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

% ***Reserved on: 31st August, 2026***
Pronounced on: 19th November, 2026
Uploaded on: 20th November, 2026

CNR No. DLHC013395232017

\+ **RSA 214/2017 & CM APPL. 22063/2024, CM APPL. 6606/2025 CM APPL. 18952/2025**

BHARAT LAL
S/o Late Shri Puran Mal,
R/o 52/50B, Gali No.17,
Nai Basti, Anand Parbat,
New Delhi .....Appellant

Through: Mr. Deepak Khadaria, Ms. Bhawna, Ms. Anita Kumari, Mr. K.L Singla, Advs.

versus

1. Sh. SURENDER
Son in Law of Late Sh. Babu Lal
R/o 407/Z4A, Than Singh Nagar, Anand Parbat,
New Delhi 110005 ....Respondent No.1.

2. Mr. Dharmesh
W/o Sh. Surender
R/o 407/Z4A, Than Singh Nagar, Anand Parbat,
New Delhi 110005 ....Respondent No.2.

3. Mr. Naveen
S/o Sh. Surender,
R/o 407/Z4A, Than Singh Nagar, Anand Parbat,
New Delhi 110005 ....Respondent No.3.

Through:

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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 has been preferred under Section 100 of the Code of Civil Procedure, 1908 *(hereinafter referred to as the "CPC")* against the Judgment dated 19.05.2017, passed by the learned Senior Civil Judge in RCA No. 328/2016, whereby the Judgment dated 31.01.2013 passed by the learned Civil Judge *dismissing the Appellant's suit for Mandatory and Permanent Injunction, mesne profits and damages*, ***was upheld.***

2. The Plaintiff/Appellant, Bharat Lal had filed **Civil Suit No. 121/2012** seeking a Mandatory Injunction for directing the Defendants/Respondents to remove their locks and belongings from Shop No. 48, Than Singh Nagar, Anand Parbat, New Delhi *(hereinafter referred to as the "suit property")* and hand over its possession to him. He had also sought *mesne* profits and Damages and Permanent Injunction for restraining them from selling, subletting, assigning, parting with possession of, or creating any third-party interest in the suit property.

3. ***The facts, in brief,*** as pleaded in the Plaint, were that the suit property initially stood in the name of *Smt. Kundania Devi*. Thereafter, *late Shri Ram Singh*, the brother of the Plaintiff, acquired all rights therein by virtue of the Mutation Letter dated 19.09.2003 issued by the Municipal Corporation of Delhi (MCD), whereby the suit property was mutated in his name.

4. The Plaintiff further submitted that he used to sit with his brother, *late Shri Ram Singh* at the suit property and assist him in managing its affairs.

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The House Tax was also paid by the Plaintiff through late Shri Ram Singh. In support thereof, he relied upon the House Tax Receipt dated 18.01.2008 for the year 2003-2004, and receipt dated 22.01.2008 for the years 2004-2005 to 2007-2008.

5. Shri Ram Singh had remained in possession of the suit property for more than 50 years and unfortunately died intestate on 05.12.2007. His wife had predeceased him and they had no children and he left behind no Class I legal heir.

6. The Plaintiff, Bharat Lal, being the brother of *late Shri Ram Singh*, was his sole surviving Class II legal heir, and consequently, all rights in the suit property devolved exclusively upon him. Accordingly, the Plaintiff claimed to be the absolute and exclusive owner of the suit property.

7. It was averred that late *Shri Babu Lal*, *predecessor-in-interest of the defendants,* earned his livelihood as a vegetable vendor from a *rehri (thela*). Being in poor financial circumstances with no proper place to work from or store his goods, he requested *late Shri Ram Singh*, sometime after 2000, to allow him to park his *rehri* partially in front of the suit property. Out of compassion, *Shri Ram Singh* permitted him to do so on a strictly temporary basis, with the clear understanding that he could be directed to remove the *rehri* at any time.

8. Subsequently, *Shri Babu Lal* requested *Shri Ram Singh*, in the presence of the Plaintiff, to allow him to keep some of his goods inside the suit property, at night. Out of compassion, *Shri Ram Singh* permitted him to do so, on the understanding that the goods would be removed every morning. One of the keys to the shutter had been given to *Shri Babu Lal* solely for the purpose of enabling him to store and remove his goods.

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9. The Plaintiff maintained that *Shri Babu Lal* acquired no right in the suit property, by this arrangement. The permission to park the *rehri* and store goods was gratuitous and personal to Shri Babu Lal and amounted, at best, to a licence and nothing else.

10. Subsequently, *Shri Babu Lal* died on 14.11.2007 and after his last rites were performed, his family members were asked to remove his articles from the suit property.

11. In the meantime, *Shri Ram Singh*, brother of the Plaintiff, who was also unwell, died on 04.12.2007. Thereafter, Defendant No. 1, Shri Surender, the son-in-law of Shri Babu Lal; Defendant No. 2, Smt. Dharmesh, his daughter; and Defendant No. 3, Shri Naveen, the son of Shri Surender, took advantage of the situation. They broke open the locks and used the key given to *Shri Babu Lal*, and replaced the small *rehri* with a larger one, obstructing access to the shop. They also changed the locks on the shutter and retained the goods belonging to *Shri Ram Singh.*

12. When the Plaintiff asked the Defendants to remove their goods and the *rehri,* they quarrelled with him, refused to vacate the shop and declined to hand over its keys.

