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

% ***Reserved on: 25th May, 2026***

Pronounced on: 03rd August, 2026

CNR No: DLHC010486972023

\+ **RFA 955/2023, CM APPL. 62465/2023, 61648/2025 and 28812/2026**

Mohan Lal Sehgal Through Lrs.

1. Ajay Sehgal
Son of Shri Mohan Lal Sehgal
R/o 1042, Mukherjee Nagar, Delhi.

2. Guarav Sehgal
Son of Shri Mohan Lal Sehgal
R/o 1042, Mukherjee Nagar, Delhi. .....Appellant

Through: Mr. Rakesh Kumar, Mr. Gaurav Pachauri and Ms. Tamanna Jangra, Advocates.

versus

Kasturi Lal Sehgal
S/o Sh. Atma Ram Sehgal,
R/o 1042, Mukherjee Nagar, Delhi. .....Respondent

Through: Mr. Rahul Rai and Mr. Shekhar Mehla, Advocates.
Mr. G. K. Chahuan, Mr. Sandeep Lamba and Mr. Amitabh Pandey, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 read with Order XLI Rule 1 of the CPC has been filed by the Defendant/Appellant, Sh. Mohan Lal

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Sehgal, against the Judgment dated 23.09.2023, whereby the *Suit filed by the Plaintiff/Respondent for* ***possession of the Suit Property****, i.e., Property bearing No. 1042, Mukherjee Nagar, Delhi, was decreed under Order XII Rule 6 CPC, by the learned Additional District Judge, Delhi.*

2. The Plaintiff/Respondent had filed ***Civil Suit bearing CS DJ No. 34/2020*** *seeking Possession, Permanent Injunction and Damages/Mesne Profits*.

3. ***Brief facts***, as stated in the Plaint, were that Late Sh. Atma Ram Sehgal (father of the parties) was the *allottee of Property* bearing No. 191-192-F, Outram Lines, Kingsway Camp, Delhi, *allotted to him by the Government of India*. He expired on 22.07.1974 and was survived by his wife, Smt. Gomti Sehgal; four daughters, namely, Ganga Devi, Viran Devi, Krishna Devi and Bimla Devi; and two sons, namely, Kasturi Lal Sehgal (plaintiff) and Mohan Lal Sehgal (defendant).

4. All the Legal Heirs of Late Sh. Atma Ram Sehgal executed a ***registered Relinquishment Deed dated 08.08.1974*** in favour of the Plaintiff, Mr. Kasturi Lal Sehgal. Thereafter, on the directions of Government of India, the property at Kingsway Camp was ***surrendered*** and in lieu thereof, Property bearing No. 1042, Mukherjee Nagar, Delhi *was allotted* in the name of the Plaintiff, on Lease Hold basis, through ***Lease Deed dated 03.02.1977,*** for a premium of Rs.21,000/- *for a period of 99 years commencing* from 10.02.1971. Thereafter, Plaintiff raised construction on this Plot from his own resources. He also got Conveyance Deed dated 30.09.1999, executed in his favour.

5. The Plaintiff/Respondent asserted that the Defendant/Appellant, being his brother and considering the *fiduciary relationship* between them,

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was permitted to reside with his family members in two rooms, toilet and kitchen on the ground floor, two rooms, kitchen and toilet on the first floor, and two rooms, toilet and kitchen on the second floor in the rear portion forming part of the property in question (*hereinafter referred to as suit property*) ***as a licensee***, without any charges or licence fee.

6. Furthermore, the Plaintiff was also supporting the Defendant's family, as the Defendant was allegedly indulging in various unlawful activities. With the passage of time, the Defendant's children grew up with the Plaintiff's children. The Plaintiff alleged that the Defendant had *developed a mala fide intention to usurp the suit property* despite having no right, title or interest therein. He declined to vacate the suit property and hand over its possession, when asked by the plaintiff.

7. The Defendant requested him to not evict him from the suit property and even entered into an ***Agreement acknowledging the Plaintiff as the absolute owner of the suit property*** and that he had been permitted to occupy the suit property, being his real brother. Believing the representations made by the Defendant, the Plaintiff accepted the undertaking. Thereafter, according to the Plaintiff, the Defendant issued a Notice dated 02.06.2017 claiming rights over the suit property and asserting himself to be its owner.

