Delhi District Court

Sh. Suresh Kumar Anand vs Sh. Sudhish C. Anand on 30 January, 2018

IN THE COURT OF SH. SANJAY KUMAR, ADDITIONAL DISTRICT
JUDGE-02, WEST, DELHI.

CS No. 17/17/89
New No. 608197/16/89

I. Sh. Jia Ram Anand and II. Smt. Sushila Anand Both deceased through LRs.

1. Sh. Suresh Kumar Anand S/o Sh. Jia Ram Anand
R/o A-1, Greater Kailash Enclave-II, New Delhi-110048.

2. Dr. Sudhir K. Anand S/o Sh. Jia Ram Anand
R/o 2829, Glendower Avenue, Los Angeles,
California-90027, U.S.A.

3. Sh. Subodh K. Anand S/o Sh. Jia Ram Anand,
R/o 1982, Rideau River Drive, Ottawa,
Ontario,
KISIT-9, Canada.

4. Smt. Sushma Sawhney,
W/o Sh. Ravinder K. Sawhney, r/o Green Acres, Block 1-B,
Flat No. 201, Lokhandwala complex, Andheri (West),
Mumbai.

.....Plaintif

versus

1. Sh. Sudhish C. Anand S/o Sh. Jia Ram Anand
R/o H.No. 95, Block 5 Eros Gardens Charmwood Village Faridabad,
Haryana.

2. Ms. Neena Anand @ Neena Sareen Deceased through LR
Mr. Sidharth Anand
R/o H.No. 95, Block 5 Eros Gardens Charmwood Village Faridabad,
Haryana.

.......Defendants

Date of institution of the case : 07.07.1989
Date of reserving of judgment : 15.01.2018

Date of pronouncement of judgment : 30.01.2018

JUDGMENT

1. The plaintiffs have filed a suit for mandatory injunction and damages/mesne profits. The factual matrix of the case is as under:

2. It is stated that the plaintiffs are joint and exclusive holders of perpetual leasehold rights in plot No. A-1, Greater Kailash Enclave-II, New Delhi -110048 (hereinafter referred to as the 'suit property'). The plaintiffs acquired the said perpetual leasehold rights by and under a duly registered perpetual sub-lease dated 14.08.1970 between the President of India and E.P. Railway Refugees Rehabilitation and House Building Cooperative Society Ltd.

3. It is stated that the plaintiffs with their own funds and resources constructed a single storeyed residential house on the said plot comprising two dwelling units in the year 1972-73, which are shown in the annexed sanctioned site plan. The dwelling unit in the eastern half portion of the building has throughout been in the possession of the plaintiffs as their residence. The defendant NO.1 Sh. Sudhish Anand is the eldest of the four sons of the plaintiffs. He was in England till 1971 when he returned to Delhi. His wife Smt.Rekha Anand with whom he had strained relations did not come back with him to India and remained in England. After returning to Delhi, the defendant NO.1 started living with the plaintiffs at their then rented accommodation at N-7, Greater Kailash-I, New Delhi. Upon construction of the suit property, the defendant NO.1 being a family member also shifted to the new house to live with the plaintiffs in the dwelling unit in the eastern half portion of the building. The room number "10" in the annexed plan was utilized as bedroom for him. The user was purely permissive and as bare licensee in his capacity as a member of the plaintiffs' family. Ms. Sumati, the daughter of defendant NO.1 from his estranged wife Smt. Rekha Anand has been living with the plaintiffs from the year 1969 when she was only two years old.

4. It is stated that the defendant NO.1 WAS transferred from Delhi to Bomaby sometime in the year 1977 and he took away his belongings with him. However, he visited Delhi off and on and stayed with the plaintiffs during such visits as their guest being their son. Shri Suresh K. Anand, the youngest son of the plaintiffs with his family i.e. wife and twin sons shifted from Calcutta in August, 1979 and started living with the plaintiffs in the dwelling unit in the eastern half portion of the suit property. The room numbers 10 and 16 with attached bathrooms were utilized as bedrooms for him and his family.

5. It is stated that the defendant NO.1 during his visits to Delhi sometime in the year 1979 developed illicit intimate relations with the defendant NO.2, who is the elder sister of Smt. Sarita Anand, wife of the youngest sons of the plaintiffs. The defendant NO.2 WENT to Bombay with defendant NO.1 and they claimed to have married each other and have ever since been living together as husband and wife and have been treated as such by the plaintiffs, relatives and friends. They have a male child born in 1987 in Delhi. The defendant NO.2 WAS working in Bombay with an agency engaged in the business of recruitment of workers for employment in the Middle East countries. Both of them used to frequently visit Delhi and stay with plaintiffs as guests.

6. It is stated that the dwelling unit in the western half portion of the suit property was let out to tenants upto December, 1981. Thereafter, the said portion save and except for the bedroom numbers "7" with attached bathroom was let out again to tenants upto December, 1983. The room numbered "7" was restrained as additional accommodation for Sh. Suresh K. Anand, the youngest son of the plaintiffs. In January 1984, the said portion, excluding room number "7" was let out to Sri Ram Pistons and Rings Ltd. and thereafter in September, 1985 to Sri Ram Fibers Ltd. for use as residence of Sh.Suresh K. Anand, who is employed as an executive with the Sri Ram group of Companies/ concerns. Sh. Suresh K. Anand and his family thus ceased to occupy the rooms number '7' and '10' in the plan annexed and shifted to the rented portion in January 1984. The rooms numbered 7 and 10 and attached bath rooms remained in possession and use of plaintiffs.

7. It is stated that sometimes during 1985-86, the defendant NO.1 WAS transferred back to Delhi from Bombay. He requested the plaintiffs to permit him to temporarily reside with them till he was able to accrue suitable alternative accommodation. The plaintiffs permitted him to temporarily reside with them along with his second wife Smt.Neena and the rooms number 7 and 10 with attached bathrooms were utilized for this purpose. The occupation by the defendants was purely permissive as guests and bare licensees and the legal as well as physical possession all along remained with the plaintiffs. However, instead of vacating the rooms, the defendants on 26.05.1989 instituted a false, malafide and frivolous suit for permanent injunction against the plaintiffs in the court of the Senior Sub Judge, Delhi. The said suit has been instituted by defendant NO.2 through defendant NO.1 as her attorney, wherein the defendant NO.2 has set up the totally baseless, concocted and malafide claim of being a tenant in respect of room no. 7 with attached bathroom for residence and room NO.14 for business purposes from 01.01.1984. This false claim is primarily based on some alleged application by her for registration as recruiting agent under the emigration act, 1983. Any averment therein is only a self serving statement and is inadmissible in evidence.

8. It is stated that the defendants being bare licensees whose license has been terminated are under a clear obligation to vacate the portion in their occupation and remove all their belongings and themselves from the said house forthwith. The defendants being in wrongful use and occupation of the aforesaid two rooms with attached bathrooms are liable to pay damages/mesne profits for use and occupation including interest thereon from 1 st June, 1989 till the date of vacation of the said rooms. The plaintiffs tentatively estimate the mesne profits @ Rs.7,500/- per month and claim interest thereon @ 20% per annum which till 30th November, 1992 aggregate to RS.4,22,625/-.

9. The plaintiffs seek to pass a decree of mandatory injunction directing and requiring the defendants to perform their obligations as licensees and vacate the rooms numbered '7' and '10' with attached bathrooms '6' and '9' in the plan annexed and handover the same to the plaintiffs in good condition, and to remove all their belongings from the suit property; and award damages/mesne profits w.e.f. 01.06.1989 including pendente lite and future mesne profits for use and occupation in favour of the plaintiffs and against the defendants jointly and severally at the rate of Rs.7500/- per month or at such rate as this Court may assess together with interest thereon @ 20% per annum till vacation of the said two rooms with attached bathrooms.

10. The defendant no. 1 in his written statement taken the preliminary objections under various headings. On the heading 'Limitation by Adverse Possession', it is stated that since 6th May 1973, the answering defendant has been in possession of the Room marked '10' and attached Bathroom marked '9' in the suit property, from which his eviction is sought by way of mandatory injunction. The present suit first filed on 07.07.1989 and subsequently amended. It is stated that he entered upon the premises as a co-owner with definite understanding with the plaintiffs that the entire eastern half belonged to him having paid significantly more than half the price of land before it was purchased and having paid more than half of the construct of construction prior to the actual construction, which is substantially corroborated by documents. Consequently, his possession was adverse to the plaintiffs right from the beginning, irrespective of whether he was de-jure, or Benami or de-facto co-owner of the suit premises and irrespective of whether the subject property is regarded as Joint Family Property financed from joint funds, or it belongs to the plaintiff, ab-initio, as alleged by them.

11. It is further stated that after 06.05.1973, the defendant never vacated the said Rooms 9 & 10 as he required them for his own personal use and he was the owner. By efflux of time also the defendant has an unfettered right to continue his possession of the said Rooms 9 & 10 and the suit seeking injunction for vacation or possession is barred by the Limitation Act, 1963, Schedule, Part V, including Article 65. It is further stated that assuming without admitting that the status of the defendant is that of a licensee even then after so many years, his possession is to be regarded as a license in perpetuity and he cannot be evicted.

