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

Reserved on: 18th December, 2025
Pronounced on: 12th January, 2026

\+ RFA 474/2013, CM APPL. 10983/2022, CM APPL. 44079/2023, CM APPL. 39143/2024 & CM APPL. 65771/2024

KALYAN DASS THROUGH LR'S .....Appellant

Through: Mr. Naresh K. Daksh, Adv.
Mob: 9810539912
Email: nareshdaksh_adv@yahoo.com

versus

PRAVEEN CHAWLA .....Respondent

Through: Mr. Charu Sharma and Mr. Nishant Nain, Advs.
Mob: 9599515369
Mob: charusharma3637@gmail.com

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\+ RFA 475/2013, CM APPL. 60422/2023, CM APPL. 39140/2024 & CM APPL. 65702/2024

KALYAN DASS THROUGH LR'S .....Appellant

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PRAVEEN CHAWLA .....Respondent

Through: Mr. Charu Sharma and Mr. Nishant

Nain, Advs.
Mob: 9599515369
Mob: charusharma3637@gmail.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGEMENT

MINI PUSHKARNA, J.

Introduction:

1. The Regular First Appeals being *RFA 474/2013* and *RFA 475/2013* are filed under Section 96 of the Code of Civil Procedure, 1908 ("**CPC**"), seeking to set aside the common judgment and decree dated 16th May, 2023 ("**impugned judgment**"), passed by the District and Sessions Judge (North), Rohini Courts, Delhi in *Civil Suit No. 355/10* and *Counter Claim No. 633/10*, titled as *"Sh. Parveen Chawla Versus Sh. Kalyan Dass"* as regards the findings on ownership, possession, *mesne profits* and permanent injunction.

2. The suit was filed by the plaintiff/respondent for possession, mesne profits/damages, and permanent injunction with respect to the property bearing *no. B-25A, Vijay Nagar, Delhi – 110009* ("**suit property**"). The Trial Court decreed the suit by granting possession of the suit property in favor of the plaintiff/respondent, on the ground that the plaintiff/respondent is the owner of the suit property. The Trial Court dismissed the Counter Claim of the defendant/appellant, wherein, the appellant sought for declaration of ownership in relation to the portion of property in possession of the appellant. However, the Trial Court granted 90 days' time to the defendant/appellant to vacate the suit property. A decree of damages @ Rs. 5000/- per month, along with *pendente lite* and future interest @ 12% p.a.

from 01st June, 2010 till delivery of possession of the suit property, was passed in favor of the plaintiff/respondent. A decree for permanent injunction was also passed in favor of the plaintiff/respondent, thereby, restraining the defendant/appellant herein from alienating or creating third party rights with respect to the suit property.

Brief Facts:

3. The factual matrix as canvassed in the appeals, is as follows:

3.1. The appellant, along with his elder brother, i.e., Ladha Ram and other family members, migrated to India in 1947. As the Hindu Undivided Family **("HUF")** left all their properties and assets at their ancestral place, the family was allotted the suit property, by way of an allotment card dated 25th June, 1950 under the policy of the Government of India. Pursuant to a family understanding, a portion of the suit property, constructed in an area of 15' X 22' was allotted to the appellant for his residence and for carrying his business. Thus, the appellant, along with his family, has been in possession of the said portion of the suit property since the year 1960, and is therefore, the owner of the said suit property.

3.2. Shri Ladha Ram demised on 25th October, 1977 and was survived by his wife, i.e., Smt. Ram Devi, along with five daughters and two sons. Thereafter, Smt. Ram Devi also demised on 07th January, 1996 and was survived by five daughters and two sons.

3.3. Subsequently, the respondent herein executed a Will dated 24th September, 1996 in favour of the appellant herein. Additionally, an Agreement dated 24th September, 1996 was also executed by the respondent. Thereafter, on 09th July, 2009, the respondent cancelled the said Will dated 24th September, 1996 and claimed title and rights over the suit property.

3.4. Aggrieved by this, the appellant filed a Civil Suit, i.e., *CS No. 558/09* for permanent injunction with respect to the suit property on the basis of the Will and Agreement dated 24th September, 1996, wherein, the appellant prayed for restraining the respondent from illegally and unlawfully dispossessing the appellant from the suit property.

3.5. Thereafter, the appellant filed an application under Order VI Rule 17 read with Section 151 of the CPC in *CS No. 558/09*, seeking amendment of the plaint with the prayer to declare appellant as the owner of the portion of the suit property under his possession. The said application was dismissed *vide* order dated 20th April, 2010 in *CS No. 558/09*, on the grounds that it would change the nature of the suit. The said suit filed by the appellant was ultimately dismissed, as the same was not pursued by the appellant.

3.6. Subsequently, in 2010, the respondent herein filed a suit for possession, *mesne profits* and permanent injunction with respect to the suit property, on the grounds of being the exclusive owner of the suit property and having given the suit property on a license to the appellant.

3.7. In response thereto, the appellant registered the *Counter Claim No. 633/10*, seeking a declaration that he is the rightful owner of the portion of the suit property under his possession.

3.8. The Trial Court tried both the suit and the Counter Claim together, and framed the following issues on 15th March, 2011:

> *"xxx xxx xxx*
>
> *1. Whether the plaintiff is the owner of suit property i.e. bearing no. B-25A, Vijay Nagar, Delhi-110009, as shown in red colour in site plan annexed with the plaint? OPP.*
>
> *2. Whether the plaintiff is entitled to a decree of possession of the suit premises as per prayer clause (a) of the plaint? OPP.*

3. Whether the plaintiff is entitled to a decree of recover of arrears of license fee amounting to Rs. 25,000/- along with pendentelite and future interest @ 24% p.a. as per prayer clause (b) of the plaint? OPP.

4. Whether the plaintiff is entitled to a decree to recover pendentelite and future damages for use and occupation of suit premises@ Rs.25,000/- per month or at what other rate? OPP

5. Whether the plaintiff is also entitled to recover interest @ 24% pa. or at what other rate? OPP.

6. Whether the plaintiff is entitled to a decree of permanent injunction as per prayer clause (e) of the plaint? OPP.

7. Whether the suit is barred by limitation as per PO No. 2 of WS? OPD.

8. Whether the suit does not disclose any cause of action and is liable to be rejected tinder Order VII Rule 11 CPC as per PO No. I of WS? OPD.

9. Whether the defenc1an/counter claimant is entitled to a decree of declaration as owner of the Suit property? OPD.

10. Relief.

xxx xxx xxx"

3.9. The Trial Court decreed the suit by granting possession of the suit property in favor of the respondent, thereby holding that the respondent is the owner of the suit property. Further, the Trial Court held that execution of the Agreement dated 24th September, 1996 itself demonstrates that the appellant herein has himself admitted that the respondent is the owner/lessee of the said property. Had the appellant been the owner of the portion of the suit property under his possession, he would not have sought permission of the respondent to allow him to carry on his business in the portion under his possession, by way of the Agreement dated 24th September, 1996. In addition, the Trial Court also came to the finding that the appellant was unable to prove the existence of the HUF. The Court held that the appellant was a licensee in respect of the suit property.

3.10. Further, a decree of possession and damages @ Rs. 5000/- per month, along with *pendente lite* and future interest @ 12% p.a. from 01st June, 2010 till delivery of possession of the suit property, was passed in favor of the plaintiff/respondent.

3.11. In view of the finding that the respondent is the owner of the suit property and the license in favour of the appellant stands terminated, a decree for permanent injunction was also passed in favor of the plaintiff/respondent, thereby, restraining the defendant/appellant from alienating or creating third party rights with respect to the suit property.

3.12. Further, the Trial Court dismissed the counter claim of the appellant. However, the Trial Court granted 90 days' time to the defendant/appellant to vacate the suit property.

3.13. Aggrieved by the aforesaid findings of the Trial Court, the appellant herein has filed the present appeals challenging the impugned judgment.

Appellant's Submissions:

4. The appellant has made the following submissions:

4.1 The Trial Court erroneously rejected the defence of appellant and Counter Claim on the ground of *Res Judicata*. The Trial Court did not decide the suit on merits, nor any issues regarding ownership, were framed and decided by the Trial Court. Further, for invoking the principles of *Res-Judicata*, it is necessary that issues raised in the suit be adjudicated and decided by the Court on merits.

4.2 The Trial Court erroneously concluded that the appellant has not proved allotment of the subject property, despite the appellant having examined the official from Land and Development Office ("**L&DO**") and proving the allotment card. Further, once the allotment card proves that the

property was allotted to the family which includes the appellant being minor, and the property being HUF/Joint Hindu Property and appellant having his title, right and share therein, the Counter Claim ought to have been allowed and the suit of respondent ought to have been dismissed.

4.3 The suit of the respondent was barred by limitation. Once the respondent had executed the Will and Agreement dated 24th September, 1996 recognising the title and right of the appellant, a Cancellation of Will and filing of suit for possession after expiry of more than 12 years, is barred under Section 65 of the Limitation Act, 1963. Further, respondent has admitted in his evidence that the suit property was given by his father to the appellant, therefore, the suit filed after 28 years seeking eviction, is also barred by limitation.

4.4 During the course of arguments, the respondent contended that the appellant has taken plea of adverse possession and same is destructive to the plea of ownership. However, the appellant nowhere either in Suit or in the instant appeal, has taken the plea of adverse possession.

4.5 It is settled law that unless there is a clause for cancellation, a mutual agreement cannot be cancelled unilaterally by a party and only remedy is to approach the Court. Further, it is admitted that there is no mutual cancellation, and the appellant not being a party to purported cancellation of Agreement dated 24th September, 1996, is not required to seek declaration as the purported cancellation is void, *non-est* and non-enforceable. Further, limitation for the same is only for a period of three years under Article 59 of the Limitation Act, 1963. Therefore, in absence thereof, suit of the respondent is not maintainable.

