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

% ***Reserved on: 10th August, 2026***
Pronounced on: 27th October, 2026
Uploaded on: 29th October, 2026

CNR No. DLHC010781322023

\+ **RSA 104/2024 & CM APPL. 35995/2024**

SHRI RAJ KUMAR AGGARWAL
S/o Late Shri Suresh Chand
R/o 343, Gali Bajrang Bali,
Chawri Bazar, Delhi-6 .....Appellant

Through: Mr. Siddharth Aggarwal, Adv.

versus

1. **KRISHNA DEVI**
W/o Late Shri Ashok Kumar .....Respondent No.1

2. **SHRI RAVI**
S/o Late Shri Ashok Kumar
Both R/o C-7, Ground Floor,
New Police Line, Kingsway Camp,
Delhi-110009. ....Respondent No. 2

3. **MUNICIPAL CORPORATION OF DELHI**
District Central, Delhi
Through:
Chief Vigilance Officer
Vigilance Department of Delhi (City Zone)
26th Floor, Civic Centre, Dr. Mukherjeet Marg,
Minto Road,
New Delhi-2 ...Respondent No. 3

4. **S.H.O.**
P.S. Hauz Qazi,
Delhi-110006. ...Respondent No. 4

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Through: Ms. Radhika Bishwajit Dubey, CGSC with Ms. Gurleen Kaur Waraich, Mr. Kritarth Upadhyay, Mr. Vivek Sharma, Mr. Amulya Dev Mishra, Mr. Saksham Sharma and Mr. Ayush Dogra, Advs. for R-3 & R-4.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present **Regular Second Appeal** under Section 100 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed on behalf of the Plaintiff/Appellant against the Judgment dated **21.08.2023** in **RCA DJ No. 70/2020,** whereby the learned *Additional District Judge,* had upheld the Judgment of the learned *Civil Judge* in *Civil Suit No. 98148/2016* (Old CS No. 26/2015) whereby the Suit of the Plaintiff for Permanent and Mandatory Injunction, was dismissed *vide* Judgment dated **20.12.2019**.

2. The Plaintiff/Appellant, Mr. Raj Kumar Aggarwal had filed ***Suit No. 98148/2016*** for *Permanent and Mandatory Injunction* for restraining Defendants No. 1 to 4 from entering in suit premises and removal of the encroachment made by them in the suit gallery i.e. First Floor of Property No. 410-414, Bazar Sita Ram, Delhi-110006 and also to direct the Defendant Nos. 5 & 6 for removal of the *chabutra* and the tea stall erected there over and also for Permanent Injunction to restrain the Defendant Nos. 1 to 4, from creating any nuisance in the suit property and adjoining tea stall in the Gali.

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3. The ***facts in brief***, as stated in the Plaint, are that Plaintiff, Shri. Raj Kumar Aggarwal is the co-owner of the suit property having right, title and interest as a co-owner and is in occupation of the property. The Defendant No. 1 at first tried to encroach in the suit premises on 05.02.2013 for which, a Complaint was lodged and she was removed. Thereafter again, on 05.01.2014, Smt. Krishna Devi i.e. the Defendant No. 1, forcibly kept her belongings in the gallery on First Floor of the suit premises and has also started staying in the gallery. Apart from this, the Defendant Nos. 1 to 4 had made an encroachment on the main gate of the suit property. They have installed a tea stall and have made a pucca *chabutra* in the street adjoining to the suit property.

4. It was claimed that even prior to it, the aforesaid Defendants had broken open the locks of the shop of the Plaintiff in the suit premises and had committed theft in the shop for which, FIR No. 11 under Section 448/380/34 of the Indian Penal Code, was registered against the Defendant Nos. 2 to 4. Thereafter, the Defendant No. 1 encroached over the gallery by putting her belongings in huge quantity and has even started residing in the gallery.

5. The Plaintiff had lodged a number of complaints at Police Station Hauz Quzi, Delhi/Defendant No. 6, as well as, to the Municipal Corporation of Delhi/Defendant No. 5 but no action has been taken. The Plaintiff sent a Legal Notice dated 25.09.2014 to both the Defendant Nos. 5 and 6 and a copy to the Defendant Nos. 1 to 4. A request was also made to the Defendant Nos. 5 and 6 for removal of the tea stall and the *chabutra*, which was an unauthorised construction. Despite service of the Notice, the Defendant Nos. 1 to 4 failed to vacate the gallery or remove the

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encroachment rather they have been threatening the Plaintiff that they would capture the entire property. Hence, the Plaintiff filed the Suit for Permanent and Mandatory Injunction for restraining Defendants Nos. 1 to 4 from entering in suit premises and removal of the encroachment made by them in the suit gallery and also to direct the Defendant Nos. 5 & 6 for removal of the *chabutra* and the tea stall erected there over. The Plaintiff also sought Permanent Injunction to restrain the Defendant Nos. 1 to 4 from creating any nuisance in the suit property.