8. The Plaintiff gave a Reply dated 12.07.2017 and revoked the Defendant's licence. He not only called upon the Defendant to *vacate the suit property, but also claimed user and occupation charges* @ Rs.50,000/- per month, being the prevailing market rate. Despite the said Notice, when the Defendant failed to vacate the suit property, the Plaintiff filed the *Suit seeking recovery of possession, mesne profits @ Rs.50,000/- per month*

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w.e.f. 01.09.2017 along with pendente lite and future mesne profits, besides Permanent Injunction restraining the Defendant from creating any third-party interest in the suit property.

9. The Defendant, in his ***Written Statement***, claimed that the Plaint *disclosed no cause of action.* It was further asserted that, as per the averments made in the Plaint, the cause of action arose on 13.08.1974 and the period of limitation expired on 12.08.1986. Therefore, *the Plaintiff's Suit was hopelessly barred by limitation.*

10. He further claimed that the Plaintiff was holding the suit property jointly with the Defendant, being the elder brother. The Defendant further claimed that the Relinquishment Deed dated 08.08.1974, had been executed merely *to facilitate the transition of the Property bearing No. 191-192-F, Outram Lines, Kingsway Camp, Delhi to the property in question, i.e., Plot No. 1042, Dr. Mukherjee Nagar, Delhi,* since the Kingsway Camp Property stood in the name of the father of the Plaintiff and the Defendant, who had expired on 22.07.1974.

11. It was further asserted that the Relinquishment Deed was executed in favour of the Plaintiff, being the *eldest male member and Karta of the family*. Therefore, the Plaintiff had no exclusive right over the entire Property, as claimed by him. The Defendant further alleged that the Plaintiff had taken undue advantage of the innocence of the Defendant and his family members, with an intention to grab the Suit Property.

12. Moreover, on the date when the Relinquishment Deed was executed, there was no *law prohibiting benami transactions*. Therefore, despite the execution of the Relinquishment Deed, the Plaintiff continued to hold the Property in question for himself and the Defendant, and there was

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no divestment of the Appellant's right, title and interest in the property in question, which allegedly continued to be the joint property of the Appellant and the Respondent.

13. After construction of the new building, the Plaintiff and the Defendant had been residing in their respective portions of the Suit Property. The Defendant *had never paid any user or occupation charges; in fact, he* has been enjoying all the amenities, including electricity and water connections, which are in his own name. Had the Defendant merely been a licensee in the suit property, he would not have been provided with electricity and other amenities in his own name, with the knowledge of the Plaintiff. Therefore, *according to the Defendant, the suit property continued to be the* ***joint property*** *of the Plaintiff, the Defendant and the other legal heirs.*

14. The Defendant further claimed that the Plaintiff had *forged certain documents on blank stamp papers and had misused the same*. He further alleged that the Plaintiff had forged his signatures on the Agreements dated 14.08.1977 and 11.12.2000, which, according to the Defendant, *were forged and fabricated documents*. The Defendant, therefore, prayed that the Suit of the Plaintiff be dismissed.

15. The Plaintiff, in ***the Replication***, re-affirmed the assertions made in the Plaint and denied the allegations made in the Written Statement.

16. Learned District Charge ***framed the Issues on the pleadings on 06.06.2022, as under:***

> "*1. Whether the suit of the plaintiff is barred by limitation?OPD.*

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2. Whether defendant has become owner of the suit property by way of adverse possession?OPD.

3. Whether plaintiff is entitled to decree of recovery of possession in respect of the suit property? OPP.

4. Whether plaintiff is entitled to damages if so at what rate and for what period?OPP.

5. Whether plaintiff is entitled is entitled for decree of permanent injunction as prayed for? OPP.

6. Relief."

17. Plaintiff examined himself as PW-1.

18. Thereafter, an application under ***Order XII Rule 6 CPC*** was filed by the Plaintiff seeking a Decree for possession on the admissions made by the Defendant.

19. The **Application was contested by the Defendant/Appellant,** who *asserted that there were no admissions* on the basis of which a judgment could be passed, in favour of the Plaintiff.