4.6 The suit property was given to the appellant by his brother pursuant to the oral partition. Further, it is an admitted fact that an Agreement and Will dated 24th September, 1996 was executed by the respondent in favour of the appellant recognising the appellant's share in the property. Thus, the said documents are in recognition of partition and family settlement, which holds legal sanctity and binds the parties.

4.7 The Trial Court erred in not considering the evidence of material witnesses, i.e., brother and sister of respondent, on the mere ground that the said parties do not have a good relation with the respondent, despite the fact that they had relinquished their share in favour of the respondent.

4.8 Even assuming that the Agreement dated 24th September, 1996 is a License Agreement, there is no clause about revocation, and further the Will of the same date is also in favour of the appellant. Moreover, the appellant has a ration card, water bill, license by Municipal Corporation of Delhi ("**MCD**"), verification certificate from Government of NCT of Delhi ("**GNCTD**") and house tax receipt in his favour for the subject property, which prove that the appellant had taken steps for permanent status without any objection from the respondent.

4.9 The respondent in regard to his ownership relied upon a Conveyance Deed registered on 08th July, 1971. However, a bare perusal of the same shows that there is no document in favour of the respondent, which is registered on the said date. Therefore, the respondent has not been able to prove the ownership over the subject property.

4.10 The respondent has nowhere made the pleading about allotment of the subject property under settlement of claim and purchase of property, but clandestinely in its evidence affidavit tendered documents in evidence in

that regard. As there is no averment regarding the said documents, the same are beyond the pleadings and cannot be considered by this Court.

4.11 The respondent has claimed that the suit property was given to the appellant by way of the Agreement dated 24th September, 1996. However, the agreement clearly states that the appellant is already in possession. Further, the respondent has admitted that the father of the respondent gave the property to the appellant, therefore, the claim that the property was given on basis of license is unsustainable.

Respondent's Submissions:

5. The respondent has made the following submissions:

5.1 The appellant has not been able to prove that the subject property is a joint property/HUF but has only made bald statements. A bare perusal of the order dated 07th May, 1957 passed by the Settlement Officer which clearly states that as per the copy of the rough plan produced by Sh. Khota Ram *(cousin of the father of the respondent herein)*, there is a mention of the home of Sh. Ladha Ram on the western side of the house claimed by Sh. Khota Ram making it evidently clear that Sh. Ladha Ram was living in his own self-acquired property and not an ancestral property even in Pakistan, and thus the appellant can't be said to be a coparcener in the property. Therefore, averments of the appellant, his legal heirs and interested witnesses should not be taken as evidence, that too in the presence of concrete documentary proof and evidence produced by the respondent regarding his legal right, title or interest in the suit property.

5.2 The plea of the appellant that he was a minor at the time of allotment of property is false, as by way of appellant's own documents, admissions and submissions, i.e., Affidavit, Special Power of Attorney, *Civil Suit No.*

558/2009 and Discharge Report, it is seen that the appellant must be 18-19 years of age in the year 1947 and 20 years old at the time of allotment in the year 1950.

5.3 The appellant as well as his legal heirs have themselves pleaded their case by relying on the Agreement dated 24th September, 1996 and have also admitted the execution and the contents of the said Agreement, registered Will and Cancellation of Will, the contents of which, specifically state that the respondent is the owner/lessee of the property. Further, the appellant had in the said Agreement specifically admitted that the respondent is the owner/lessee of the said property. Therefore, the appellant is bound by his own submissions and admissions.

5.4 The case of the appellant relies upon the testimony provided by interested witnesses, out of which, the brother and sister of respondent provided their testimony, with whom, the respondent does not share a good relation. Further, even the Trial Court has reached the conclusion, that the said witnesses are adversarial interested witnesses and therefore, discarded their testimony. Further, it is a settled law that the testimonies of the related/interested witnesses have to be scrutinized with greater care and circumspection and as such should be analysed with greater caution for its credibility.

5.5 The appellant has taken mutually destructive pleas, as on the one hand the appellant has taken a plea of being a coparcener and on the other hand he has claimed ownership on the basis of adverse possession. Further, the appellant has relied on the Will as well, therefore, the appellant cannot both assert ownership independent of the respondent (by adverse possession or as coparcener) and simultaneously admit respondent's ownership by admitting

the Will and License Agreement dated 24th September, 1996. Such mutually destructive pleas are not permissible in a coherent pleading and must be rejected.

5.6 The appellant had filed the *Civil Suit 558/2009*. However, during the course of the suit the appellant attempted to amend the plaint to seek a prayer for being declared as the owner of the subject property, but the same was rejected by the Trial Court *vide* order dated 20th April, 2010, which has never been challenged by the appellant, and has therefore attained finality. Therefore, appellant is barred by *Principles of Estoppel and Res Judicata* for raising the said plea of ownership in a subsequent suit.

5.7 The license given to the appellant to live in the suit property was a revocable license as it was granted without any interest, and the appellant had never incurred any expense for construction nor was any license fee charged by the respondent or his father. Further, the said licence/agreement clearly mentions that the legal heirs of the appellant will have no right/title or interest in the said property.

5.8 The respondent seeks *mesne profits* as the appellant and his legal heirs have been earning rent from the subject property for the last 12 years.

Proceedings before this Court:

6. Notice was issued in both the present appeals on 04th October, 2013. *Vide* the same order, the appeals were admitted and this Court directed that there shall be stay of execution on the impugned judgment and decree dated 16th May, 2013, subject to the common appellant depositing the entire decretal amount towards *mesne profits*, i.e., with interest till the date of deposit.

7. Subsequently, the aforesaid stay was vacated on 24th February, 2014, as the appellant failed to deposit the decretal amount, despite being granted an extension of time for complying with the directions passed in order dated 04th October, 2013. Accordingly, the applications seeking stay in both the appeals were dismissed on 24th February, 2014.

8. Thereafter, again an application was filed by the appellant for stay of the impugned judgment, whereby, the appellant sought to deposit the up-to-date interest and costs, in terms of the impugned judgment. Accordingly, this Court, on 30th April, 2014, stayed the operation of the impugned judgment and decree, subject to aforenoted deposit by the appellant, within one week.

9. Pursuant thereto, the respondent filed an application, i.e., *CM APPL. 4099/2015* in the year 2015, seeking release of the decretal amount. The said application was allowed *vide* order dated 02nd September, 2015, subject to the respondent furnishing a solvent security. It was also recorded *vide* order dated 06th October, 2015, that the respondent has failed to furnish the security, and the matter be placed before the Registrar General in that regard, when the same has been furnished.

10. Further, on 20th November, 2023 and 22nd November, 2023, on account of demise of the appellant on 13th September, 2023, the applications of Legal Representatives **("LRs")** of the deceased appellant, i.e., his widow, two sons and two daughters were allowed, and they were brought on record.

11. It is noted that subsequently, appellant no. 1(A) and appellant no. 1(D) had passed away, and this Court, while recording the factum of their death, had noted that the appeal was capable of being prosecuted by the remaining surviving appellants. In this regard, the remaining appellants nos. 1(B), (C),

and (E), stood registered as appellants nos. 1(A), (B) and (C), respectively, as recorded in the order dated 23rd February, 2024, passed in *RFA 475/2013*.

12. It is further noted that this Court *vide* order dated 21st October, 2024 recorded the statement of the appellant that they are not altering the position of the suit property.

13. Accordingly, the final arguments were heard by this Court, and the judgment in the present connected appeals was reserved on 18th December, 2025.

Analysis and Findings:

14. I have heard learned counsels for the parties and have perused the record. By way of the present appeals, the appellant has challenged the common judgment/decree dated 16th May, 2013 passed by the Trial Court, whereby, the suit filed by the respondent, *Civil Suit no. 355/2010*, seeking recovery of possession, *mesne profits* and permanent injunction in respect of front portion of the suit property, i.e., *property no. B-25A, Vijay Nagar, New Delhi-110009*, measuring 15' X 22', was decreed in favor of the respondent. Further, the Counter Claim filed on behalf of the appellant, *Counter Claim no. 633/2010*, seeking declaration as regards ownership in the suit property, was dismissed.

15. *Civil Suit no. 355/2010* was filed by the respondent herein, claiming himself to be the absolute owner of the suit property. In response, the appellant herein filed the *Counter Claim no. 633/2010*, claiming to be the owner of the front portion of the suit property.

16. As regards the claim of the respondent herein as plaintiff in the suit, for ownership of the suit property, the Trial Court had framed issue nos. 1, 2 and 6 in relation thereto, which read as under:

"xxx xxx xxx

21. From the pleadings of the parties and documents on record, following issues were framed on 15.03.2011 :-

1. Whether the plaintiff is the owner of suit property i.e. bearing no. B-25A, Vijay Nagar, Delhi-110009, as shown in red colour in site plan annexed with the plaint? OPP.

2. Whether the plaintiff is entitled to a decree of possession of the suit premises as per prayer clause (a) of the plaint? OPP.

xxx xxx xxx

6. Whether the plaintiff is entitled to a decree of permanent injunction as per prayer clause (e) of the plaint? OPP.

xxx xxx xxx"

17. The appellant, as defendant in the suit, raised the objection that the suit did not disclose any cause of action and was liable to be rejected. While raising this objection, the appellant herein claimed right and title over the suit property. Further, the appellant also filed the Counter Claim claiming ownership over the suit property. Thus, in this regard issue nos. 8 and 9 were framed by the Trial Court and onus of proving the said issues was laid upon the appellant herein. The said issue nos. 8 and 9, are extracted as below:

"xxx xxx xxx

8. Whether the suit does not disclose any cause of action and is liable to be rejected under Order VII Rule 11 CPC as per PO No. 1 of WS? OPD.