6. The *Defendant Nos. 1 and 2* in their **Written Statement**, took the preliminary objections that they have neither invaded nor extended any threat to invade the legal rights of the Plaintiff. The Suit was claimed to be not maintainable on the ground that the Plaintiff had no *locus standi* to institute the Suit. It was stated that one *Smt. Sudha Gupta* claimed herself to be the owner of the suit property and the Plaintiff was a stranger to the Defendants.

7. It was further asserted that the relief by way of Permanent and Mandatory Injunction, in fact amounts to asking for Possession. The Hon'ble Court is not to be guided by the nomenclature of the Suit but by the contents of the plaint and prayer made therein. The Plaintiff has alleged that the Defendant No. 1 is a rank trespasser and the Suit for Mandatory Injunction, therefore, is not maintainable. The value of the subject matter of the suit is more than Rs. 20 Lakhs, which is beyond the pecuniary jurisdiction of the Civil Court. Furthermore, the Suit has been instituted by affixing the fixed court fees, which is not as per law as this being a Suit for Recovery of Possession. The Suit has neither been valued correctly nor has

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the court fee been paid properly. The Suit has been undervalued for the purpose of court fees and the jurisdiction.

8. It is further claimed that the Suit is bad for misjoinder of the Defendant Nos. 3 and 4, who have nothing to do in the present case. Furthermore, the Plaintiff has not approached the Hon'ble Court with clean hands and has concealed material facts. The Defendant No. 1 is in possession of the gallery in question for last more than 35 years, a fact, which has not been disclosed in the Plaint.

9. The Suit is barred by limitation since she is in occupation of the gallery since last more than 35 years. Her possession is hostile and adverse to that of the real owner and, therefore, she has become owner of the suit portion by fiction of law and she cannot be dispossessed form the suit property. It is further claimed that the Plaint does not disclose any cause of action and is liable to be rejected under Order VII Rule 11 CPC.

10. ***On merits***, the Defendant Nos. 1 and 2 reiterated that one *Smt. Sudha Gupta*, had represented herself as the owner of the suit property and denied that the Plaintiff was the occupier or the co-owner. It was further denied that Defendant No. 1 tried to encroach the gallery on 05.02.2013 or that a Complaint was lodged. It is claimed that this averment has been made only to give semblance that she has recently occupied the premises but in fact, she has been in occupation for last 35 years. It is falsely alleged that the Defendant No. 1 had again occupied the premises on 05.01.2014. It is further denied that the Defendant Nos. 1 to 4 have installed a tea stall and have made a pucca *chabutra*. It is claimed that the tea stall is an old one, which was being run by the husband of the Defendant No. 1, for last 40

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years. The husband expired in the year 2006 and thereafter, Defendant Nos. 1 and 2 have been running the tea stall for their livelihood.

11. It was further denied that the Defendants broke open the locks of the shop of the Plaintiff or committed theft. It is asserted that the FIR has been registered falsely in order to put pressure on the Defendants, to vacate the portion in their occupation. All the other averments were denied and it was asserted that the Suit of the Plaintiff was liable to be rejected.

12. The *Defendant No. 5/North DMC* in its **Written Statement** claimed that the Suit was barred under Sections 477 and 478 of the Delhi Municipal Corporation Act, 1957 Act for want of service of statutory notice. It was further claimed that as per the record, a raid was conducted by the Food Hygienic Department, City Zone, North DMC Delhi, in the area of Chawri Bazar and Sita Ram Bazar on 13.04.2015 with the help of Police of Police Station Hauz Qazi, Delhi. During the raid, some articles from the site in question i.e 410-414, Bazar Sita Ram, Delhi, were seized *vide* a Seizure Memo by the concerned officials and deposited in the Malkhana City Zone.