13. The Plaintiff asserted that the permission granted to *Shri Babu Lal* had, was temporary and gratuitous and, in any event, came to an end upon his death. The Defendants' entry into the shop, change of locks and retention of the keys, were not only in breach of the terms on which Shri Babu Lal had been permitted to use the premises, but was also illegal.

14. Despite the issuance of a Legal Notice dated 01.03.2008, calling upon the Defendants to vacate the suit property and hand over the keys, they failed and neglected to do so.

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15. Aggrieved thereby, the Plaintiff filed a *Suit for Mandatory Injunction directing the Defendants to remove their goods, rehri and hand over the keys of the suit property along with a Permanent Injunction restraining them from creating third-party rights therein.*

16. The Plaintiff also *sought Mesne profits and damages* for the Defendants' use and occupation of the suit property at the rate of Rs. 4,000/- per month during the pendency of the Suit and until its vacation.

17. The Defendants filed a joint *Written Statement*. They raised *preliminary objections* that the Suit was not maintainable as it disclosed no cause of action and that the Plaintiff had no *locus standi*; being neither the owner, nor the landlord of the suit property.

18. They contended that the Plaintiff was seeking possession, under the garb of a Mandatory Injunction and was, therefore, *required to value the Suit accordingly and pay the requisite Court Fee.* The Suit had thus, not been properly valued for the purposes of Court Fee and jurisdiction, nor had the requisite Court Fee been paid.

19. The Defendants also denied that any legal and valid Notice had been served upon them, before the institution of the Suit.

20. Their case was that the entire area in which the suit property was situated belonged to Ramjas Foundation, which had earlier collected rent from the shops therein.

21. It was admitted that Shri Ram Singh, who had a shop in the vicinity of suit property, was on good terms with Shri Babu Lal. Shri Babu Lal, being illiterate, used to hand over the licence fee/rent to Shri Ram Singh for deposit with Ramjas Foundation. The Defendants alleged that Shri Ram

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Singh took advantage of his illiteracy and ill-health, to procure and fabricate documents concerning the suit property.

22. It was further contended that the Plaintiff, Bharat Lal, brother of late Shri Ram Singh, has no concern whatsoever with the suit property.

23. ***On merits,*** the Defendants denied that *Smt. Kundania Devi* had executed any document in favour of *Shri Ram Singh* or that he had acquired rights by virtue of the Mutation Letter dated 19.09.2003. They also disputed the House-Tax receipts, alleging that these had been obtained by misrepresentation. According to them, *Shri Ram Singh* had no right in the suit property which could devolve upon the Plaintiff.

24. The the description of the suit property in the Plaint was asserted to be not correct and maintained that the Site Plan was incorrect and incomplete.

25. The Plaintiff, in connivance with late Ram Singh, has forged and fabricated certain documents, which have been filed along with the Plaint with the sole intent to harass the Defendants.

26. The Defendants claimed that *late Shri Babu Lal* had remained in continuous occupation of the suit property for more than 50 years until his death, and had thereby become its owner by way of *adverse possession.*

27. Upon his demise, the Defendants claimed to have inherited his interest therein, and Defendant No. 3, Shri Naveen, grandson of late Shri Babu Lal, continues to remain in possession of the suit property.

28. The Defendants denied that either Shri Ram Singh or the Plaintiff used to sit in the suit property or look after its affairs. They also denied that *Shri Babu La*l had been permitted to park a *rehri* outside the shop or keep his goods there overnight. According to them, Shri Babu Lal had occupied

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the shop in his own right, and the *rehri* used by the Defendants, was the same one that had been there for more than 15 years.

29. Shri Babu Lal had his own shop near that of Shri Ram Singh and had no occasion to seek his permission to store goods. The Defendants denied having changed the locks, threatened the Plaintiff or attempted to sell the suit property.

30. It was further objected that the suit property fell within a Slum Area and that the Suit was not maintainable, without obtaining permission under the Slum Areas (Improvement and Clearance) Act, 1956.

31. It was thus, denied that the Defendants were in unauthorised occupation of the suit property or liable to pay mesne profits and damages. *The Defendants accordingly, sought dismissal of the Suit.*

32. The Plaintiff, in the ***Replication,*** denied the averments made in the Written Statement and reiterated the case set out in the Plaint.

33. On the basis of the pleadings of the parties, **the following *Issues* were framed on 18.09.2008:**

> ***"****1. Whether the Appellant has no locus standi to file the present suit? OPD*
> *2. Whether present suit is not valued property for the purpose of Court fees? OPD*
> *3. Whether the suit not maintained as per the provision of the Slum Area improvement Act? OPP*
> *4. Whether Appellant has concealed material facts, if so to what effect? OPP*
> *5. Whether Appellant is entitled to the decree of mandatory injunction, as prayed for? OPP*
> *6. Whether Appellant is entitled to the decree of mesne profit as prayed for? OPP*
> *7. Relief.****"***

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34. In support of his case, the **Plaintiff examined himself as PW-1** and tendered his evidence by way of Affidavit Ex. P-1, reiterating the averments made in the Plaint. He relied upon the following documents:

Exhibit	**Document**
Ex. PW-1/1	Site Plan of the suit property
Mark A	Mutation Letter dated 19.09.2003 issued by the Municipal Corporation of Delhi in favour of late Shri Ram Singh
Ex. PW-1/3	House Tax Receipt No. 466070 for the years 2004-2005 to 2007-2008
Ex. PW-1/4	House Tax Receipt No. 607071 dated 18.01.2008 for the year 2003-2004
Mark B and Mark C	Ration Cards of late Shri Ram Singh and the Plaintiff, bearing the address 52/50B, Gali No. 17, Nai Basti, Anand Parbat, New Delhi
Ex. PW-1/6	Legal Notice dated 01.03.2008 issued to the Defendants
Ex. PW-1/7	Registered postal receipt evidencing dispatch of the Legal Notice
Ex. PW-1/8	UPC receipt evidencing dispatch of the Legal Notice
Ex. PW-1/9 to Ex. PW-1/11	Returned Acknowledgment Due Cards

35. PW-1 was duly cross-examined by the Defendants.

36. The Defendants, however, did not lead any evidence and, pursuant to their statement dated 26.07.2012, their evidence was closed.

