



2026:AHC:23707

## HIGH COURT OF JUDICATURE AT ALLAHABAD

**FIRST APPEAL No. - 317 of 2019**

**A.F.R.**

JUDGEMENT RESERVED ON 04.11.2025  
JUDGEMENT DELIVERED ON 04.02.2026

Sonu Sirohi

.....Appellant(s)

Versus

Pushpendra Singh Sirohi And Another

.....Respondent(s)

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Counsel for Appellant(s)

: Kartikeya Saran, Rahul Sahai

Counsel for Respondent(s)

: Anand Kumar Tripathi, Archit  
Mehrotra, Atul Kumar Tiwari,  
Mrityunjay Pandey, Nipun Singh,  
Prashant Mishra, Rakesh Kumar  
Mathur, Sanjay Pandey, Siddharth  
Nandan

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### **Along with :**

**1. First Appeal No. 320 of 2019:**

Sonu Sirohi

Versus

Poonam Agarwal and 3 others

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### **Court No. - 6**

**HON'BLE PRAKASH PADIA, J.**

1. Since both the appeals arise out of common judgment and decree dated 11.12.2018 passed by the Civil Judge (Senior Division), Gautam Budh Nagar in Original Suit Nos. 1199 of 2009 and 1187 of 2011, as such, both the appeals are being decided by the present common judgment.

2. The facts giving-rise to the present dispute are that an Original Suit No. 1199 of 2009 was instituted by Pushpendra Singh Sirohi and Smt. Poonam Agarwal against Smt. Sonu Sirohi for mandatory injunction, directing the defendant to vacate the flat and restore the possession to the plaintiff. A further prayer was made for mesne-profit @ Rs.80,000/- per month from the date of Institution of the suit till actual physical possession is delivered to the plaintiff. For the sake of brevity, the present

suit is being referred hereinafter as Suit No. 1 and plaintiff of aforesaid suit are being referred hereinafter as plaintiff nos. 1 & 2 of Suit No. 1. The defendant, namely, Smt. Sonu Sirohi is being referred hereinafter as defendant of Suit No.1.

3. The facts as stated in the plaint are that the defendant of suit no. 1 was married with plaintiff no.1 of suit no. 1. A tripartite agreement dated 15.6.2006 between NOIDA, M/s A.T.S. Infrastructure Pvt. Ltd and plaintiff no.1 of suit no. 1 was executed and thus the plaintiff no. 1 of suit no. 1 became owner of Flat No. 1201, Ground Floor, ATS Green Village, Noida, District Gautam Budh Nagar (hereinafter referred as "flat in dispute").

4. It is further alleged that the defendant of suit no.1 being married wife of plaintiff no. 1 of suit no.1, was authorized to realize the rent of disputed flat. In due course of time, the relation between the plaintiff No.1 of suit no. 1 and defendant of suit no. 1 became strained and various litigations, including proceedings under Protection of Women from Domestic Violence Act, 2005, were initiated by the defendant of suit no.1.

5. It is further alleged that a license to realize the rent of disputed flat was given to the defendant of suit no. 1, which was revoked on 17.11.2009. Thus, after revocation of License, the plaintiff No.1 of suit No. 1 is entitled for possession of flat in dispute and the possession of defendant of suit No.1 over disputed flat is illegal. Accordingly, the relief of mandatory injunction and mesne-profit have been prayed for by instituting Suit No. 1199 of 2009.

6. It is further alleged in the plaint that the plaintiff no. 1 of suit no. 1 decided to sell the disputed flat to the plaintiff no. 2 of suit no. 1 and therefore on 8.2.2011, M/s ATS Infrastructure Pvt. Ltd issued no objection certificate for transfer of flat in dispute in favour of the petitioner no. 2 of suit no. 1. On 17.2.2011, the plaintiff no. 1 filed transfer application with NOIDA and on 24.3.2011, on execution of indemnity bond by plaintiff no.1 and plaintiff no. 2 in favour of NOIDA, permission for the transfer was granted and accordingly, the transfer memorandum and transfer-cum-sale deed was executed between plaintiff no. 1 and plaintiff no. 2 of suit no.1 for sale consideration of Rs. 95 lacs.

