dismissed on **11.09.2001,** by the learned *Civil Judge*.

14. ***On merits***, all the averments made in the plaint, were denied. It is asserted that in view of the submissions made in the *preliminary objections*, the Suit of the Plaintiff is liable to be dismissed.

15. The Plaintiff, in the ***Replication***, denied the averments made in the Written Statement. It was claimed that the Memorandum of Association of the Defendant reflects the address as H. No. 2109, Mohalla Indara Kuan, Delhi. This document does not refer to the suit property and the Receipts and documents relied upon, were forged and fabricated. The Annual Declaration dated **18.05.1998,** was tampered. The Site Plan was incorrect, and the photographs do not pertain to the suit property. All the documents of the Defendant were manipulated and do not establish any right of the Defendant in the suit property.

16. The ***Issues*** on the pleadings were framed *vide* order dated **20.08.2009,** as under:

> "*(1) Whether the suit of the plaintiff is not maintainable as there is no cause of action in favour of the plaintiff? OPD.*
>
> *(2) Whether the present suit is barred by the provisions of Slum Area Improvement & Clearance Act? OPD*

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(3) *Whether the defendant has become owner of the suit property by way of adverse possession? OPD*

(4) *Whether the plaintiff is entitled to the relief of possession as prayed for? OPP*

(5) *Whether the plaintiff is entitled to the relief of mesne profit as prayed for? OPP*

(6) *Relief."*

17. The Plaintiff examined **PW-1, Shri. Nitin Sharma, Mauza Clerk, Record Room (Civil), Tis Hazari, Delhi, who** brought the summoned file of the Suit No. 118/2001 and he proved the original plaint as **Ex.PW1/A**; certified copies of the order dated 05.03.2001, 26.04.2001, 16.05.2001, 23.08.2001, 11.09.2001 as **Ex.PW1/B (Colly)**; certified copy of judgment dated 11.09.2001 as **Ex.PW1/C**; certified copy of the decree sheet as **Ex.PW1/D** and certified copy of written statement filed by the MCD as **Ex.PW1/E**.

18. PW-2, Shri Sunil Kumar, UDC, Office of Sub-Registrar-1, Kashmere Gate, Delhi proved certified copy of the sale deed dated 12.06.2008 as **Ex.PW2/A**; certified copy of the site plan of the said sale deed as **Ex.PW2/B**; certified copy of the sale deed dated 03.03.2000 as **Ex.PW2/C**; certified copy of the site plan of the said sale deed as **Ex.PW2/D**.

19. PW-3, **Shri Nand Lal Puri, Zonal Inspector, House Tax Department, City Zone, MCD, Asaf Ali Road, Delhi** deposed that the Suit property was mutated in the name of *Smt. Radha Aggarwal* and proved the said Mutation Letter dated 06.11.2008 and House Tax Receipt dated 06.11.2008, as **Ex.PW3/A** and **Ex.PW3/B** respectively.

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20. **PW-4**, **Shri Virender Kumar, Z.I., House Tax Department, City Zone, Asaf Ali Road, Delhi** proved the certified copy of the Survey Reports of the year 1956, 1959-60, 1960-61 and 1970-71, as **Ex.PW4/A (Colly)**.

21. **PW-5**, **Shri Mahabir Singh, LDC from the office of Registrar of Societies**, proved the Certificate of Registration of Mohalla Samiti Indara Kaun, Delhi as **Ex.PW5/1** and List of members with their designation and the Rules and Regulations of the Society, as **Ex.PW5/2 (Colly)**.

22. **PW-6**, **Shri Anoop Aggarwal, husband of the Plaintiff,** tendered his evidence by way of Affidavit, **Ex.PW6/A**. He proved the power of Attorney executed by Plaintiff in his favour dated 26.06.2014 as **Ex.PW6/1**; original site plan of the suit property as **Ex.PW6/2**; General Power of Attorney dated 11.10.2000 executed by Shri. Dinesh Kumar in his favour as **Ex.PW6/6** and legal notice dated 18.08.2008 and its reply dated 02.09.2008 as **Ex.PW6/7 (colly)**.

23. **PW-7**, **Shri Anil Kumar Gupta** deposed that he prepared the site plan of the suit property, **Ex.PW6/2**.