37. The **learned Civil Judge** observed that the Plaintiff had relied upon the House Tax Receipts, Ex. PW-1/3 and Ex. PW-1/4, to claim ownership of the suit property. In cross-examination, however, he admitted that the property belonged to Ramjas Foundation; that *Smt. Kundania Devi* had no Sale Deed in her name; and that the suit property had not been mutated in his name. The Plaintiff also admitted that he had no document of title in his own name or in the name of *Smt. Kundania Devi or Shri Ram Singh*.

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38. The learned Civil Judge held that in the absence of any document establishing the rights claimed through Shri Ram Singh, the Plaintiff had failed to establish his right, title or interest in the suit property and had no *locus standi* to maintain the Suit.

39. The learned Civil Judge further observed that though the Suit had been framed as one for Mandatory Injunction, the Plaintiff was, in effect, seeking possession of the suit property. He was, therefore, required to file a Suit for Possession and pay Court Fee on an *ad valorem* basis. *The valuation of the relief of Mandatory Injunction at Rs. 130/- was consequently, held to be improper.*

40. Insofar as the objection under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 was concerned, the learned Civil Judge noted the Plaintiff's admissions in his cross-examination that the area in which the suit property was situated fell within a slum area, and that he had not obtained permission from the Competent Authority before filing the Suit. *It was accordingly decided that the Suit was not maintainable, in the absence of Slum permission.*

41. It was further held that though the Plaintiff had claimed himself to be the absolute owner, but his admission that the property belong to Ramjas Foundation established that he had no ownership rights in the suit property.

42. In view of the findings on the aforesaid issues, **the Plaintiff was held not entitled to Mandatory Injunction or *mesne* profits, the Suit of the Plaintiff was dismissed with costs.**

43. *Aggrieved, the Plaintiff filed Regular First Appeal bearing RCA No. 328/2016.*

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44. The **learned First Appellate Court** observed that the Defendants' failure to lead evidence did not dispense with the Plaintiff's obligation to prove his own case. The Mutation Letter on which he relied, had only been marked A and had not been proved by examining any witness from the concerned department. The House Tax Receipts also did not establish ownership or possession.

45. On the objection under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, the learned First Appellate Court noted that the Plaintiff had admitted that the area was a Slum Area and that no permission had been obtained from the Competent Authority. Though the Court observed that the admission, by itself, might not determine whether the Suit Property fell within a Slum Area under the Act, the Plaintiff had failed to prove otherwise. *The finding of the learned Civil Judge on this issue was, therefore, upheld.*

46. The learned First Appellate Court further held that the Plaintiff had failed to establish a better title to the suit property or that the Defendants were occupying it, as his licensees. The Plaintiff was admittedly not in possession and his title was disputed. In view of the principles laid down in *Anathula Sudhakar v. P. Buchi Reddy,* (2008) 4 SCC 594, he ought to have sought a declaration of title and possession, instead of pursuing a Suit for Mandatory and Permanent Injunction alone.

47. Finding no infirmity in the Judgment of the learned Civil Judge, the **First Appellate Court dismissed the Appeal *vide* Judgment dated 19.05.2017.**

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48. *Aggrieved by the concurrent dismissal of his Suit and First Appeal,* ***the Plaintiff has preferred the present Regular Second Appeal under Section 100 CPC.***

49. The ***grounds of challenge*** are that the concurrent findings of the learned Civil Judge and the learned First Appellate Court are perverse and contrary to the evidence on record.

50. It is contended that the evidence of the Plaintiff remained unrebutted, as the Defendants neither entered the witness box nor led any evidence in support of their defence. Despite this, the Courts below accepted the unproved defence of the Defendants, disregarded the evidence led by the Plaintiff and failed to draw an adverse inference against the Defendants, for withholding the best evidence available to them.

51. Furthermore, though the Defendants claimed ownership of the suit property, they neither produced any document nor examined any witness to establish their claim. On the other hand, the Plaintiff/Appellant contended that Ramjas Foundation was the original owner and relied upon 91 original Receipts, evidencing payment of licence fee in favour of *Smt. Kundania Devi* from 1978 to 1998, the Licence Deed executed in her favour and the original House Tax Receipts for the years 2010-2012, to establish ownership in the suit property.

52. It is further contended that the parties were illiterate and unfamiliar with the English language, whereas the proceedings were conducted in English. The testimony of the Plaintiff, being a rustic and illiterate person, cannot be expected to be weighed on the same scale as the literate and qualified people, and the principles of appreciation of evidence to be applied in the two cases, should be different.