7. The defendant of suit no. 1, namely, Smt. Sonu Sirohi instituted Original Suit No. 1187 of 2011 (Smt. Sonu Sirohi Vs. Smt. Poonam Agarwal, Pushpendra Singh Sirohi, ATS Infrastructures and Noida Authority. The suit is being referred as suit no. 2. In the aforesaid suit, a relief of permanent injunction, restraining the defendant from evicting the plaintiff Smt. Sonu Sirohi, from the flat in dispute was prayed for. By way of amendment, a decree for declaring the transfer deed dated 25.3.2011, executed in favour of the plaintiff no.2 of suit no.1 as void, with a further prayer of declaration against no objection certificate granted by Noida Development Authority and ATS Infrastructure was prayed for. In short, the claim set-up by Smt. Sonu Sirohi in suit no. 2 was that she has also invested stridhan in purchase of the flat in dispute and proceedings under Protection of Women from Domestic Violence Act, 2005 as well as other proceedings are pending before various Courts and in view of the aforesaid, she is entitled to reside in the flat in dispute.

8. Since the subject matter of both the suits was the same property, as such, both the suits were consolidated and decided by a common judgment and decree dated 11.12.2018.

9. The trial Court had framed issues separately in both the suits. In suit no. 1, the first issue was whether the plaintiffs of suit no. 1 are owners of flat in dispute. The first issue in Suit no. 2 was whether the plaintiff of suit no. 2 (defendant of suit no. 1 Smt. Sonu Sirohi) is owner of flat in dispute. Issue nos. 2, 7, 10 & 11 of suit no. 2 also related to ownership of flat in dispute as well as the legality of transfer deed dated 25.3.2011.

10. The issue no. 1 of both the suits had been decided by the learned trial Court, holding that the owner of flat in dispute was plaintiff No.2 of suit no. 1 and subsequently transfer deed dated 25.3.2011 executed by plaintiff of suit no. 1 in favour of the plaintiff no. 2 is lawful transfer deed and accordingly, plaintiff no. 2 of suit no. 1 namely Smt. Poonam Agarwal is the lawful owner of flat in dispute. It has been further decided by the trial Court that the possession of defendant of suit no. 1 w.e.f. May 2011 is illegal.

11. The trial Court has further decided the issue holding that the plaintiff no. 2 of suit no. 1 is entitled for damages/mesne-profit for use and

occupation @ Rs. 60,000/- per month from May 2011 till the time actual physical possession is delivered to plaintiff no. 2 of suit no. 1. Thus, suit no.1 has been decreed and suit no. 2 has been dismissed.

12. Being aggrieved with the aforesaid judgment and decree, the present two First Appeals have been filed, mainly on following grounds:

- (A) That the impugned judgment suffers from manifest errors apparent on the face of record;
- (B) That the suit of Plaintiff No. 2 was liable to be dismissed, which was otherwise wrongly decreed by the trial court;
- (C) That the disputed flat was purchased out of joint funds (Stridhan) contributed by both the Appellant and Plaintiff No. 1, and therefore Plaintiff No. 1 alone could not have alienated it;
- (D) That the Sale Deed dated 25.03.2011 is patently null and void, and no right flows to the alleged vendee;
- (E) That the Appellant, residing permanently in the disputed flat with her children, who also have a claim therein, could not have been directed to vacate;
- (F) That the Appellant has substantive rights under the Protection of Women from Domestic Violence Act, 2005;
- (G) That Plaintiff No. 1 colluded with the builder and NOIDA to circumvent the rights of the Appellant under the said Act;
- (H) That the Transfer Deed issued by NOIDA contained a precondition binding the parties to pending suits, which was mischievously ignored;
- (I) That the trial court wrongly held that the lease deed was executed exclusively in favour of Plaintiff No. 1 alone;
- (J) That the trial court erroneously held that the Appellant failed to produce documentary evidence of financial contribution;
- (K) That case laws cited by the Appellant were misconstrued;

(L) That the imposition of damages at Rs. 60,000 p.m. is unjust, given the Appellant's meagre maintenance of Rs. 75,000/-;

(M) That allowing the impugned judgment would occasion failure of justice and cause irreparable loss.