24. The Defendant examined **DW-1**, **Shri Subhash Chand Kashyap**, who tendered his evidence by way of Affidavit. He proved the photographs of carrying out the repairs as **Ex.DW1/A** to **Ex.DW1/H**; site plan of the suit property as **Ex.DW1/I**; Application for electricity connection dated 13.12.2006 as **Ex.DW1/J**; Demand Note dated 21.12.2006 as **Ex.DW1/K**; Membership Receipts dated 22.11.1988, 23.11.1988 and 01.11.1988 as **Ex.DW1/L (colly)**; letter dated 03.12.2001 as **Ex.DW1/M**; Notice dated 18.08.2008 as **Ex.DW1/N**; UPC receipt as **Ex.DW1/O** and postal receipt of registered AD post as **Ex.DW1/P**.

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25. **DW-2**, **Shri Satish Sharma, APO, BSES, Chandni Chowk, Town Hall, Delhi** proved the record pertaining to electric connection installed at the Suit property as **Ex.DW2/1 (colly)**.

26. **DW-3**, **Shri Bal Krishan Kapoor, UDC, DUSIB, ITO, New Delhi** proved office copy of form of supply of information dated 13.04.2009 as **Ex.DW3/1**, copy of letter dated 02.04.2009 written by Sh. G. S Mehra Deputy Director as **Ex.DW3/2** and copy of reply dated 30.03.2009 sent by Director (TP) as **Ex.DW3/3**.

27. **DW-4**, **Shri Pooran Chand Kaushik** tendered his evidence by way of Affidavit, **Ex.DW4/A**.

28. The ***learned Additional District Judge (ADJ)*****, on appreciation of the evidence,** concluded that the suit property was situated within the Slum Notified Area, and the Suit for possession was not maintainable, without permission under Section 19 of the Slum Act from the Competent Authority.

29. The learned *ADJ* further considered that the Plaintiff had adduced evidence to prove that she had purchased the property from *Shri Dinesh Kumar*. However, it was asserted that the possession was handed over to *Shri Dinesh Kumar*, who in turn gave it back to Mohalla Samiti on license basis @ **Rs.5,000/-** per month which was paid till 01.01.2002.

30. The learned *ADJ* referred to the Survey Reports of the MCD for the years 1956, 1959-60, 1960-61 and 1970-71 wherein Mohalla Samiti was shown to be in possession of the property, and the rent per month was recorded as "free." It was observed that the Plaintiff had not been able to prove that the erstwhile owners had inducted Mohalla Samiti as a tenant or an occupier or was paying any rent. *The alleged tenancy of the Defendant was held to be neither pleaded nor proved, not much significance to one*

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entry in the Survey Report of 1970–1971 where the rental was reflected as Rs.21/-, could be attached. It was found from the Survey Reports that Mohalla Samiti has been in continuous possession since 1957, without paying any rent to the original owner.

31. This fact was further fortified by the Sale Deed dated **03.03.2000**, **Ex.PW2/C** executed in favour of *Shri Dinesh Kumar*, from whom the Plaintiff through her husband, claimed to have purchased the suit property. In the Sale Deed, it was specifically mentioned that the property in question was an old property and was *in the occupation of unauthorized occupants*, for the last several years.

32. The moment, the owner from whom the title has come to the Plaintiff states that the property was in occupation of unauthorized occupants, it means that the occupation of such persons is open i.e. known to the owner and is hostile because the owner claims the occupation to be unauthorized. It was concluded that the Defendant was shown to be in continuous, open, and hostile possession of the Suit property to the complete ouster of the original owner in question, for more than 12 years.

33. The learned *ADJ* observed that the claim of the Plaintiff that the Defendant had handed over the possession of the suit property to the Plaintiff and had thereafter, been inducted as a licensee @ **Rs.5,000/-** per month, was *highly improbable*. It was against normal human conduct that a person who is in settled rights of occupation for a long period, would suddenly hand over the possession to the new purchaser and thereafter, become a licensee under him. Furthermore, the Plaintiff failed to prove the date on which the Defendant became a licensee under her.

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34. **PW-6**, *Shri. Anoop Kumar Aggarwal*, also did not depose that he had handed over the property on license basis to the Defendant in the GPA dated **11.10.2000**, **Ex.PW6/6** executed by Shri Dinesh Kumar, or specify the date when he allegedly done so. Furthermore, there is no receipt of payment of license fee. The creation of alleged license in favour of Defendant was thus, held to be not proved by the Plaintiff.

