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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **RSA 50/2026, CM APPL. 17145/2026 & 17147/2026**

AMAR  
S/o Shri Arjun  
R /o A-188, 4th Floor,  
Lai Bagh, G./T. Kamal Road,  
Azadpur, Delhi.

.....Appellant

Through: Mr. Abhinav Dubey and Mr. Sandeep  
Chauhan, Advocates.

Versus

HARPAL  
S/o Shri Harish Chander  
R/o A-188, Lai Bagh,  
G.T. Kamal Road,  
Azadpur, Delhi.

.....Respondent

Through:

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**ORDER**  
**19.03.2026**

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**CM APPL. 17146/2026 (Seeking Exemption)**

1. Allowed, subject to just exceptions.
2. The Application stands disposed of.

**CM APPL. 17147/2026 (Seeking condonation of Delay)**

3. This is an Application filed by the Appellant seeking condonation of delay of 220 days in re-filing the Appeal on account of the Appellant's mother being seriously ill and her subsequent demise.
4. For the reasons stated in the application, the delay of 220 days in re-filing the appeal is condoned.



5. The Application stands disposed of.

**RSA 50/2026**

6. The present Regular Second Appeal under Section 100 read with Section 151 Civil Procedure Code, 1908 (*hereinafter referred to as 'CPC'*), has been filed by the Appellant/Defendant to assail the Judgment dated 19.04.2024 passed by the learned District Judge, whereby the Judgment and Decree dated 28.04.2022 passed by the learned Civil Judge, ***decreeing the Suit for Possession, permanent injunction and mesne profits*** filed by the Respondent, has been upheld.

7. The case of the Plaintiff/Respondent is that Shri Panna Lal, predecessor-in-interest had been allotted the property bearing No. A-188, Lal Bagh, Azadpur, Delhi (*hereinafter referred to as the 'Suit Property'*) by the DDA, under the Jhuggi Jhopdi Removal Scheme in the year 1985.

8. During his lifetime, Shri Panna Lal constructed the house up to the fourth floor and was residing there along with the Plaintiff/Respondent. Shri Panna Lal was unmarried and issueless, and the Plaintiff/Respondent, being his nephew, looked after him during his old age and performed all social obligations.

9. Shri Panna Lal sold the entire Suit property *vide* General Power of Attorney, an Agreement to Sell, an Affidavit, Receipt and Possession Letter, all dated 16.07.2012 for a sale consideration of Rs.5,00,000. A Will was also executed in respect of the Suit property, in favour of the Plaintiff.

10. Thereafter Shri Panna Lal died on 24.12.2012. The Plaintiff claimed to have become the absolute owner of the entire Suit property.

11. The Appellant/Defendant, Shri Amar, being the cousin brother of the Plaintiff, attended the last rites of Shri Panna Lal along with other relatives.



It is the Plaintiff's case that as the Defendant had arrived from Aligarh and was facing difficulty in arranging accommodation, so he requested the Plaintiff for assistance. Considering the Defendant's requirement, he was permitted to stay on the Fourth floor comprising of one room and a small kitchen for a short period until the last rites of Shri Panna Lal were concluded.

**12.** Thereafter, in the first week of January 2013, the Defendant again requested permission to continue to stay in the premises as he was looking for a job in and around Delhi; the Plaintiff further allowed him to stay for a further period of two months.

**13.** Subsequently, in September 2013, the Plaintiff requested the Defendant to vacate the Suit Property, but this time the Defendant changed his colours and threatened the Plaintiff and his family with dire consequences, if he was ever again asked to vacate the premises. It was claimed that the Defendant has no right, title or interest in the Suit Property.

**14.** Subsequently on 09/10<sup>th</sup> September, 2013 a *Biradari meeting* was convened wherein the Defendant was requested to vacate the Suit Property, but he picked a quarrel and threatened that no one can make him vacate the Suit Property.

**15.** The Plaintiff lodged a Complaint with the Police, but no action was taken. He lastly asked the Defendant to vacate on 15.09.2013, but to no avail. It was asserted that the Defendant was only a permissive user and therefore, he filed a *Suit for Possession and Permanent Injunction as well as for Mesne Profits*.