13. On the basis of the grounds mentioned above and the argument raised by the learned counsel for the appellant, following points/issues for determination have been framed.

(A) Suit No. 1 for mandatory injunction is barred under section 41(h) of Specific Relief Act, 1963, which provides that an injunction cannot be granted when equally efficacious relief can be obtained by any other usual mode of proceedings except in case of breach of trust.

(B) The findings that the plaintiff no. 1 of suit no. 1 was absolute owner of flat in dispute are perverse and contrary to evidence on record.

(C) The transfer deed dated 25.3.2011 is illegal.

(D) Award of damage @ Rs. 60,000/- per month is contrary to evidence on record.

#### **Point No. 1-Preliminary Objection**

14. The appellant has raised a preliminary objection to the maintainability of Suit No. 1, contending that the suit for mandatory injunction is barred under section 41(h) of the Specific Relief Act, 1963, which provides that an injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust.

15. The learned counsel for the appellant has argued that the plaintiff of suit no.1 in plaint has indicated that the defendant is trespasser over flat in dispute, thus, the suit for mandatory injunction is not maintainable and the plaintiff should have filed suit for possession. The learned counsel for the appellant has also relied upon a case of ***Hashmat Husain & others Vs. Inayat Ullah & others, AIR 1958 Alld. 706*** and also a case of ***Bharat Heavy Electrical Rajapur Haridwar Vs. Sanju Paliwal, 2013 (2) Uttrakhand 1137.***

16. On the other hand, the learned Senior Counsel for plaintiff of suit no.1 stated that it was specifically argued before the trial Court that the defendant was residing in flat in a capacity of licensee and this fact was admitted by her. This admission on her part clearly established the relationship of licensor and licensee, as provided under Indian Easement Act, 1882. The license was terminated by plaintiff no. 1 of suit no. 1 by giving notice dated 17.11.2009 to remove his possession from the house within 15 days. He has relied upon **AIR 1985 SC 857 Sant Lal Jain Vs. Avtar Singh**. The Court has observed:

*"In a suit, where a mandatory injunction for possession is sought by a licensor from a licensee who has terminated the license, the suit is not barred merely because it takes the form of a suit for mandatory injunction. The object of the suit is possession, and the relief sought is possession which the plaintiff may be found to be entitled."*

In case of **Bharat Bhushan Gupta Vs. Pratap Narain Verma & another**, (2022) 8 SCC 333, the Hon'ble Supreme Court has reaffirmed the position that when a licensor-licensee relationship exists and the licensor can seek mandatory injunction for possession without being barred under section 41 (h) of the Specific Relief Act.

17. The learned trial Court, after appraisal of evidence recorded findings that the plaintiff no. 1 of suit no. 1 has permitted appellant to collect rent as an agent and to enter and exit the premises for limited purpose only. The trial Court has further recorded findings that the permission for revocation was granted on 17.11.2009 and thus she has no legal right to continue occupying the disputed flat in question.

18. Thus, in view of the law laid down by the Apex Court, as referred above, the suit for mandatory injunction was maintainable.

#### ***Point No. 2-Onwership and title of plaintiff no.1 of suit no. 1***

19. The learned trial Court has recorded finding that the plaintiff of suit no. 1 is owner of flat in dispute, in view of the registered lease deed dated 16.6.2006 executed exclusively in favour of plaintiff no. 1 of suit no. 1. The trial Court has recorded finding that the plaintiff no. 1 of suit no. 1

has taken loan from HSBC Bank and NOC was issued by the bank and this fact was admitted by the defendant of suit no. 2, namely, ATS Infrastructure Ltd. and Noida Development Authority.