35. **It was thus, concluded** that the Plaintiff failed to prove that after the purchase of property by her predecessor-in-interest, he had regained the possession of the suit property or had thereafter, given it again to the Defendant on license basis. Further, it was held that the Defendant had proved and became owner by virtue of *adverse possession*, and therefore, the Plaintiff was not entitled to the relief of possession. **Consequently, the Suit of the Plaintiff for Possession and Mesne Profits, was dismissed.**

36. ***Aggrieved by the dismissal of the Suit, the present Regular First Appeal has been preferred by the Plaintiff***.

37. The ***grounds of challenge*** are that the evidence led by the parties has not been appreciated, in the right perspective. It has not been considered that the Plaintiff had every right, title, and interest in the suit property, being the owner thereof.

38. The Plaintiff became the owner of the suit property by virtue of a registered Sale Deed executed in her favour, by the erstwhile owner. The Respondent had challenged the validity of the Sale Deed and the chain of documents by way of a Suit for Declaration, which was dismissed vide Order dated 26.09.2018 by the learned Civil Judge, Tis Hazari, Delhi, against which an Appeal is pending before the Court of the learned *ADJ*.

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39. Furthermore, in the Survey Reports, it was duly recorded that the Defendant was a tenant at a monthly rent of Rs.21/-. Mohalla Samiti had surrendered the tenancy in favour of *Shri Dinesh Kumar*, who carried out repairs. The Civil Suit No. 118/2001 had been filed by him to restrain the MCD and Slums Department from demolishing his property. The Suit was disposed of, vide Order dated 11.09.2001.

40. The Suit property had been let out by *Shri Dinesh Kumar*, the erstwhile owner, to Mohalla Samiti as a licensee, on a monthly charge of **Rs.5,000/-**, and protection under the Delhi Rent Control Act automatically became extinct. The subsequent purchase of the property by the Plaintiff, gives her the right to seek Possession and Mesne Profits.

41. The finding of the learned *Trial Court* that the Defendant became the owner by virtue of adverse possession, is patently incorrect. It is therefore, prayed that the impugned judgment be set aside and the Suit of the Plaintiff be decreed.

42. The Plaintiff/Appellant, in her **Written Submissions**, had asserted that the Slum Act is not applicable as it was enacted *inter-alia* for protection of tenants in slum areas, from eviction. Section 19 of the Slum Act states that proceedings for eviction of tenants would not take without the permission of the Competent Authority. But it would come into picture only when there exists a relationship of Landlord and Tenant between the parties.

43. The Defendant had denied this relationship and claims the ownership by *adverse possession*. It was asserted that no permission under Slums Act was mandated, as the Plaintiff pleaded herself to be the owner of the suit premises by the virtue of registered sale deed and the Defendant was an

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illegal occupant. The reliance was placed on *Satender Jain vs. Satya Narain* decided on 09.09.2021.

44. **The** Defendant/Respondent, in its **Written Submissions,** had referred to the Survey Reports, **Ex.PW4/A** to assert that the learned *ADJ* has rightly dismissed the Suit for Possession. Moreover, it has been rightly held that the Suit is barred under the Slum Act.

45. It is also contended that there is no date given when the Respondent was inducted as a licensee, but only it was asserted that license fee has not been paid since 01.01.2002. There was no evidence, whatsoever, to show that the Defendant was ever inducted as a licensee. The Defendant was in occupation of the Suit property since 1957 and no action taken by any of the erstwhile owners and has acquired ownership rights by way of adverse possession.

46. It was thus, contended that there is no infirmity in the impugned Judgment and the Appeal is liable to be dismissed.

Submissions heard and record perused.

47. The Plaintiff/Appellant had sought possession of the suit Property from the Defendant/Respondent by asserting that she was the owner of the suit property. She had explained her ownership by producing the registered Sale Deed dated **03.03.2000**, **Ex.PW2/C**, in favour of Mr. Dinesh Kumar. The recitals in this Sale Deed reflect that *Smt. Bimla Devi* had acquired ownership in the suit property, by virtue of a registered Partition Deed dated **06.07.1962**. Thereafter, she sold the property to *Shri. Dinesh Kumar*, through her Power of Attorney Holder, *Shri. Sunil Mohan* S/o *Shri Ram Mohan*.

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48. In the Sale Deed dated **03.03.2000**, **Ex.PW2/C**, it was clearly stated that the aforesaid property was an old property, which has been in occupation of unauthorised occupant for last many years. It was stated to be free from any kind of incumbrances such as sale, mortgage, gift, court orders, decree etc. and that there was no defect in the title of the vendor. *Shri. Dinesh Kumar,* thus, acquired ownership by virtue of registered Sale Deed dated **03.03.2000**, **Ex.PW2/C**.

