

**IN THE COURT OF MS. SHUNALI GUPTA, ADJ-06, SOUTH DISTRICT,
SAKET COURT COMPLEX, NEW DELHI**

CS No.: 22/17
CNR No. DLST01-004577-2016
Unique I.D No. CSDJ/209045/16

In the matter of:

Sh. K. S. Bakshi
S/o Sh. S. S. Bakshi
R/o 21/48, Malcha Marg,
New Delhi.

..... Plaintiff

VERSUS

- 1. Sh. Anuj Nath**
S/o Late Sh. Surinder Nath
- 2. Smt. Veena Gupta**
W/o Late Sh. Surinder Nath
- 3. Sh. Saunuj Nath**
S/o Late Sh. Surinder Nath

All resident of:
420, Ghitorni Village,
Mehrauli-Gurgaon Road,
New Delhi-110030.

..... Defendants

Date of Institution	:	20.10.2003
Date reserved for judgment	:	06.12.2018
Date of pronouncement of judgment	:	18.12.2018

Suit for Possession, Mesne Profits and Damages.

JUDGMENT:

1. The brief facts of the case as culled out from the pleadings of the parties are summarized as under:
 - 1.1 It is stated in the plaint that plaintiff is the sole and absolute owner of the property measuring 1 bigha and 1 biswa in khasra no.420 Min (0-5) & 421 Min (0-16) in Village Ghitorni, Tehsil Mehrauli (*hereinafter referred to as 'suit property'*), having purchased the same vide registered Sale Deed dated 01.06.1994. The property comprises of basement, ground floor and first floor. The suit property was earlier standing in the name of M/s. Bombay Builders (India) Pvt. Ltd. which is a family owned company of the plaintiff and wherein plaintiff is one of its Director and shareholder. The said company had purchased the suit property on 16.01.1992 vide registered Sale Deed.
 - 1.2 In the month of December, 1993/ January, 1994, the father of defendant no.1 & 3 namely Sh. Surinder Nath approached the plaintiff and requested him to use the suit property as his residence for a short period of time as due to litigation *inter-se* his brothers with regard to the estate of their father, he was not in a position to use any property of his father. He further represented to him that he shall vacate the suit property as & when he makes an alternative arrangement or when desired by the plaintiff. In view of the representation of the father of the defendants and owing to the old family relations, the plaintiff permitted him to reside in the suit property

purely on licence basis and without any charges. On 01.06.1994 the title of the said property was transferred in the name of the plaintiff and immediately thereafter in the month of June, 1994 itself Sh. Surinder Nath with his family shifted to the suit property and started residing there. Sh. Surinder Nath expired in June, 1996 and after which the defendants being his legal heirs are in occupation of the suit property. Few months later on, the plaintiff requested the defendants to vacate the suit property, however, the defendants sought some more time for the same as they were looking for alternative premises. Again in January, 2003, the plaintiff requested the defendants to vacate the suit premises but the defendants refused the same and claimed that they were having the title to the said property.

1.3 It is also stated in the plaint that in the month of March, 1993, plaintiff vide registered Lease Deed had taken on rent the first floor of property bearing no.20/48, Malcha Marg from M/s. S. N. Surinder Nath (P) Ltd. - a family owned company of Late Sh. Surinder Nath and wherein the defendants are shareholders and Directors. The said lease was renewed and plaintiff further paid 9 years' advance rent for the said premises. The basement of the said property was also let out to M/s. Bombay Builders (India) Pvt. Ltd. and advance rent and various deposits were paid to M/s. S. N. Surinder Nath (P) Ltd.

1.4 It is stated that Late Sh. Surinder Nath was put in possession of the suit property purely on the licence basis and no rights were ever created in his

favour. The defendants being legal heirs of Late Sh. Surinder Nath, are thus in illegal occupation of the said property and liable to handover the vacant possession thereof along with *mesne* profits and damages for the use of the suit property. Legal notices dated 25.03.2003 & 02.09.2003 were served upon the defendants seeking possession of the suit premises and charges for use & occupation thereof @ Rs.75,000/- per month w.e.f. 01.11.2000 till 31.12.2002 (Rs.19.50 lacs) and @ Rs.1 lac per month w.e.f. 01.01.2003 till 30.09.2003 (Rs.9 lacs) along with interest thereon @ 15% p.a. In reply to the legal notices, the defendants have claimed title to the said property.