9. Whether the defendant/counter claimant is entitled to a decree of declaration as owner of the suit property? OPD.
xxx xxx xxx"

18. Regarding the issue of ownership of the suit property, the facts and documents on record point out as to how the said property came to be in possession of the parties. On the basis of the facts, evidence and documents on record, it is established that the deceased father of the respondent, namely, Shri Ladha Ram along with his wife and two children, migrated to India in the year 1947 at the time of partition of the country. The younger

brother, i.e., appellant herein, and sister of the deceased father of respondent, also migrated to India and they all resided in the same tent, i.e., Tent No. 40.

19. Thereafter, as per the scheme of Government, allotment of quarters was being made on rental basis. Thus, in the year 1950, father of the respondent, Shri Ladha Ram also got allotted one quarter purely on rental basis, i.e., the suit property *vide* allotment card dated 25th June, 1950. Subsequently, in the year 1957, the father of the respondent, Shri Ladha Ram applied to the Ministry of Rehabilitation to purchase the suit property. Thus, letter dated 30th September, 1957 was issued by the Ministry of Rehabilitation, Government of India, wherein, documents *viz.* original allotment letter, rent receipt, ground rent receipts, water charges receipts, etc. were directed to be deposited by a stipulated date.

20. Subsequently, upon the completion of the various formalities, including, deposit of full amount towards purchase of the suit property, a Perpetual Lease Deed dated 21st June, 1971 was registered in the name of father of the respondent, Shri Ladha Ram on 08th July, 1971. Thus, it is apparent that father of the respondent, Shri Ladha Ram became the absolute owner of the suit property upon execution of the said Perpetual Lease Deed in his favour.

21. The allotment letter/card dated 25th June, 1950, *Ex. DW6/A*, issued initially for occupation of the suit property, conferred only the right to reside in the suit property upon payment of rent. The said allotment letter did not confer any right or title over the suit property and that the possession in the suit property, pursuant to the allotment letter, was only in the nature of a tenant, for which rent was to be paid to the Government. Accordingly, the mere fact that name of the appellant was also reflected in the said allotment

letter, does not inure to the benefit of the appellant in any manner, as the said allotment letter did not create any proprietary right over the suit property.

22. It was only upon the option given by the Government for purchase of the suit property and upon deposit of the requisite documents and the purchase amount, that proprietary rights were conferred *qua* the suit property. Before conferment of the proprietary right *qua* the suit property upon father of the respondent, Shri Ladha Ram, the suit property vested in the Government, for occupation of which, rent was payable to the Government. Mere issuance of allotment letter did not create any proprietary right in the suit property. Therefore, the appellant cannot seek to secure any right in his favour in respect of the suit property on the basis of his name being reflected in the allotment letter.

23. It is to be noted that Shri Ladha Ram who deceased intestate on 25th October, 1977, was survived by seven children and his wife. Upon the death of his wife, Smt. Ram Devi on 07th January, 1996, the seven children became the only legal heirs of Late Shri Ladha Ram. Subsequently, the other six legal heirs/children of Shri Ladha Ram, relinquished and released their right, title, interest and share in the suit property in favour of the respondent herein *vide* Release Deed dated 14th August, 1996, *Ex. PW1/3*.

24. This Court also notes that the suit property was converted into freehold and *vide* Conveyance Deed dated 25th August, 1999, *Ex. PW1/2*, the suit property was registered in the name of Shri Parveen Chawla, the respondent herein. Accordingly, the respondent became the absolute and registered owner of the suit property.

25. It is also relevant to note that the Conveyance Deed dated 25th August, 1999, *Ex. PW1/2*, executed in favour of the respondent clearly mentions that

no person had objected to the mutation/substitution of the name of the lessee, i.e., the respondent. Thus, it is clear that the appellant who was in occupation of some portion of the suit property did not challenge the execution of Conveyance Deed in favour of the respondent.

26. The contention of the appellant that ownership of the respondent is not proved is wholly unpersuasive. The Conveyance Deed dated 25th August, 1999, *Ex. PW1/2*, categorically makes reference to the Perpetual Lease Deed dated 21st June, 1971 registered on 08th July, 1971, in favour of late Shri Ladha Ram. Furthermore, once a Conveyance Deed has been validly registered by the Government, no reference to any prior Lease Deed is required to be done. Even otherwise, the appellant has not challenged the Conveyance Deed dated 25th August, 1999 in favour of the respondent, which is a legal and valid ownership document in favour of the respondent. The plea of admissibility of the document, *Ex. PW-1/1* has been taken by the appellant only now. The objection of the appellant is to the mode of proof of the document, which cannot be entertained at this stage. Even otherwise, a licensee is estopped from questioning the title of the owner, i.e., respondent in the present case. It is pertinent to note that the Conveyance Deed in favour of the respondent dated 25th August, 1999, has been duly exhibited as *Ex. PW-1/2*. It is settled law that registered titled documents have a presumption of validity attached to it ***(See: Prem Singh and Others Versus Birbal and Others, (2006) 5 SCC 353, Para 27)***. Therefore, the contention of the appellant in this regard is totally baseless and is hereby rejected.

27. From the facts on record, it is established that the deceased appellant was in occupation of front portion of the suit property admeasuring 15’ x 22’. After securing full right over the suit property, the respondent executed

an Agreement dated 24th September, 1996, *Ex. PW1/5*, in favour of the deceased appellant, wherein the deceased appellant, being uncle of the respondent, was allowed to stay/occupy the said portion of the suit property, during his lifetime. Further, it was clearly mentioned in the said Agreement that the legal heirs of the deceased appellant will have no right, title or interest in the said portion of the suit property after the death of the appellant. The said Agreement dated 24th September, 1996, *Ex. PW1/5*, as also *Ex. DW1/3*, is reproduced as under:

> *"xxx xxx xxx*
>
> *'AGREEMENT'*
>
> *THIS AGREEMENT is made at Delhi, on this 24th Day of September 1996, BETWEEN* ***Shri Parveen Chawla son of Late Shri Ladha Ram resident of B-25A, Vijay Nager, Delhi, hereinafter called the FIRST PARTY****.....AND.....Shri Kalyan Dass son of Late Shri Gela Ram resident of B-25A, Vijay Nagar, Delhi, hereinafter called the SECOND PARTY.*
>
> *The expressions of the first party and the second party shall mean and include the parties, their respective heirs, successors, executors, administrators, legal representatives and assignees.*
>
> *THAT WHEREAS* ***the first party is the owner/lessee of Property bearing No. B-25A, area measuring 100 Sq.Yds., situated at Vijay Nagar, Delhi, by virtue of Release Deed registered as Document No. 6471, in Additional Book No. I, Volume No. 7300, on pages 171 to 174, dated 14.8.1996, with the office of the Sub-Registrar, Sub-District No. I, Delhi.***
>
> *AND WHEREAS the second party is in possession of front portion measuring 15'x 22' of the said property.*
>
> ***THAT the second party will not sell or transfer the said portion of the property in any manner to any outsider, if the second party leaves the possession of the said portion of the property then he shall hand over the possession of the property to the first party. The legal heirs of the second party shall have no right title or interest in the said portion of the property after the death of second party.***
>
> *This agreement is final and binding of both of the parties.*
>
> *xxx xxx xxx"*

(Emphasis Supplied)

28. The aforesaid Agreement dated 24th September, 1996 categorically states that the respondent herein is the owner of the suit property by virtue of the Release Deed dated 14th August, 1996. Further, in the Agreement it is clearly stipulated that the deceased appellant will not sell or transfer the front portion of the suit property occupied by him, in any manner to any outsider. The aforesaid Agreement stipulates in categorical terms that the legal heirs of the deceased appellant shall have no right, title or interest in the said portion of the suit property, after the death of the appellant.

29. Further, a Will dated 24th September, 1996, *Ex. PW1/4*, as also *Ex. DW1/4*, was also made by the respondent in favour of the deceased appellant. The said Will dated 24th September, 1996 is extracted as below:

> *"xxx xxx xxx*
>
> *THIS IS THE FIRST AND FINAL WILL AND TENTAMENT of Shri Parveen Chawla son of Late Shri Ladha Ram resident of B-25A, Vijay Nagar, Delhi, made at Delhi on this 24th day of Sept. 1996.*
>
> *Life is uncertain and evanescent nobody knows when one's end may come, I, therefore made this WILL in my perfect state of health and sound disposing mind without the pressure or persuation of anybody.*
>
> *I hereby bequeath that after my death all my rights, title and interests Front portion measuring 15' x 22' of property bearing No. B-25A with its leasehold rights, situated at Vijay Nagar, Delhi, and bounded as under-*
>
> *NORTH: Property No. B-25B. SOUTHs Property No. B-24B.*
>
> *EAST: Remaining part of West: Road.*
> *The said P.No.B-25A.*
>
> *should go and devolve upon Shri Kalyan Dass son of Late Shri Gela Ram resident of B-25A, Vijay Nagar, Delhi, to the exclusion of any of my heirs or successors.*
>
> *Nobody should challenge this WILL and if anybody does so the same should be treated as Null Void Ineffective and Inoperative. This*

WILL embodying my last wishes should be given effect strictly in terms laid down herein.

In witness whereof this WILL is made at Delhi on the day of the month and year first above written, in presence of the following witnesses.