49. Thereafter, *Shri. Dinesh Kumar* executed a registered GPA dated **11.10.2000** in favour of Mr. Anoop Kumar Aggrawal, who then executed the Sale Deed dated **12.06.2008**, **Ex.PW2/A** in favour of his wife, the Plaintiff i.e. *Smt. Radha Aggarwal*. The chain of documents as proved by the Plaintiff, therefore, establishes that the Plaintiff has acquired ownership by virtue of registered Sale Deed dated **12.06.2008**, **Ex.PW2/A**.

50. *The Defendant in the Written Statement* has asserted that it was registered as a Society with the Sub-Registrar of Society in the year 1959 and had been in possession of the Suit property since the year 1957. It was also claimed that their possession was exclusively undisturbed and to the knowledge of the real owner i.e. *Shri. Chhunamal Saligram and thereafter, his legal heirs/successors, Smt. Bimla Devi and Shri. Sunil Mohan etc.*

51. The Defendant, therefore, have admitted in his Written Statement the original ownership in the name of *Smt. Bimla Devi* and *Shri. Sunil Mohan,* etc. The admissions of the Defendant in the Written Statement coupled with the documents of title proved by the Plaintiff, establishes that she has acquired ownership in respect of the suit premises, by virtue of the registered Sale Deed dated **12.06.2008**, **Ex.PW2/A**.

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52. Even if for the sake of arguments, it is accepted that there was any defect in the earlier Sale Deed dated **03.03.2000, Ex.PW2/C**, but Section 27 of the Limitation Act, 1963 provides that upon the expiry of the period prescribed under the Limitation Act for instituting a suit for possession of any property, the right to such property itself is extinguished.

53. Pertinently, the Defendant had challenged the validity of the Sale Deed and the chain of documents relied upon by the Plaintiff, in a Suit for Declaration, which has been dismissed *vide* Order dated **26.09.2018** by the learned Civil Judge, Tis Hazari, Delhi, though, an Appeal is pending in the Court of learned *ADJ*.

54. Once, the parent Sale Deed dated **03.03.2000, Ex.PW2/C**, is without any challenge, the subsequent Sale Deed dated **12.06.2008**, **Ex.PW2/A** executed by *Shri. Dinesh Kumar*, through his Power of Attorney Holder, *Shri. Anoop Kumar Aggarwal*, in favour of the Plaintiff, cannot be questioned. The chain of documents proved by the Plaintiff, establishes that she is the registered owner of the suit property.

55. The ***next aspect*** for consideration is the capacity in which the Defendant is admittedly in occupation of the suit property. The Defendant had claimed to be in possession of the suit property since 1957, which is also confirmed from the recital in the Sale Deed dated **03.03.2000, Ex.PW2/C**, executed in favour of *Shri. Dinesh Kumar*, the predecessor-in-interest, that *the suit property was in occupation of the unauthorised occupants.*

56. It was for the Defendant to establish the capacity in which, he was in occupation of the suit property. The first set of documents, which are relevant for consideration is the **Municipal Survey Report**, **Ex.PW4/A(colly)**. The Survey Report for the year 1959-60, records that the

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Ground Floor premises are in occupation of the Panchayati Chaupal for which, there was no actual rent per month being paid, but the estimated fair rent was stated to be Rs.21/-. The First Floor having one tin room, was indicated to be used for the residential purposes for which, the actual rent per month was stated to be Rs.4/-. Similar was the Survey Report for the year 1960-61. However, in the Survey Report of the year 1970-71, it was indicated that the name of the intruder was Mohalla Panchayat and the rent rate was stated to be Rs.21/-.

57. However, it is the case of the Defendant itself that its possession relates back to 1957. There is not an averment that he was ever inducted in the premises, as a tenant. Therefore, the learned *ADJ* had rightly noted that one sole entry in the Survey Report of 1970-71, is not sufficient to establish that the Defendant was in occupation of the suit premises as a tenant; rather the Survey Report for the early years clearly reflects that no rent was being paid but the fair estimated rent was stated to be Rs.21/-.

58. From the Survey Reports, as well as, from the recital in the Sale Deed, dated **03.03.2000**, **Ex.PW2/A** along with the admissions of the Defendant, clearly reflect that the Defendant was in occupation of the suit property, without any right or title.