Hence, the present suit has been filed seeking decree of possession of the suit property, decree for a sum of Rs.28.50 lacs along with interest @15% p.a. and also a direction for inquiry for *mesne* profits from the date of the suit till handing over the possession of the premises.

- 2.** Joint written statement was filed by the defendants resisting absolutely the claim made by the plaintiff.
- 2.1** The case set-forth by the defendants was that in December, 1992, the plaintiff started showing interest in the property bearing no.20/48, Diplomatic Enclave, Malcha Marg, New Delhi owned by Sh. Surinder Nath. After negotiation, it was agreed that basement and first floor of the said property will be let out to the plaintiff @ Rs.15,000/- p.m. for the basement and Rs.20,000/- p.m. for the first floor. The basement of the property was

already fetching rent @ Rs.15,000/- p.m. while it was let out to M/s. Allied Computers Technique (P) Ltd. The plaintiff was having a farm house on agricultural land in Ghitorni. During the course of negotiations, the plaintiff offered to sell to Late Sh. Surinder Nath, 1100 sq. yards out of his agricultural land in Ghitorni and it was also agreed that the cost of the said land would be adjusted by the plaintiff by availing rebate in rent for the basement and first floor of the property bearing no.20/48, Malcha Marg. Thus, it was agreed that the rent of basement would be reduced from Rs.15,000/- p.m. to Rs.1,500/- p.m. and the rent of first floor would be reduced from Rs.20,000/- to Rs.1,500/- p.m. for nine years and by getting the said rebate on the said rent, the price of the said land stood paid / adjusted by the plaintiff. Accordingly, at the time of handing over the possession of the property bearing no.20/48, Malcha Marg to the plaintiff and his companies on 18.03.1993, the possession of the aforesaid land (land beneath the suit property) measuring 1100 sq. yards in Village Ghitorni was handed over to Late Sh. Surinder Nath in part-performance of the Agreement to Sell. It was further agreed that the sale deed for the said land would be executed after obtaining 'no objection certificate' from Tehsildar Notification and thus, pending NOC, the possession was handed over to Late Sh. Surinder Nath who was also authorized to raise construction thereon. Owing to the old good relations between the parties, there was no reason for Late Sh. Surinder Nath to disbelieve the

promise/representation made by the plaintiff. Pursuant to handing over the land, Late Sh. Surinder Nath commenced construction on the said land in the year 1993 and constructed basement, ground floor and partial first floor. The building was named as 'Nath Haveli' and Late Sh. Surinder Nath along with his family started residing there. After the death of Sh. Surinder Nath, the defendants are residing therein. The plaintiff has no locus to claim possession of the suit property from the defendants as the defendants are owners of the said property and the plaintiff has already received complete payment towards the sale consideration as rebate availed in the rent was adjusted towards the sale consideration. Thus, the defendants are owners of the suit property and their possession is also protected U/Sec.53A of the Transfer of Property Act.

- 2.2** It is also stated that the plaintiff had no authority to get the sale deed for the suit property registered in his favour on 01.06.1994 as he had already sold the same to Late Sh. Surinder Nath on 18.03.1993 and had been promising to execute the sale deed in his favour but was avoiding the same on the pretext that NOC from Tehsildar Notification has not been received.
- 2.3** Regarding the legal notices, it was stated that the defendants on 22.02.2003 had issued notice to the plaintiff demanding possession of the property bearing no.20/48, Diplomatic Enclave, Malcha Marg. As a counter blast to the said notice, the plaintiff gave notices dated 25.03.2003 &

02.09.2003 to the defendants. Both the notices of the plaintiff were duly replied vide reply dated 09.04.2003 & 03.10.2003. It is also stated that in the notice dated 25.03.2003, plaintiff had categorically admitted that the defendants had come into the possession of the suit property in March, 1993 but when the said notice was replied and true facts were brought to the knowledge of the plaintiff, he became dishonest. He changed his stand and in the subsequent notice of September, 2003 alleged that Late Sh. Surinder Nath was permitted to reside in the said property in June, 1994.