20. The ***learned District Judge, in the impugned Judgment dated 23.09.2023***, observed that the *licensor-licensee relationship stood admitted*, though the Defendant sought to explain that the *Relinquishment Deed* had been executed merely to facilitate the exchange of the Property at Outram Lines, Kingsway Camp, Delhi with the Suit Property. However, if the Written Statement was read as a whole, *the execution of the Relinquishment Deed stood admitted*. The explanation furnished for its execution could not vary the terms of the registered document. It was concluded that the Plaintiff *had become the absolute owner of the suit property.*

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21. It was further observed that that the Defendant had *neither filed any Counter-claim nor sought partition of the Suit Property or cancellation of the Relinquishment Deed*. It was, therefore, held that, in view of the clear admissions made by the Defendant, ***the Plaintiff was entitled to a Decree for possession under Order XII Rule 6 CPC.*** *Consequently,* ***the Suit for possession was decreed***.

22. *Aggrieved by the said Judgment dated 23.09.2023,* ***the Defendant has filed the present Appeal.***

23. The ***grounds of challenge*** are that the Appellant/Defendant had raised several issues of law and facts in his Written Statement, which were triable and no decree under Order XII Rule 6 CPC could have been passed. Moreover, the Plaintiff had already led his evidence and had been partly cross-examined at the time the Application under Order XII Rule 6 CPC was filed. Once the evidence had commenced after the framing of issues, it was necessary that the entire trial be concluded, before any Judgment in the Suit, could be pronounced.

24. The Appellant further claimed that there were no clear and unequivocal admissions on his part, sufficient to support the passing of a Decree. The Appellant had never accepted that by virtue of the Relinquishment Deed, *he had relinquished his rights in the properties of Late Sh. Atma Ram Sehgal, their father, including the Property in question, allotted subsequently in lieu thereof.*

25. It was further contended that *there was no admission of the licensor-licensee relationship.* In fact, the Plaintiff, in his cross-examination, had admitted that the suit property was in his safe custody as he was the Karta of

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the joint family and that the Defendant/Appellant had been permitted to reside in the suit property as a family member and *not as a licensee*.

26. It has further been contended that the learned Trial Court failed to appreciate that, having regard to the special social circumstances and the needs of the joint family, the Relinquishment Deed was executed at a time when *there was no law prohibiting benami transactions*. The Plaintiff continued to hold the Property for and on behalf of himself and the other legal heirs of Late Sh. Atma Ram Sehgal.

27. Furthermore, the cause of action had expired on 12.08.1986 and the Suit was barred by limitation. The Defendant has been in occupation of the suit property for more than 46 years and had, therefore, become the owner thereof by way of ***adverse possession.*** A Prayer is, therefore, made that the impugned Judgment and Decree passed ***under Order XII Rule 6*** CPC, be set aside.

28. ***Written Submissions were filed on behalf of the Respondent/Plaintiff,*** who contended that though the Defendant had claimed that the Suit property belonged to the HUF and not to the Plaintiff, the said contention was not tenable, in view of the admitted execution of the Relinquishment Deed in favour of the Plaintiff. It was, therefore, submitted that the present Appeal *was devoid of merit and* ***liable to be dismissed.***

Submissions heard and record perused.

29. The Plaintiff had sought possession of the suit property from the Defendant, his brother, by asserting that the Defendant had been inducted as a licensee, whose licence was terminated *vide* Reply dated 12.07.2017, whereupon the ***Plaintiff claimed to be entitled to recover possession thereof***.

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30. It is an admitted case that Late Sh. Atma Ram Sehgal, father of the parties, had been allotted the Property at Outram Lines, Kingsway Camp, Delhi. On his demise on 22.07.1974, admittedly, a registered Relinquishment Deed dated 08.08.1974 was executed by all the Legal Heirs of Late Sh. Atma Ram Sehgal in favour of the Plaintiff. It is further admitted that the Property at Outram Lines, Kingsway Camp, Delhi was surrendered, in lieu whereof the suit property was allotted to the Plaintiff on leasehold basis vide Lease Deed dated 03.02.1977. Thereafter, the Plaintiff got a **registered Conveyance Deed dated 30.09.1999** executed in his favour.

31. It is not in dispute that the suit property was constructed and the Defendant came to reside in the **rear portion of the suit property comprising the Ground, First and Second Floors,** in the year 1977. The Plaintiff claimed that the Defendant had been permitted to reside in the suit property as a licensee, being his younger brother.

