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

+ **RFA 14/2026, CM APPL. 793-795/2026**

SHRI MRIDULA SHUKLA PANDEY @ MRIDULA PANDEY

.....Appellant

Through: Mr. Ankur Dhall, Adv.

versus

SMT KAMLESH KUMARI

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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07.01.2026

1. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 ('CPC') has been filed against the Judgment and decree dated 25.03.2025 whereby the learned Additional District Judge, New Delhi has decreed the *Suit of the Plaintiff for decree of mesne profits @ Rs.10,000/- per month from 22.09.2017 till the receiving of the possession on 03.12.2021.*

2. The **brief facts** are that the Plaintiff/ Respondent had filed a Suit for *Declaration, Permanent Injunction, Rendition of Accounts and Recovery of Mesne Profits*. The case of the Respondent was that she which was the owner of property bearing No. H-54, Gyan Mandir Road, Jaitpur, Badarpur, Delhi, having purchased the Suit property on 09.02.1996 from the erstwhile owner, Mahipal through GPA, Agreement to Sell, Affidavit, etc., and was in possession thereof. Defendant, Appellant was the daughter of the husband of the Plaintiff from his first marriage.



3. On 19.06.2004, her husband/ father of the Defendant passed away. The intentions of the Defendant became dishonest towards the Plaintiff and her children, leading to her filing of a Suit for Partition, Declaration, Rendition of Accounts bearing CS No. 932/2004 before this Court, against the Respondent. The Suit got transferred to the Court of District and Sessions Judge on 24.11.2016. The Suit got dismissed *vide* Judgment and decree dated 22.09.2017. Thereafter, the Plaintiff filed the suit for Recovery of possession, and Mesne Profits, since she had no right, title or interest to reside in the property.

4. The ***Written Statement was filed by the Appellant***. Thereafter, the **issues were framed** whether the Suit was liable to be decreed in terms of the Judgment dated 22.09.2017 in CS No. 506/2017 decided by the Learned ADJ between the same parties. Thereafter, which the Plaintiff/ Respondent led her evidence.

5. The ***PW-2, Shambhoo Datt***, Record Clerk, Judicial Assistant, produced the record pertaining to *Civil Suit No. 932/2004* and proved the documents of the said Suit. ***PW-3, Ranbir Singh, Record Clerk, Record Room (Sessions)***, produced the record of Civil Suit No. CS number 506/2017 and proved the proceedings. The Defendant/Appellant tendered her evidence.

6. The Learned ADJ on the appreciation of evidence and the rival contentions, concluded that the finding that the Defendant had never claimed ownership in the Suit property, in the judgment dated 13.11.2019 in the Partition Suit, was binding as *res judicata*. The Plaintiff was held to be the owner of the Suit property and the preliminary decree of possession was passed in favour of the Respondent, which got executed and possession was handed over in December, 2021.



7. Only the issue of mesne profits remained, which after considering the evidence, was allowed @ Rs.10,000/- per month from 22.09.2017 till the date of possession, i.e. 03.12.2021, alongwith interest @ 6% p.a.

8. The ***grounds of challenge*** of the judgment are that the learned Trial Court has failed to consider that the property was in a dilapidated/uninhabitable condition and was not fit for living. Moreover, it is situated in an unauthorized colony, where the rent of the property is much less. The Suit property came under O-Zone area, in which any kind of construction and repair work, was not permitted. The Respondent's claim of letting out the Suit property on a rent was only a thought, to get the relief from the Court, but there was no proof in regard to the same. No neighbour was examined, which proves that the Respondent never visited the Suit property in person, and her claim of getting the property from her father during his lifetime, seems least trustworthy. Moreover, no inquiry was conducted to ascertain the actual mesne profits, which includes the assessment of the condition of the property and the prevailing market rental rates in the area.

9. The Appellant is the daughter of the Respondent's husband from his first marriage and is the only legal heir of her father, late Kamla Prasad Shukla and entitled to his movable and immovable properties. She was a simple housewife who had been mentally unwell for the last two years and had been undergoing regular treatment at IHBAS. Imposing of Mesne Profits @ Rs.10,000/- per month, would deteriorate her financial condition.

10. In fact, before the judgment dated 22.09.2017, the Appellant had requested the Respondent to take possession of the keys of the Suit property, but the Respondent had denied to accept it. The Appellant's son had even sent WhatsApp messages to the Respondent in regard to handing over of the keys,



but to no avail. It is therefore, submitted that the impugned judgment granting mesne profits as damages for use and/or occupation of the Suit property is liable to be set aside.

Submissions heard and record perused.

11. The Respondent had not challenged the decree of Possession dated 22.09.2017 and that she had handed over the possession only in 03.12.2021. It is evident that she was admittedly in possession of the Suit property till 03.12.2021, on which day the possession was handed over to the Respondent.

12. The first ground to challenge the Mense profits by the Appellant, is that *she was willing to hand over the keys which was not being accepted by the Respondent*, is completely defeated by the fact that the possession was handed over to the Respondent in the **presence of Bailiff**, on 03.12.2021. Had she been actually inclined to hand over the possession, there was nothing which prevented her in moving an appropriate Application in the Court or submitting the keys of the premises. Also, it cannot be overlooked that the possession was not handed over for over three years, and then too, the Bailiff got the possession delivered. Mere empty claim of her intention with no corresponding handing back the possession, cannot deny the fact that she remained in possession and the respondent was deprived of the beneficial use of her property. Having retained the property, the Appellant, is bound to pay the Mense profits.

13. The Respondent has then claimed that the property was *dilapidated and in an uninhabitable condition and no repairs* could have been done as the property was located in O-Zone. However, if the Appellant felt that the property was not fit for residence, there was no reason for her to wait for the Bailiff to take the possession. So long as she was in possession of the



property, whether habitable or uninhabitable, the Respondent was deprived from the use of the property as per her own will and desire. The fact that the possession was with the Appellant till 03.12.2021, makes her liable to pay the damages.

14. The last aspect which has been contended is that the *mesne profits* have been assessed as Rs.10,000/- per month arbitrarily, without noting the prevailing rate of rent in the area or by examining any witnesses in the neighborhood.

15. The learned Trial Court had considered the claim of the Respondent that the Suit property can fetch approximately Rs.50,000/- per month, but found the same to be without basis. The learned ADJ made the assessment of the mesne profits at Rs.10,000/- per month, by taking into consideration that the Suit property was built on a plot measuring 113 sq. yards and was located in Jaitpur.

16. There is no cogent ground taken in the Appeal to show that the assessment of mesne profits @ Rs.10,000/- per month is perverse or is not reasonable.

17. In view of the aforesaid, there is no merit in the Appeal, which is hereby dismissed. Pending Applications are disposed of accordingly.

NEENA BANSAL KRISHNA, J.

JANUARY 7, 2026

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