12. On the heading "Estoppel", it is stated that in view of the family arrangement as mentioned above, the plaintiffs are estopped from seeking eviction of the defendant after so many years, when he has become old and got settled. He could have made alternative arrangements long back in his younger days instead of giving money to the plaintiffs if they had given the slightest indication of their present claim. The plaintiffs have intentionally led the defendant to believe that he is a co-owner of the suit property financed by joint funds and defendant having acted upon it parted with his money. The plaintiffs are now estopped from denying the co-ownership and evicting the defendant. The defendant carves reference to Section 115 of the Evidence Act and the Kerala High Court D.B. judgment cited as AIR 1990 Ker 226, Thyyullathil Kunhikannan vs. Thayyullathil Kalliani.

13. On the heading "Ex.-Facie Bar of SEC.41(G) of Specific Relief Act", it is stated that the suit for injunction, as distinct from suit for possession, is ex-facie barred by Section 41 (g) of the Specific Relief Act, according to the facts alleged. In the lawyer's notice dated 02.05.1989, the plaintiffs have alleged occupation by the defendant since mid 1985. The plaintiffs have acquiesced in the said occupation for about 4 years. The delay attracts the bar of acquiesced under Section 41(G) of the Specific Relief Act. The delay has to be seen in the context of 6 months mentioned in Sec. 6 (2)

(b) in the said Act and general period of 3 years for unspecified causes as mentioned in the Limitation Act. This point is co-related to the question of Court fees. The defendant craves reference in the matter of Sant Lal Jain vs. Avtar Singh, (1985) 3 SCR 184.

14. On the heading "Court Fees", it is stated that apart from the delay since 06.05.1973, which affects the court fees, there is no written license deed like the aforesaid case of Sant Lal. Merely an oral license is averred without any time limits to evade court fees for suit for possession which has to be viewed suspiciously and examined unlike a License deed, which is prima facie accepted for levy of court fees. The plaintiffs have failed to comply with the requirements of Order 7 Rule 1 (i) CPC. They have failed to disclose the market value of the subject property. The market value is relevant under Section 7 (v) (e) of the Court Fees Act.

15. On the heading "Lack of Bonafide Cause of Action in the Plaint", it is stated that the plaintiffs have not even alleged any requirement of the premises for their own use. The defendant had offered to build further on the first floor for future family needs in 1988. They got the plan prepared by Architect but subsequently changed their mind. The sole allegation against the defendant in notice dated 02.05.1989 was that behaviour became bad and same is reiterated in the plaint. There are no details of any facts on which the said flimsy allegation is based. The defendant was 50 years old in 1989. It is prima-facie beyond comprehension that the behaviour of the defendant was alright for 49 years and then it suddenly became bad without any rhyme or reason. The plaintiffs who are very old are suffering from various old age problem and infirmities. They have nothing personal to gain from the litigation and in the absence of any real personal interest, the bar of Section 41 (j) of the Specific Relief Act would apply to the grant of injunction. In the instant case, the youngest brother of the defendant and son of the plaintiffs is paying Rs.5000/- per month to the plaintiffs, through his employers, and he has blackmailed them for initiating he lawyer's notice and present litigation with a view to grab the suit property.

16. On the heading "Incomplete Plan filed with plaint", it is stated that incomplete plan filed is marked 'extract' and 'proposed'. It is neither purports to be a plan of the premises as existing on the date of the suit nor does it fit the description given in the amended plaint and its Index. First floor plan is not shown and there is material concealment of additional construction on the ground floor.

17. In the reply on merits, the defendant has denied the averments made in the plaint as wrong and misleading. It is stated that the defendant had paid to the plaintiffs significantly more than half of the total cost of land, including development charges, Rs. 20,597/- as shown in the lease deed dated 14.08.1970. Part of the balance money was paid by the plaintiffs by sale realization from ancestral HUF immovable property. As such the defendant has ancestral HUF interest as well as personal interest in the subject Joint family property financed jointly.

18. It is stated that in 1947, the paternal grandfather of the defendant held ancestral HUF immovable property in West Punjab, now in Pakistan. In compensation for the same, he got land in PEPSU. The share of the defendant, his brothers and the plaintiffs themselves in the sale realization of the said land was utilized by the plaintiff to partly finance the purchase of the land i.e. the suit property. In 1947, the maternal grandfather of the defendant held immovable property in Jhansi (UP) and also in west Punjab, now Pakistan. In compensation for the latter, he got more immovable property in Jhansi. He had several bungalows. It is stated that to partly offset the loss of ancestral HUF property of the plaintiffs, the defendant and his brothers, the said grandfather of the defendant, have land in Civil Lines, Jhansi (UP). The sale realization from the same was also used by

the plaintiffs to partly finance the suit property. This is reflected in their Income Tax Assessment orders for 1973-74, 1974-75 etc. In July, 1961 the defendant took up regular employment with the Ministry of Railways at Shimla. In September, 1961 he was transferred to Lucknow. At that time, the plaintiff NO.1 WAS already a member of the E.P.R.R. Housing Society mentioned in the lease deed. He had booked for the smallest size of Plot 200 sq. yds. In early 1962, the defendant asked plaintiff NO.1 to enquire from the office of the said society, if the defendant could become a member of the said society for booking his own plot. At that time both the plaintiffs advised the defendant that the size of the plot booked could be increased and the interest and share of the defendant would be duly taken care of. Thereafter, the defendant started sending money to the plaintiffs for the said purpose. In the middle of 1962, the defendant got selected for Class I service through the Engineering Services Examination 1961. On 03.12.1962, he joined the Indian Inspection Service Class -I, initially at Delhi. The plot size had been increased to 500 sq. yds. In 1963-1964, the defendant was posted at Calcutta and in 1964-1965 at Madras and with effect from 08.09.1965 he was posted in the High Commission of India in London. He came back to Delhi on 17.03.1971.

19. It is further stated that while posted in London, the defendant had duties all over Europe. In addition to his Indian salary paid in Sterling, he was getting a much larger amount as Foreign allowance and free furnished accommodation. Besides, he got substantial daily allowances while on tour. There were substantial savings. Therefore, the size of the plot booked was increased at his request to the largest size of of 1000 sq.yds. against which the existing plot of 833.3 sq. yds. was allotted. According to the bank statements he paid a total sum of RS.10,171/- to the plaintiff during the period 1963 to 1969 for the purpose. Earlier from May to November, 1962, he had paid them Rs.700/- @ RS.100/- per month predominantly from his Lucknow bank account. Similarly in January, February, May and June, 1964 the defendant paid them Rs.400/- @ RS.100/- per month predominantly from his Calcutta account. Thus the defendant had paid RS.11,271/- out of the total land price of RS.20,597/- prior to its purchase. The plaintiffs informed the defendant that as he was out of India in 1970, his name could not be included in the lease deed.

20. It is further stated that even before the construction started and the defendant agreed to the use of his money for the purpose, it was agreed by the plaintiffs that the entire Eastern half belongs to the defendant. He personally planned and supervised the entire construction and entered the premises for residence with effect from 06.05.1973 while finishing touches for the Western half were still going on. Room No. 10 along with Bath room no. 9 have always been in his personal use and possession ever since. Room no. 16 with shared use of bathroom no. 13 has always been in use of the daughter of the defendant since 06.05.1973. She attained majority on 07.05.1985. The defendant having paid for land and construction, she is free to use it for as long as she likes, until any better arrangement to her liking can be made. By efflux of time, she is the de- facto owner of room NO.16. In as far as some belonging of the defendant are also in the same room, the plaintiffs do not have any right to seek their removal. Otherwise, the present suit is not specifically concerned with the said Room NO.16. The western half was also built under the personal supervision of the defendant along with the eastern half.

21. It is stated that the plaintiffs had informed the defendant that his brothers in America and Canada had also contributed. It is for them to disclose the details. It had been agreed that the

western half shall remain in the absolute control and discretion of the plaintiffs during their lifetime. What may happen afterwards was not discussed and has never been decided as far as the defendant is aware. In May, 1973, when the defendant shifted to the said premises, he did not have any personal need for Room No. 15 and its attached Bathroom no. 12. At that time the Western half was still being finished, therefore, the plaintiffs occupied the said Room No. 15 and Bathroom 12. The occupation was essentially as parents and family members of the defendant and not really as owners. As the defendant had no personal need for the same they have continued to live there and they let out the entire Western half. The defendant could not even think of disturbing them and more so when they have become old.

22. It is stated that the defendant had already proposed to built further and after getting the plan prepared from the Architect, the plaintiffs changed their mind. The kitchen marked 11 in the plan was always in shared use with the plaintiff and even when the defendant was posted outside Delhi, his kitchen Gas connection remained in Delhi as he had to visit Delhi very frequently. Room No. 14 marked Drawing & Dining in the plan was being used by the defendant for the said purposes right from May, 1973. His air conditioner was fitted there in May 1973 and remains fitted there till today. Earlier the plaintiffs were also using the said room but as they grew older, they discontinued using it and preferred to call their guests to Room No. 15, where they had their sofa set.

23. It is stated that the ration card of the defendant remained in Delhi and the plaintiffs got the rations through the servant or otherwise. His electoral registration also remained in Delhi. During 1982 or 1983, the youngest brother of the defendant got employment in Ghaziabad and he started using room no.7 as his bedroom and also made use of the Drawing and Dinning room for that purpose which was shared with the defendant when the defendant visited Delhi. In end of 1983, when he rented Rooms 1 to 5 and 8, in the Western half, he stopped using room NO.14 in the Eastern half and also vacated Room no.7 with its bathroom 6.