32. The Defendant admitted the execution of Relinquishment Deed, but his sole defense was that it was executed to facilitate the Plaintiff in completing all the formalities for surrender of the property of Kingsway Camp and for allotment of the suit property.

33. It is significant to note that there is a registered Relinquishment Deed and the defence sought to be projected by the Defendant, is contrary to the content of Relinquishment Deed. Whatever may have been the intention behind the execution of Relinquishment Deed, the contents of this Relinquishment Deed cannot be overlooked and ignored, which confer absolute ownership on the Plaintiff. The admissions of the Defendant along with the admitted Relinquishment Deed established the absolute right and ownership of the Plaintiff in the Suit Property.

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34. Admittedly, ***the Plaintiff got the registered Conveyance Deed in his name, in the year 1999***. The Defendant has all throughout been in possession of the suit property and was aware of the Relinquishment Deed and subsequent execution of the Conveyance Deed in 1999, despite which he never filed any Suit, Application or other proceedings to challenge the Conveyance Deed in the name of the Plaintiff or to assert his ownership rights in the suit property, as has been rightly observed by the learned District Judge.

35. *There are clear and unequivocal admissions on the part of the Defendant that the suit property is in the name of the Plaintiff and he had come with his family to reside in the suit property.*

36. ***The learned District Judge rightly held that the Defendant was a licensee, whose licence stood terminated vide Reply dated 12.07.2017.***

37. The Appellant had further claimed that the suit property was held by the Plaintiff as a Karta, for the benefit of the Defendant and the other legal heirs and that there existed co-ownership. However, the said defense has no legs to stand as there is not a whisper of their being any Joint family or the HUF interse the family members. The Conveyance Deed is, admittedly in the name of the Plaintiff and merely because the defendant and his family came to live in the suit property, would neither constitute a joint family or an HUF. *Such assertions of the defendant have no basis in facts or law and do not establish any proprietary or ownership right of the Appellant in the suit property.*

38. The Appellant has also referred to the cross-examination of the Plaintiff, wherein he had admitted that the suit property was in his safe custody as he was the Karta of the joint family and that the

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Defendant/Appellant had been permitted to reside in the suit property as a family member and *not as a licensee*.

39. These admissions also do not help the defendant since the plaintiff may had felt responsible for the family and permitted the defendant to reside as a family member; that too, also reflects the status of the defendant as a permissive user, and not as the owner.

40. Another defence taken by the Defendant is that he is in possession since last more that 40 years and has the electricity/Water connection in his name to the knowledge of the plaintiff and has thus, acquired the ownership by adverse possession.

41. The law relating to adverse possession is well settled. The person in possession must claim to be so of right, as against the true owner. It must be '*nec vi, nec clam, nec precario'*. It must be adequate in continuity and publicity to the extent of showing that it is averse to the competitor. It must be hostile and under a claim or colour of title. It must be actual, open, uninterrupted, notorious, exclusive and continuous and it must run over the entire statutory period of 12 years. Any person who bases his claim to title by adverse possession should be hostile to the real owner with the attributes of notoriety, exclusivity and continuity over the statutory period.

42. The Supreme Court, in *Karnataka Board of Wakf v. Government of India and Others*, (2004) 10 SCC 779, summed up the legal position as under:

> *"It is well settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity*

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and in extent to show that their possession is adverse to the true owner. It must start with the wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. Physical fact of exclusive, hostile and the animus possedendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since, he is trying to defeat the rights of the true owner it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

43. In *Ravinder Kaur Grewal and Ors. v. Manjit Kaur and Ors.*, (2019) 8 SCC 729, the Supreme Court reiterated that a claim of adverse possession can succeed only when the claimant establishes the essential ingredients of nec vi, nec clam and nec precario, i.e., possession must be continuous, open and notorious, and hostile to the title of the true owner. It was further held as under:

"We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12

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years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed."

44. Furthermore, in *Maria Margarida Sequeria Fernandes and Ors. v. Erasmo Jack de Sequeria (Dead) through L.Rs.*, (2012) 5 SCC 370, the Supreme Court extensively dealt with the rights of a permissive occupant and held that such a person can never satisfy the ingredients of adverse possession, as his possession is not hostile but on behalf of the true owner.