13. The suit property was inspected on 18.04.2015 and during the inspection, the *chabutra* was found to have been removed by the owner/occupier of the property in question. It was further claimed that the Plaint does not disclose any cause of action. It was further asserted that the Defendant No. 5 has been impleaded through Chief Vigilance Officer, Department of MCD, New Delhi, which is not the proper impleadment. It is North DMC through its Commissioner, Civic Centre, Minto Road, New Delhi, who should have been made a party. ***On merits***, the defence as narrated in the preliminary objections, was reiterated.

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14. The *Defendant No. 6/SHO, P.S. Hauz Quzi* was deleted *vide* Order dated **01.04.2015** and Amended Memo of Parties was filed on behalf of the Plaintiff.

15. The Defendant Nos. 3 and 4 were deleted *vide* Order dated **25.04.2016** as no relief was claimed against them and since the year 2016, none had been appearing on their behalf but no Amended Memo of Parties was filed on behalf of the Plaintiff.

16. The following ***Issues*** were framed *vide* Order dated **05.06.2015**, which are as under:-

(i) *Whether plaintiff is entitled to the decree of permanent injunction, as prayed for? OPP*

(ii) Whether plaintiff is entitled to the decree of mandatory injunction, as prayed for? OPP

(iii) Relief

17. Further, the following ***Additional Issues*** were framed *vide* Order dated **05.09.2016** are as under:-

2A Whether the Suit of the plaintiff is barred by limitation? OPD

2B Whether the Suit of the plaintiff is properly valued for the purpose of court fees and jurisdiction? OPD

2C Whether the defendants No. 1 and 2 have become owner of the red portion of the suit property as shown in the site plan by way of adverse possession? OPD

2D Whether the plaintiff is the co-owner of the suit premises? OPP

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2E Whether the suit is maintainable in the present from? OPD

18. The Plaintiff, *Shri. Raj Kumar Aggarwal*, examined himself as **PW-1** and tendered his evidence by way of Affidavit **Ex.PW1/A**. He proved the Site Plan as **Ex.PW-1/1**, Legal Notice dated **25.09.2014** as **Ex.PW-1/2**, the postal receipts as **Ex.PW-1/3** to **Ex.PW-1/8**. He also produced complaint dated 17.07.2014 as **Mark A**, FIR dated 07.01.2014 as **Mark B**, complaint dated 05.01.2014 as **Mark C**, complaint dated 05.02.2013 as **Mark D**, Registered Will dated 08.10.1989 as **Mark E**, Death Certificate of his father as **Mark F** and Sale deed dated 17.07.1972 as **Mark G**. The photographs of the site are **Ex.PW-1/16** to **Ex.PW-1/21**. In his cross-examination, he proved compromise deed between him and his stepmother, *Smt. Sudha Gupta* dated **10.06.2016**, which is exhibited as **Ex.PW-1/D1 (Colly)**.

19. The Defendant No. 2, *Shri Ravi Gupta*, examined himself as DW-1 and tendered his evidence by way of Affidavit, **Ex.DW-1/A**. No evidence was led on behalf of the Defendant No. 5.

20. The **learned *Civil Judge*, on appreciation of the evidence**, *vide* Judgment dated **20.12.2019** held that the Plaintiff had failed to produce any kind of admissible evidence to establish his co-ownership in the suit property. The only document produced was the Settlement Deed dated **10.06.2016**, **Ex.PW-1/D1** but being an unregistered document, it was inadmissible in evidence. The alleged Will of the grandmother of the Plaintiff, whereby half of the share in the suit property, was bequeathed in favour of the Plaintiff, had also not been proved. Therefore, it was held that the Plaintiff has not been able to prove his co-ownership in the suit property.

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Consequently, it was held that the Plaintiff was not entitled to the relief of Permanent and Mandatory Injunction.

21. The learned *Civil Judge* further considered the plea of adverse possession taken by the Defendant No. 1, to claim their ownership in the suit gallery but it was found that the Defendants were unable to prove their possession of the suit property for a long time. Also, it was held that they were not able to prove that the Suit was barred by limitation. In regard to the suit valuation, it was held that the relief of Mandatory Injunction was not maintainable as no relief of possession had been sought and the Suit had not been filed in the appropriate forum. The Suit of the Plaintiff was consequently dismissed.

22. The Plaintiff filed ***First Regular Appeal*** bearing **RCA DJ 70/2020** to challenge the judgment and decree dated **20.12.2019** whereby the learned *Civil Judge* dismissed the Suit. However, the learned *Additional District Judge*, re-appreciated the evidence and concurred with the findings of the learned *Civil Judge,* that the original Sale Deed or the certified copy of the ownership documents had not been produced by the Plaintiff.