24. It is stated that when the defendant was actually resident in Delhi, his daughter was naturally staying with him. She also visited the defendant outside Delhi during school holidays. At other times, she was in Delhi predominantly for educational reasons and being in the same house as a minor, she was under their care and control in the absence of the defendant. The allegation that the defendant stayed as a guest is erroneous. It is evasively silent regarding which room he stayed in He used to stay in his own room NO.10. He had the keys fro the built in cup-boards and kept them locked. The Rooms 10 and 16 were in use and possession of the defendant and his daughter.

25. It is stated that it is correct in as far as the second defendant Neena is sister of Sarita, wife of Suresh. When Sarita came to Delhi, Neena used to visit her frequently. She was employed by a Bombay firm at Delhi for obtaining Visas from Embassies at Delhi and arranging interviews etc. for employment of workers abroad. It is stated that in the end of 1982, her brother got married and there was no bedroom left for her in her father's house. Thereafter in the end of 1982 and almost the whole of 1983, with some interruptions, she was living as a guest in Room NO.10 in the absence of the defendant and in Room no. 16 with his daughter. As such she was either a guest of her sister or of the defendant or of both and not a guest of the plaintiffs. Even at that time she was using Room 14 for the official business of her employers sometime. In the end of 1983, she started her own

employment agency and when her sister and defendants brother shifted to Rooms 1 to 5 and 8 in the Eastern half, she rented the portion vacated by them from the plaintiffs which in her understanding meant room 7 with Bathroom 6 and Room NO.14 which was being used by Suresh and shared use of kitchen 11 as was being used by Suresh and his family. The defendant NO.1 WAS informed of this position when he vistied Delhi by the plaintiffs and defendant NO.2 and his brother and sister-in-law. As such defendant NO.2 started occupying Room no.7 which had a connecting door with Room NO.10 in which defendant NO.1 used while in Delhi. Then she had developed very good relations with defendant NO.1 and his daughter. In September 1985 the defendants decided to live together on a regular basis.

26. It is stated that in the instant case the youngest brother of the defendant who is paying approx. Rs.5000/- per month rent to the plaintiffs and his wife have blackmailed and instigated the plaintiffs to initiate litigation with the malafide object of grabbing the property. In the end it is prayed the suit be dismissed with costs.

27. The defendant NO.1 also filed additional written statement to the amended plaint. In the additional preliminary objections, it is stated that the suit does not survive qua defendant NO.1 on the death of plaintiff NO.1. In view of Sections 211, 212 and 213 of the Indian Succession Act, the subject property jointly vests in defendant NO.1 as a heir also. As joint owner, he cannot be regarded as a licensee and therefore, the prayer for mandatory injunction for leaving the premises does not survive, even if it is assumed that it is not HUF property. There are no probate proceedings of the alleged Will of plaintiff and as such probate proceedings are now barred by Article 137 of the Limitation Act. The defendant NO.1 referred judgment of Hon'ble High Court of Delhi titled 'Pamela Mohan Singh v. State' 83 (2000) DLT 469.

28. It is stated that the suit does not survive qua defendant NO.2. The defendant NO.1 as joint owner has accepted defendant NO.2 as a tenant. She can only be evicted by proceedings under Delhi Rent Control Act and the present suit does not survive against her. The defendant relies on (1987) 1 SCC 2004 'Yudhister v. Ashok Kumar' and 1998 (1) RCR 197 'Dimple v. Harish Kumar Aggarwal'. It is stated that HUF property and suit not maintainable qua defendant NO.1. The subject property is HUF property referred to as joint family property in earlier objection. The suit is not maintainable qua defendant NO.1, who is now the 'Karta' thereof. Defendant NO.1 relied on AIR 1998 SC 310 'Rebti Devi v. Ram Dutt'.

29. It is stated that there is misjoinder of parties The portions in occupation/tenancy of defendants NO.1 and 2 are distinctively separate. It is further stated that the claim for damages mesne-profits is partially barred by limitation and this objection was allowed to be raised by the order allowing amendment. The claim for damages/mesne profits is not based on any rational basis like the controlled rent under the Delhi Rent Control Act which could be earned lawfully. Amended memo of parties has not been filed as per order of Joint Registrar.

30. On merits, it is stated that the amended plan now filed as Annexure-A is not the true copy of the approved sanctioned plan. The plaintiffs are called upon to produce the original approved sanctioned plan and file it. N-7, Greater Kailash Enclave-II, does not exist and never existed earlier.

Only Room No. 14 and 15 were used by Suresh K. Anand in 1979 and that was more than sufficient for him at that time. Room No. 10 was in possession of defendant NO.1 all the time since 06.05.1973. Sh. Suresh K. Anand is not longer working in Shri Ram Group as far as defendant NO.1 is aware. The defendant NO.2 has already been accepted as a tenant by defendant NO.1 as heir of plaintiff NO.1 and also as Karta of HUF and she has paid rent upto 30.11.2000. The defendant NO.2 is not at all liable for any damages/mesne profits. The defendant NO.1 is joint owner and not at all liable for any damages/mesne profits. Besides, the damages/mesne profits are not claimed on any rational basis like the controlled rent under the Delhi Rent Control Act which could have been lawfully earned. It is stated that the additional prayer (a) (a) is totally wrong and denied.

31. Defendant NO.2 Ms. Neena Anand @ Neena Sareen adopted the the written statement filed by defendant NO.1. She stated that the written statement dated 07.03.1991 filed by defendant NO.1, inter-alia cross referring to the suit and pleadings dated 24.05.1989 filed by defendant NO.2 (since transferred to the Hon'ble High Court and re-numbered as Suit 776 of 1992) substantially explains and covers the defence of defendant NO.2 also and is adopted by her. Regarding list of documents, it is stated that defendant NO.2 has already filed 93 documents in her Suit dated 24.05.1989 (since transferred to the Hon'ble High Court and re-numbered as Suit 776 of 1992) which is to be heard along with the instant suit as per order dated 22.03.1990, in the instant case. She will be relying on the same documents for her defence in the instant case along with any relevant documents filed by defendant NO.1.

32. Plaintiffs filed replication to the written statement of defendant NO.1, in which the plaintiff denied the averments made in the written statement and reiterated the averments made in the plaint. In the reply to the preliminary objections, it is stated that plea of "limitation by adverse possession" is not only based on incorrect allegations of fact but is even otherwise wholly misconceived, self-contradictory and untenable. The suit was filed on 07.07.1989 and amended immediately thereafter even before issuance of summons to the defendants.

33. It is stated that the plaintiffs were earlier residing in rented accommodation at N-7, Greater Kailash -I, New Delhi. The defendant NO.1 upon his return from England in 1971, started residing with the plaintiffs in the said rented accommodation as their son. Upon construction of the house at A-1, Greater Kailash Enclave -II, New Delhi by the plaintiffs, the defendant NO.1 being a member of the plaintiff's family also shifted to the new house to live with the plaintiffs. It is false and denied that the defendant NO.1 paid any amount whatsoever at any time towards either purchase price of the land/plot or the cost of construction. It is stated that a concocted feeble and false attempt has been made by him to put forth some alleged documents to show some stray remittances during the period from 1963 to 1969, much prior to construction.

34. It is stated that the defendant NO.1 cannot seek to blow hot and cold at the same time and adopt shifting stands and to aver and allege in one breach that he is co-owner of the suit premises as it may be regarded as Joint Family Property or as self acquired but acquired with joint funds or that he is either de-jure or benami or defacto co-owner of the suit premises whether or not the suit property initially belonged to the plaintiffs. This jumbled self contradictory plea only betrays the dishonest malafide intent of the defendants to grab a substantial port of the suit property by any means.

35. It is stated that the defendants have no right whatsoever to continue to occupy any room or portion of the house as alleged or at all. The period of limitation under Article 65 of the Limitation Act commences only when possession of the occupant becomes adverse to the owner. There can be no question of either of the defendants being in adverse possession as alleged or of the suit being barred by limitation. The permissive possession of a licensee can never be adverse even after termination of the license. It is stated that the question of any estoppel operating against the plaintiffs does not arise. The plaintiffs have full right to exclude the defendants and even prevent their access to the premises. The decision of the Hon'ble Kerala High Court reported as AIR 1990, Kerala 226 has no application to the facts of the present.

36. It is stated that the suit for mandatory injunction is not barred by Section 41 (g) of the Specific Relief Act as contended or at all. The question of acquiescence can arise only if there is unreasonable delay after a bare license has been asked to leave the premises. In the present case it was by notice dated 02.05.1989 that the defendants were called upon to remove themselves and their belongings from the suit premises within 15 days from the receipt of the said notice. Since the defendants did not comply with the notice, the suit was filed almost immediately after the court re- opened at the end of the 1989 summer vacation. The question of any delay does not arise. Section 6 (2) (b) of the Specific Relief Act and Article 137 of the Limitation Act, 1963 are not relevant to the present case.

37. It is stated that in order to appreciate the reason as to why notice was not earlier given for terminating the license, it will be apposite to notice that the first defendant is the eldest son of the plaintiffs and moreover was all the time assuring the plaintiffs that he would soon make alternative arrangements. Moreover, the defendant NO.2 WAS expecting and delivered a male child in March, 1987 and the plaintiffs thought it proper to wait for a reasonable post-natal period before seeking intervention of friends and relations. When this failed, they were constrained to issue the formal legal notice dated 02.05.1989.