Rest all the contrary assertions made in the plaint have been denied and dismissal of the suit has been sought.

- 3.** Replication was filed by the plaintiff reiterating the averments made in the plaint and denying the contrary averments made in the written statement. It was specifically denied that any Agreement to Sell whatsoever, written or oral, was ever entered into by the plaintiff with Late Sh. Surinder Nath with respect to the suit property. The lease of the basement and the first floor of the property bearing no.20/48, Malcha Marg, was an independent transaction vide registered lease deeds. The story envisaged by the defendants regarding the reduction in rent and adjusting the same towards alleged sale of suit property is highly preposterous and against preponderance of probabilities. It is beyond reasonable prudence that plaintiff would agree for reduction of rent to the tune of Rs.32,000/- in two

floors of property at Malcha Marg and in lieu thereof give the suit property to Late Sh. Surinder Nath and which was worth more than Rs.75 lacs in year 1994 and could have fetched a rent of more than Rs.50,000/- p.m. In fact, Late Sh. Surinder Nath had let out the property at Malcha Marg to the plaintiff against huge security deposits given under the lease and also against payment of advance rent of 9 years paid by the plaintiff. Further, it was denied that the construction of the suit property was done by Late Sh. Surinder Nath. Merely by putting a name outside the house, cannot confer any title on Late Sh. Surinder Nath or on the defendants.

4. Upon completion of the pleading, on 04.05.2006 the following issues were settled:

- i. Whether the plaintiff is the owner of suit property bearing Khasra No.420 Min (0-5) and 421 Min (0-16) alongwith superstructure built thereon and situated at Village Gitorni, Tehsil Mehrauli, New Delhi admeasuring 1 Bigha and 1 Biswa? OPP***
- ii. Whether the defendants have acquired any title to the suit property as alleged in the written statement? OPD***
- iii. Whether the plaintiff is entitled to a decree for possession of the suit property? OPP***
- iv. Whether the plaintiff is entitled to a decree for a sum of Rs.28,50,000/- against the defendants? OPP***
- v. If issue no.3 is decided in favour of the plaintiff, whether the plaintiff is entitled to pendentelite and future interest, if so, at what rate? OPP***
- vi. Whether the plaintiff is entitled to a decree for mesne profits, if***

so, at what rate and for what period? OPP

vii. Relief.

5. In support of his case, the plaintiff has examined **two witnesses**. They are as under:-

(1) **PW-1 Sh. K. S. Bakshi – the plaintiff himself**. In lieu of his examination-in-chief he has deposed by way of affidavit **Ex.PW1/A**, wherein he has reiterated the case set forth in the plaint and has relied upon the following documents:

- i. **Ex.PW1/1** is the copy of registered Sale Deed dated 01.06.1994 of the suit property in favour of the plaintiff.
- ii. **Ex.PW1/2** is the copy of registered Sale Deed dated 01.06.1992 of the suit property in favour of the family owned company of the plaintiff i.e. M/s Bombay Builders (India) Pvt. Ltd.
- iii. **Ex.PW1/3** is the copy of Site Plan of the suit property.
- iv. **Ex.PW1/4** and **Ex.PW1/5** are copies of Lease Deeds dated 02.11.1993 for the first floor and basement of property no.20/48, Diplomatic Enclave, Malcha Marg, New Delhi.
- v. **Ex.PW1/5A to Ex.PW1/10** are the postal and courier receipts pertaining to the exchange of legal notices and reply.

Further, the following documents were admitted by the defendants during admission/denial of documents carried out on 05.04.2005:

- vi. **Ex.P-1** is letter dated 25.04.2003 written by the plaintiff to the defendant.
- vii. **Ex.P-2** is copy of letter dated 25.03.2003 written by plaintiff to the defendants.
- viii. **Ex.P-3** is copy of letter dated 09.04.2003 which was given in reply to

the plaintiff's letter dated 25.03.2003.

- ix. **Ex.P-4** copy of legal notice dated 12.09.2003 issued by the plaintiff to the defendant.