59. The Defendant is admittedly not the tenant and is, therefore, in occupation of the suit property without any permission or basis. It is evident that he is the unauthorized occupant in the suit property. Being the unauthorized occupant from whom the possession had been sought by the Plaintiff by way of Legal Notice dated **18.08.2008** terminating the license. The Defendant has no right or title to continue in the Suit property.

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60. The sole basis on which the Defendant is claimed a right to continuing possession of the suit property is that, his possession was adverse to the original owners, who were having the knowledge of the occupation of the Suit property by the Defendant. The Defendant thus claimed the ownership by way of *adverse possession* on account of *his long, continuous and uninterrupted occupation of the suit property for several decades.* However, mere length of possession, howsoever prolonged, does not confer ownership by adverse possession. The law in regard to *adverse possession* is well-settled.

61. The Supreme Court in *Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.,* (2019) 8 SCC 729, has reiterated that a person claiming adverse possession must establish that his possession was *nec vi, nec clam, nec precario,* i.e., peaceful, open, continuous and hostile to the title of the true owner, with the requisite *animus possidendi*, for the statutory period of twelve years.

62. Furthermore, in *Narasamma v. A. Krishnappa (Dead) through LRs.,* AIR 2020 SC 4178, it was held that a person claiming ownership under an independent title, cannot simultaneously claim adverse possession from the same date. Upon failure of the asserted title, it is necessary to establish when the possession became hostile to the true owner.

63. The aforesaid position has recently been reiterated by the Supreme Court in *Bhag Singh (D) through Mahant Kashmir Singh v. Basant Kaur (D) through LRs.,* 2026 INSC 983. It was observed that where possession is referrable to a lawful or permissive origin, mere lapse of time does not render it adverse; there must be clear and unequivocal evidence of the point at which such possession became hostile to the true owner. Significantly, the

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Apex Court further held that *the absence of pleadings identifying the commencement of hostile possession is not a mere technical defect, since unless such commencement is pleaded and proved, the statutory period for adverse possession cannot even begin to run.* Mere continuous occupation for several decades, without any clear assertion of hostile ownership to the knowledge of the true owner, cannot mature into adverse possession.

64. In the present case, the Defendant has not been able to establish that his possession was adverse, open or hostile to that of the erstwhile owners or of the present owners. *In view of the aforesaid, the Defendant cannot claim any right in the suit property by way of adverse possession.*

65. The Defendant had tried to take the benefit of the contradictions in the case of the Plaintiff, who had asserted that *Shri. Dinesh Kumar*, after having acquired the suit property by virtue of the Sale Deed, dated **03.03.2000**, had filed a Civil Suit No. 118/2001 against MCD and Slum for Permanent Injunction to restrain the MCD and Slum Department from demolishing the construction raised by him.

66. The MCD had given a Statement that they did not intend to demolish the Suit property and the Suit got disposed of on 11.09.2001, by the learned Civil Judge. It is claimed by the Defendant that the suit property had always been in occupation of the Defendant and *Shri. Dinesh Kumar* never came in physical possession of the suit property and there was no question of he having raised any construction thereon.

67. Whether *Shri. Dinesh Kumar* had raised any construction or not, the fact remains that the Defendant, who was in occupation of the suit property, was unauthorized occupant and mere filing of the Suit by *Shri. Dinesh Kumar* alleging that he had raised construction in the suit property, would

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not ensure to the benefit of the Defendant, who admittedly has been in occupation of the suit property.

68. It was further claimed by the Defendant that there was no question of giving the property on license basis by *Shri. Anoop Kumar Aggarwal* or the Defendant having made payment of **Rs.5,000/-** per month as license fee. It may be that such averments made by the Plaintiff were incorrect, but it cannot be overlooked that the Plaintiff is a subsequent purchaser of the suit property and it has already been held that she is the owner of the suit property.

69. The Defendant, who denies being a tenant or a licensee in the suit premises, is nothing but an unauthorized occupant as already held above. Therefore, once the permission is withdrawn by the registered owner of the suit property, the Defendant is liable to vacate the property.

70. Article 65 of the Limitation Act, 1963 provides for limitation for filing the Suit for Recovery of Possession of immovable property. It provides that the Suit for Possession may be filed within a period of 12 years since the date, when the possession of the Defendant becomes adverse to the true owner.