WITNESSES.

xxx xxx xxx"

30. The aforesaid Agreement dated 24th September, 1996 and the Will of the same date, i.e., dated 24th September, 1996, have been duly admitted by the deceased appellant. Reference in this regard may be made to the Evidence by way of Affidavit, *Ex. DW-1/A* of deceased appellant, as *DW-1*, relevant portions of which is reproduced as under:

"xxx xxx xxx

7. That the defendant and his son is residing and doing his aforesaid business in the property in dispute ***as per mutual understanding between Late Sh. Ladha Ram and the defendant which is duly recognized by the plaintiff and in this regard he has executed the agreement as well as the Will.*** *Now the plaintiff has been dishonest and wants to dispossess the defendant from the front portion of the property bearing No. 25-A, Single Storey, Vijay Nagar, Delhi, which shall be hereinafter referred as a disputed property.*

8. ***That after the demise of Late Sh. Ladha Ram, the plaintiff being a son and in occupation of the remaining portion of the said and also recognized the right and occupation of the deponent over his portion has executed an agreement on 24th September, 1996 in Delhi and recognized the possession of the plaintiff in an front portion of the said joint property and allowed to carry on his business in the said portion and deponent was also residing in the said portion after partition till the date as he was owner of the 1/2 share of the allotted property.*** *The agreement dated 24.09.1996 is already exhibit in the court of Sh. V.K. Jha, Civil Judge, Delhi and the photocopy of the same are marked as* ***DW-1/3.***

xxx xxx xxx"

(Emphasis Supplied)

31. The aforesaid documents *viz*. Agreement and Will dated 24th September, 1996 were relied upon by the deceased appellant as *DW-1* during

the course of his examination-in-chief and the same were exhibited as *Ex. DW1/3* and *Ex. DW1/4*, respectively. The examination-in-chief of deceased appellant as *DW-1*, is reproduced as under:

> *"DWI, Sh. Kalyan Dass recalled for further examination in chief (in continuation to earlier statement dated 24.05.2012).*
>
> *On S.A.*
>
> ***I also rely upon documents which are exhibited as Exs. DW1/l to DW1/8.*** *Documents Ex. DW1/l is the certified copy of site plan. Ex. DW1/2 is the certified copy of Spl. Power of Attorney.* ***Ex. DW1/3 is the certified copy of Agreement dated 24.09.1996. Ex. DW1/4 is the certified copy of Will dated 24.09.1996.*** *Ex. DW1/5 (colly) are the certified copies of my ration card and voter card. Ex. DW1/6 (colly - 2) are the certified copy of water connection bills. Ex. DWI/7 is the certified copy of license issued by MCD. Ex. DW 1/8 is the certified copy of Certificate of Verification issued by GNCTD.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

32. It is also to be noted that during his cross examination, the deceased appellant categorically admitted that he was residing in the suit property only on the basis of document *Ex. DW1/3*, i.e., the Agreement dated 24th September, 1996. Further, the appellant also admitted that the suit property was allotted to the father of the respondent herein. Relevant portions of the cross examination of the deceased appellant, are reproduced as under:

> *"xxx xxx xxx*
>
> *XXXXXXXX by Sh. A.P. Dubey, Counsel for plaintiff.*
>
> *It is wrong to suggest that in Government records, plaintiff is the owner of property bearing no. B-25-A, Single Storey, Vijay Nagar, Deihi-110009.* ***It is correct that the document Ex. DW1/3 bears my signatures at point X & Y. It is correct that since the plaintiff became owner of property bearing no. B-25-A, Single Storey, Vijay Nagar, Delhi- 110009, I am residing at that property only on the basis of document Ex. DW1/3.***
>
> *I reached India after partition on 02.12.1947. It is correct that after coming India, I resided at tents at Kingsway Camp, Delhi-110009.* ***It***

is correct that the property bearing no. B-25-A, Single Storey, Vijay Nagar, Delhi- 110009, was allotted to father of the plaintiff……..

xxx xxx xxx"

(Emphasis Supplied)

33. Likewise, son of the deceased appellant, i.e., Gulshan Kumar, as *DW-2*, in his Evidence by way of Affidavit, *Ex. DW-2/A*, while admitting that the respondent allowed the appellant to carry on the business in the front portion of the suit property, stated as follows:

> *"xxx xxx xxx*
>
> *9. That after the demises of Late Sh. Ladha Ram, the plaintiff being a son and in occupation of the remaining portion of the said property and also recognized the right and occupation of the defendant over his portion has executed an agreement on 24.09.1996 in Delhi and recognized the possession of the defendant in the front portion of the said joint property* ***and allowed to carry the business in the said portion.*** *The defendant was also residing in the said portion after partition till the date of filing of the suit. The agreement dated 24.09.1996 is already on record.*
>
> *10.* ***That the plaintiff also executed a registered Will in favour of the defendant regarding the said portion in which the defendant is residing and doing his business.*** *The defendant shall have all rights over the property after the demise of the plaintiff. The Will is already on record.* ***It is submitted that the plaintiff has cancelled the Will with his malafide intention and ulterior motive*** *and the deponent has only knowledge after receiving the legal notice, however, the suit was filed prior to receiving the notice.*
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

34. In his cross examination, *DW-2*, son of the deceased appellant has admitted that the suit property was in the name of Parveen Chawla, i.e., respondent herein and that his father, i.e., the deceased appellant, entered in an Agreement dated 24th September, 1996 with the respondent. The relevant portion of the cross examination of *DW-2*, is extracted as below:

> *"DW-2: Sh. Gulshan Kumar (Recalled for cross-examination in continuation of earlier statement dated 24.05.2012).*

On SA

XXXXXX By Sh. A.P. Dubey, counsel for plaintiff.

It is correct that the suit property is in the name of Sh. Parveen Chawla (sic), plaintiff. It is correct that my father, who is defendant in this case, entered in an agreement dated 24.09.1996 with plaintiff.
I do not know whether the legal notice dated 03.05.2010 was received by my father or not. It is incorrect that Ex.PW-1/14 bears my signatures. It is correct that I and defendant resides under address mentioned in Ex.PW-1/11. It is correct that if anybody wants to send a letter to me or defendant,
he will send on the address mentioned in Ex.PW- 1/11 which is the copy of legal notice. It is correct that defendant did not file any reply to that legal notice Ex.PW- 1/11. Vol. same are not received by me and defendant.

xxx xxx xxx

(Emphasis Supplied)

35. From the aforesaid, it is manifest that the deceased appellant as well as son of the appellant, deposing as *DW-1* and *DW-2* respectively, have unequivocally acknowledged the execution of the Agreement and Will dated 24th September, 1996. As noted above, the Agreement dated 24th September, 1996 explicitly stated that the respondent herein was the owner of the suit property. Further, the fact that the Will dated 24th September, 1996 was executed by the respondent in favour of deceased appellant and the said Will has been admitted by the deceased appellant as well as his son, evidences the fact of ownership of the respondent in the suit property. It is *res integra* that a will would be executed only by owner of a property and having admitted the said will, the deceased appellant as well as his son, have clearly recognized and admitted to the ownership of the respondent in the suit property. Thus, admission of the aforesaid documents and their execution thereof, is a clear indication to the recognition of the ownership of the respondent in the suit property.

36. Further, it is also to be noted that an earlier suit filed by the deceased appellant, i.e., *Civil Suit No. 558/2009* was premised on the aforesaid Agreement and Will dated 24th September, 1996. The relevant portions of the plaint in *Civil Suit No. 558/2009*, filed by the deceased appellant, are extracted as below:

> *"xxx xxx xxx*
>
> *5. That after the demises of late Sh. Ladha Ram, the Defendant being a son and in occupation of the remaining portion of the said and also recognized the right and occupation of the* ***Plaintiff over his portion has executed an agreement on 24th September,1996 in Delhi and recognized the possession of the plaintiff in an front portion of the said property and allowed to carry on his business in the said portion*** *and Plaintiff was also residing in the said portion after partition till the date of filing of suit. Photostat copy of the agreement is attached herewith and marked as* ***Annexure P-3.***
>
> *6.* ***That the Defendant also executed a registered Will in favour of the plaintiff regarding the said portion in which the Plaintiff is residing and doing his business.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

37. Further, it is also to be noted that the said suit was filed by the deceased appellant claiming only right of possession and averring that the respondent herein had no right to dispossess the deceased appellant from the property without due process of law. *Para 15* of the plaint in *Civil Suit No. 558/2009*, filed by the deceased appellant, reads as under:

> *"xxx xxx xxx*
>
> *15. That the Plaintiff and his son is in occupation of the disputed property from the very beginning without any interruption for and on behalf of Sh. Ladha Ram and after his demise, his son Defendant. The* ***Plaintiff is in possession and occupation of the disputed property, therefore, the plaintiff has right, title and interest over the said property to continue in possession and the Defendant has no legal***

rights to evict dispossessing (sic) him from the property in question in any manner without any due process of law.

xxx xxx xxx"

(Emphasis Supplied)

38. At this stage, it is also worth mentioning that while deciding the plea of the deceased appellant herein regarding ownership over the suit property, the Trial Court relied upon an order dated 20th April, 2010 in the earlier suit filed by the appellant herein, i.e., *Civil Suit No. 558/2009*. The said suit had been filed by the appellant for restraining the respondent herein from illegally and unlawfully dispossessing the appellant from the suit property. Subsequently, the appellant sought to amend the said suit seeking declaration as owner of the suit property under his possession. *Vide* the aforesaid order dated 20th April, 2010 passed in *Civil Suit No. 558/2009*, the application of the appellant was dismissed, thereby, holding that the appellant as plaintiff in the said suit, cannot be allowed to change the nature of the suit by claiming the ownership right instead of the possessory rights as claimed earlier.