(2) PW-2 Sh. Bhupinder Sawhney – AR of M/s. Bombay Builders (India)

Pvt. Ltd. In lieu of examination-in-chief, PW-2 has also deposed by way of affidavit **Ex.PW2/A** wherein he has deposed that the suit property was purchased by M/s. Bombay Builders (India) Pvt. Ltd. vide registered Sale Deed already Ex.PW1/2 and further that they sold the suit property to the plaintiff vide registered Sale Deed already Ex.PW1/1. He being the authorized representative of M/s. Bombay Builders (India) Pvt. Ltd. had executed the Sale Deed Ex.PW1/1 on behalf of M/s. Bombay Builders (India) Pvt. Ltd. in favour of the plaintiff. At the time of execution of Sale Deed Ex.PW1/1, the building was existing on the property.

During cross-examination, he admitted that no authority letter was issued to him by M/s. Bombay Builders (India) Pvt. Ltd. to appear and depose before the court. That apart, nothing material could be elicited during his cross-examination.

6. On behalf of the defendants, **two witnesses** were examined. They are as under:

(1) DW-1 Sh. Anuj Nath – defendant no.1 himself. In lieu of his examination-in-chief he has deposed by way of affidavit **Ex.DW1/A**, wherein he has reiterated the case set forth in the written statement and

has relied upon the following documents:

- i. **Ex.DW1/1** is the copy of acknowledgment slip dated 12.04.1993 issued in his name by MTNL regarding the application for MTNL telephone connection for installation of telephone in his name at the suit property.
- ii. **Ex.DW1/2** is the certified copy of Lease Deed dated 11.07.1990 vide which the property was let out by Late Sh. Surinder Nath to M/s Allied Computer Techniques (P) Ltd. @ Rs.15,000/- p.m.
- iii. **Mark-A** is the copy of order dated 26.08.2004 issued by Municipal Council vide which they had assessed the house tax of the Malcha Marg property and fixed the monthly rent for the basement portion at Rs.15,000/- and for the ground and mezzanine floor @ Rs.24,200/-.

(2) **DW-2 Sh. Saunuj Nath – defendant no.3 himself.** In lieu of his examination-in-chief he has deposed by way of affidavit **Ex.DW2/A**, wherein he has reiterated the case set forth in the written statement. He was duly cross-examined, whereafter DE was closed.

7. Final arguments addressed by Ld. Counsel Sh. Ravi Krishan Chandana for the plaintiff and Ld. Counsel Sh. Manish Makhija for the defendants were heard and record carefully perused. Written submissions filed by either side.
8. Before adverting further, it would be important to note the observations made by Hon'ble High Court in order dated 20.01.2006 while disposing the two applications filed by the plaintiff – one U/O.39 R.1&2 CPC and the other application U/O.39 R.10 CPC. The observations made in para 4 & 5

of the said order are reproduced herein as under:

“4. It is clear from the pleadings that there are serious disputes between the parties about the ownership of the suit property. In so far as the defendants are concerned, the circumstance in their favour are that there is an established possession since 1993 in their favour. During all these years, they have not paid any license fee to the plaintiff even if it is presumed that the premises were given by the plaintiff to (late) Mr. Surinder Nath on license basis. There is also a dispute as to whether only plot of land was given on which the defendants raised the construction or the construction thereof was raised by (late) Mr. Surinder Nath. While the learned counsel for the plaintiff argues that the defendants have not furnished any evidence to show that the construction was raised by (late) Mr. Surinder Nath and/or the defendants on the plot, curiously, the suit property in occupation of the defendants has the name 'Nath Haveli'. It may also be noted that though contention of the learned counsel for the plaintiff is that there are no particulars of alleged oral agreement given in the written statement, fact remains that it is not disputed by the plaintiff that the defendants' property at 20/48, Diplomatic Enclave, Malcha Marg, New Delhi was let out to the plaintiff almost the same time i.e. in December, 1992 when the purported agreement to sell in respect of the suit property was entered into when possession was given. Further, at the time of giving possession of the suit property, the rent of the property at Malcha Marg was reduced from Rs.15,000/- per month to Rs.1,500/- per month in respect of basement and from Rs.20,000/- to Rs.1,500/- per month in respect of first floor on the property and tenancy was agreed to be nine years.