45. In Maria Margarida *(supra)*, on similar facts, the Appellant therein had permitted her brother, the Respondent, to take care of her property as she was living outside Goa, being married to a Naval Officer posted from time to time in different places. The Appellant filed proceedings to claim back the possession, after having been kept out of her property for nearly two decades. A similar plea of family arrangement and long possession was taken by the brother, to defend his possession. The Apex Court held that the Respondent was merely a caretaker and could not acquire any right or interest in the property, irrespective of his long possession. It was further held that a caretaker holds the property of the principal only on behalf of the principal and acquires no right or interest whatsoever for himself in such property. The possession was directed to be restored to the Appellant, who was admittedly the true owner of the suit property.

46. The Supreme Court, relying upon its earlier decision in *Rame Gowda (dead) by L.Rs. v. M. Varadappa Naidu (dead) by L.Rs. and Anr.*, (2004) 1 SCC 769, held that in an action for recovery of possession of

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immovable property, upon the legal title being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession to establish that he has such a right. It was further held that possession is no good against the rightful owner and that the assumption that a person is in peaceful possession will not work and cannot operate against the true lawful owner.

47. Reliance was also placed on *Southern Roadways Ltd., Madurai v. S.M. Krishnan*, (1989) 4 SCC 603, wherein it was held that an agent has no possession of his own, and the possession of the agent is the possession of the principal. In view of the fiduciary relationship, the agent cannot be permitted to claim his own possession.

48. Similarly, in *Puran Singh v. The State of Punjab*, (1975) 4 SCC 518, it was held that an occupation of the property by a person as an agent or a servant at the instance of the owner will not amount to actual physical possession.

49. In *Mahabir Prasad Jain v. Ganga Singh*, (1999) 8 SCC 274, it was reiterated that the possession of a servant or agent is that of his master or principal, as the case may be, for all purposes, and the former cannot maintain a suit against the latter on the basis of such possession.

50. In *Anima Mallick v. Ajoy Kumar Roy and Anr.*, (2000) 4 SCC 119, where a sister had given possession gratuitously to her brother, the Supreme Court restored possession to the sister, holding that it was on a purely gratuitous basis and she could have reclaimed possession even without the knowledge of the brother.

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51. The Supreme Court, in Maria Margarida *(supra)*, crystallized the principles of law as under:

(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.

52. In the present case, the Defendant has failed to establish any of the aforesaid ingredients of adverse possession. Mere long possession or having water/electricity connection, which are only the facilities for enjoyment of the property, is not sufficient to establish the ownership by adverse possession. There is no assertion by the Defendant that his possession was of an owner, adverse to that of the Plaintiff. Rather, his own assertions

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reflect that he came into the property with the permission of the Plaintiff, which never transformed into that of an owner.

53. The Defendant had also claimed that the Suit was barred by limitation, as he is in possession for last more than 40 years. However, Article 65 of Schedule I to the Limitation Act, 1963 prescribes a period of twelve years for a suit for possession of immovable property based on title, commencing from the date when the possession of the defendant becomes adverse to the plaintiff. Since the Defendant was admittedly a permissive occupant whose possession was never hostile or adverse to the Plaintiff, the period of limitation never commenced. The licence was revoked vide Reply dated 12.07.2017 and the Suit was instituted in the year 2020, well within the prescribed period of limitation.

54. The Suit of the Plaintiff is, therefore, not barred by limitation.

55. The Appellant had also contended that once the issues had been framed and part evidence of the Plaintiff had been recorded, the Application under Order XII Rule 6 CPC ought not to have been entertained and the trial ought to have proceeded to its logical conclusion by recording the evidence of the parties. This contention is liable to be rejected.

56. Order XII Rule 6 CPC does not restrict the filing of an application to any particular stage of the proceedings; such an application may be filed at any stage, if the Court finds clear admissions on the basis of which the Suit can be decreed. There is no legal bar to passing a judgment on admissions after commencement of evidence. Rather, the mandate of law is that litigation should not linger endlessly, but should be decided expeditiously, in accordance with law. It is in the interest of the parties that their rights are determined and finality is accorded to the litigation.

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57. *There is no infirmity in the impugned Judgment dated 23.09.2023.*

58. Accordingly, the present Appeal is ***dismissed*** as being devoid of merit, along with all pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 03, 2026/*R*

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