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53. The finding that the Plaintiff had no *locus standi* or could not claim any right on the basis of the House Tax Records, is also assailed. It is contended that *Smt. Kundania Devi* was the original Licensee under Ramjas Foundation and, upon her demise, her rights devolved upon her husband, *late Shri Ram Singh.* After the demise of *Shri Ram Singh*, the Plaintiff, being his sole surviving Class II legal heir, succeeded to those rights. The Courts below, therefore, erred in insisting upon a Sale Deed, without appreciating the nature of the leasehold/licence rights claimed by the Plaintiff, through his predecessors.

54. The Appellant further contends that his rights were required to be examined *vis-a-vis* the Defendants and not *vis-a-vis* Ramjas Foundation, whose ownership was never disputed. The Licence Deed, Licence-fee Receipts and House Tax Receipts, established a better title and prior possession in favour of his predecessors, whereas the Defendants failed to prove any right in the suit property.

55. It is further submitted that prior possession constitutes good title against all persons, except the true owner and entitles such a person to recover possession from a trespasser having no better title. Reliance in this regard is placed upon *Sultan Narayanon v. Mathaya Aiyar*, AIR 1966 *Kerala 179; Subodh Gopal v. Province of Bihar*, AIR 1950 Patna 222; *Asher v. Whitlock*, (1865) 1 QB 1; *Perry v. Clissold*, (1907) AC 73; *Sahodra Kuer v. Gobardhan Tewari*, AIR 1917 Patna 546; and *Ram Dayal v. Saraswati*, ILR (1926) 49 All 191.

56. The finding that a Suit for Possession ought to have been filed, is also challenged. According to the Appellant, *Shri Babu Lal* occupied the suit property merely as a licensee and his licence came to an end upon his

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demise. A licensor who approaches the Court within a reasonable time after termination of the licence, is entitled to seek possession by way of a Mandatory Injunction. Reliance is placed upon *E.P. George v. Thomas John*, AIR 1984 Kerala 224; *Sant Lal Jain v. Avtar Singh*; *Hasan Ali v. Akbari Begum @ Akbari Hajjan*, 133 (2006) DLT 26; *Ramesh Kumar Handoo v. Binay Kumar Basu*, RSA No. 286/2007; and *Prabhu Dayal v. Roop Kumar*, AIR 2005 Delhi 144.

57. The finding under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, is also challenged. It is contended that a locality described as a *"slum"* in ordinary parlance, does not necessarily constitute a notified slum area under the Act. The Defendants neither produced the relevant Notification nor otherwise, proved that the suit property fell within a notified slum area. On the contrary, the Notification relied upon by the Appellant, showing that the suit property was not covered under the Act, was not considered by the Courts below.

58. It is, therefore, submitted that the findings concerning the Plaintiff's title and *locus standi*, maintainability of the Suit, and applicability of the Slum Areas (Improvement and Clearance) Act, 1956, are erroneous.

59. It is, therefore, submitted that the Impugned Judgments and Decrees be set aside and the Suit of the Plaintiff be decreed.

60. Learned counsel for the Appellant has also filed *Written Submissions*, wherein the grounds raised in the Appeal have been reiterated.

61. The Notice in the present Regular Second Appeal was issued *vide* Order dated 21.08.2017. Upon service, the Respondents entered appearance through Counsel, on 13.12.2017.

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62. During the pendency of the present Appeal, Ramjas Foundation executed a Licence Deed dated 24.12.2019 in favour of the Plaintiff/ Appellant, Shri Bharat Lal, a copy of which was placed on record.

63. The Appellant also filed an **Application under Order XLI Rule 27 CPC**, seeking leave to place the additional documents, i.e. Licence Deed dated 24.12.2019 executed between Ramjas Foundation and the Appellant, Bharat Lal, in respect of the suit property, along with the Site Plan, and four Receipts dated 24.12.2019 issued by Ramjas Foundation acknowledging the payments made by the Appellant on record. The Application was allowed *vide* Order dated 07.09.2021 and the documents appended thereto, were taken on record.

64. On 07.04.2021, this Court was apprised that Respondent No. 3, *Shri Naveen*, had expired on 19.03.2021, whereupon the Appellant sought time to ascertain the particulars of his Legal Representatives in order to implead them.

65. The better particulars of the Legal Representatives of Respondent No. 3 could not be ascertained, as learned Counsel who had been appearing for the Respondents stated that he was no longer in contact with him. A Report was, therefore, called from the concerned SHO, P.S. Anand Parbat, to ascertain the whereabouts of Respondent Nos. 1 and 2 and the particulars of the Legal Representatives of Respondent No. 3.

66. Accordingly, **a Status Report dated 20.09.2021 was filed by the SHO,** wherein it was reported that Respondent No. 1, *Shri Surender*, along with his family, *i.e.* Respondent Nos. 2 and 3, had earlier been residing at the suit property, but had subsequently left the premises, and no one was found residing there. SI Jagbir Rana visited the suit property and found the

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shop in a dilapidated condition and lying locked. Upon local enquiry, he learnt that Respondent No. 3, *Shri Naveen*, had been running the vegetable shop and had expired. His Death Certificate, however, could not be obtained, while Respondent Nos. 1 and 2 remained untraceable.

67. SI Jagbir Rana also visited the other address of the Respondents, *i.e.* 407/Z4A, Than Singh Nagar, Anand Parbat, New Delhi-110005, as mentioned in the Memo of Parties, and met *Shri Kishan Swaroop, the owner of the said property*. He informed the police that Respondent No. 1 and his family had been residing there as tenants since 2007, but had vacated the premises in November, 2020. He further informed that they were residing somewhere in Modi Nagar, Ghaziabad, Uttar Pradesh; however, their complete address was not known.