5. In view of this, the appropriate order that requires to be passed in this case is to protect the suit property in the meantime

by maintaining status quo in this respect and the order for payment of Rs.1 lakh per month for use and occupation of the suit property cannot be passed.

6. *There is yet another reason for doing so. The property of the defendants at Malcha Marg is an occupation of the plaintiff as tenant. This would itself be sufficient security for the plaintiff in case the plaintiff ultimately succeeds in the suit."*

DISCUSSION ON ISSUES:

ISSUE No.1 : Whether the plaintiff is the owner of suit property bearing Khasra No.420 Min (0-5) and 421 Min (0-16) alongwith superstructure built thereon and situated at Village Gitorni, Tehsil Mehrauli, New Delhi admeasuring 1 Bigha and 1 Biswa? OPP

ISSUE No.2 : Whether the defendants have acquired any title to the suit property as alleged in the written statement? OPD

ISSUE No.3 : Whether the plaintiff is entitled to a decree for possession of the suit property? OPP

9. Issue no.1 to 3 are taken up together as they are inter-connected, based on same evidence and hence, a common discussion shall suffice.

9.1 The crux of the case of the defendants is that the suit property was given to late Sh. Surinder Nath [predecessor-in-interest of the defendants] on account of the fact that they had given on rent the basement and first floor of the property bearing no.20/48, Malcha Marg, New Delhi to the plaintiff at significantly reduced rentals with the understanding that the differential amount would be adjusted / towards the consideration of the suit property.

Per contra, case of the plaintiff is that both the transactions are distinct transactions – separated by time and the defendants were merely a

licensee in the suit property. The licence having been revoked by the plaintiff, he is entitled to seek back the possession of the suit property.

9.2 Now, in so far as the contentions of the defendants are concerned, suffice to note that even upon taking a bird's eye view of the pleadings, the defendants have no document in their favour to show that the title of the suit property had passed to them or any other document evidencing any understanding to transfer the suit property. It needs no reiteration that any transfer of immovable property can be done only through a registered document. Sec.54 of The Transfer of Property Act, 1882 defines sale and the manner in which it is made. For ready reference, Sec.54 of the said Act is reproduced herein under:

***“54. “Sale” defined.** - “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

***Sale how made.** - Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.”

Thus, the question of the defendants becoming an owner, in absence of any registered document in their favour, does not arise.

9.3 Now the second line of reasoning adopted by the defendants is that they have already paid the consideration for the property, were put in

possession thereof and are residing therein since 1993. Therefore, by doctrine of part-performance U/Sec.53A of The Transfer of Property Act, 1882, they are entitled to retain possession of the property. Again, Sec.53A reads as under:

“[53A. Part performance.- Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]”

Now, this Section has two requirements – **(i)** the agreement should be in writing and **(ii)** the consideration must have passed. In the

case herein as there is no agreement in writing between the parties, point no.(i) is not made out and thus, Sec.53A of The Transfer of Property Act, 1882 does not come to the aid of the defendants.

9.4 Delving further, the plea of the plaintiff is that it was a mere licence. licence has been defined U/Sec.52 of The Indian Easements Act, 1882. Same reads as under:

“52. “Licence” defined.

Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.”

Now, the defendants have raised a contention that they were given possession of only land and the residential building thereon has been raised by them. Hence, the licence was irrevocable. For the said purpose, it would be apposite to reproduce Sec.60 of The Indian Easements Act, 1882. The same reads as under:

“60. Licence when revocable

A licence may be revoked by the grantor, unless-

- (a) it is coupled with a transfer of property and such transfer is in force;*
- (b) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution.”*

Now, to appreciate the said contention, I need to have a re-look at the documents of the parties and the evidence adduced by them.