39. Considering the fact that no appeal was filed against the aforesaid order dated 20th April, 2010, the Trial Court held that the said order had attained finality. On the said basis, it was held that the plea of the appellant herein regarding ownership was barred by *Principles of Res Judicata*.

40. In this regard, this Court notes that the aforesaid suit was not pressed by the appellant and was not pursued thereafter. As regards the order dated 20th April, 2010, the said order merely dismissed the application of the deceased appellant for amendment of the plaint on the ground that the deceased appellant, as the plaintiff therein, cannot be allowed to change the nature of the suit by claiming ownership right, instead of possessory rights

as claimed in the suit. However, there was no finding by the Court in the said suit, i.e., *Civil Suit No. 558/2009,* regarding the claim of ownership in the suit property by the deceased appellant. Therefore, the finding of the learned Trial Court that the aforesaid order dated 20th April, 2010 in *Civil Suit No. 558/2009,* operated as *Res Judicata*, cannot be accepted.

41. However, on the basis of documents and evidence on record, the ownership of the respondent in the suit property has been established.

42. Further, this Court notes that the appellant herein was unable to prove that the suit property was a joint property of an HUF. It is no longer *res integra* that burden to prove that a property is a joint property of an HUF, is on the person who asserts the same. In this regard, reference may be made to the judgment of the Supreme Court in the case of ***Bhagwat Sharan Versus Purushottam and Others, (2020) 6 SCC 387***, wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> ***10.*** *At the outset we may note that a lot of arguments were addressed and judgments were cited on the attributes of HUF and the manner in which it can be constituted. In view of the facts narrated above, in our view, a large number of these arguments and citations need not be considered.* ***The law is well settled that the burden is on the person who alleges that the property is a joint property of an HUF to prove the same. Reference in this behalf may be made to the judgments of this Court in Bhagwan Dayal v. Reoti Devi [Bhagwan Dayal v. Reoti Devi, AIR 1962 SC 287].*** *Both the parties have placed reliance on this judgment. In this case, this Court held that the general principle is that a Hindu family is presumed to be joint unless the contrary is proved. It was further held that where one of the coparceners separated himself from other members of the joint family there was no presumption that the rest of coparceners continued to constitute a joint family. However, it was also held that at the same time there is no presumption that because one member of the family has separated, the rest of the family is no longer a joint family. However, it is important to note that this Court in Bhagwati Prasad Sah v. Dulhin Rameshwari*

Kuer [Bhagwati Prasad Sah v. Dulhin Rameshwari Kuer, 1951 SCC 486 : 1951 SCR 603] , it held as follows : (SCC p. 491, para 10)

> *"10. ... Except in the case of reunion, the mere fact that separated coparceners chose to live together or act jointly for purposes of business or trade or in their dealings with properties, would not give them the status of coparceners under the Mitakshara law."*

11. *The Privy Council in Randhi Appalaswami v. Randhi Suryanarayanamurti [Randhi Appalaswami v. Randhi Suryanarayanamurti, 1947 SCC OnLine PC 42 : ILR 1948 Mad 440] held as follows : (SCC OnLine PC)*

> *"... The Hindu law upon this aspect of the case is well settled.* ***Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact.*** *But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property."*

12. *In D.S. Lakshmaiah v. L. Balasubramanyam [D.S. Lakshmaiah v. L. Balasubramanyam, (2003) 10 SCC 310] this Court held as follows : (D.S. Lakshmaiah case [D.S. Lakshmaiah v. L. Balasubramanyam, (2003) 10 SCC 310] , SCC p. 317, para 18)*

> *"18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family.* ***The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.*** *"*

Similar view was taken in Rukhmabai v. Lala Laxminarayan [Rukhmabai v. Lala Laxminarayan, (1960) 2 SCR 253 : AIR 1960 SC 335] and Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade [Appasaheb Peerappa Chamdgade v. Devendra

*Peerappa Chamdgade, (2007) 1 SCC 521]. **The law is thus well settled that the burden lies upon the person who alleges the existence of the Hindu Undivided Family to prove the same.***

xxx xxx xxx

***21.** An admission made by a party is only a piece of evidence and not conclusive proof of what is stated therein. It is in this light that we have to examine the admission made by Hari Ram and his brothers while filing the written statement to the suit filed by Seth Budhmal. In Para 6, the averment was that the defendants constituted trading joint Hindu family. It is obvious that the admission was with regard to a trading family and not HUF. **In view of the law cited above, it is clear that not only jointness of the family has to be proved but burden lies upon the person alleging existence of a joint family to prove that the property belongs to the joint Hindu family** unless there is material on record to show that the property is the nucleus of the joint Hindu family or that it was purchased through funds coming out of this nucleus. In our opinion, this has not been proved in the present case. Merely because the business is joint would not raise the presumption that there is a joint Hindu family. As far as Para 8 is concerned, in our view, there is no clear-cut admission. The allegation made was that the minors were represented by Defendants 1 to 3, who were head of their respective branches. In reply to this it was stated that Defendants 1 to 3 were neither the head or the karta, nor was the mortgage transaction made in that capacity. This admission cannot be said to be an unequivocal admission of there being a joint family.*

xxx xxx xxx"

(Emphasis Supplied)

43. In the present case, apart from bald and verbal averments made by the appellant regarding status of the suit property as an HUF, there is no material on record to prove that the suit property is an HUF property.

44. The appellant additionally contends that since he was a minor at the time of allotment of property, the said property was allotted in the name of father of respondent being the Karta of HUF. However, as noted hereinabove, the allotment card, *Ex. DW-6/A*, in no way conferred ownership on any person. The father of the respondent later purchased the suit property from the Government of India, upon which, Perpetual Lease

Deed dated 21st June, 1971 was executed in favour of the father of the respondent, Shri Ladha Ram and was registered on 08th July, 1971. Further, as noted above, subsequently a Conveyance Deed dated 25th August, 1999 was executed in favour of the respondent. Thus, the plea of the appellant to claim ownership in the suit property claiming the same to be HUF by relying upon the allotment card, is liable to be rejected.

45. Reliance by the appellant on the testimony of witnesses, *DW-3* and *DW-4*, who are the siblings of the respondent herein, to submit that the suit property was a joint property, again, cannot be accepted and has rightly been rejected by the learned Trial Court as interested witnesses. It has come on record that the respondent and the said siblings of the respondent are not in talking terms with each other since last many years. *DW-3*, brother of respondent and *DW-4*, sister of respondent, have categorically deposed in their respective cross-examination that they are not in talking terms with the respondent. Further, *DW-3* has stated that his affidavit was prepared by the counsel for the appellant herein at the instance of the appellant, which is a pointer to the fact that *DW-3* is an interested witness and his testimony has rightly been discarded by the Trial Court. The cross-examination of *DW-3* and *DW-4*, in this regard is reproduced as under:

> *"xxx xxx xxx*
>
> ***DW3**, Sb. S.K. Chawla, s/o Late Sh. Lada Ram, aged 63 years, r/o Rites Flats, C/4/3, Ashok Vihar, Phase-3, Delhi - 110052.*
>
> *xxx xxx xxx*
>
> ***It is correct that since then I and the plaintiff are not in talking terms.** It is wrong to suggest that as the relation between me and the plaintiff is not good, so I have come to the Court today to depose against him. **It is correct that my affidavit is prepared by the Counsel for the defendant on the instance of defendant**……*
>
> *xxx xxx xxx*

> ***DW4****, Mrs. Sudershan Gambhir, w/o Sh. Vinod Gambhir, aged 58 years, r/o Flat No. 95, Ramprastha Green, Sector-7, Vaishali, Ghaziabad, UP.*
>
> *xxx xxx xxx*
>
> *It is correct that Sh. Praveen Chawla is my real brother.* ***I am not on talking terms with Praveen Chawla for the last about 2 years.*** *It is wrong to suggest that as my relations with my brother are strained and that is why I have come to depose as a false witness. It is wrong to suggest that I am deposing falsely and that my affidavit is false.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

46. It is settled law that testimonies of the related/interested witnesses have to be scrutinized with greater care and circumspection and as such have to be analyzed with greater caution for its credibility. Thus, the Supreme Court in the case of ***Mohd. Jabbar Ali and Others Versus State of Assam, (2023) 19 SCC 672***, has held as follows:

> *"xxx xxx xxx*
>
> ***49.*** ***It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of law.*** *It was contended by the learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other.* ***This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinised with greater care and circumspection.*** *In Gangadhar Behera v. State of Orissa [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 : 2003 SCC (Cri) 32],* ***this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.***
>
> ***50.*** *In Raju v. State of T.N. [Raju v. State of T.N., (2012) 12 SCC 701 : (2012) 4 SCC (Cri) 184], this Court observed: (SCC pp. 709-10, para 29)*

> *"29.* ***The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny. However, this is only a rule of prudence and not one of law****, as held in Dalip Singh [Dalip Singh v. State of Punjab, (1953) 2 SCC 36 : AIR 1953 SC 364] and pithily reiterated in Sarwan Singh [Sarwan Singh v. State of Punjab, (1976) 4 SCC 369 : 1976 SCC (Cri) 646] in the following words : (Sarwan Singh case [Sarwan Singh v. State of Punjab, (1976) 4 SCC 369 : 1976 SCC (Cri) 646] , p. 376, para 10)*
>
> > *'10. ... The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of interested witnesses have a ring of truth such evidence could be relied upon even without corroboration.'"*
>
> *xxx xxx xxx*
>
> ***52. It is thus settled that the evidence of the related witnesses have to be considered by applying discerning scrutiny.*** *……..*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