38. It is further stated that the cause of action arose in favour of the plaintiffs only when the defendants failed and neglected to comply with the notice dated 02.05.1989. It is stated that the members of the family of the owner of property residing with him cannot be expected and granted permissive license by means of a formal license deed. In such circumstances the license is only a permissive bare license. It is further stated that since no ad valorem court fee has been paid nor is required to be paid on he plaint considering the nature of the suit it was not necessary for the plaintiffs to state the market value thereof.

39. It is stated that it was not necessary for plaintiffs for the purposes of the present suit to set out the actual incidents of disrespect and deplorable behaviour of the defendants. Their behaviour deteriorated and progressively worsened evidently due to malafide and dishonest intention to stake their dishonest claim to the suit property and to seek to usurp the same. It is stated that for the major part of his life after attaining the majority, the defendant NO.1 had been living away from the plaintiffs as he was posted at different places outside Delhi from time to time. His stay outside Delhi has been for nearly 25 years.

40. It is stated that the bar of Section 41 (j) of the Specific Relief Act is not at all attracted in the facts of the present case. The plaintiffs being the owners of the property have a direct interest in the subject matter. The youngest son of the plaintiffs has given constant support and attention to the plaintiffs in the time of their need and old age and has never laid any claim to the property in question or any part thereof or any share therein.

41. It is stated that the plan filed with he plant and with the amended plaint is infact another blueprint of the plan filed by the defendants themselves in the earlier suit for injunction instituted in the court of the Senior Sub-Judge, Delhi wherein the defendant NO.2 set up the malafide and frivolous claim of being a tenant in respect of rooms '7' and '14'. This fact is evident from the signatures of the defendant NO.1 appearing at the right hand foot of the plan. However, after institution of the suit, the plaintiffs realized that while the defendants had shown the modification of raising of wall to close the gate in the western boundary wall of the plot, he had either deliberately or by oversight, not shown the existence of the 8 ft. high wall bifurcating the open courtyard. This wall has been shown by addition in red ink in the plant filed with the application I.A. No. 11240/90. The plan infact correctly shows the construction existing on the spot and the words "proposed" or "extract" are surplurage and may be ignored.

42. It is stated that infact the words "extract" and "proposed" appear in the Plan filed by the defendants themselves in the said earlier suit. Infact the word "extract" is in the handwriting of the defendant NO.1. The house is a single storeyed house except that the terrace has two very small storage rooms about 6' x 8' each, without corrugated tin roofs unsed storage or surplus mostly disused articles. There is no also no material additional construction on the ground floor. There is only a small servant's room measuring about 4' ft. x 7' and W.C. measuring 4' x 5' with height of only 6 ½' built along a portion of the boundary of rear set back of the western half of the property. This small structure has been there since about 1978 and was also not shown by the defendants in the Plan filed by them. It is denied that there is any material concealment on the part of the plaintiffs. The suit relates only to rooms marked '7' and '10'.

43. It is stated that the defendant NO.1 did not pay any amount whatsoever towards the purchase price of the plot as alleged or at all. The entire amount for acquisition of the plot was paid by the plaintiffs from their own individual funds during the period March, 1963 to May, 1970. The defendant NO.1 got engaged/betrothed in 1964 and was married in 1965. He was thereafter posted at London. He often used to visit Delhi and stay with the plaintiffs for several days at a time. During his visits he used to make small payments as contributions towards mess expenses. He also made some payments in 1964 and 1965 towards anticipated expenses on his marriage. The payments made during 1969- 70 were made so as to provide for maintenance of the defendant NO.1'S daughter Sumati, who has been brought up and looked after by the plaintiffs right from October, 1969 till date. Except for occasional small contributions by the defendant NO.1, the plaintiffs have been meeting all her educational and other expenses till date. The alleged documents filed by the first defendant do not even remotely support his contention of having contributed anything towards the price of acquisition of the plot, and infact these documents with a view to confuse the issue and create a false and untenable defence. Furthermore, he is debarred from rising such a plea in the light of the provisions of the Benami Transactions (Prohibition) Act, 1988. The title deeds stand

exclusively in the name of the plaintiffs.

44. It is denied that plaintiffs ever had any ancestral HUF funds in their hands or any ancestral HUF immovable property available to them. The question of any HUF or joint family funds having been utilized for acquisition of the plot does not arise. It is stated that some land was allotted to the father of the plaintiff NO.1, particulars whereof are not known to the plaintiffs. The land was sold by the father of the plaintiff NO.1 sometime during his lifetime probably for a small amount of abut Rs.5000/- and was utilized by father of the plaintiff NO.1. No part whatsoever thereof came to the plaintiffs, who never received or had any ancestral funds.

45. In the replication it is admitted that the father of the plaintiff NO.2 gifted a plot of land in Jhansi to the plaintiff NO.2 and her sisters. However, this was by way of gift out of natural love and affection of a father for his daughters and not to offset the loss of any ancestral property as alleged or at all. However, in any view of the matter, the first defendant cannot have any semblance of claim or right thereto or to the sale proceeds thereof. It is stated that initially E.P.R.R. Housing society had intended to develop and allot only plots of 200 sq. ft. to each of its member from the land allotted to the Society. However, in or about the year 1962, it transpired that further land was allotted to the Society in lieu of its excess freehold land acquired by the Government as a result whereof the Society gave option to all the members to opt for larger plots. The plaintiff NO.1 accordingly opted for being alloted a plot of more than 500 sq. yds. It is denied that defendant NO.1 ever asked the plaintiff NO.1 to enquire from the office of the Society as to whether the defendant NO.1 could become a member for being allotted a plot. The plaintiffs never told or advised the defendant NO.1 that the size of the plot could be increased or the alleged imagined interest or alleged imagined share of the defendant NO.1 could be taken care. It is denied that the size of the plot was increased at the request of the defendant NO.1.

46. It is stated that as a long time has elapsed and payments made by defendant NO.1 WERE mostly in respect of expenses incurred on behalf of the defendant NO.1 or amounts spent on his behalf or borrowed by him, it is now not possible for the plaintiffs to recollect the exact nature of the individual payments nd separate the same into distinct heads like marriage expenses, personal expenses, maintenance or Sumati etc. It is possible that some small payments may have been in token of gift to parents as has frequently been done by other sons also. The plaintiff's sons settled in USA and Canada respectively have from time to time been remitting since 1967 and 1973 respectively, very substantial amounts to the plaintiffs for more comfortable living in their old age. These run into about Rs. 2 lacs. All these were meant to be and were treated as monies of the plaintiffs to utilize for themselves as they pleased.

47. It is stated that the defendant NO.1 is probably seeking to take advantage of some certificates which the plaintiff NO.1 recollects was issued by the defendant NO.1 to meet some objection by Income authorities during assessment proceedings of the plaintiffs. The plaintiffs reiterated the facts mentioned in the plaint.

48. It is pertinent to mention that initially the present suit was filed before the Hon'ble High Court in the year 1989 and as per order dated 16.04.2004 of Hon'ble High Court this case was transferred

to District Courts and further as per orders of Hon'ble High Court received in this court on 23.01.2017.

49. On the pleadings of the parties, the following issues were framed vide order dated 15.07.2017:

1. Whether suit property is joint family property and defendant NO.1 is in possession of room no. 10 and bath room no.9 since 06.05.1973? OPD

2. Whether principle of estoppel is applicable against the plaintiff? OPD

3. Whether the present suit is barred by Section 41 (g) of Specific Relief Act? OPD

4. Whether plaintiff has not affixed the appropriate court fee? OPD

5. Whether plaintiffs have no bonafide requirement for filing the suit? OPD

6. Whether defendant NO.2 WAS the tenant in respect of room no. 7 and bath room no. 6 and having shared used of room no. 14 since 01.01.1984? OPD

7. Whether the registered Will of Sh. Jia Ram Anand dated 30.08.1989 was duly executed & genuine Will? OPD

8. Whether the registered Will of Smt. Sushila Anand dated 30.08.1989 was duly executed and genuine Will? OPP

9. Whether the plaintiffs are entitled to Decree of mandatory injunction for directing and requiring the defendants to vacate the Rooms No. 7 and 10 with attached bathrooms no. 6 and 9 of the House No. A-1, Greater Kailash Enclave-II, New Delhi as shown in the plan filed with the plaint and to remove all their belongings from the suit house? OPP

10. Whether the plaintiffs are entitled to decree of money being damages/ mense profits w.e.f. 01.06.1989 @ Rs.7500/- per month from the defendants being charges for use and occupation or from any other date till the decision of this suit and further damages at the rate to be fixed by the Court till the possession is delivered? OPP

11. Whether the plaintiffs are entitled to interest on the amount of decree for damages/mense profit @20% or any other rate from the date, each amount became due till the realization? OPP

12. Whether the plaintiffs are entitled to the cost of the suit? OPP

13. Relief.

50. Plaintiffs in support of their case got examined PW1 Sh. Sudhir Suri S/o late Sh. C.L. Suri; PW2 Sh. Naveen, Record Keeper from Department of Delhi Archives; PW3 Sh. Suresh Kumar Anand S/o

late Sh. Jia Ram Anand; and PW4 Sh.Sudhir Kumar Marwaha. Thereafter, as per statement of Ms. Veena Goswami, Counsel for LRs of plaintiff closed the evidence on 01.09.2017.