20. The appellant, (defendant of suit no. 1) has filed her affidavit in evidence, stating therein that she has contributed obtaining lease/ownership of flat in dispute by selling her stridhan and thus she is co-owner of flat and accordingly, the transfer deed executed by plaintiff no.1 of suit no. 1 is without authority.

21. Though an affidavit was filed by defendant of suit no. 1, being plaintiff of suit no. 2, but she never appeared for examination, despite repeated opportunities provided to her to appear for cross-examination. In absence of cross-examination, the affidavit in evidence filed by the appellant has rightly not been relied upon by the trial Court and the contention of the appellant that she has contributed funds in purchase/lease of flat in dispute has rightly been disbelieved. No documentary evidence whatsoever has been adduced by the defendant of suit no.1 to establish that she has contributed in obtaining the transfer deed dated 16.6.2006 of flat in dispute.

22. It is further argued by the learned counsel for the appellant that no separate issue was framed by the trial Court, as such, appellant could not lead evidence to the fact that joint funds were invested in purchase/lease of flat in dispute and thus, the invested appellant was prejudice of proper opportunity to lead evidence on the said issue.

23. From perusal of record and the oral evidence adduced by the parties, it is established that the defendant of suit No.1 has not let any documentary or oral evidence to establish that she has contributed in purchase of flat in dispute. The only evidence adduced by her, during trial is an affidavit of evidence but as she had not turned up despite various opportunities provided by the Court for cross-examination, as such, the affidavit filed by her, cannot be accepted in absence of cross-examination. On the other hand, the plaintiff of suit no. 1 has adduced ample evidence i.e. statement of loan taken by plaintiff no. 1 of suit no. 1 from HSBC Bank and subsequent NOC issued by the bank. Thus, it is established that it is the plaintiff no. 1 who made investment in purchase of flat. The learned

counsel for the appellant has failed to Indicate any document to suggest that any amount was invested by her in purchase of flat in question.

24. The learned trial Court has framed issues with regard to ownership of flat in dispute and it was open to appellant to establish that the ownership of plaintiff no. 1 of suit no. 1 was not exclusive, but was joint ownership, but no evidence was led to establish joint ownership. Thus, argument raised by the learned counsel for the appellant that her right was prejudiced to lead evidence in absence of proper issue, is wholly misconceived and not tenable in law, especially when the parties have full knowledge about the case and have not pleaded but have led evidence with respect to their ownership.

In ***Nedunuri Kameswaramma Vs. Sampati Subba Rao, AIR 1963 SC 884***, it has been held by the Hon'ble Supreme Court that when the parties are ad idem on the fact involved in the suit and have pleaded about the same as well as led evidence with respect to the same, it is not necessary for the trial Court to have framed separate issues, as the Court has effectively disposed off the point in its judgment.

In ***Bhairab Chandra Nandan Vs. Runadhir Chandra Dutta, (1988) 1 SCC 383***, the Hon'ble Supreme Court held that where evidence has been led by parties with respect to certain facts, despite the absence of a formally framed issue, the findings returned by the trial Court on such facts are not rendered nugatory.