Plaintiff contends that the property was already built-up when the M/s. Bombay Builders (I) Pvt. Ltd. had purchased it from M/s. Guru Mehar Construction. Subsequently, he purchased a portion of the said property from M/s. Bombay Builders (I) Pvt. Ltd. – his family owned company and thereafter the property purchased by him was given on licence to the father of the defendants. Now the relevant portions of the first Sale Deed dated 16.01.1992 and the subsequent Sale Deed dated 01.06.1994, reads as under:

(FIRST SALE DEED)

**Sale Deed dated 16.01.1992 by
M/s. Guru Mehar Construction
in favour of
M/s. Bombay Builders (I) Pvt. Ltd.**

WHEREAS The Vendors are the absolute, rightful and exclusive Owners of 2 Bighas & 1 Bisw. of land comprising of Khasra No.412 Min (1-16) and 420 Min (0-5) in the revenue Map of village Ghitorni, Tehsil Mehrauli, Delhi State, Delhi.

AND WHEREAS the Vendors have agreed to convey, transfer their Rights, title and interest in the said land alongwith the Building constructed on it in favour of the Vendees for the total consideration of Rs.1,46,000/- (Rupees One Lac Fourtysix Thousand Only).

(SECOND SALE DEED)

**Sale Deed dated 01.06.1994 by
M/s. Bombay Builders (I) Pvt. Ltd.
in favour of**

Sh. K. S. Bakshi S/o Sh. S.S. Bakshi

Whereas the Vendor is the absolute owner / bhumidar and in possession of agricultural land measuring 1 BIGHA AND 1 BISWA, BEARING KHASRA NOS. 420 MIN (0-5), 421 MIN (0-16), SITUATED AT VILLAGE GHITORNI, TEHSIL MEHRAULI, NEW DELHI.

That the said land is the self acquired land of the vendor and the same stands mutated in the name of the vendor in Revenue Records as owner / bhumidar and the vendor has full rights absolute authority to sell and transfer the said land.

That the vendor has obtained the No objection certificate from the Tehsildar (N) Delhi.

And whereas the Vendor has agreed to sell and the Vendee has agreed to purchase the said land for a sum of Rs.25,000/-.

Pertinent to note herein that the Sale Deed in favour of the M/s. Bombay Builders (I) Pvt. Ltd. is for 2 bigha and 1 biswa of land whereas the Sale Deed in favour of the plaintiff is for 1 bigha and 1 biswa. Further, though in the Sale Deed in favour of M/s. Bombay Builders (I) Pvt. Ltd., the sale is of land along with the building constructed thereon without any details about the building / floors in the same; whereas in the Sale Deed in favour of the plaintiff, there is no mention of any construction over the land. The Sale Deed only pertains to the land/a parcel of agricultural land. Meaning thereby, that what was transferred to the plaintiff by way of Sale Deed, was only a chunk of land devoid of any building.

Plaintiff's specific case is that he had let out the property in year

1994, pursuant to having purchased the same from M/s. Bombay Builders (I) Pvt. Ltd. In this regard, I may again quote the relevant portion of the plaint so as to ensure that there is no break of narrative herein. Extracts from para 4 of the plaint reads as under:

“The title of the said property was transferred in the name of the plaintiff on 01.06.1994 and the said Mr. Surender Nath immediately thereafter in June 1994 itself, shifted in the said property along with his family and started residing there.”

Now, what was purchased by the plaintiff was only a piece of land and hence, the question of it being built-up, does not arise. Needless to state that no oral evidence can be led to countenance the terms of a registered document.

9.5 Delving further, admittedly, the plaintiff had served a notice dated 25.03.2003 asking the defendants to handover the possession of the suit property. The said notice is important. It reads as under:

“KANWALJIT BAKSHI

March 25, 2003

REGD. A.D.

To,

Mr. Anuj Nath
Nath Haveli,
420 Gitorni
Mehrauli Gurgaon Road,
New Delhi.

Sub: *Nath Haveli, 420 Gitorni, Mehrauli Gurgaon Road, New Delhi*

Dear Sir,

I had permitted your father Late Mr. Surinder Nath to reside in the subject property / house on a mutual arrangement on a license basis in the year 1993. Due to financial constraints and family disputes no use and occupation charges were paid by Mr. Surinder Nath to me. After his unfortunate demise in June 1996, I was requested by you to permit you and your mother to reside there for some more time till the time alternate arrangements are not made. Since I had old relations with Mr. Surinder Nath, I had permitted you to reside in the said premises for some more time. I have been requesting you to vacate the said property and handover the possession of the property to me but one or other grounds you have been avoiding to vacate the said property.