23. Furthermore, the Plaintiff had placed reliance on the Will of his grandmother but the same was not proved, in accordance with Section 67 and 68 of the Indian Evidence Act. It was also found that the Plaintiff had relied upon a Deed of Family Settlement with his step mother, *Smt. Sudha Gupta* but there was no evidence led in respect of this Family Settlement. The learned *ADJ*, therefore, concurred with the findings of the learned *Civil Judge* that the Plaintiff had failed to prove the documents of his title.

24. The Plaintiff had claimed that he and his sister had purchased a remaining portion of the suit property from *Smt. Sudha Gupta* but then, the

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document creating any new rights in respect of immovable property apparently of value of Rs. 100 or upwards required compulsory registration under Section 17 of the Indian Registration Act, 1908. No such registered document had been produced by the Plaintiff. It was further noted that it was not the case of the Plaintiff that the Defendant No. 1 was a licensee or that her license was terminated compelling her to vacate the property by way of Mandatory Injunction under Section 39 of the Specific Relief Act, 1963.

25. In fact, as per the assertions of the Plaintiff, the Defendant No. 1 was a trespasser in the Suit in gallery. Therefore, the appropriate remedy available to the Plaintiff was to file a Suit for Possession and pay the appropriate court fees for the relief and that the Suit for Mandatory Injunction was not maintainable. It was thus held on reappreciation of the evidence that the Suit of the Plaintiff had been rightly dismissed. Consequently, the First Appeal was also dismissed.

26. Aggrieved by the dismissal of the Suit as well as the First Regular Appeal, ***the present Regular Second Appeal has been preferred under Section 100 CPC***.

27. The ***first challenge*** is that the right to challenge a Will is of the natural heirs of the deceased testator. Here all the natural heirs of *Late Smt. Kiran Devi* had admitted her last registered Will dated **08.10.1989** which is evident from the Memorandum of Understanding/Deed of Family Settlement dated **10.06.2016**. When all the natural heirs including *Smt. Sudha Gupta* (*whom the Defendant Nos. 1 and 2 were claiming to be the owners of the property in dispute)* admitted that by virtue of the said Will, undivided half share of *Late Smt. Kiran Devi* was bequeathed in favour of her grandson, i.e. the Plaintiff herein. Furthermore, it is admitted that the

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other undivided half share of the property in question was owned by *Shri. Suresh Chand* and the Appellant being his son, inherited 1/7th undivided share of Mr. Suresh Chand. The Memorandum of Understanding was duly proved as **Ex.PW-1/D1**. Therefore, it did not lie with the Defendant Nos. 1 and 2, who were not the natural heirs of deceased testator *Smt. Kiran Devi*, to allege that the Will dated **08.10.1989** had not been proved. In fact, this Will was not disputed and was thus proved in the facts and circumstances of this case.

28. The ***second challenge*** is that the First Appellate Court erred in holding that when the Plaintiff and his sister purchased the remaining portion of the suit property from *Smt. Sudha Gupta*, the new set of rights in respect of immovable property apparently of value more than Rs. 100/-, had been created in their favour. Moreover, it was erroneously held that the Plaintiff had not produced the registered document to prove that he and his sister, had purchased the share of *Smt. Sudha Gupta* in the Suit Property.

29. It has not been appreciated that the Plaintiff and his sister had not purchased the share of *Smt. Sudha Gupta*. However, they had entered into an understanding with her and had given her money in lieu of her share in the suit property. The Memorandum was duly proved and it is on the basis of this Memorandum that the *Suit No. 222/2016* for Partition was disposed of as settled and the parties held to be bound by their statements recorded in the Suit, as well as, by the terms of MOU dated **10.06.2016**. In view of the settled law, this Memorandum of Understanding/Family Settlement did not require any registration. Even otherwise, it could be read for collateral purpose.

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30. Even assuming for the sake of arguments that the MOU required registration, the terms regarding payment of money by the Plaintiff and his sister to *Smt. Sudha Gupta* in lieu of a share in the suit property, may not have been read in evidence but the other terms of the MOU in respect of the admission of the last registered Will of *Smt. Kiran Devi*, could still be considered. Similarly, factum that *Shri. Suresh Chand* died intestate and his undivided share devolving upon the Plaintiff could very well be read in evidence as collateral purpose as per Section 49 of the Indian Registration Act.