47. It is also relevant to note that there are inherent contradictions in the statement of *DW-3*. On the one hand *DW-3* stated in the affidavit that the suit property is a joint family property. On the other hand, *DW-3* has stated that the said property was allotted in the name of Sh. Ladha Ram under settlement claim which later devolved on the legal heirs of Sh. Ladha Ram. The relevant portion of the deposition of *DW-3* in this regard, is reproduced as under:

> *"xxx xxx xxx*
>
> ***It is correct that the suit property was allotted to my father under settlement claim. It is correct that after death of our father Late Sh. Ladha Ram, my mother became owner of the suit property and subsequently, the suit property was devolved upon legal heirs of Sh. Ladha Ram i.e. Smt. Ram Pyari, Sh. S.K. Chawla, Smt. Sudershan***

> ***Gambhir, Smt. Kanchan Dhingra, Smt. Neeru, Smt. Manju and the plaintiff.*** *There was an agreement between the plaintiff and defendant which is Ex. PW1/5 and I was a witness in that agreement. It is incorrect that in Ex. PW 1/5, it is written that the defendant only has right to reside in the part portion of the suit property and he has to hand over the same to the plaintiff as and when demanded.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

48. Furthermore, during cross-examination, *DW-3* himself admitted to the fact that the suit property was allotted to the father of the respondent and that the same devolved upon various legal heirs of Late Sh. Ladha Ram. Therefore, the statement of *DW-3* in the affidavit that the suit property was a joint property, or an HUF property, was not established during the course of evidence of the said witness. Rather the said witness deposed to the contrary, which defeats the case as set up in the evidence affidavit by the said witness.

49. Further, the said witnesses, i.e., *DW-3* and *DW-4* admitted that they along with other legal heirs of Late Sh. Ladha Ram, i.e., father of the respondent and the said witnesses, had relinquished their respective share in favour of the respondent herein. Thus, it is established that the respondent herein exclusively had right over the suit property, as other legal heirs of Late Sh. Ladha Ram had relinquished their respective shares in favour of respondent herein.

50. Once, on the basis of the documents and evidence on record, it is established that the respondent is the owner of the suit property, no right can be claimed by the appellant through the Will and Agreement dated 24th September, 1996 executed by the respondent in favour of the appellant, since the said documents already stand cancelled/revoked by the respondent.

51. It is clear and settled position of law that a Will *qua* a property can only be made by the owner of the property. Since the appellant has admitted

the Will, the same connotes the admission of the appellant to the ownership of the respondent in the suit property. Even otherwise, a Will does not come into effect during the lifetime of the maker, and in the present case the maker of the Will, i.e., the respondent, is still alive. The appellant, in whose favour the said Will was made has already expired. Further, the said Will already stands cancelled on 08th July, 2009, *Ex. PW-1/9*. Therefore, no right can be said to flow in favour of the appellant from the said Will.

52. As regards the Agreement dated 29th September, 1996, *Exhibit PW 1/5*, the said Agreement itself recognized the respondent herein as the owner of the property. Besides, the said Agreement already stands revoked by the respondent. The appellant has disputed the status of the said Agreement as license, on the ground that the respondent has admitted that his father had given the suit property to the appellant. However, the said contention advanced by the appellant is fundamentally flawed. As noted hereinabove, the appellant has been unable to establish that the suit property was a joint or HUF property and has been unable to establish his title over the suit property. Rather, by admitting and relying upon the said Agreement dated 24th September, 1996, the appellant has recognized the ownership of the respondent, as the said Agreement clearly states the respondent herein to be the owner of the suit property.

53. The terms of the Agreement dated 24th September, 1996, *Ex. PW-1/5*, explicitly set forth the status of ownership and possession of the parties in the suit property. The condition enumerated in the said Agreement is that the appellant as a second party, if vacates the suit property, has to handover the premises to the respondent herein, i.e., the first party in the said Agreement. Further, the Agreement clearly stipulated that in the event of the death of the

appellant, there would be no right, title or interest of the LRs of the appellant in the suit property, and the possession would be handed over to the respondent.

54. With regard to the Agreement dated 24th September, 1996, it was the case of the respondent that the said Agreement was a License Agreement, and therefore, rights inured under the same allowed for the respondent to revoke the license granted to the appellant in the suit property. This submission of the respondent was accepted by the Trial Court.

55. In contrast, the appellant had contended that even if it is assumed that the Agreement dated 24th September, 1996 was a License Agreement, the same was irrevocable. For this purpose, the appellant pleaded that there was a Will of the same date in his favour and that the appellant had taken steps for permanent status of the said license on account of ration card, water bill, license by MCD, certificate of verification by GNCTD and house tax receipt in his favour. Thus, it is contended that once there is document to transfer, i.e., Will in favour of the appellant and no objection by respondent in procuring the aforesaid documents, the same proves that the License Agreement was irrevocable.

56. The aforesaid submissions raised by the appellant claiming the License Agreement to be irrevocable, are liable to be rejected. The claim of the appellant regarding transfer of interest in the property in his favour on account of the Will dated 24th September, 1996 is entirely without merit. As noted hereinabove, the said Will already stands cancelled by way of Deed of Cancellation of Will dated 08th July, 2009, i.e., *Exhibit PW 1/9*. Thus, no transfer can be said to have been effected in favour of the appellant. Even otherwise, as noted above, a Will comes into operation only after the demise

of the maker of the Will. However, in the present case, the maker of the Will, i.e., the respondent, is alive, while the beneficiary of the Will, i.e., the appellant, has already expired. Besides, the ownership of the respondent in the suit property stands established, while the appellant has been unable to establish his right over the property in the absence of any evidence or document to suggest that the suit property was a joint property. Therefore, the said contention of the appellant does not hold water.

57. It is pertinent to note that the Agreement dated 24th September, 1996 only allows for the appellant to occupy a portion of the subject premises. The said Agreement clearly envisages that no right, title or interest is given to the appellant or his legal heirs, but merely permission to allow for occupation of a part of the suit property during the lifetime of the appellant. There is clear provision in the said Agreement that the occupation of a part of the suit property was subjected to the condition stipulated in the said Agreement, i.e., in the scenario of death of the appellant or if the appellant vacates the property, then the possession was to be handed back over to the respondent. Therefore, in these circumstances it cannot be said that the agreement in question created an irrevocable license in favour of the appellant.

58. At this stage, this Court finds it appropriate to make reference to the judgment of Supreme Court in the case of ***Pradeep Oil Corporation Versus Municipal Corporation of Delhi and Another***, ***(2011) 5 SCC 270***, wherein, the Supreme Court discussed the characteristics of a license. The relevant portions of the said judgment are reproduced as under:

> *"xxx xxx xxx*

13. ***A licence may be created on deal or parole and it would be revocable. However, when it is accompanied with a grant it becomes irrevocable. A mere licence does not create an interest in the property to which it relates. A licence may be personal or contractual. A licence without the grant creates a right in the licensor to enter into a land and enjoy it.***

xxx xxx xxx

16. It is quite clear that the distinction between lease and licence is marked by the ***last clause of Section 52 of the Easements Act as by reason of a licence, no estate or interest in the property is created.***

xxx xxx xxx

18. ***A licence, inter alia, (a) is not assignable; (b) does not entitle the licensee to sue the stranger in his own name; (c) it is revocable and (d) it is determined when the grantor makes subsequent assignment. The rights and obligations of the lessor as contained in the Transfer of Property Act, 1882 are also subject to a contract to the contrary. Even the right of assignment of leasehold property may be curtailed by an agreement.***

xxx xxx xxx

28. Similarly, in Vayallakath Muhammedkutty v. Illikkal Moosakutty [(1996) 9 SCC 382 : JT (1996) 6 SC 665] where the defendant was given exclusive possession of the disputed premises for running a hotel but was not given the permission to sub-lease the property, the document was held to be a licence: (SCC pp. 386-87, para 9)

> *"9. ... this Court has indicated that for a consideration as to whether a document creates a licence or lease, the substance of the document must be preferred to the form. It is not correct to say that exclusive possession of a party is irrelevant, but at the same time it is also not conclusive.* ***The other tests, namely, intention of the parties and whether the document creates any interest in the property or not, are important considerations.****"*

xxx xxx xxx

30. In Swarn Singh v. Madan Singh [1995 Supp (1) SCC 306] it was held: (SCC pp. 307-08, paras 3-4)

> *"3. On a careful consideration of the above arguments, we feel that there is no substance in any one of them. To our mind it is very clear that the right granted under the above document is nothing but a licence. Our reasons are as under:*

(1) the nomenclature of the document is licence. Of course, we hasten to add that nomenclature is not always conclusive;

(2) ***the document in question in no unambiguous terms says that the possession and control shall remain with the owner. This is a clear indication of the fact that no interest in immovable property has been conferred on the grantee. If it were to be a case of lease under Section 105 of the Transfer of Property Act, there must be an interest in the immovable property. On the contrary, if it were to be a licence under Section 52 of the Easements Act, no such interest in immovable property is created. The case on hand is one of such.***

xxx xxx xxx

31. In Lilawati H. Hiranandani v. Usha Tandon [1995 Supp (4) SCC 158 : AIR 1996 SC 441] ***an assignment made to the effect that the owner permitted the licensee to occupy a portion with no right or interest created in his favour and also undertaken to vacate the premises within one month, was held to be a case of licence.***

xxx xxx xxx

32. In view of the aforesaid well-settled legal position, whether a particular document will constitute "lease" or "licence" would inter alia depend upon certain factors which can be summarised as follows:

(a) ***whether a document creates a licence or lease, the substance of the document must be preferred to the form;***

(b) ***the real test is the intention of the parties—whether they intended to create a lease or a licence;***

(c) if the document creates an interest in the property, it is a lease; ***but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and***

(d) ***if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant;*** *but circumstances may be established which negative the intention to create a lease.*

xxx xxx xxx"

(Emphasis Supplied)

59. Considering the law laid down by the Supreme Court in the aforesaid judgment and considering the covenants of the Agreement dated 24th

September, 1996, it is manifest that the said Agreement was in the nature of a license, which was revocable. The License Agreement dated 24th September, 1996 was not an irrevocable license, as the intention of the parties is clearly evident from the terms of the Agreement, and the same did not create any interest in favour of the appellant in the property.