51. The defendants in support of their case got examined DW1 Sh. Sudhish Chandra Anand; DW2 Ms.Manju Gautam Sharma, Advocate; DW3 Sh. Chander Gupt Khanna; Sh. Surinder Nath Khanna, Secretary, E.P.R.R. House Building Co-Operative Society Ltd.; DW5 Sh. Devendra Dhawan; and Sh. Praveen Malik. Thereafter, as per statement of defendant NO.1, evidence of defendant NO.1 WAS closed on 23.11.2017.

52. I have heard Ms. Veena Goswami, Counsel for LRs of plaintiffs and Sh. Sudhish Chandra Anand - defendant NO.1 in person for self and for LR of defendant NO.2 and perused the material on record. My findings on issues are as under:

ISSUES NO. 7 & 8:

53. Issues no. 7 and 8 taken up together. It is pertinent to mention her that in the pleadings of the parties, there is no whisper of being Will of original plaintiffs Sh. Jia Ram Anand and Smt. Sushila Anand dated 30.08.1989. However, it is apprised by parties that at the time of death of Sh. Jia Ram Anand and Smt. Sushila Anand, applications under Order 22 Rule 3 CPC dated 11.07.1997 in respect of late Sh. Jia Ram Anand and dated 01.10.2001 in respect of late Smt. Sushila Anand were filed for impleadings LRs. The Wills have been filed along with these applications. Ld. Counsel for the plaintiffs submitted that defendants have not disputed the Will of late Sh. Jia Ram Anand. However, a separate suit has been filed by defendant NO.1 Sh. Sudhish C. Anand challenging the Will of late Smt. Sushila Anand, which is also pending in this court.

54. The burden of proof is on the plaintiffs, therefore, they examined PW1 Sh. Sudhir Suri, attesting witness to both the Wills. He proved certified copy of Will of late Sh. Jia Ram Anand as Ex. PW1/1 and certified copy of Will of late Smt. Sushil Anand as Ex. PW1/2. He identified his signatures, the signatures of other attesting witness and deceased testator and testatrix. He deposed that both the Will signed in his presence and executed at the residence. Both testator and testatrix enjoying good mental and physical health at that time. In the cross-examination, he admitted that he did not visit Sub Registrar office for registration and he deposed that he does not know the contents of both the Wills.

55. PW2 Record Keeper proved the registration of both the Wills with the Sub Registrar on 01.09.1989. PW4 Sh.Sudhir Kumar Marwaha, another attesting witness also appeared in the witness box. As per his testimony, he was called by original plaintiffs at their own room on 30.08.1989, where Sh. Sudhir Suri and Sh. Rajiv Kohli were present. He signed the Will as attesting witness in their presence. He has explained that firstly, late Sh. Jia Ram Anand signed the Will and he identified his signatures and signatures of other attesting witness. He also testified that late Smt. Sushila Anand also signed the Will on all pages in his presence and other attesting witness also signed the Will Ex. PW1/2. In the cross-examination, he testified that no other person was present. He denied the fact of running a Recruitment Agency by Smt. Neena for sending the workers in Middle East. He deposed that he did not attend funeral rite and Chautha on her death. Smt. Neena

was previously married to Sh. Vinod Ghai. The plaintiffs have examined both the attesting witnesses and also proved on record the factum of registration of Will Ex. PW1/1 and Ex. PW1/2. In the cross-examination of PW4 Sh.Sudhir Kumar Marwaha, nothing brought on record in respect of challenging the execution and registration of Will.

56. PW1 although testified that he does not know the contents of the Will but there is no dispute about the good mental and physical health and signing of Will Ex. PW1/1 and Ex. PW1/2 as testified in the chief examination. The context in which PW1 stated that he does not know anything about the contents may be on the day of his deposition in the court but not on the day of execution because it is not specified when he had no knowledge of the contents. Defendant NO.1 relied on judgment of 'Pratap Singh & Anr. v. State & Anr.' 173 (2010) DLT 132. I have gone through the judgment. No question or suggestion put that both the executants i.e. testator and testatrix did not know and understand English language. The signatures of testator late Sh. Jia Ram Anand are in English and signatures of testatrix late Smt. Sushila Anand are in Hindi but no question or suggestion put up by the defendants that she was not aware of understanding the English language during the cross-examination.

57. It is pertinent to mention here that the fact is not disputed by defendants that they are not disputing the Will of late Sh. Jia Ram Anand Ex. PW1/1. The judgment of Pratap Singh (Supra) is distinguishable in the present facts and circumstances of the case. In my considered opinion, on the basis of above observation and discussion, plaintiffs have established that original plaintiffs late Sh. Jia Ram Anand and late Smt. Sushila Anand had executed the Will dated 30.08.1989 Ex. PW1/1 and Ex. PW1/2. Therefore, issues no. 7 and 8 are decided in favour of the plaintiffs and against the defendants.

58. The burden of proof of this issue is on the defendants. The defendant NO.1 in the written statement pleaded that in the year 1947, paternal grand father of defendant held ancestral HUF immovable property in West Punjab now in Pakistan. In compensation for the same, he got land in PEPSU. The share of defendant, his brothers and the plaintiffs themselves in the sale realization of the said land was utilized by the plaintiff to partly finance the purchase of the land. In 1947, maternal grandfather of the defendant held immovable property in Jhansi, UP and also in West Punjab now in Pakistan. In compensation for the latter, he got more immovable property in Jhansi and he has several buglows. The plea is that the suit property is HUF property. Thereafter, defendant NO.1 pleaded that he took a regular employment with Ministry of Railways in 1961 and thereafter, during his service period he was posted at various centres including Calcutta, Madras and also at London. He used to get substantial daily allowance while on tour especially in foreign countries. At his advise, the plot size was enlarged from 200 sq. yds. to 500 sq. yds. during the period 1963 to 1969. He has paid RS.10,071/- to the plaintiffs and in total paid RS.11,271/- out of total land price of RS.20,597/- prior to its purchase. He further pleaded that since 1983, he is in occupation and possession of room no. 9 and 10 and never vacated being the co-owner as the suit property is joint family property. He is also pleaded the legal plea of Estoppel and bar of Section 41 (g) of Specific Relief Act.

59. Defendant NO.1 filed detailed affidavit Ex. DW1/A. He relied on written statement and additional written statement Ex. DW1/B and Ex. DW1/C. It is pertinent to mention here that as per law, there is no need to prove the pleadings as it is already admitted by the defendant and in the witness box same were de-exhibited. He further relied on Ex. D1, a lawyer's notice dated 17.07.1985 and attorney in his favour of LR of defendant NO.2 late Smt. Neena as Ex. DW1/1 and another Power of Attorney of late Smt. Neena as Ex. DW1/2 in his favour. The notice Ex. D1 is a photocopy which was sent by Sh. Wazir Chand Chopra, Advocate on the instructions of Ms. Rekha Anand, wife of defendant NO.1 Sh.Sudhish Chandra Anand with regard to some matrimonial litigation. The copy was also sent to original plaintiffs. Ld. Counsel for the plaintiffs objected to the attorney ex. DW1/2, which was executed by late Ms. Neena in favour of defendant NO.1. I have gone through the contents of attorney. Primarily, this attorney was executed to lookafter the business. Ms.Neena Sarin also known as Neena Marwah. It is a GPA authorizing defendant NO.1 Sh.Sudhish Chandra Anand to perform all acts of sole proprietory business in the name of M/s. Neena and Anand Fitwell Employment Services. It is not specified about any litigation with the original plaintiffs or any other litigation. It specify the litigation only with regard to above said M/s. Neena and Anand Fitwell Employment Services.

60. Further, in the affidavit, the DW1 relied on certified copies of business registration certificate, letters, newspaper advertisements, letters to Protector of Emigrant as Ex. DW1/7 to DW1/17. These documents pertain to the business carried out by Ms. Neena Sareen as per version of defendants. The objection raised by Ld. Counsel for the plaintiffs that these documents are certified copies of the copies filed by the defendants in some other litigation. In that litigation/case, none of the documents proved on record. Therefore, these documents are not proved and admissible as per law. I agree with the contentions of Ld. Counsel for the plaintiffs. All the documents which are brought on record and given the exhibits as Ex. DW1/7 to Ex. DW1/17 are certified copies of the documents filed in another case i.e. CS No. 466/09 titled 'Neena Sarin vs. Jia Ram'. Therefore, they are not proved as per law and cannot be relied.

61. Similarly, all the documents which are exhibited after calling the record of civil suit i.e. CS No. 466/09 titled 'Neena Sarin vs. Jia Ram' decided on 18.03.2010 and 'Neena Sarin vs. Jia Ram Anand' SR-5/89 by the then ARC Sh. D.S. Pawariya, are not admissible and proved as per law by the defendants because they were not proved in that suit while appearing in the witness box.

62. It is pertinent to mention here that the defendant NO.1 Sh. Sudhish Chandra Anand has made several improvements in the deposition of affidavit Ex. DW1/A. In para 5, he claimed to reach at the age of 'Sanyas'. He explained all his career. He also referred to the litigation with the department and relied on judgment of Bombay High Court Ex. DW1/3. He relied on slips of plaintiff NO.1 Ex. PW3/X-1 and X-2. However, no original of these documents are produced. These slips are silent on the context on which they were alleged to be written. The defendant has failed to prove these receipts. The slips do not bear signatures of any person.