71. In the present case, it has already been found that the possession of Defendant was not adverse to that of the owner of the property and, therefore, the Suit of the Plaintiff to seek possession, was maintainable. The learned *ADJ* fell in error in construing the long possession of Defendant as adverse possession and thereby, dismissing the Suit for Possession of the Plaintiff.

72. It is, therefore, held that the Plaintiff being the owner and Defendant being an unauthorized occupant having no legal right to continuing in the

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Suit property, and is liable to be evicted. ***Therefore, the Plaintiff is entitled to a Decree of Possession.***

73. The ***last objection*** raised by the Defendant was that the suit property is situated in a notified Slum Area and**, therefore, the Suit for Possession was not maintainable without obtaining prior permission of the Competent Authority under Section 19 of the Slum Act.** Further, *vide* the Notification No. SRO 1252 dated **10.04.1957** provided that the Ward Number I to VI were declared as the areas falling in the slum area.

74. Even if it is accepted in terms of this Notification that the suit property was located in slum area, but the question which arises for consideration is whether the protection contemplated under Section 19(1) extends to *every person in occupation of property situated in a notified slum area, irrespective of the legal character of such occupation, or is confined to persons who qualify as tenants in law.*

75. Section 19(1) of the Act reads as under:

> *"19. Proceedings for eviction of tenants not to be taken without permission of the competent authority.(1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority, (a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or*
>
> *(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order."*

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76. Pertinently, Section 19 itself clearly provides that *proceedings for eviction of tenants cannot be taken without permission of the Competent Authority.* It is, therefore, evident that the bar of Section 19 of the Slum Act is applicable only in the case of tenants and not the other occupiers.

77. This distinction was considered by the Full Bench of this Court in *Punnu Ram & Ors. v. Chiranji Lal Gupta & Ors., AIR 1982 Delhi 431*. While examining the scheme of the enactment, the Full Bench also considered the meaning of the expression "tenant", which, unlike "occupier", has not been separately defined under the Act. Rejecting the contention that every person in occupation of property situated in a slum area was entitled to the protection of Section 19, the Full Bench expressly held:

> *"The protection contemplated is for a tenant as recognised by law. A mere occupier cannot be equated to a tenant. An occupier may be a trespasser or a licensee or a tenant. The concept of welfare State cannot extend to giving protection to trespasser or persons who have no right of occupation. Therefore, when the Legislature used the term 'tenant' in Section 19 as well as in the Preamble of the Act it meant tenant-in-law."*

78. The Full Bench, therefore, drew a clear distinction between a tenant recognized in law and a person who is merely in occupation of the premises. The expression *"occupier" under Section 2(f), is wider in its scope and may include a licensee, trespasser or tenant.* However, the Legislature consciously employed the expression "tenant" in Section 19, thereby restricting the statutory protection to persons possessing the requisite legal status of a tenant. The mere fact that a person continues in physical possession of premises situated in a notified Slum Area does not, by itself, bring such person within the protective ambit of Section 19(1).

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79. The said principle was reiterated in *Giri Raj (Since Deceased) Through LRs. v. Deepak Gupta & Ors., RSA 151/2012*, decided on 12.09.2013, and *Satender Jain v. Satya Narain Sanjiv Gupta HUF, RSA 139/2019*, decided on 09.09.2021.

80. The legal position emerging from the aforesaid decisions is that the applicability of Section 19(1) depends upon the legal character of the Defendant's occupation and not merely upon the location of the suit property within a notified slum area.

81. In the present case, this objection of the Defendant that the Suit for Possession not being maintainable in view of Section 19, is not tenable as Defendant is not a tenant, but an unauthorized occupant in the suit property.

Conclusion:

82. In view of the aforesaid discussion, it is hereby held that the impugned Judgment dated **26.08.2023** dismissing the Suit for Possession is hereby, set aside and the ***Suit of the Plaintiff for Possession of the Suit property, is hereby decreed***.

83. The Plaintiff had claimed Mesne Profits @ **Rs.5,000/-** per month, but has not led any evidence in proof thereof. There was a specific Issue No. 5 framed in respect of the Mesne Profits. Despite this, no evidence whatsoever has been led by the Plaintiff and, ***therefore, no Mesne Profits can be granted to the Plaintiff. The dismissal of the Suit in regard to the grant of Mesne Profits is, therefore, upheld.***

84. The Appeal is accordingly ***partly allowed in regard to the relief of Possession, but dismissed in regard to the relief of Mesne Profits*.**

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85. Pending Application, if any, is disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 19, 2026/va/RS

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