60. The Supreme Court in the case of ***Yazdani International Private Limited Versus Auroglobal Comtrade Private Limited and Others, (2014) 2 SCC 657***, has held that a license does not transfer any interest in the property and the grantor of the license can revoke the same at his will. The relevant portions of the aforesaid judgment are extracted as follows:

> *"xxx xxx xxx*
>
> ***43.*** *As rightly pointed out by Shri Nariman,* ***a licence by definition does not create any interest in the property. A licence only gives a right to use the immovable property of the grantor, to the grantee. There is no transfer of any interest in such property in favour of the grantee. On the other hand, under the Transfer of Property Act, an interest either limited or unlimited is created in favour of the transferee depending upon the nature of the transfer (sale, mortgage or lease, etc.). Under Section 60, a licence is revocable at the will of the grantor which is the essence of a licence. The Easements Act categorically declares that a licence can be revoked by the grantor except in the two contingencies specified under Sections 60(a) and (b). No such exceptions are pleaded or demonstrated by the appellants. Therefore, it must be held that none of the appellants have any indefeasible right of renewal either under the Easements Act or under the abovementioned policy.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

61. Likewise, this Court in the case of ***Planet M Retail Ltd. Versus Select Infrastructure Pvt. Ltd., 2014 SCC OnLine Del 4869***, held that a license does not create any interest in the property, and merely permits the licensee to use the property. Therefore, the legal possession of the property still vests with the licensor. Thus, it was held as follows:

"xxx xxx xxx

....

26. *The nature of occupancy is clearly permissive. In fact it does not amount to possession at all. The relationship between the plaintiff and the defendant in terms of the compromise decree was that of Licensor and licensee and not Lessor and Lessee. The plaintiff had use of the two rooms under a license.* ***A license does not create any interest in the property. It merely permits another person to make use of the property. There is no parting with possession as the legal possession continues with the owner (licensor)****. In C.M. Beena v. P.N. Ramachandra Rao, III (2004) SLT 36 = II (2004) CLT 112 (SC) = (2004) 3 SCC 595, the Supreme Court held: -*

*"****Only a right to use the property in a particular way or under certain terms given to the occupant while the owner retains the control or possession over the premises results in a license being created; for the owner retains legal possession while all that the licensee gets is a permission to use the premises for a particular purpose or in a particular manner and but for the permission so given the occupation would have been unlawful*** *(see Associated Hotels of India Ltd. v. R.N. Kapoor, AIR 1959 SC 1262)."*

What is meant by parting with legal possession has been explained by the Supreme Court in the context of sub-letting in the case of Delhi Stationers and Printers v. Rajendra Kumar, (1990) 2 SCC 331 (paragraph 5) in the following words: -

"Parting of the legal possession means possession with the right to include and also a right to exclude others. ***Mere occupation is not sufficient to infer either subtenancy or parting with possession.****"*

xxx xxx xxx

33. ***From the above case laws, it, therefore, is apparent that under the licence, the licensee is only given the permission to use the property in a particular way and that after the termination of the licence, the licensee has no right to continue in the said premises and that the possession of the said premises all along remain with the licensor.***

xxx xxx xxx"

(Emphasis Supplied)

62. In the present case, the appellant has been in possession of the suit property, wherein, the License Agreement clearly envisaged that the

occupation of part of the property by the appellant, was permissible only during his lifetime, and after the death of the appellant, his legal heirs had no right in the suit property and the possession of the same was to be returned to the respondent. Thus, it is apparent that the License Agreement merely allowed the appellant to occupy the premises, and there was no grant of any interest in the suit property. As noted above the Will dated 24th September, 1996 executed by the respondent in favour of the appellant already stands revoked. Accordingly, the Agreement dated 24th September, 1996 was a License Agreement and the same was revocable, which already stands revoked by the respondent. Thus, the appellant cannot seek any right in the suit property on the basis of the Agreement and the Will dated 24th September, 1996.

63. Considering the aforesaid discussion, it stands established that the Agreement dated 24th September, 1996 was a revocable License Agreement. Thus, the contention of the appellant that the same was a mutual agreement which could not have been cancelled unilaterally by a party, is erroneous and is accordingly rejected.

64. In view of the clear finding on the basis of the evidence and documents on record that the suit property is owned by the respondent and in the absence of any evidence that the suit property was a joint property, the plea of the appellant regarding oral partition and family settlement, cannot be accepted, and the same is also rejected. In the absence of the appellant establishing his right, title and interest over the property, the plea regarding any oral partition and family settlement, cannot be entertained.

65. Another plea raised by the appellant is that the suit filed by the respondent was barred by limitation. In this regard, it is to be noted that the

respondent cancelled his Will dated 24th September, 1996 executed in favour of the appellant, *vide* Deed of Cancellation of Will dated 08th July, 2009, *Exhibit PW 1/9*. Further, the respondent also sent notice dated 03rd May, 2010, *Exhibit PW 1/11*, thereby, cancelling the license of the appellant and requesting the appellant to handover the legal peaceful possession of the property to the respondent. Since the appellant refused to hand over the possession of the part of the suit property occupied by him, the respondent filed the Civil Suit in the year 2010 for possession, *mesne profits*, damages and permanent injunction.

66. Merely because the appellant had been allowed to occupy the property by father of the respondent earlier, in no way affected the right of the respondent to file the suit in the year 2010. In this regard, it is to be noted that by virtue of the Perpetual Lease Deed dated 21st June, 1971, registered on 08th July, 1971, Shri Ladha Ram, father of the respondent became absolute owner of the suit property. Shri Ladha Ram died intestate on 25th October, 1977 leaving behind his wife and seven children, including, the respondent herein. The mother of the respondent died on 07th January, 1996 and the suit property devolved upon the seven legal heirs, i.e., the children of Shri Ladha Ram, including, the respondent herein. As established by way of evidence, all the other six legal heirs voluntarily and with free will, relinquished and released their right, title, interest and share in the property in favour of the respondent *vide* Release Deed dated 14th August, 1996, *Exhibit PW 1/3*.

67. Thereafter, the suit property was converted into freehold *vide* Conveyance Deed dated 25th August, 1999, *Exhibit PW 1/2*, and the property got registered in the name of the respondent herein. Thus, the respondent

became the absolute and registered owner of the suit property. After becoming the sole and absolute owner, the respondent executed a License Agreement dated 24th September, 1996, *Exhibit PW 1/5; Exhibit DW 1/3*. The said License Agreement clearly stated the respondent to be the owner of the suit property and the deceased appellant was allowed to occupy front portion of the suit property for his lifetime. A Will dated 24th September, 1996, *Exhibit PW 1/4; Exhibit DW 1/4,* was also executed by the respondent in favour of the deceased appellant.

68. However, the Will dated 24th September, 1996 was cancelled on 08th July, 2009. As regards the License Agreement dated 24th September, 1996 the same was revoked *vide* notice dated 03rd May, 2010, *Exhibit PW 1/11*, thereby, requesting the appellant to handover the portion of the suit property occupied by him. Since the appellant did not comply with the said request, suit came to be filed by the respondent in the year 2010.

69. Considering the aforesaid facts and circumstances, it cannot be said that the suit was barred by limitation, as the cause of action for filing the suit arose in the year 2009, when the Will was cancelled on 08th July, 2009. Cause of action in favour of the respondent for filing the suit further arose in the year 2010 when the respondent revoked the License Agreement dated 24th September, 1996 *vide* notice dated 03rd May, 2010, *Exhibit PW 1/11*. Thus, the suit having been filed by the respondent in the year 2010, was well within limitation. The plea of the appellant in this regard is accordingly rejected.

70. Reliance by the appellant on Section 29 of The Displaced Persons (Compensation and Rehabilitation) Act, 1954 ("**Displaced Persons Act**") is also misplaced. The suit property is not an evacuee property. As held in the

case of ***Jagmohan Lal & Ors. Versus Harkishan Lal, 1994 SCC OnLine Del 171***, a person who was a tenant under the custodian of evacuee property which ultimately formed part of the compensation pool or was an allottee thereof under the Evacuee Property Act, would be covered under Section 29 of the Displaced Persons Act. Thus, in the said case, it was held as follows:

> *"xxx xxx xxx*
>
> ***20. <u>Another submission by the defendants and yet again in the alternative was that since the defendants were in lawful occupation of the suit property and on its transfer to the plaintiff, the defendants will be protected under section 29 of the Act from dispossession.</u>*** *This section 29, so far as it is relevant, is as under:—*
>
> *"29. Special protection from ejectment to certain classes of persons.—*
>
> *(1) Where any person to whom the provisions of this section apply, is in lawful possession of any immovable property of the class notified under sub-section (2), which is transferred to another person under the provisions of this Act, then, notwithstanding anything contained in any other law, such person shall, without prejudice to any other right which he may have in the property, be deemed to be a tenant of the transferee on the same terms and conditions as to payment of rent or otherwise on which he held the property immediately before the transfer:*
>
> ***Provided……..***
>
> *(2) The Central Government may, from time to time by notification in the Official Gazette, specify the class of persons to whom, and the class of immovable property in the compensation pool, other than agricultural land, in respect of which, the provisions of this section shall apply and in issuing any such notification the Central Government shall have regard to the following matters, that is to say,-*
>
> *(a) the length of the period for which any such persons may have been in lawful possession of the property;*
>
> *(b) the difficulty of obtaining alternative accommodation;*
>
> *(c) the availability of any other suitable residential accommodation for the use of the transferee; and*
>
> *(d) such other matters as may be prescribed.*