63. It is pertinent to mention here that the defendant has not produced any document and oral evidence about the ancestral property as alleged of his grandfather and maternal grandfather. He claimed to contribute RS.11,271/-. However, no document proved on record to establish the

contribution made by him. However, he admitted that suit property was allotted to his deceased father original allottee Sh.Jia Ram Anand by the DDA. He admitted that the conveyance deed also executed in the joint name of deceased father and mother.

64. He further admitted in the cross-examination that one of his brother Dr. Sudhir Anand is citizen of America and other brother Sh. Subodh Anand is citizen of Canada. He admitted that in the year 1967, his father late Sh. Jia Ram Anand was retired and he has received retirement funds. The defendant NO.1 failed to prove the nature of property as HUF on the basis of plea of sale of ancestral properties and compensation received of the properties at Pakistan. However, he heavily relied on Income Tax Assessment order proved by plaintiffs as Ex. PW3/8. I have gone through the Assessment order. In the assessment order, the details have been given for raising the funds for the suit property and its construction. The original plaintiff Smt. Sushila Anand sold her plot situted at Jhansi in 1966 for RS.10,000/-; a land at Ghaziabad was sold for RS.14,775/- on 22.06.1972. The total cost of construction of RS.1,18,000/- was raised, out of encashment of FDR, sale of land at Ghaziabad and a scooter. He had taken loan from Sh. R.K. Sahni of Rs.7500/- and Rs.8700/- was contributed by Smt. Sushila Anand as she got this loan from relations and contribution by son Dr. S.K. Anand and Rs.7000/- from on source. In the Assessment order, no where claim and contribution of defendant NO.1 has been mentioned.

65. In the circumstances, where defendant NO.1 Sh.Sudhish Chandra Anand failed to produce any cogent, coherent and documentary evidence about the funds derived from the ancestral properties for purchase of land of suit property and constructions. Then he has made further improvements by examining DW3 Sh. Chander Gupt Khanna, who was alleged to be running Khanna Traders and a Hardware shop in the year 1972 at E-588, Greater Kailash Part-II, Delhi. He has brought only the registration certificate Ex. DW3/A. He was also doing business in the name of Khanna Property Dealer and proved the shop registration certificate as Ex.DW3/B. According to his testimony, he is dealing in paint, sanitary, marble chips etc. He supplied material for the construction of suit property, such as paints, sanitary, water pipes, hardware and flooring material.

66. In the cross-examination, he admitted that Sh.Suresh Kumar Anand is residing in the suit property along with his family and there is a separate entrance for him. The other gate is for entrance of defendant NO.1. He admitted that defendant NO.1 and his family is not residing for the last 10 years. He could not able to produce any Income Tax Record of his business as Khanna Property Dealer and Khanna Traders for the year 1972. He admitted that he cannot show any record of receiving payment of the above said material supplied at suit property of cheque or cash payment. He has not produced any document or bill for sale of building material, paint, flooring, sanitary or electric.

67. He admitted that original plaintiff Sh. Jia Ram Anand is his friend and defendant NO.1 Sh.Sudhish Chandra Anand is his regular customer and he has friendly relation with him. The testimony of DW3 Sh. Chander Gupt Khanna failed to establish that defendant NO.1 Sh.Sudhish Chandra Anand had purchased the material as paints, hardware, sanitary, marble chips etc. for construction of the suit property in the year 1972. It is also not established on record that payments were made by the defendant NO.1. The testimony of DW3 Sh. Chander Gupt Khanna is not reliable

being friendly to the defendant NO.1 in the absence of any documentary proof.

68. Defendant NO.1 Sh.Sudhish Chandra Anand further examined DW5 Sh. Devendra Dhawan to narrate the instances when he returned from London in March, 1971. DW5 Sh. Devendra Dhawan testified that he kept his goods in the year 1971 for 3-4 days at his house, which were imported. According to his understanding, they were sold. In the cross- examination, he deposed that his father had given the permission to defendant NO.1 to keep the goods. He knew the defendant about 15 days prior to keeping of the goods. He does not know since when the parents of defendant NO.1 were living at N-7, Greater Kailash -I, Delhi. He did not see any document of defendant NO.1 WITH regard to the goods. The defendant NO.1 brought this oral evidence which was known to him only 15 days prior to the parking of the imported goods in his house. It is pertinent to mention here that all imported goods cannot be brought without documents. No documentary evidence brought on record to corroborate this incident. In case defendant NO.1 had sold the goods, then how the payments were utilized by him for the alleged construction and contribution by him. Nothing proved on record by him. The testimony of DW5 Sh. Devendra Dhawan is not reliable and any such help to the defendant NO.1, who appeared about 46 years after.

69. Lastly, defendant NO.1 introduced another fact by way of improvement, although he has not taken any plea that he had borrowed loan for contributing for the construction of the suit property. He examined DW6 Sh. Praveen Malik, son of one late Sh.Ramesh Chand Malik, who is stated to be friend of defendant NO.1 Sh.Sudhish Chandra Anand. The story put up by this witness is that his late father and defendant NO.1 Sh.Sudhish Chandra Anand used to share Car pool and he herd about the loan taken by defendant NO.1 from his father. Another new fact introduced about the closing of Suez Canal during 1971-72, which give rise to steep hike in the prices of oil and other articles. In the detailed cross-examination, DW6 Sh.Praveen Malik deposed that in February, 1996, he used to work in Okhla. His father used to start from Saket and then pick the defendant NO.1 Sh. Sudhish Chandra Anand from Greater Kailash and to Parliament Street. How it is possible that he used to take his son DW6 while going to the residence and then office of the defendant NO.1. This arrangement is unbelievable. To the story of Suez canal, he has no knowledge. In my considered opinion, DW6 failed to establish any loan transaction between his late father Sh. Ramesh Chander Malik and defendant no. 1 Sh. Sudhish Chandra Anand. On the basis of above observation and discussion, in my considered opinion, the defendant NO.1 miserably failed to prove that the suit property was joint family property and he contributed for purchase of land and construction of suit property.

70. Defendant NO.1 Sh. Sudhish Chandra Anand taken a legal plea that since 06.05.1973, the suit property room NO.10 and attached bathroom no. 9 is in his possession and the same was adverse to the plaintiffs right from the beginning, irrespective of the fact that he was dejure, benami and de-facto owner of the suit premises and irrespective of whether subject property is recorded as joint family property financed from joint funds or it belongs to plaintiff abinitio. He relied on judgment of 'Kr. Wasiq Ali vs. The Director of Consolidation Agra and others' AIR 1974 Allahabad 46 and 'Rekha Ram through his legal representatives vs. Board of Revenue and others' decided by Rajasthan High Court on 13.04.2001 in SB Civil Writ Petition No. 1354 of 2001. I have gone through both the judgments. In the case of Wasiq Ali (Supra), the possession of the disputed land was given under the court order. Wasiq Ali admitted that he neither paid any rent nor land in suit nor in possession and

court considered the fact of joint possession for more than 12 years of the parties. However, in the present facts and circumstances, defendant NO.1 has failed to establish on record that suit property was joint family property. The period of possession of the suit property i.e. Room no. 9 attached with room no. 10 as son of the original plaintiffs. Therefore, no limitation runs/create adverse possession against the original plaintiffs.

71. The judgment of Rekha Ram (Supra), the principle of adverse possession has been discussed. The defendant NO.1 never in the possession which is a hostile possession. He was always being son of original plaintiffs in permissive possession. At no point of time, the possession of the defendant was hostile to the original owners. Therefore, this judgment is also distinguishable. In my considered opinion, there is no defence of adverse possession in favour of defendant NO.1 and also there is no question of running limitation for filing of the present suit. The plea of limitation by adverse possession is not acceptable proposition of law in the present facts and circumstances of the case. On the basis of above observation and discussion, issue NO.1 is decided against the defendants and in favour of plaintiffs.

72. The burden of proof of this issue is on the defendants. It is pertinent to mention here that there is a dispute raised by parties with regard to relationship of defendant NO.1 Sh. Sudhish Chandra Anand and deceased Ms. Neena Sarin/ Neena Anand. The letter dated 17.07.1985 Ex. D-1 proved on record establish that defendant no. 1 Sh.Sudhish Chandra Anand was married to Ms. Rekha Anand and a petition filed on 06.10.1977 for divorce by Sh. Sudhish Chandra Anand. However, the same was dismissed and thereafter appeal was also dismissed in the High Court of Bombay on 15.02.1985. It establishes that the marriage of defendant NO.1 Sh. Sudhish Chandra Anand was not dissolved with Ms. Rekha Anand. The other vital fact brought on record orally that Ms. Neena Sarin/ Neena Anand was the sister of wife of PW3 Sh. Suresh Kumar Anand and she was divorcee. Further, it is also brought on record that defendant NO.1 Sh.Sudhish Chandra Anand and Ms. Neena Sarin were residing in the suit premises. Deceased Ms. Neena was occupying room no. 7 with attached bathroom no. 6. DW1 Sh.Sudhish Chandra Anand relied on documents of running of business Ex. DW1/7 to 15.