25. The trial Court has further recorded findings:

"उपरोक्त विधि व्यवस्थाओं के आलोक में उभयपक्षों के अभिवचनों में यह स्पष्ट रूप से स्वीकृत तथ्य है कि विवादित फ्लैट अग्रणी वाद के वादी सं0-1 पुश्पेन्द्र सिंह सिरोही को आवंटित हुआ था, न कि आवंटन प्रतिवादिनी के साथ संयुक्त रूप से हुआ था। अग्रणी वाद की पत्रावली पर उपलब्ध प्रपत्र सं0-80ग 1 व 81ग1 के अवलोकन से भी यह दर्शित होता है कि विवादित फ्लैट के सम्बन्ध में पंजीकृत लीज डीड वादी सं0-1 पुश्पेन्द्र सिंह सिरोही के पक्ष में निश्पादित की गयी थी। इसके अतिरिक्त पत्रावली पर उपलब्ध प्रपत्र 79ग1 के अवलोकन से यह दर्शित होता है कि पुष्पेन्द्र सिरोही द्वारा एच.एस.बी.सी. से ऋण लिया गया था जिसके सम्बन्ध में नोड्यूज प्रमाण पत्र प्रस्तुत किया गया है। प्रतिवादी सं0-2 के पक्ष में मूल आवंटन के तथ्य को पष्चातवर्ती वाद के प्रतिवादी सं0-3 -ए०टी०एस०

इन्फाट्रेक्टर लिंग व प्रतिवादी संगठनों नोएडा विकास प्राधिकरण द्वारा अपने प्रतिवाद पत्र में स्वीकार किया गया है। इस प्रकार स्पष्टतः वादी संगठनों विवादित प्लैट का मूल आवंटी व स्वामी बतौर पट्टाधारी था। यह भी स्वीकृत तथ्य है कि अग्रणी वाद की वादिनी संगठनों श्रीमती पूनम अग्रवाल द्वारा विवादित प्लैट को जरिये पंजीकृत बैनामा वादी संगठनों से पञ्चात्वर्ती वाद के प्रतिवादी संगठनों एवं इन्फाट्रेक्टर लिंग से एनोओसी दिनांक-08-02-2011 को एवं प्रतिवादी संगठनों नोएडा विकास प्राधिकरण से टीएमो दिनांक-25-03-2011 को प्राप्त कर वादी संगठनों से क्रय किया गया है। प्रतिवादी संगठनों द्वारा अपने प्रतिवाद पत्र में यह स्पष्ट कथन किया गया है कि विवादित प्लैट की स्वामिनी अग्रणी वाद की वादी संगठनों श्रीमती पूनम अग्रवाल दर्ज कागजात हैं। इस सम्बन्ध में अग्रणी वाद की प्रतिवादिनी व पञ्चात्वर्ती वाद की वादिनी का क्रमांक: अपने प्रतिवाद पत्र व वाद पत्र में मुख्य रूप से यह कथन है कि चूंकि विवादित प्लैट को अग्रणी वाद के वादी संगठनों पुश्पेन्द्र सिंह सिरोही के साथ क्रय करने में उसके द्वारा अपनी व्यक्तिगत सम्पत्ति (स्त्रीधन, स्वर्ण आभूषणों की विक्री आदि) के विक्रय से प्राप्त सम्पत्ति से भी भुगतान में सहयोग प्रदान किया गया है, एवं नोएडा विकास प्राधिकरण की पोलिसी के अनुसार नोएडा प्राधिकरण के क्षेत्र में -किसी आवंटी के पति/पत्नी व अव्यस्क बच्चों के नाम एक से अधिक 31 सम्पत्ति नहीं हो सकती, इस कारण विवादित प्लैट की वह तथा उसके बच्चे संहस्वामी वादी संगठनों पुश्पेन्द्र सिंह सिरोही के साथ हैं तथा उसकी अनुमति के बिना वादी संगठनों पुश्पेन्द्र सिंह सिरोही को अग्रणी वाद की वादिनी संगठनों श्रीमती पूनम अग्रवाल को विवादित प्लैट का विक्रय नहीं किया जा सकता था। यह तथ्य की अग्रणी वाद की प्रतिवादिनी द्वारा विवादित प्लैट के क्रय करने में वादी संगठनों को अपनी निजी सम्पत्ति (स्त्रीधन, स्वर्ण आभूषणों की विक्री आदि) के द्वारा भुगतान में अंशदान / सहयोग किया गया था, साबित करने का भार अग्रणी वाद की प्रतिवादिनी व पञ्चात्वर्ती वाद की वादिनी पर है। परन्तु इस सम्बन्ध में उसके द्वारा बतौर मौखिक साक्षी मुख्य परीक्षा शपथ पत्र प्रपत्र प्रस्तुत किया गया, परन्तु स्वयं को न्यायालय द्वारा पर्याप्त अवसर प्रदान किये के जाने के पश्चात भी परीक्षित नहीं कराया गया, न ही कोई दस्तावेजी साक्ष्य अपनी व्यक्तिगत सम्पत्ति के सम्बन्ध में प्रस्तुत किया गया है। जब कि इसके विपरीत यह स्वीकृत तथ्य है कि विवादित प्लैट का आवंटन वादी संगठनों पुश्पेन्द्र सिंह सिरोही के नाम हुआ था तथा इस सम्बन्ध में लीज डीड भी उसी के नाम से निष्पादित हुई थी। इस प्रकार पत्रावली पर उपलब्ध साक्ष्यों के आधार पर स्पष्ट है कि विवादित प्लैट को क्रय करने के सम्बन्ध में भुगतान अग्रणी वाद के वादी संगठनों पुश्पेन्द्र सिंह सिरोही द्वारा स्वयं अकेले किया गया था एवं वह अकेले उक्त विवादित प्लैट का स्वामी था तथा उसको प्लैट विक्रय करने का पूर्ण अधिकार एक मात्र स्वामी होने के कारण