31. The reading of the terms would show that *Smt. Kiran Devi* died leaving behind her last Will, bequeathing her undivided half share in favour of the Plaintiff and that Mr. Suresh Chand also died intestate leaving behind his one half undivided share in the suit property in favour of the Plaintiff and the others. It was thus, duly established that the Plaintiff was the co-owner of the suit property.

32. The Plaintiff had established by way of the evidence, his title in the suit property. The Defendants, on the other hand, had not produced any document to establish their right in the suit property. Thus, the Defendants were not able to prove a title better than that of the Plaintiff in the suit property.

33. The ***third challenge*** is that the learned First Appellate Court erroneously held that Suit for Mandatory Injunction was not maintainable, in the facts and circumstances of the case. It is a settled principle of law that the relief of possession would be inherent in a Suit for Mandatory Injunction and the decree of eviction could be passed in a Suit for Mandatory Injunction.

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34. The First Appellate Court erroneously referred to Section 41(h) of the Specific Relief Act and held that the appropriate remedy available with the Plaintiff was to seek the relief of possession and not mandatory injunction. The main relief sought by the Plaintiff was a direction to the Defendants to remove their belongings from the gallery, which could have been directed under the Mandatory Injunction. Furthermore, it has been erroneously held that once the relief of Mandatory Injunction, was not maintainable, the relief of Permanent Injunction to restrain the Defendant from entering into the premises was also not maintainable. The Defendants to have shown their right title and interest in the suit properties, which they have failed to prove.

35. It is claimed that the facts and the evidence have not been rightly appreciated by both the Courts. Therefore, the prayer is made that the impugned Judgment dated **21.08.2023** be set-aside and the Suit of the Plaintiff/Appellant be decreed in their favour.

36. The Plaintiff/Appellant had filed the written arguments essentially on the same grounds as stated in the Appeal.

37. The Respondent Nos. 1 and 2 had initially appeared through counsel on **09.09.2025** but thereafter, they stopped appearing and were proceeded *ex-parte vide* order dated **18.05.2026**.

Submissions heard and the record perused.

38. The substantial question that arises, in the present Regular Second Appeal, is as under:-

> *(i) Whether the findings of the learned First Appellate Court, were based on incorrect appreciation of the evidence and thus perverse?*

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39. The Plaintiff had filed a Suit for Mandatory Injunction and Permanent Injunction for directing the Defendant, *Smt. Krishna Devi* and *Shri. Ravi*, to be removed from the gallery from the Suit Premises as being encroachers and also, for directions to the Defendant Nos. 5 and 6 for breaking the *Chabutra* installed by the Defendant Nos. 1 & 2, outside the property and also to remove the Tea Stall installed therein.

40. The learned *Civil Judge*, as well as, the *First Appellate Court*, non suited the Plaintiff/Appellant essentially on the ground *that he was unable to establish his ownership in the suit premises.*

41. The case of the Plaintiff was that the property was purchased by *Smt. Kiran Devi*, paternal grandmother of the Plaintiff and *Shri. Suresh Chand*, his father from one *Smt. Angoori Devi, vide* registered Sale Deed dated **17.07.1972**, *Mark 'G'*. Thereafter, *Smt. Kiran Devi*, who was the owner of half of suit property, bequeathed it to the Plaintiff, *Mr. Raj Kumar* s/o *Shri. Suresh Chand, vide* Will dated **08.10.1989**, *Mark 'E'*. *Shri. Suresh Chand*, father of the Plaintiff, who was the owner of the remaining half of the property in question, died intestate and, therefore, his legal heirs became entitled to equal share in the half property of *Shri. Suresh Chand*.

42. The Plaintiff thereafter, filed a Civil Suit bearing **CS(OS) No. 1303/2011**, titled *Raj Kumar Aggarwal & Others vs. Smt. Sudha Gupta & Others* (New **CS No. 222/2016**) for Partition in respect of the half share of his father. During the pendency of the said Suit, the parties arrived at a Settlement *vide Memorandum of Understanding* dated **10.06.2016**, *Ex.PW-1/D1*. The authenticity of this MOU has not been challenged by any of the co-owners or even by the Defendant Nos. 1 and 2.

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43. In the said Memorandum of Understanding, not only was the inheritance of the property through *Smt. Kiran Devi* by virtue of the Will dated **08.10.1989** to the Plaintiff was recorded, but it was also stated that the share of *Shri. Suresh Chand*, was inherited by his family members in 1/7th share each. *Smt. Kiran Devi* expired on **17.05.1997** while *Shri. Suresh Chand* expired on **22.09.1999**. *Shri. Radhey Lal*, husband of *Smt. Kiran Devi*, expired somewhere in 1970.