73. However, as per discussion herein above, they were not proved as per law, therefore, not admitted. It is admitted by the defendant NO.1 that LR of Ms. Neena, namely, Sh. Siddharth was born on 27.03.1987 at Moolchand Hospital. A certificate has been issued by the hospital authorities Ex. PW3/4, which clearly mentioned the name of the child's mother as Ms. Neena Anand and father's name as Sh. S. Anand. The defendant NO.1 admitted that Sh.Siddharth Anand is his biological son with Ms.Neena. However, there is no document proved on record with regard to legal marriage of defendant NO.1 Sh.Sudhish Chandra Anand with Ms.Neena Sarin/Neena Anand. However, she had started writing her name as Ms. Neena Anand as per her cremation receipt Ex. DW1/PX and certificate of Mool Chand Hospital Ex. PW3/14. The circumstances as per pleadings and evidence establish that defendant NO.1 Sh.Sudhish Chandra Anand and Ms. Neena were in live-in relation and a son, namely, Sh. Siddharth was also born out from the said relationship.

74. Defendant NO.2 deceased Ms. Neena taken defence that she was inducted as tenant and paying Rs.400/- monthly rent. However, no rent receipt, rent agreement or any other document proved on

record to establish the tenancy @ Rs.400/- per month. It is admitted by parties that a standard rent petition filed by Ms. Neena against original plaintiffs Sh. Jia Ram Anand. The standard rent petition was dismissed by the then Ld. ARC Sh.D.S. Pawariya vide order dated 07.10.1995 Ex. DW1/X-4. The defendant NO.1 has already admitted and produce the record. Another civil suit bearing no. 466/09 titled 'Neena Sarin vs. Jia Ram Anand' also filed by her for Permanent Injunction. The documents and files produced in these two litigation do not establish any relationship of landlord and tenant between Ms.Neena Sarin and original plaintiffs Sh. Jia Ram Anand and Smt. Sushila Anand.

75. In the detailed cross-examination of DW1 Sh.Sudhish Chandra Anand, it is admitted by DW1 that Ex. DW1/7 to Ex. DW1/17 were not proved before Ld. ARC and also not exhibited. Therefore, defendants cannot read and rely on these documents in the present suit also. The defendants miserably failed to establish on the basis of these documents the relationship of Ms. Neena Sarin as a tenant with the original plaintiffs with regard to suit property. It is pertinent to mention here that however, the possession of Ms.Neena Sarin/Neena Anand in respect of room no. 7 and attached room no. 6 since 01.01.1984 is proved to be permissible possession as she has been living with defendant NO.1 Sh.Sudhish Chandra Anand and a male child, namely, Sh.Siddharth Anand also born out of their relationship. The relationship may be termed as live-in relationship between them. However, the defendants miserably failed to prove and establish that deceased defendant NO.2 Ms. Neena Sarin/Neena Anand was tenant in respect of suit property room no. 7 and bath room no. 6. There is no oral or documentary evidence proved on record with regard to sharing of room NO.14. On the basis of above observation and discussion, issue no. 6 is decided against the defendants and in favour of the plaintiffs.

ISSUE N. 2

76. Onus to prove this issue is on the defendants. The defendants have taken legal plea of Estopel. In the written statement, it is pleaded that the plaintiffs are estopped from seeking eviction of defendants after so many years when they have become older and go settled. He could have made alternative arrangements long back in his younger days instead of giving money to the plaintiff, if they had given the slightest indication of their present claim. The plaintiffs have intentionally led the defendant to believe that he is a co- owner of the joint family property financed by joint funds.

77. I have gone through the record and considered respective submissions of the parties. Section 115 of Indian Evidence Act deals principle of Estoppel. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, do deny the truth of that thing. The plea of the defendants is contrary to the testimony of witnesses and the record and the documents proved on record.

78. The defendants have admitted that original plaintiffs were the owners by virtue of conveyance deed of suit property. The defendant NO.1 has miserably failed to establish on record his contribution towards the purchase of land and construction of the suit property. The defendant further failed to prove on record that at any point of time, original plaintiffs declares or acted or

omitted so that defendants would believe that defendant NO.1 is the co-owner and deceased defendant NO.2 is the tenant.

79. The fundamental plea of defendant NO.1 is that he is co-owner and suit property is a joint family property. Therefore, in these facts and circumstances of the case principle of Estoppel has no role to play. It is pertinent to mention here that plaintiff's intention has not been established that at any point of time they declared defendant NO.1 as a owner and defendant NO.2 as a tenant. Therefore, no estoppel is applicable against them. Issue NO.2 is decided against the defendants and in favour of plaintiffs.

80. Onus to prove this issue is on the defendants. Defendants have taken plea that suit for injunction is ex-facie is barred by Section 41 (g) of Specific Relief Act. Reliance has been placed on lawyers's notice dated 02.05.1989 EX.PW3/15. The plea taken that the plaintiffs have acquiesced the occupation of the defendants since mid 1985 for the last four years. Therefore, they acquiesced and bar is in operation against the plaintiffs against Section 41 (g) of the Specific Relief Act. It is pertinent to mention here that defendant NO.2 admitted that legal notice served by original plaintiffs served upon her but she had not replied. The reading of provisions of Section 6 (2) (b) of Specific Relief Act is misreading and misinterpreted by the defendants. The defendant NO.1'S relation with the suit property is as a licensee being son of original plaintiffs and defendant NO.2 WAS also living with him. They both were in permissive possession as licensees. It is the wish of the owners of the suit property to initiate legal action for taking the possession of the suit property from the defendants. Permissive possession does not create bar and acquiescence.

81. In my considered opinion, there is no applicability of limitation of three years in the present facts and circumstances of the case. In my considered opinion Section 41 (g) of Specific Relief Act is not attracted. There is no acquiescence on the part of the plaintiffs. Therefore, suit is not barred. Issue no.3 is decided accordingly against the defendants and in favour of plaintiffs.

82. The onus to prove this issue was on the defendants. The defendants have taken the plea that the plaintiffs have averred merely an oral license without any time limit. In order to evade the court fee for suit for possession, present suit filed for mandatory injunction. The plaintiffs have failed to comply the requirements of Section 7 Rule 1(1) of CPC. The value of the suit is fixed as RS.1,04,000/-, however the market value is at least Rs.66 lacs. Therefore, suit has to be valued at the market value and the court fees is payable on the market value. The defendant NO.1 being the son of the original plaintiffs was permitted to occupy the suit premises and the deceased defendant NO.2 who was living with him was teated as a guest and both were in the capacity of permissive possession as licensee. Therefore, the suit for mandatory injunction against the licensee is maintainable. In my considered opinion, suit for possession does not lie in the present facts and circumstances of the case. Therefore, the plaintiffs paid the appropriate court fee for the relief of mandatory injunction against the defendants. The suit has also been valued at RS.1,04,000/- appropriately as per the claim of mesne profit/damages for the occupation of the suit property by the defendants after the legal notice dated 02.05.1989 EX.PW3/15. On the basis of above observation and discussion issue is decided against the defendants and in favour of plaintiff.

83. Onus to prove this issue is on the defendants. Issue no. 5 is framed on the plea of the defendants and burden lies on the defendants. Defendants taken a plea that plaintiffs have not even alleged any requirements for premises for their own use. The defendants have offered to further built first floor for further future needs in the year 1988 and a plan was prepared from the architect. The allegations in the notice dated 02.05.1989 was that of behaviour become bad and irritating. The defendant NO.1 was 50 years old in 1989. However, behaviour become bad without any rhyme and reason. In addition to it, further plea taken is that youngest brother of defendant NO.1 and son of plaintiffs is paying rent of approximately Rs.5000/- per month through his employer and he has black mailed for initiating lawyer's notice in the present litigation to grab the suit property. At the outset the defendant NO.1 is not a tenant and he has no protection of Rent Control Act. Similarly, it is not proved on record that defendant NO.2 WAS tenant and any protection available to her. Although defendant NO.2 had filed a standard rent petition 'Neena Sarin vs. Jia Ram Anand' SR- 5/89 dismissed by the then ARC Sh. D.S. Pawariya. The law is well settled that a mere licensee has no ground to challenge the bonafides of the original owners/plaintiffs for seeking the possession of the suit premises.

84. It is pertinent to mention here that defendant NO.2 at no point of time after receiving the notice Ex. PW3/15 did not reply. The plea of the defendant NO.1 is that he was informed through defendant NO.2. Even after receiving the information no reply was given. In the notice Ex. PW3/15, it was specifically mentioned that a flat of DDA at Mayur Vihar was alloted to defendant NO.1. This fact is not disputed by the defendants. It is specifically averred in the notice that being son and treated as guest allowed to stay in the suit premises. In my considered opinion, defendants cannot challenge the bonafide need which has no role to play in the facts and circumstances of the case. Therefore, issue no. 5 is decided against the defendants and in favour of plaintiffs.

85. The burden of proof is on the plaintiff for seeking the decree of mandatory injunction for directing and requiring the defendants to vacate the Rooms No. 7 and 10 with attached bathrooms no. 6 and 9 of the House No. A-1, Greater Kailash Enclave-II, New Delhi as shown in the plan filed with the plaint and to remove all their belongings from the suit property. The plaintiffs examined PW3 Sh. Suresh Kumar Anand, one of the LR of original plaintiffs. PW3 Sh. Suresh Kumar Anand has proved his affidavit Ex. PW3/A reiterating the contents of the plaint. He further proved his documents i.e. Power of Attorney of LR no. 2 Dr. Sudhir Kumar Anand as Ex. PW3/1 and Ex. PW3/4. The objections were raised by defendants that they are not as per Section 85 of Indian Evidence Act. I have gone through both the Attorneys. They are executed giving the attorney to Sh. Suresh Kumar Anand.