68. This Court took note of the Status Report on 25.11.2021. Since Respondent Nos. 1 and 2 remained untraceable and failed to appear, Bailable Warrants were issued against them *vide* Order dated 02.05.2022. Pursuant thereto, Respondent No. 2, *Smt. Dharmesh*, appeared before this Court on 24.05.2022 and stated that she and Respondent No. 1 were the only Legal Representatives of deceased Respondent No. 3.

69. Subsequently, Respondent No. 1, *Shri Surender*, also expired and *vide* Order dated 01.10.2024, the Appeal against him was recorded as having abated. Since none appeared on behalf of **Respondent No. 2, *Smt. Dharmesh*, she was proceeded *ex-parte* on the same date.**

70. Thereafter, the following ***Substantial question of law*** were framed *vide* Order dated 25.04.2025, which read as under:

> ***"****3.1. Whether there is any requirement to obtain permission under section 19 of the Slum Areas (Improvement and*

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Clearance) Act, 1956 in a suit seeking recovery of possession from an unauthorized occupant of a property covered by that Act;

3.2. Whether a plaintiff is entitled to relief on the basis of 'better title theory' with respect to a property where the defendant has not filed any document nor led any evidence to prove any title to the property at all; and

3.3. Whether a court can dismiss a suit for possession holding that the plaintiff has no locus standi, solely for the reason that the plaintiff is not shown to have any right, title or interest in suit property, and the defendant is also unable to show any right, title or interest in that property;"

Submissions heard and record perused.

71. The Suit of the Appellant for Mandatory and Permanent Injunctions in respect of the suit property, has been concurrently dismissed on the findings that he had no *locus standi* and that it was not maintainable for want of permission under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956. The three Substantial Questions of Law framed in the present Appeal are now taken up for consideration in seriatim.

I. *Whether the Suit was not maintainable under Section 19(1) of the Slum Areas (Improvement and Clearance) Act, 1956:*

72. The first substantial question of law which arises for consideration is whether prior permission of the Competent Authority under Section 19(1) of the Slum Areas (Improvement and Clearance) Act, 1956 *(hereinafter referred to as the "Slum Act")* was necessary for instituting the present Suit

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against the Defendants, who were alleged to be unauthorised occupants of the suit property.

73. The learned Civil Judge, while deciding Issue No. 3, held that the Suit was not maintainable for want of permission under Section 19 of the Slum Act. This finding was principally founded upon the admission of the Plaintiff that the suit property was situated in a slum area and that no permission had been obtained from the Competent Authority. The learned First Appellate Court affirmed the said finding, observing that the Plaintiff had failed to establish that the suit property was outside the ambit of the Slum Act.

74. The *first aspect* is whether the suit property is situated in a slum area at all. The admission of the Appellant that the area was a slum area and that no permission had been obtained before filing the Suit could not, by itself, have invited an adverse finding. Whether a property falls within a slum area for the purposes of the Slum Act, depends upon a Notification issued under the Act, and not upon how the locality is described in common parlance.

75. Moreover, the Appellant has placed on record the Government of India Notification dated 02.04.1987, which clearly reflects that the suit property does not fall in a slum area. Being a Government Notification, judicial notice can be taken of it. *It is, therefore, established that the suit property is not situated in a slum area.*

76. The *second aspect* is that, even if it is assumed that the suit property is situated in a slum area, the question arises whether permission under Section 19(1) of the Slum Act was required for instituting the present Suit. Section 19(1) of the Slum Act reads as under:

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> *"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."*

77. Section 19(1) restricts only the eviction of a *"tenant"*. The meaning of this expression was considered by the Full Bench of this Court in *Punnu Ram & Ors. v. Chiranji Lal Gupta & Ors.*, AIR 1982 Delhi 431. The Full Bench, while considering the interpretation of Section 19(4), examined whether the expression *"tenant" under Section 19 included every person occupying premises situated in a slum area.* It was observed as under:

> *"This brings us to the consideration of a few other aspects agitated at the Bar. Sub-section (3) of Section 19 of the Act postulates grant or refusal of the permission to institute any suit or proceeding for obtaining a decree or order for eviction of a tenant or where any decree or order is obtained in any suit or proceeding instituted before the commencement of the Act for eviction of a tenant from any building or land in an area declared as a slum area. The question that arises for consideration is what is the meaning of the term "tenant". As noticed earlier, this term is not defined by the Act. Mr. Narula submits that tenant*

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> *contemplated by Section 19 is a person in occupation or a person likely to be evicted, if permission is granted to institute eviction proceedings or execute an order of eviction.* ***We do not agree. The protection contemplated is for a tenant as recognised by law. A mere occupier can not 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 aforesaid principle was reiterated in *Giri Raj (Since Deceased) Through LRs. v. Deepak Gupta & Ors.*, RSA Nos. 151/2012, 152/2012 and 164/2012, decided on 12.09.2013, wherein the Defendants, who had originally occupied the suit properties as tenants, subsequently asserted ownership by adverse possession. The Court held that, having renounced their tenancy rights by asserting a hostile title, the Defendants could not invoke the protection under Section 19. Following *Punnu Ram* (supra***), it was held that the Slum Act protects tenants recognised in law and not mere occupiers or unauthorised occupants.***

79. The same principle was applied in *Satender Jain v. Satya Narain Sanjiv Gupta HUF*, RSA 139/2019, decided on 09.09.2021, wherein the legal heirs of the original tenant continued in occupation after the tenancy rights were claimed to have stood extinguished. Relying upon *Punnu Ram* (supra) and *Giri Raj* (supra), ***held that the protection under Section 19 extends only to tenants recognised in law and not to occupiers generally.***

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80. The legal position which thus, emerges from the aforesaid decisions is that the applicability of Section 19(1) cannot be determined merely by establishing that the property falls within a notified slum area. *The statutory restriction is directed against the eviction of a tenant and not against every person found in occupation of such property.* Consequently, the Court must first examine the ***legal character of the occupation*** before concluding that prior permission from the Competent Authority, was mandatory.