44. Admittedly, *Shri. Suresh Chand* had married twice and the second wife was *Smt. Sudha Gupta*, stepmother of the Plaintiff. The Memorandum of Understanding/Deed of Family Settlement dated **10.06.2016** was effected between *Shri. Raj Kumar Aggarwal, Smt. Lata Aggarwal, Smt. Nirmal Gupta* and *Smt. Laxmi Gupta* as one party and *Smt. Sudha Gupta*, second wife of Shri. Suresh Chand, *Shri. Lalit Aggarwal* and *Smt. Silky Goel* as second party, who were having 1/7th each share in half of the property in question. The Second Party jointly owing 3/7th share together, agreed that for their 3/7th share, *Shri. Raj Kumar Aggarwal* i.e. the Plaintiff and *Smt. Lata Aggarwal* i.e. two members of First Party would pay Rs. 25,00,000/- jointly to *Smt. Sudha Gupta*, who in turn, shall disburse the money to *Shri. Lalit Aggarwal* and *Smt. Silky Goel*.

45. In the said Memorandum of Understanding, further details were mentioned in respect of the division and Settlement in respect of the other properties, jointly owned by the legal heirs. It was also agreed that the possession of the suit property, part of which was in occupation of the tenants against whom the eviction Petition had been filed, *shall hand over the possession to Shri. Raj Kumar Aggarwal, the Plaintiff herein.* The Memorandum of Understanding was presented in the ***Suit for Partition (CS***

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222/16) wherein the Statements of all the legal heirs were recorded, who admitted and endorsed the MOU as **Ex. P-1** along with the Site Plan as **Ex. P-2**. In view of the Settlement, an Application under Order XXIII Rule 1 and 3 CPC was jointly filed by all the legal heirs, whose Statements were recorded separately.

46. The learned *ADJ vide* Order dated **15.07.2016** recorded that the parties have arrived at an amicable Settlement pursuant to the Memorandum of Understanding/Deed of Family Settlement dated **10.06.2016** and accordingly, disposed of the Suit as settled, with the direction that the parties shall remain bound by the terms of the MOU. The MOU thus, got endorsed and became a part of the decree, the certified copy of which has been placed on record. It being a judgement of the Court, judicial notice can be taken of the final Order of the learned ADJ, in terms of Section 74 and 77 of the Indian Evidence Act. Both the Courts, however, failed to appreciate that not only was the MOU put to PW-1 in the cross-examination and was exhibited as ***PW-1/D1,*** but it also formed the part of the Order dated **15.07.2016** of the learned ADJ in the Partition Suit.

47. It is also pertinent to observe that the Defendants had never questioned the authenticity either of the MOU or of the Plaintiff having become the owner of the suit property in question. The Defendants never claimed any independent right in the suit property and, therefore, the First Appellate Court erroneously appreciated the evidence and upheld the findings of the learned Civil Court that the Plaintiff did not have any right, title to maintain the present Suit. Not only was the MOU proved as **Ex.PW-1/D1,** but it also found endorsement in the Order dated **15.07.2016** of the learned ADJ in Partition Suit.

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48. Furthermore, it was held that the MOU/Settlement Deed dated **10.06.2016**, **Ex.PW-1/D1**, cannot considered as it is an unregistered document and is not admissible in evidence. However, in the case of *Kale and Others vs. Deputy Director of Consolidation and Ors., (1976) 3 SCC 119*, it is held that if the Memorandum of Family Settlement was reduced to writing only for the purpose of record or for information to the Court for making necessary mutation, then it would be exempt from registration as it is only a Memorandum of Understanding, which does not create or extinguish any rights in the immovable property.

49. Likewise, in the case of *Lieutenant Col. Gaj Singh Yadav vs. Satish Chander Yadav, 1999 (51) DRJ 240*, it was explained that if a party had a share in the property, enlargement of such share by relinquishment or gift or by the other defendant, would not require registration. It is only when a right in the property is created for the first time by a particular document, that it would require registration. Therefore, mischief of Section 49 of the Registration Act, 1908, would not fall on an oral Settlement.