विधिनुसार प्राप्त था।

26. Thus, the findings recorded by the trial Court on the issue are perfect and the said finding is not perverse and is based on cogent evidence.

***Point No. 3-Transfer deed is illegal***

27. The Appellant contends that the transfer of the disputed flat was made to Plaintiff No. 2 during pendency of suit proceedings, wherein the rights of the Appellant had to be determined and hence the said transfer could not have been executed without taking permission of the concerned Court, thereby violating Section 52 of Transfer of Property Act. The counsel further submitted that the Sale Deed is null and void because the disputed flat was purchased from joint funds, the NOIDA Transfer Memorandum contained a precondition that parties must comply with pending matrimonial proceedings and that the said transfer mischievously took place without the Appellant's knowledge or consent. The Counsel vehemently argued that the transfer deed executed between the Plaintiff of suit no.1 has a false declaration recorded by Plaintiff No.1 that the property sought to be transferred is free from all disputes and litigations pending in any court of law and the said recital has not been objected to by the vendee Plaintiff No.2, which establishes that both the Plaintiffs are complicit and are deliberately hand in glove to defraud the Appellant.

28. Objecting to Appellant's submissions, the learned Senior Counsel for Plaintiff No.2 submitted that the disputed premises was rightfully and lawfully transferred only after issuance of No Objection Certificate (NOC) by the developer M/s. ATS Infrastructure Pvt. Ltd. For transfer of the flat in question on 08.02.2011, Indemnity Bond was executed by Plaintiff No.2 in favour of Noida showing her willingness to purchase the flat in question on 24.03.2011. Transfer Memorandum was issued by Noida permitting the transfer of the flat in question in favour of Plaintiff No.2 on 25.03.2011, before finally a Transfer Deed-cum-Sale Deed was executed by the Plaintiff No.1 in favour of Plaintiff No.2 of the flat in question for a total consideration of Rs. 95.00 Lacs.

29. The Senior Counsel vehemently submitted that aforesaid facts

establish that all requirements of transfer between the parties were complete and the Transferor recorded with Noida his Sub-lease transferring his rights absolutely in favour of the Plaintiff No.2. Admittedly, in the deed that was executed in the year 2006, the name of the Appellant was not recorded with Noida. The said deed is dated 15.06.2006 and is a Tripartite Agreement between the Noida, ATS Infrastructure Pvt. Ltd., and the Plaintiff No.1.