I do not find any non compliance as per Section 85 of Indian Evidence Act. Similarly, Power of Attorney of Sh.Subodh Kumar Anand is also proved as Ex. PW3/2 and Ex. PW3/5. Similar objection taken to it. Another Attorney of Smt.Sushma Sahni as Ex. PW3/3 also proved. All the Attorneys are as per procedure and law and duly executed and exhibited. Objections taken by the defendants are overruled.

86. PW3 Sh. Suresh Kumar Anand further proved perpetual lease deed of the suit property dated 14.08.1970 as Ex. PW3/6. The objection to this is also with regard to maps. In my considered

opinion, the perpetual lease deed is executed by DDA in favour of original plaintiffs is duly proved. The site plan of the property Ex. PW3/7 is also objected. However, there is no dispute raised by the defendants, even filed their own site plan with regard to Rooms no. 7 and 10 and attached bathrooms no. 6 and 9. The identity of the suit property in occupation of the defendant is not disputed. Therefore, I do not find any ground for sustaining the objections of the defendants. Furthermore, during the cross- examination, the detailed layout plan is also proved on record as Ex. PW3/X4 showing the property.

87. The Income Tax Assessment orders and Passbook of original plaintiffs is also proved as Ex. PW3/8. Death certificate of original plaintiffs late Sh. Jia Ram Anand as Ex. PW3/11 and late Smt. Sushila Anand are proved. Legal notice served upon defendant NO.2 and addressed to defendant NO.1 as well is proved as Ex. PW3/15. The envelops and certificate of posting also proved. Further, certified copy of order dated 13.08.2010 proved as Ex. PW3/16. The Standard Rent petition filed by deceased defendant NO.2 is also proved as Ex. P1 and P2.

88. In the detailed, certified copy of record pertaining to case 'Neena Sarin vs. Jia Ram Anand' decided on 18.03.2010 also proved. PW3 Sh. Suresh Kumar Anand admitted that he was not paying any rent to deceased original plaintiffs but through company rent was paid for occupation of the portion of the suit premises by him till 1996. He admitted that the suit property was constructed in 1972-73 and he was student till June, 1972. He admitted that he did not contribute any money for construction of the suit property. He explained that he has full knowledge of the funds used for construction. The parents were having their own funds and about RS.2 lacs were sent by his brothers Dr.Sudhir Kumar Anand and Sh. Subodh Kumar Anand residents of USA and Canada respectively. The brothers had sent the fund into the joint account of deceased mother. He admitted that defendant NO.1 WAS in England when lease of the property was signed. Planning of construction was started in 1970 and he used to visit.

89. He denied all the suggestions about the existence of ancestral property at Dinga, Distt. Gujarat and in Lahore, now in Pakistan. There was no ancestral property and no agricultural land was allotted at Rajpura in Patiala and East Punjab States Union. He denied that deceased father was not having sufficient funds to construct to suit property. The record of contribution from USA and Canada by brothers proved as Ex. PW3/X-3. The defendants during the cross- examination failed to challenged and demolish the testimony with regard to parents' own funds contributed towards the construction of the suit property.

90. Further, it is also established by PW3 Sh. Suresh Kumar Anand that two other brothers, namely, Dr. Sudhir Kumar Anand and Sh. Subodh Kumar Anand, residents of USA and Canada respectively also contributed. It is pertinent to mention here that the Assessment Order Ex. PW3/8, which has been discussed already in detail while deciding the issue NO.1, relied by plaintiffs is also heavily referred by defendants during the course of arguments. I have already discussed in detail the contribution as per the Income Tax Record for construction.

91. The plaintiffs further established that defendant NO.1 Sh.Sudhish Chandra Anand has not contributed in any manner for the purchase of land of suit property and construction carried out. It

is also established on record that when the construction was started, defendant NO.1 WAS posted at London. PW3 Sh. Suresh Kumar Anand further proved the legal notice Ex. PW3/15 as he replied to specific question that his father has got drafted the notice from the lawyer.

92. PW3 Sh. Suresh Kumar Anand further explained that there was a joint kitchen till two months prior to service of legal notice Ex. PW3/15. He further explained that there are 8 rooms, 6 bathrooms, 1 kitchen and 1 store at the suit property. The defendants on the important aspect of the ownership of the original plaintiffs and the acquisition of the suit property by the original plaintiffs and construction carried on there with the funds by the original plaintiffs and loans taken from them and contribution of two other sons remained unrebutted and unchallenged. There is no question or suggestion put with regard to th legal notice Ex. PW3/15 served upon defendants especially defendant NO.2. It is also admitted on record by the defendants that the Standard Rent Petition filed by deceased defendant NO.2 WAS dismissed.

93. PW3 as per his testimony and documents established and proved that they were the original owners of the suit property and they constructed the suit property with their own funds, loans and contribution by two sons. Nothing brought on record that defendant defendant NO.1 at any point of time contributed in any manner. The plea of joint Hindu Family property is also not established on record. However, it is established on record that defendant NO.1 and deceased defendant NO.2 WERE permissive occupants of the suit property i.e. Room no. 7 with attached bathroom no. 10 and room no. 6 with attached bathroom no.9 of the suit property as shown in site plan. The possession of both the defendants were permissive as a licensee. The legal notice admitted by defendant NO.2 and information of said notice also admitted by defendant NO.1, though failed to file any reply to the said notice. Therefore, it is further proved on record that defendants failed to vacate the suit premises and remove their belongings.

94. On the basis of above observations and discussion, issue no.9 is decided in favour of plaintiffs and against the defendants.

95. The burden or proof of these issues are on the plaintiffs, who claimed the money decree for damages/mesne profit w.e.f. 01.06.1989 @ Rs.7500/- per month from the defendants being charges for use and occupation of the suit premises till the possession is delivered. It is pertinent to mention here that it has already been held while deciding issue no. 9 that defendants were in permissive possession of the suit property being son and defendant NO.2 being in live in relationship with defendant NO.1 because a son was also born out of their relationship. Their permissive occupation of the suit property legally terminated as per legal notice EX.PW3/15 and they failed to vacate and handed over the peaceful possession of the suit property and also not removed their belongings.

96. Therefore, their occupation of the suit property becomes unauthorized. The plaintiffs are entitled for claiming the damages/mesne profit for unauthorized occupation. However, during the course of the proceedings, the original suit plaint was amended. Therefore, the entitlement of the damages/mesne profit would start from the date of amendment of the plaint i.e. 12.04.1994 @ Rs.7500/- per month till March, 1997. This fact cannot be ignored that suit property is situated in Greater Kailah and there is a high rise of rents in the South Delhi for the last 10 years. Therefore,

increase of 20% every three years is just and appropriate.

97. Therefore, the plaintiffs are entitled for damages/mesne profits from April, 1997 to March, 2000 @ Rs.9000/- per month; from April 2000 to March 2003 @ RS.10,800/-; from April 2003 to March, 2007 @ RS.12,960/- per month; from April 2007 to March 2010 @ RS.15,550/- per month; from April 2010 to March 2013 @ RS.18,660/- per month; from April 2013 to March, 2016 @ RS.22,400/- per month and from April 2016 till possession @ RS.26,875/-. The plaintiff is directed to pay the court fee on the awarded damages as per rules. The issues no. 10 and 11 are decided accordingly in favour of plaintiffs and against the defendants.

98. Plaintiffs have contested the present suit for about 28 years and the original plaintiffs, who were the parents of defendant NO.1 also expired during the pendency. In my opinion, it is a fit case where plaintiff would be granted cost of the suit. Therefore, I award cost of RS.20,000/- as cost of the suit in favour of the plaintiffs. The issue NO.12 is decided accordingly in favour of the plaintiffs.

ISSUE N.13 (RELIEF)

99. In view of my discussion and observations on the issue nos. 1 to 12, it is held that plaintiffs are entitled for a decree of mandatory injunction and the defendants are directed to vacate the Rooms no. 7 and 10 with attached bathrooms no. 6 and 9 of the House No. A-1, Greater Kailash Enclave-II, New Delhi as shown in the plan attached with the plaint and defendants are further directed to remove all their belongings from the suit premises.

100. Plaintiffs are further entitled to decree of damages/mesne profit starts from 12.04.1994 @ Rs.7500/- per month till March, 1997 and further entitled for damages/mesne profits from April, 1997 to March, 2000 @ Rs.9,000/- per month; from April 2000 to March 2003 @ RS.10,800/-; from April 2003 to March, 2007 @ RS.12,960/- per month; from April 2007 to March 2010 @ RS.15,550/- per month; from April 2010 to March 2013 @ RS.18,660/- per month; from April 2013 to March, 2016 @ RS.22,400/- per month and from April 2016 till possession @ RS.26,875/-.

101. The plaintiff is directed to pay the court fee on the awarded damages as per rules.

102. The plaintiffs are also entitled for RS.20,000/- as cost of the suit.

103. Decree sheet be prepared accordingly.

104. File be consigned to Record Room.

Announced in the open court today the 30th January, 2018.

(Sanjay Kumar) ADJ-02,WEST/DELHI 30.01.2018