50. The Apex Court while considering the effect of non-registration of *Kharurnama* (*Family Arrangement recording past transaction*) in the case of *Korukonda Chalapathi Rao vs. Korukonda Annapurna Sampath Kumar*, *2021 SCC OnLine SC 847*, observed that where a document by itself does not create, declare, limit or extinguish rights in the immovable properties in question but merely records past transactions, which have been entered into between the parties, it would not attract Section 49(1)(a) of the Registration Act, 1908. ***Therefore, a mere recital of what has already taken place, cannot be held to declare any right and there would be no necessity of registering such a document.***

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51. Similarly, in the case of *Ravinder Kaur Grewal & Ors. vs. Manjit Kaur & Ors.*, *2020 INSC 473*, the Hon'ble Supreme Court of India emphasised that where the parties have acted upon the Family Settlement, it would not be open to them to resile from the said arrangement. ***In the event, a family arrangement has not been registered, it would not prejudice its binding nature upon the members of the family and would continue to act as an estoppel to prevent members from revoking the Family Agreement, if the members have acted upon it.***

52. Therefore, the MOU/Deed of Family Settlement, **Ex.PW-1/D1** clearly defined the share of the Plaintiff as the owner of the suit property and therefore, **the Plaintiff/Appellant had the *locus standi* to file the Suit for Permanent and Mandatory Injunction.**

53. The ***next aspect*** was whether the Plaintiff was entitled to seek removal of the encroachment made by the Defendant No. 1. In this context, it is not denied by the Defendants that they had kept their belongings in the gallery; the only defence was that she had been in occupation for last more than 35 years. From the very description of the property, it is evident that the suit property in which the encroachment has been made, is the gallery of the shops on either side and by its very nature, it is evident that the Defendants had no right of any kind to occupy the suit premises. It was clearly a case of encroachment for which, **the Mandatory Injunction was well maintainable.**

54. The Defendant Nos. 1 and 2 in their *Written Statement* had asserted that the possession of Defendant No. 1 *qua* the suit premises, is legal and she had been in occupation of the same for the last more than 35 years. Her possession is hostile and adverse to that of the real owner and therefore, she

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had become owner of the suit property by fiction of law and she cannot be dispossessed.

55. The law on adverse possession is well settled. A person claiming title on this basis must establish possession which is *nec vi, nec clam, nec precario*, i.e., peaceful, open and continuous, and which is hostile to the title of the person against whom such possession is asserted. Such possession must commence with the wrongful denial of the rightful owner's title, and must be actual, visible, exclusive, hostile accompanied by the requisite *animus possidendi* throughout the statutory period of twelve years.

56. In *Karnataka Board of Wakf v. Government of India*, *(2004) 10 SCC 779*, the Supreme Court further held that the claimant must specifically plead and establish, inter alia, when possession commenced, its nature, whether it was known to the other party, the period for which it continued and that it was open and undisturbed.

57. Equally, mere possession, however long, does not ripen into title unless accompanied by the requisite hostile animus. In *Konda Lakshmana Bapuji v. Government of A.P.*, *(2002) 3 SCC 258*, the Supreme Court has explained that mere possession of land, however long, does not ripen into title unless the possessor has the requisite *animus possidendi* to hold the land adverse to the title of the true owner, and that where, at the commencement of possession, there is no such animus, the period for adverse possession commences only from the date when both the fact of possession and the assertion of hostile title are shown to exist.

58. The Supreme Court, in *Ravinder Kaur Grewal v. Manjit Kaur*, *(2019) 8 SCC 729*, has reiterated that a claim of adverse possession succeeds only where the claimant establishes these ingredients of hostility, continuity and

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openness against the true owner throughout the statutory period, and that it is only upon completion of that period that even the true owner's right to eject the possessor stands extinguished.

59. In *T. Anjanappa and Others vs. Somalingappa and Another*, *(2006) 7 SCC 570,* this Court reiterated that adverse possession contemplates possession which is hostile to the title of the true owner. A person asserting such a plea must establish by clear and unequivocal evidence that his possession was actual, open, continuous and hostile, so as to amount to a denial of the true owner's title. Mere long possession, however uninterrupted, is insufficient unless accompanied by the requisite hostile animus. Where possession can be referred to a lawful or permissive origin, it cannot be regarded as adverse merely by lapse of time.