> ***From this section one thing is quite clear that the transferee of immovable property from the compensation pool constituted under section 14 of the Act cannot proceed against the lawful occupant unless perpetual lease deed and conveyance deed have been executed in his favour. Moreover, the lawful occupant has to be of the authorities appointed under the Act to manage the properties in the compensation pool. That is not the case here.*** *The defendants, as noted above, have claimed that their predecessor Mela Ram was licensee of the plaintiff. We have not been shown by the defendants any notification issued under sub-section (2) of section 29 of the Act by the Central Government for us to hold otherwise. Mr. Aggarwal referred to a decision of the Punjab and Haryana High Court in Kesar Das v. Jatsa Ram, (1967) Vol. 69 P.L.R. 499. We are afraid this judgment does not help the defendants at all. In this case it was held that* ***a person who was a tenant under the custodian of evacuee property which ultimately formed part of the compensation pool, or was an allottee thereof under the Evacuee Property Act, would be covered under section 29 of the Act. The suit property was not an evacuee property. It was built by the Central Government for the purpose of granting rehabilitation relief to the displaced persons who had migrated from Pakistan and formed part of the compensation pool. It was a Government built property. It is not the case of the defendants that they were either the tenants or the licensees under the Act.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

71. Reliance by the appellant on Article 59 of the Limitation Act, 1963, is again misplaced, as the said Article pertains to limitation for filing of suit for cancellation of an instrument and creates no bar in cancellation of an instrument executed by a party. When a license has been acquired for an agreed term, the same would not affect the right of the licensor to revoke it at any time, where it is only a bare license. In this regard, the findings of the learned Trial Court are reproduced as under:

> *"xxx xxx xxx*
>
> *57.* ***It is a case where I have to keep in mind that here the plaintiff and before that his father held the land. They continued to have an interest in the subject matter of the contract. It is well settled preposition that the fixing of tenure of license by contract,***

does not make the license irrevocable. It can still be revoked by the licensee/guarantor. *In that event, guarantee at best can be entitled to recovery of compensation. The plaintiff has not taken the plea in the pleadings or otherwise in the arguments that he is permanent licensee, therefore, cannot be evicted from the Suit property. Though it is apparent from the document Ex. PW1/5, the position is different,* ***It is fact that when a license has been acquired for an agreed term that would not affect the right of the licensor to revoke it at any time where it is only a bare license. In the present case, it is fact that the plaintiff or before that his father had not charged any fees or rent from the defendant and they had only given the possession of the suit property to the defendant. Ex. PW1/5 demonstrates that only possession was given to the defendant of the built up portion which was nothing but a bare license to use and occupy the suit premises on license basis. A license to occupy the existing house is only a bare license which can be revoked at the will of the licensor. It is not a case that the defendant had built the house under a grant of land to him. It was a case where the defendant has a possession of built up portion, it is nothing but a bare license which can be revoked at the will of the licensor i.e. the plaintiff, hence, the defendant has no valid defence to the suit.*** *Even otherwise, in order to claim benefits of Sec. 60(a), the license should relate to the property of the licensor and it should also enable the licensee to secure a transfer of the property of the licensor from out of that property to enter upon which the license was granted. There is no force in the contention of Counsel for the defendant/counter claimant that the plaintiff is not entitled for the relief of possession, in view of above discussions. There is also no force in the contention of Counsel for the defendant that the property in question is an HUF property and the defendant is the co-owner thereof, in view of above discussions.* ***In view of the later execution of Ex. PW1/6, the status of the defendant is nothing but a bare licensee. It is a well settled proposition of law that there are no provisions under the law for issuance of any notice as in the case of leases before a license, can be revoked.*** *However, in this case, the plaintiff has proved the legal notice as Ex. PW1/11, its UPC receipt as Ex. PW1/12, AD receipt as Ex. PW1/13 and AD card as Ex. PW1/14.*

xxx xxx xxx"

(Emphasis Supplied)

72. Considering the detailed discussion hereinabove, no merit is found in the present appeal.

73. This Court also takes note of the submission made by respondent that the suit property is situated in a commercial area in the heart of North Delhi, near the North Campus of University of Delhi. It is the case of the respondent that the appellant, by subletting the property to third parties for running commercial establishment, has earned hefty amounts. Thus, the respondent has claimed enhanced *mesne profits* for the period from passing of the impugned judgment dated 16th May, 2013 till date, over and above the damages of Rs. 5000/- per month that has been allowed by the Trial Court.

74. In this regard, it is to be noted that though averments regarding enhanced *mesne profits* and damages have been made by the respondent, there is no evidence that has been led by the respondent, nor any document has been placed before this Court, on the basis of which enhanced *mesne profits* could be granted to the respondent, by calculating prevailing market rate of rent in the same locality in respect of similar portions. In this regard, reference is made to the case of ***Sarvinder Singh and Ors. Versus Vipul Tandon, MANU/DE/5067/2025***, wherein this Court has held as follows:

> *"xxx xxx xxx*
>
> *21. Section 2(12) of Code of Civil Procedure, 1908 defines mesne profits which reads as under:-*
>
> > *"Section 2(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."*
>
> *22. The Madras High Court in Ramakka v. V. Negasam, MANU/TN/0241/1923, has held that:*
>
> > *"On the second point, I am of opinion that the Commissioner and the District Judge were in error in requiring the plaintiff to open her case. Order XVIII, rule 1, Civil Procedure Code, which is applicable to miscellaneous proceedings through section 141,*

lays down that the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff. ***In a case like the present, where the fourth defendant is the person claiming mesne profits, he is in the position of a plaintiff, as it is his petition, that is the foundation of the proceedings and, if he adduces no evidence at all, no mesne profits can be awarded to him. Section 2, clause (12) defines mesne profits as those profits which a person in wrongful possession of such property actually _ received or might, with ordinary diligence, have received. The profit which a person actually received is a matter within the peculiar knowledge of that person and, under section 106 of the Evidence Act, the burden of proving the amounts actually received will lie on the person who received them; but the burden of proving the profits that the person in occupation might have received will lie on the person who claims them*** *..."*

(emphasis supplied)

23. The landlord is entitled to the mesne profits against a tenant who continues to stay in the tenanted premises after the termination of the tenancy. It is now well accepted that the amount which a landlord is entitled to receive on the termination of tenancy is the amount which the premises can fetch if let out on rent during the period of its illegal occupation by the tenant.

24. ***The rent which the premises can fetch during the period of the illegal occupation by the erstwhile tenant is a fact which can be easily demonstrated in a suit for possession and mesne profits against the tenants by leading evidence. In the present case, the Plaintiffs have not led any evidence with respect to rent of similar premises within the locality.***

25. The Plaintiffs in this case are claiming mesne profit from the date of filing of suit, i.e., 06.08.2015 till possession, i.e., 17.07.2018, at the rate of Rs.2,00,000/- per month along with interest @ 15% p.a. It is an admitted position that the probate of Will was not granted in favour of the Defendant, and therefore, the Defendant is not the owner of the said premises. It is also admitted that Plaintiffs are Class-I heirs of the owner of the property. ***However, the Plaintiffs in the present case have not presented any evidence to show that the said amount of mesne profits claimed is as per the prevailing market rate of rent in the same locality in respect of similar portions.***

26. ***Mere guess work cannot be used for ascertaining the rent. This Court cannot make a guess work in thin air. Guess work cannot take the form of evidence. Coming to a figure which might be the rent of***

> ***the area on its own without any material is not permissible in law. Thus, in the absence of any evidence, either oral or documentary, this Court is not in a position to calculate any mesne profits.***
>
> *27.* ***This Court is of the opinion that, in the absence of any evidence to ascertain the mesne profit, it cannot calculate the amount to be awarded as mesne profit on its own.*** *Therefore, the claim of mesne profits cannot be granted.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

75. Consequently, in the absence of any evidence to ascertain *mesne profits*, this Court cannot make any calculations towards the *mesne profits* to be granted in favour of the respondent. Accordingly, the respondent is granted liberty to initiate appropriate legal proceedings for seeking *mesne profits* from the appellant for the period from passing of the impugned judgment dated 16th May, 2013, till handing over of the possession of the suit property to the respondent.

76. The suit was decreed by the Trial Court in favour of the respondent, thereby, granting possession of the suit property in favour of the respondent. Accordingly, the appellant is directed to forthwith handover the portion of the suit property occupied by him, to the respondent.

77. The respondent has further been held entitled to a decree of damages @ Rs. 5,000/- per month along with *pendente lite* and future interest @ 12% per annum from 01st June, 2010, till delivery of possession of the suit property to the respondent. Pursuant to directions of this Court, decretal amount along with interest up to the date of deposit, has been deposited by the appellant, with this Court. Though *vide* order dated 02nd September, 2015, directions were issued to release the decretal amount in favour of the respondent subject to furnishing a solvent security, in the absence of

furnishing such security by the respondent, the said amount continues to lie deposited with this Court.

78. Accordingly, the decretal amount along with the interest accrued shall be released in favour of the respondent.

79. The present appeals are accordingly dismissed, with the aforesaid directions.

80. The pending applications also stand disposed of.

MINI PUSHKARNA
(JUDGE)

JANUARY 12, 2026
KR/AU/AK/SK