30. It is submitted by Sri Goyal, learned Senior Counsel, that Objection is to the effect that a letter was issued by Noida to the Plaintiff No.2 whereafter the Plaintiff No. 2 executed the Indemnity Bond as well as an affidavit mentioning the pendency of the proceedings between the Plaintiff No.1 and the defendant of suit no. 1 before the Court of ACMM, Patilala House, New Delhi. This objection on the face of it is untenable as mere pendency of the said case had no bearing on the execution of the Transfer Deed in favour of Plaintiff no.2. The pendency of the proceedings does not indicate that the Plaintiff No.2 is not bonafide purchaser. Rather it indicates that the Plaintiff No.2 has carried out due diligence before purchasing the lease hold rights and the super structure and has shown her bonafides by putting it on record by understanding the consequences of such case.

31. Moreover, it is evident from the pleading of the Defendant that she claimed her own right of residence in the house that was occupied only with effect from 11.07.2009 at a point of time when her license was terminated by the Plaintiff No.1. It is further argued that in terms of the provisions contained in Section 38 of the Transfer of Property Act, 1882, the Plaintiff No.2 conducted due diligence, used reasonable care to ascertain the circumstances and has acted in good faith before purchasing the property in question. By no stretch of imagination can it be stated that the property in question stood affected by operation of the Protection of Women from Domestic Violence Act, 2005 inasmuch as Section 2(s) read with Section 12, 17 and 19 uses the word "shared household" and does not apply to more than one household. Evidence has already been led and it has come on record that there was more than one household between Plaintiff no.1 and the Defendant, namely another flat in the same group housing, being Flat No. 1083 ATS Green Village

Section 934, Noida. Once the intention of the legislature is to restrict the provision to a single household and not extent it beyond one household, the flat in question could not be included in the proceedings that were pending on the date when the Transfer-Cum-Sale Deed came to be executed.

32. In my view, the Indemnity Bond executed by Plaintiff No. 2 on 24.03.2011 was a separate arrangement between Plaintiff No. 2 and NOIDA and not a condition affecting the validity of the Sale Deed. Plaintiff No. 2 undertook to thereby indemnify NOIDA against any adverse outcome of the domestic violence proceedings, assuming the risk. This does not invalidate the sale deed. Moreover, since the plaintiff no. 1 is the sole owner of the disputed flat, having purchased it with his own funds and without any contribution from the appellant, he had full authority to execute a valid sale deed in favour of the plaintiff no. 2. The sale deed dated 25.3.2011 is therefore valid and effective, and all rights pertaining to the disputed flat have rightly vested in plaintiff no. 2.

#### **Point No. 4- Award of damages**

33. The appellant's main argument on the the imposition of aforesaid issue is that imposition of damages at the rate of Rs. 60,000/- per month is harsh and unjust, particularly when she receives only Rs. 75,000/- as monthly maintenance from her estranged husband. The relevant findings given by the Trial Court read as follows:-

"अग्रणी मूलवाद में वाद विन्दु सं०-१, ५ व पञ्चातवर्ती मूलवाद क' बाद विन्दु सं०-१, २, ७, १०, व ११ के निस्तारण से यह स्पष्ट है कि अग्रणी वाद की प्रतिवादिनी ३१ श्रीमती सोनू सिरोही का विवादित पलैट पर अन्तरण विलेख दिनांक-२५-०३-२०११ को निष्पादित होने के पश्चात् तथा माह मई २०११ में पलैट खाली करने हेतु वादिनी सं०-२ श्रीमती पूनम अग्रवाल द्वारा कहे जाने के पश्चात् से कब्जा अवैध है तथा श्रीमती पूनम अग्रवाल विवादित पलैट के सम्बन्ध में प्रतिवादिनी सोनू सिरोही से हर्जा इस्तेमाली प्राप्त करने की अधिकारिणी है। हर्जे के सम्बन्ध में वाद पत्र में यह अभिकथन किया गया है कि वाद संस्थित करने की तिथि से वादिनी ८०,०००/- रूपये प्रतिमाह हर्जा प्राप्त करने की अधिकारी हैं। इस सम्बन्ध में पत्रावली पर जरिय सूची पत्र ७५ग/ प्रपत्र ८२ग छायाप्रति लीज डीड दिनांक-२२-०५-२०१४ बावत् पलैट सं०-१००१ ए०टी०एस० ग्रीन विलेज, सैक्टर ९३ए, नोएडा प्रस्तुत की गयी है। जिसमें किराया ८०,०००/- रूपये प्रतिमाह दर्शित है। परन्तु उक्त दस्तावेज छायाप्रति हैं जो साक्ष्य में ग्राह्य नहीं है। इस तथ्य का उल्लेख मुख्य परीक्षा शपथ पत्र में किया गया है। परन्तु बतौर पी०डब्लू०-१ साक्षी