**16.** The ***Defendant/Appellant filed a Written Statement***, wherein preliminary objections were taken that the Plaintiff has no *locus standi* to



file the Suit; even otherwise, the Suit did not disclose *any cause of action* inasmuch as the Plaintiff was guilty of suppression of material facts.

**17.** The Suit was stated to be bad for misjoinder and non-joinder of DDA, who was the alleged owner of the property. The Suit was also claimed to be not maintainable under *Section 41(h)(i)&(j) of the Specific Relief Act, 1963*, as it has been filed on vexatious grounds. He further stated that the transfer documents are forged and fictitious and are not enforceable in law. The transfer of property to the Plaintiff is *void ab initio* and against public policy.

**18.** Furthermore, he stated that the Suit is not valued properly as the value of the property is 7,30,000/- as per the Circle Rate notified by GNCTD w.e.f. 05.12.2012 in the category 'E' and the minimum rate for valuation of land for residential use is Rs.58,400/- per square meter.

**19.** *On merits*, all the averments made in the plaint were denied. It was claimed that the Defendant had been in actual and physical possession of the Suit property since much prior to the demise of Shri Panna Lal and had become the owner of the Suit Property by way of *Adverse Possession*. Accordingly, it was prayed that the suit be dismissed.

**20.** The Plaintiff in his Replication, reaffirmed the averments made in the Plaint.

**21.** *Issues on the pleadings were framed by the learned Civil Judge on 06.10.2015 as under :*

“(i) Whether the Plaintiff is entitled to the relief of Possession, as prayed for? *OPP*

(ii) Whether the plaintiff is entitled to the relief of the permanent injunction as prayed for? *OPP*

(iii) Whether the plaintiff is entitled to the relief of



*mesne profits, if any, for what rate and for what period?*  
*OPP*

(iv) *Whether defendant has become the owner of the fourth floor of the suit property by way of adverse possession? OPD”*

**22.** The Plaintiff in support of his case examined himself as **PW-1** and tendered his affidavit of evidence as **Ex.PW1/A** and reaffirmed the assertions made in the Plaint.

**23.** The Plaintiff also examined **PW-2**, Sh. Radhey Shyam to prove the Will dated 16.07.2012 which is **Ex. PW2/1**. The copy of the Possession Letter dated 16.07.2012 is **Ex.PW2/2**. The Agreement to Sell, GPA, Possession Letter, Affidavit all dated 16.07.2012 are exhibited as **Ex.PW1/1 (colly)**.

**24.** **PW3**, Hari Chand corroborated the testimony of the Plaintiff.

**25.** **The Defendant/Appellant, however, failed to examine any witness in his support, and therefore, the DE stood closed vide Order dated 22.10.2018.**

**26.** The learned Civil Judge *rejected the plea of adverse possession* and held that the Plaintiff had proved the execution of the documents Ex. PW1/1. The learned Civil Judge further held that, although such documents did not confer ownership in view of the Judgment in Suraj Lamp & Industries Pvt Limited vs State of Haryana & Anr, (2012) 1 SCC 656, they created an interest in the Suit Property and that the Will Ex. PW2/1 stood duly proved in accordance with law.

**27.** Accordingly, the Plaintiff was held entitled to possession of the suit property, and the suit for *possession, permanent injunction and mesne profits was decreed in favour of the Plaintiff/Respondent.*



28. The **RCA DJ No. 23/2022** was preferred against the Judgment of the learned Civil Judge, *but the Appeal was also dismissed vide Judgment dated 19.04.2024.*

29. *Aggrieved thereby, the* present Regular Second Appeal has been preferred by the Appellant.

30. The ***main grounds of challenge*** are that both the Judgments are bad in law and contrary to the facts on record. The onus to prove Issue No.1 was on the Plaintiff/Respondent, which he had miserably failed to discharge.

31. The Respondent has based his claim of ownership on the basis of the Agreement to Sell, GPA etc dated 16.07.2012 allegedly executed by Shri Panna Lal, in favour of the Respondent. These are all forged and fabricated documents and, in any event, being merely notarized documents, they do not confer any right of ownership as held by the Apex Court in the case of Suraj Lamp & Industries (P) Ltd. (Supra).