81. In the present case, the Appellant's case was that late *Shri Ram Singh* had merely permitted *late Shri Babu* Lal to park his *rehri* and keep his goods in the suit property, and that the Respondents continued in unauthorised occupation after their demise. The Respondents, on the other hand, claimed that the suit property belonged to Ramjas Foundation and that late Shri Babu Lal, being illiterate, used to hand over the licence fee/rent to late Shri Ram Singh for its deposit with Ramjas Foundation on his behalf. They further claimed that *late Shri Babu Lal* had become the owner of the suit property by adverse possession, and that they had inherited his interest therein. *Significantly, the Defendants neither pleaded any tenancy under the Plaintiff or his predecessor nor led any evidence to establish a subsisting tenancy recognised in law*. Mere occupation of the suit property, even if prolonged, could not confer the protection contemplated under Section 19.

82. The learned Courts below, therefore, erred in treating the location of the suit property in a slum area, as sufficient to attract the bar under Section 19, without determining whether the Defendants were tenants entitled to statutory protection.

83. In view of the foregoing discussion, the suit property is not shown to be situated in a slum area and, in any event, the Defendants were not tenants

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entitled to the protection under Section 19(1). The prior permission of the Competent Authority was, therefore, not required. *The finding of the learned Civil Judge and the learned First Appellate Court on Issue No. 3 being contrary to established law, is, accordingly, set aside.*

II. *Whether the Appellant was Entitled to Relief on the Basis of a Better Title, and Whether he had the Locus Standi to Maintain the Suit:*

84. The *second and third* Substantial Questions of Law are interlinked and are, therefore, taken up together. The Appellant, Bharat Lal, in order to establish his lawful ownership in the suit property, had explained that the entire area was owned by Ramjas Foundation, which had given licences to various persons, in respect of the shops existing in the area.

85. The suit property had been given on licence to *Smt. Kundania Devi*, through a Licence Deed dated 01.07.1978, (which was taken on record, on the Application of the Plaintiff, under Order VII Rule 14 CPC, *vide* Order dated 19.11.2011) who thereafter, gave the property to *late Shri Ram Singh*, the brother of the Appellant. *Late Shri Ram Singh* applied to the MCD for mutation of the property in his name and, along with the Application, submitted his transfer documents. On the basis of those documents, ***the property was admittedly transferred in the name of late Shri Ram Singh, vide Mutation Letter dated 19.09.2003.***

86. The Appellant explained in the Plaint, and also deposed as PW-1, that late Shri Ram Singh died on 05.12.2007 and that his wife had predeceased him. He died issueless and was not survived by any Class I legal heir. The Appellant, being the brother and the only Class II legal heir, inherited the suit property, which stood in the name of *late Shri Ram Singh*.

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87. The Appellant was, therefore, able to prove that the suit property had come to him through his brother, *late Shri Ram Singh*, in whose favour there existed the Mutation Letter dated 19.09.2003, Ex. PW-1/2. The Appellant also deposed that the House Tax of the suit property was being paid by late *Shri Ram Singh*. The House Tax Receipts dated 22.01.2008 and 18.01.2008, Ex. PW-1/3 and Ex. PW-1/4 respectively, further corroborate the possessory rights of *late Shri Ram Singh*.

88. Even if the Mutation Letter and the House Tax Receipts are not, by themselves, documents of title, they establish that late *Shri Ram Singh* dealt with the suit property as its owner. Read with the unrebutted testimony of the Appellant, they are sufficient to establish a better title in his favour as against the Respondents, who have not produced even a scrap of paper in support of their claim. **The Appellant has, therefore, been able to establish his possessory rights in the suit property.**

89. Significantly, during the pendency of the present Appeal, Ramjas Foundation, which is admittedly the owner of the suit property and had initially granted the licence in favour of *Smt. Kundania Devi*, executed a fresh Licence Deed dated 24.12.2019 in favour of the Appellant, Bharat Lal. The said Licence Deed was taken on record, *vide* Order dated 07.09.2021. *The admitted owner has thus, recognised the Appellant as the licensee in respect of the suit property, which further reinforces his superior entitlement thereto, vis-à-vis the Respondents, and affirms that neither late Shri Babu Lal nor, thereafter, the Respondents had any possessory rights therein.*

90. The ***next aspect*** **is the status and right of the Respondents to occupy the suit property.** The case of the Appellant was that late Shri Ram Singh had permitted late Shri Babu Lal, the predecessor-in-interest of the

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Respondents, to park his vegetable *rehri*/*thela* outside the shop during the day and to keep his goods inside the shop at night. It was thus, deposed that late Shri Babu Lal had been given a permissive, limited right to use the suit property.