60. Even otherwise, the reliance placed upon the length of possession, does not advance the Defendant's case. Long possession, howsoever protracted, does not by itself ripen into title unless shown to have been hostile, to the knowledge of the true owner, for the entire statutory period; *mere continuance of possession, without more, remains possession simplicitor.*

61. As recently reiterated by the Supreme Court in *Bhag Singh (D) through Mahant Kashmir Singh v. Basant Kaur (D) through LRs*., *2026 INSC 983* , long possession may establish physical occupation, but does not, by itself, establish adverse possession; what must additionally be proved is a conscious and hostile assertion of ownership in denial of the rights of the true owner. *The Defendant has led no such evidence to establish their possession to be adverse to that of the plaintiff.*

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62. Applying the aforesaid principles to the facts of the present case, it is evident that the Defendant Nos. 1 and 2 have failed to discharge the burden of establishing their plea of adverse possession.

63. Although they asserted that Defendant No. 1 had been occupying the suit gallery for more than 35 years, *no cogent evidence has been brought on record to establish that such possession was hostile to the title of the lawful owner throughout the statutory period*. The mere fact that Defendant No. 1 had placed her belongings in the suit gallery and was occupying the same does not, by itself, establish the requisite *animus possidendi*.

64. The Defendants have failed to establish, by cogent evidence, that the possession of Defendant No. 1 was continuous, open and hostile to the title of the Plaintiff for the requisite period of *twelve years*. Their assertion of long-standing occupation, unsupported by evidence establishing the commencement and hostile character of such possession, is insufficient to sustain the plea of adverse possession. Accordingly, the claim that Defendant No. 1 had acquired ownership of the suit gallery by operation of law is liable to be rejected.

65. It may also be observed that on the other hand, the Plaintiff had deposed that the Defendant No. 1 had first tried to encroach on **05.02.2013** for which a complaint was lodged and Defendant No. 1 was removed. Thereafter, that she again encroached on **05.01.2014**.

66. ***Therefore, the Plaintiff is entitled to the relief of Mandatory Injunction for directing the Defendant No. 1 and 2 to remove the entire encroachment from the suit gallery.***

67. The next relief sought by the Plaintiff was that there was an illegal *Chabutra* built by the Defendant Nos. 1 and 2 outside the suit property and

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installed a Tea Stall, which was liable to be removed. The Plaintiff had made Complaints to the MCD and Police for removal of the *Chabutra,* as well as, the encroachment by the Defendants.

68. The Plaintiff himself, **PW-1** was confronted by the counsel for Defendant No. 2 in the cross-examination with the photographs, **Ex.PW-1/19**, which showing the *Chabutra* outside the premises of the Plaintiff. He further clarified that the Defendant No. 2 had been selling tea from the said *Chabutra* since last 5 to 7 years. It is clearly evident that the *Chabutra* had been constructed illegally outside the premises of the Plaintiff, thereby, causing nuisance at the entry of the property of the Plaintiff.

69. An objection has been taken on behalf of the Respondent that under the garb of Mandatory Injunction, the Plaintiff is seeking the possession of the Suit premises. It is pertinent to observe that it is the Respondent No.1 and 2 who have kept their belongings in the gallery on the First Floor, forming part of the property of the Plaintiff and are ranked encroachers. ***Therefore, the Suit for Mandatory Injunction for directing them to remove their belongings is maintainable***.

70. From the aforesaid discussion, it is evident that the finding of the learned *Civil Judge* as well as the learned *Additional District Judge* are contrary to the settled preposition of law and the findings on the evidence are per se perverse, which are liable to be set aside.

71. ***Therefore, the Plaintiff is entitled to the Mandatory Injunction for removal of the Chabutra and Tea Stall from the Gali.***

72. For the same reason, the Plaintiff is ***also entitled to Permanent Injunction and the Defendant Nos. 1 and*** *2 are restrained from entering into the premises of the Plaintiff or creating any nuisance therein.*

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Conclusion:

73. In view of the aforesaid discussion, ***the Appeal is allowed and the defendants No. 1&2 are directed to remove their belongings from the gallery/space inside the suit property with three months. Also, the Defendant No.1 and 2 are directed to demolish the Chabutra with the Tea stall installed on it which is an encroachment on the public land just outside the property of the Appellants, be also demolished within three months. In case the Respondent No.1 and 2 failed to remove the Chabutra, the Respondent No.3 and 4 are directed to do the needful in accordance with law. Further, the Defendants are restraint from entering into the premises of the Plaintiff or to create nuisance therein.***

74. ***The Suit of the Plaintiff for Mandatory Injunction and Permanent Injunction, is hereby, decreed***.

75. The Appeal is disposed of accordingly. The pending Application is also disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 27, 2026/RS

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