32. Furthermore, no relief of Declaration of ownership has been sought by the Plaintiff, without which the relief of possession could not have been claimed. The Respondent/Plaintiff was required to establish his title independently, by seeking appropriate declaratory relief.

33. Furthermore, the Will has not been proved in accordance with law. Moreover, *Arjun, father of the Appellant*, has already filed a Civil Suit for Declaration, Partition and Permanent Injunction against the Respondent and his father, in respect of the same property to declare the notarized GPA, Agreement to Sell, etc. dated 16.07.2012 allegedly executed by Shri Panna Lal in favour of the Respondent, as null and void.

34. It is, therefore, prayed that the judgments and decrees passed by the learned Civil Judge and the learned District Judge, be set aside.



**35.** The following substantial questions of law are proposed for consideration:

- (i) *Whether the Plaintiff can seek the Possession of the Suit Property on the basis of Notarized documents i.e GPA, Agreement to Sell etc. dated 16.07.2012, without seeking the relief of Declaration?*
- (ii) *Whether the Leasehold property can be sold out on the basis of notarized documents without the permission of the concerned Authority?*

**Submissions heard and record perused.**

**36.** The present appeal is a Regular Second Appeal under Section 100 CPC and can be entertained only where a substantial question of law arises. The scope of interference in such an Appeal is limited and does not extend to re-appreciation of evidence or interference with concurrent findings of fact, unless the same are shown to be perverse or based on no evidence.

**37.** In the present case, both the learned Trial Court as well as the First Appellate Court have returned concurrent findings that the Respondent/Plaintiff has been able to prove the execution of the documents Ex. PW1/1 as well as the Will dated 16.07.2012 Ex. PW2/1. The Will has been duly proved by one of the attesting witness **PW-2**, in accordance with law.

**38.** The contention of the Appellant that the documents such as GPA and Agreement to Sell do not confer ownership, in view of the judgment in *Suraj Lamp & Industries (P) Ltd. (supra)* is of little assistance to the Appellant, since the claim to title of the respondent, also rests on the Will



which has been duly proved. It is significant to observe that despite being given an opportunity, Defendant/Appellant failed to lead any evidence whatsoever. The two Courts have rightly observed that, though such documents i.e. GPA, etc may not confer absolute ownership, but the Respondent has independently proved his case on the basis of the Will.

**39.** The objection regarding non-seeking of Declaratory relief, is also without merit. The Respondent has been able to establish a better right to possession *vis-à-vis* the Appellant. It is settled law that a person in settled possession with a better title, can seek recovery of possession, even without a formal declaration, particularly where the Defendant has failed to establish any independent right. In the present case, the Appellant has failed to establish any competing title or raise a substantial cloud over the title of the Respondent, so as to necessitate a declaratory relief.

**40.** The contention regarding pendency of a separate Civil Suit filed by the father of the Appellant also does not assist the Appellant, and do not dilute the findings returned in the present Suit, as the pendency of a separate said Suit filed by the father of the Appellant, cannot be the ground to deny the relief to the respondent.

**41.** The plea of *adverse possession* had been taken by the Appellant. The burden to prove adverse possession, was on the Appellant but he failed to lead any evidence whatsoever to substantiate his defence. Mere assertion in the Written Statement, is not sufficient to establish adverse possession.

**42.** The contention regarding the leasehold nature of the property and absence of permission from DDA, is also of no avail, in the absence of any evidence led by the Appellant or any issue framed in this regard.

**43.** No perversity, illegality or material irregularity has been shown in the



concurrent findings returned by the Courts below. The findings are based on proper appreciation of evidence; all the grounds of challenge are of facts and do not raise any substantial question of law, meriting any interference in exercise of jurisdiction under Section 100 CPC.

**44. The Appeal is, accordingly, dismissed. Pending applications, if any, are also disposed of, accordingly.**

**MARCH 19, 2026/VA**

**NEENA BANSAL KRISHNA, J.**