श्रीमती पूनम अग्रवाल ने अपनी जिरह में पृष्ठ 6 पर यह अभिकथन किया है कि "इस पलैट में वर्ष 2009 से किरायेदार रोहित शर्मा रहा करता था ये 60 हजार रुपये प्रतिमाह का किराया देता था।" इस प्रकार उसके द्वारा स्वीकार किया गया है कि विवादित पलैट पहले 60,000/- रुपये प्रतिमाह किराये पर दिया गया था।

इस तथ्य के विपरीत प्रतिवादिनी श्रीमती सोनू सिरोही की ओर से कोई विपरीत साक्ष्य प्रस्तुत नहीं किया गया है। ऐसी दशा में वादिनी श्रीमती पूनम अग्रवाल प्रतिवादिनी सोनू सिरोही से मई 2011 से कब्जा दिये जाने की तिथि तक प्रतिमाह 60,000/- रुपये प्रतिमाह की दर से हर्जा इस्तेमाली प्राप्त करने की अधिकारिणी हैं। वादिनी सं0-2 श्रीमती पूनम अग्रवाल का वाद सव्यय तदनुसार आज्ञाप्त किये जाने योग्य है।

34. On consideration of the facts and circumstances, and the arguments advanced, I find that the amount fixed by the trial Court is reasonable at Rs. 60,000/- per month, especially considering that this was the rental income generated from the disputed flat when it was occupied by tenant Rohit Sharma (rent agreement dated 24.6.2008). The appellant has been enjoying the property since a long time and there is every likelihood that the rental value of the flat in dispute would have substantially increased over the years, while she remained in possession. Be that as it may, Rs. 60,000/- per month is a fair measure of compensation for the loss suffered by the rightful owner (plaintiff no. 2) during the period of unlawful occupation by the appellant.

35. From the discussion made above and also from perusal of oral and documentary evidence it is established that the trial Court has rightly decreed the Original Suit No. 1199 of 2009 and has rightly dismissed the Original Suit No. 1187 of 2011.

36. The Apex Court in case of *Nirmala Devi Vs. Gurgaon Schedule Caste and Vimukta Agriculture Thrift and Credit Society Limited and Others (2021) 8 SCC 785* has held that the findings of facts recorded by the trial Court particularly relating to ownership and possession of immovable property should not be disturbed in appeal unless there is compelling reason to do so. In the present appeal, no compelling reason has been brought on record. The learned counsel for the appellant has to demonstrate that any finding recorded by the trial Court, especially with regard to ownership and award of damages is perverse and contrary to evidence on record.

37. Thus both the First Appeals are hereby dismissed and the judgment and decree dated 11.12.2018 passed by the Civil Judge (Senior Division), Gautam Budh Nagar in Original Suit No. 1199 of 2009 and Original Suit No. 1187 of 2011 are affirmed.

38. Registry is directed to return the original records of the aforesaid appeals to the Court below within a week.

**(Prakash Padia,J.)**

**February 4, 2026**

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