91. The Respondents, are the legal heirs of late Shri Babu Lal, who admittedly died on 14.11.2007. They had admitted that late Shri Babu Lal was a small vegetable vendor, but claimed that he was an old occupant of the suit property and had been selling his vegetables from the shop, for more than 50 years. It was denied that he had merely been given permissive rights to keep his vegetables and goods, after the year 2000. It was also denied that there was ever any temporary arrangement between late Shri Ram Singh and late Shri Babu Lal, especially when late Shri Ram Singh had his own shop near the shop of late Shri Babu Lal.

92. Though the Defendants/Respondents had claimed that Late Babu Lal occupied the suit property in his own right, but not a single document was filed along with the Written Statement to show that the shop was ever allotted to late Shri Babu Lal. Moreover, no evidence whatsoever, has been led by the defendants, to establish any right in the suit property. *In fact, they chose not to lead any evidence*, which was closed *vide* Order dated 26.07.2012.

93. It is significant to observe that in order to ascertain the legal heirs of deceased respondent No.3, the SHO was deputed, who submitted his Report dated 20.09.2021, that the Respondents had left the suit property, which was found lying locked and in a dilapidated condition. Respondent No. 3, Shri Naveen, who had been running the vegetable shop, had expired on 19.03.2021. Respondent No. 1, Shri Surender, also subsequently expired and

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the Appeal against him was recorded as having abated *vide* Order dated 01.10.2024. Respondent No. 2, Smt. Dharmesh, was proceeded *ex parte* on the same date. *Thus, none of the Respondents remained in occupation of the suit property, which was lying abandoned, in dilapidated condition.*

94. Significantly, the defence taken in the Written Statement, was that late Shri Babu Lal was paying the Licence fee to Ramjas Foundation, through late Sh. Ram Singh, thereby acknowledged the superior possessory title of late Sh. Ram Singh. There was no circumstance, either pleaded or proved by the Defendants, to show any right superior to that of the Appellant. *The Respondents have thus not been able to prove any right, title or interest in the suit property.*

95. The Appellant has, through his unrebutted testimony and the documents on record, established that the shop had been acquired by his brother, *late Shri Ram Singh*, from *Smt. Kundania Devi,* to whom the licence had actually been granted, and that after the demise of *late Shri Ram Singh*, he has inherited the rights in the suit property. The evidence of the Appellant, coupled with the absence of any evidence on behalf of the Respondents, *establishes the superior possessory rights of the Appellant.*

96. The law recognises the right to claim possession either on the basis of proprietary title or on the basis of superior possessory rights. Indeed, the dispute revolves around the *"possessory rights"*, rather than the *"ownership rights", inter se* the parties.

97. It is, therefore, significant to understand the two concepts, *i.e. "possessory rights" and "ownership rights"*. Salmond on Jurisprudence *(12th Edn., at paras 59-60)* expounded the two concepts as under:

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> "*These two concepts of ownership and possession, therefore, may be used to distinguish between the de facto possessor of an object and its de jure owner, between the man who actually has it and the man who ought to have it. They serve also to contrast the position of one whose rights are ultimate, permanent and residual with that of one whose rights are only of a temporary nature.*"

98. Legal remedies thus intended for the protection of possession, even as against ownership, are called possessory, while those available for the protection of ownership itself may be distinguished as proprietary. The distinction in modern and medieval civil law is expressed by contrasted terms: *Petitorium* (a Proprietary Suit) and *Possessorium* (a Possessory Suit).

99. It has been explained by the Supreme Court in the case of *Nair Service Society Ltd. v. K.C. Alexander*, AIR 1968 SC 1165, has authoritatively laid down that a person in possession of land in the assumed character of owner, and exercising peaceably the ordinary rights of ownership, *has a perfectly good title against the entire world except the rightful owner. When the facts disclose no absolute title in either party, possession alone decides.*

100. In *Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs.*, (2008) 4 SCC 594, on which the learned First Appellate Court placed reliance, the Supreme Court observed that a person has a right to protect his possession against any person who does not prove a better title. Summarising the law on suits for injunction relating to immovable property, it held that where a cloud is raised over the plaintiff's title and he is not in possession, the remedy ordinarily is a suit for declaration and possession. However, where there are necessary pleadings regarding title and an appropriate issue

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relating to title on which the parties lead evidence, and the matter involved is simple and straightforward, the Court may decide the issue regarding title even in a Suit for Injunction.

101. The said principles were reiterated by the Supreme Court in *Poona Ram v. Moti Ram*, (2019) 11 SCC 309, wherein it was observed that legal remedies ***appointed for the protection of possession, even against ownership, are called possessory, while those available for the protection of ownership itself may be distinguished as proprietary***. It was further held that in order to claim possessory title, the Plaintiff must establish his own case and must also show that he has a better title, than the Defendant.

102. Where neither party establishes an absolute title, the Court is required to decide which of the *two has the better possessory title*; it cannot non-suit the Plaintiff merely because he does not hold a Sale Deed, while leaving the Defendant, who has no title at all, in occupation. In the light of the aforesaid principles, it is proved that the Appellant had a better possessory title rights, while the Respondents had no right whatsoever in the suit property, except the permissive rights.

103. The Two Courts failed to appreciate the facts of this case in the light of settled law and the findings suffer from perversity, and are liable to be set aside.

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III. *Whether the Defendants have ownership in the suit property, by Adverse Possession:*

104. ***Lastly,*** **the Defendants sought to resist the Suit by claiming that late Shri Babu Lal had acquired ownership of the suit property by way of *adverse possession, having remained in its occupation for more than 50 years.***

105. To establish ownership by adverse possession, the determinative consideration is not merely the duration of possession. Such possession must be ***nec vi, nec clam, nec precario, namely, peaceful, open and continuous, besides being actual, exclusive and hostile to the true owner throughout the statutory period.***

106. In *S.M. Karim v. Mst. Bibi Sakina,* AIR 1964 SC 1254, the Supreme Court held that a plea of adverse possession must, at the very least, disclose when the possession became adverse so that the commencement of limitation against the person affected can be ascertained. Likewise, in *Karnataka Board of Wakf v. Government of India*, (2004) 10 SCC 779, it was held that a person claiming adverse possession must clearly plead and establish all the facts necessary to *prove adverse possession, namely, the date on which he came into possession, the nature of his possession, whether the factum of possession was known to the other party, how long his possession continued, and whether it was open and undisturbed.*

107. 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 referable to a lawful or permissive origin, mere lapse of time does not***

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render it adverse; there must be clear and unequivocal evidence of the point at which such possession **became hostile to the true owner**.

108. *The 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.*

109. Tested on these principles, the defence of the Respondents does not stand scrutiny. Not even the basic particulars of adverse possession were proved, as the Respondents led no evidence at all. Their plea is, moreover, self-contradictory. The Respondents themselves pleaded that late Shri Babu Lal, being illiterate, used to hand over the Licence fee/rent to late Shri Ram Singh, for deposit with Ramjas Foundation. A person who pays Licence fee or rent in acknowledgement of the title of the owner cannot, in the same breath, claim to hold the property adversely to it. This pleading, rather, lends support to the case of the Appellant that the occupation of late Shri Babu Lal, was not independent of late Shri Ram Singh.

110. Even otherwise, the occupation of late Shri Babu Lal was permissive in its very origin. The rights of a person permitted to occupy premises were considered by the Supreme Court in *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370, wherein the brother, who had been permitted by his sister, the owner, to look after her house in Goa as a caretaker, claimed to be in possession in his own right. The Supreme Court crystallised the principles of law as under:

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> *"(i) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously; even by long possession of years or decades, such person would not acquire any right or interest in the said property;*
> *(ii) A caretaker, watchman or servant can never acquire interest in the property, irrespective of his long possession, and is required to give possession forthwith on demand;*
> *(iii) The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant;*
> *(iv) The protection of the Court can only be granted or extended to a person who has a valid, subsisting rent agreement, lease agreement or licence agreement in his* favour; and
> *(v)* ***The caretaker or agent holds the property of the principal only on behalf of the principal and acquires no right or interest whatsoever for himself in such property, irrespective of his long stay or possession."***

111. The Supreme Court in *Maria Margarida* (supra) thus, held, *inter alia*, that gratuitous occupation, even for years or decades, does not confer title and a caretaker, servant, friend or relative permitted to occupy the premises does not acquire an interest merely by reason of such occupation. A caretaker or agent merely holds the property on behalf of the principal and cannot claim an independent right merely from the duration of possession. The Supreme Court thus, concluded *that no one acquires title to a property if he or she was allowed to stay in the premises gratuitously, and even by*

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long possession of years or decades, such a person does not acquire any right or interest therein.

112. *The aforesaid principles apply squarely to the present case.* Late Shri Babu Lal had been permitted only to park his *rehri* outside the suit property during the day and to store some of his goods inside the shop at night, without payment of any consideration. Such limited and gratuitous permission could not mature into ownership merely because the arrangement allegedly continued for a prolonged period.

113. Moreover, the Respondents neither identified any act by which the permissive occupation became hostile nor proved that any hostile title had been asserted to the knowledge of the true owner. *Late Shri Babu Lal*, therefore, acquired no right or interest in the suit property merely by reason of the duration of his occupation, and no better right could have devolved upon the Respondents after his demise.

114. Consequently, the plea of adverse possession is wholly without merit. The Respondents failed to establish any right, title or interest capable of defeating the superior possessory entitlement of the Appellant.

115. Therefore, the conclusions of the learned Civil Judge, which were affirmed in the Appeal, are patently erroneous and based on non-appreciation of the evidence and the documents on record.

IV. *Whether the Appellant/Plaintiff is entitled to Mesne Profits*:

116. The Appellant also sought *Mesne* Profits @ Rs. 4000/- per month. However, no evidence whatsoever has been led in respect of the *Mesne* Profits or the benefit which was being derived by the Respondents from the

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use and occupation of the suit property, as required under Order XX Rule 12 CPC. *The Appellant is, therefore, not entitled to any Mesne Profits.*

Conclusion:

117. In view of the aforesaid discussion, the impugned Judgment dated 31.01.2013 of the learned Civil Judge and that of the learned First Appellate Court dated 19.05.2017 are hereby, set aside. The Suit of the Appellant for Mandatory Injunction is decreed, and the belongings of the Respondents lying in the suit property are directed to be removed and its possession handed over to the Appellant. **The Suit for Permanent Injunction** is also decreed, and the Respondents, their legal representatives, assigns or any person claiming through them, are restrained from creating third-party rights in the suit property.

118. The Regular Second Appeal is accordingly allowed, and the Suit of the Appellant for Mandatory and Permanent Injunction is hereby, decreed. **However, the dismissal of relief of mesne profits, is upheld.**

119. Pending Applications, if any, are also disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

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