Now, I finally call upon you to vacate the said property within 15 days and handover the vacant physical possession of the property to the undersigned under due intimation.

No payments ever have been made by Late Mr. Surinder Nath during his life time or by you for use and occupation charges and substantial amount has become due and payable to me on this account, but keeping in account my old relations with Mr. Surinder Nath, I restrict my right to claim use and occupation charges w.e.f. 01.06.97 and @ Rs. 50,000/- per month till 31.12.1999 and @ Rs. 75000/- w.e.f. 01.01.00 per month till 31.12.02. Further I call upon you to pay use and occupation charges @ Rs. 1,00,000/- per month for the said property w.e.f. 01.01.03 till the date of handing over of the vacant physical possession of the property to me. I further reserve my right to claim all damages, compensation etc. for any damage caused to the property in question on verification and inspection.

Yours faithfully,

KANWALJIT SINGH BAKSHI"

The usage of the word 'Nath Haveli' in the said notice assumes

importance. The defendants had replied to the said notice vide an exhaustive reply dated 09.04.2003 wherein they have taken all the pleas as stated in the written statement including the fact that they have raised the construction and named the building as 'Nath Haveli'. Now the notice preceding the filing of the suit dated 12.09.2003 through Sh. Amit Saxena, advocate, curiously did not address the house of the defendants as 'Nath Haveli' but only mentions the address of the suit property. Significance of addressing the defendants' house as 'Nath Haveli', is not only a reference to the address, but more importantly acknowledgment of the fact that the house belongs to them.

I am emphasizing on the usage of word 'Nath Haveli' as in the context of the facts of the case i.e. the plaintiff claims that the predecessor-in-interest of the defendants was only a gratuitous licensee whereas the defendants contends themselves to be the owners thereof as their father had raised the residential building thereon.

9.6 In this reference, reliance can usefully be placed upon the judgment of Hon'ble Delhi High Court in the case of **Hari Mohan & Anr. Vs. Maya Devi & Anr. passed in RSA Nos.82/2010 & 84/2010, date of decision:July 26th, 2011**, wherein the fact situation was akin to the present case and a similar issue came up for consideration. The observations made by the Hon'ble Court in para 6 of the said judgment is as under:

“.....In my opinion, the arguments as raised by the counsel for the appellants are misconceived and no substantial question of law arises inasmuch if really the appellant No.2/Smt. Koyal Devi, wife of appellant No.1, was the owner of the property, then the appellants would not have stood by and allowed the respondents to raise construction on the suit property. It is established on record that the respondent No.1 herein incurred the complete costs for construction on the plot, got electricity and water connections in her name and also has paid all the charges to the local authorities with respect to the subject property. Clearly therefore Section 60 of the Act applies. The argument of the appellants that the respondents herself denied applicability of Section 60, is without merit inasmuch as there cannot be an estoppel against law. The respondents are always entitled to argue that Section 60 of the Act applies. In my opinion, the Appellate Court is also otherwise correct because as per Section 115 of the Evidence Act, 1872, once a person having a belief that he is the owner of a plot, constructs on a plot and the real owner stands by then such real owner is estopped from claiming any title in the plot inasmuch as by standing by he has given a representation that the person who constructs on the plot had complete entitlement to construct. Further, since the respondent No.1 has admittedly made entire construction on the plot in question, she is definitely the owner of the building which has been constructed on the plot though formally there may not be title papers in the name of the respondents with respect to the plot in question.....”

Thus, no objection raised by the true owner to the constructions carried out implies acknowledgment of rights of the defendants over the suit property.

Reference can also be made to the leading judgment in the case of **Ram Sarup Gupta (Dead) by LRs v. Bishun Narain Inter College & Ors., (1987) 2 SCC 555**. Extract from para 9 of the said judgment is reproduced hereinunder:

“.....Section 60 enumerates the conditions under which a licence is irrevocable. Firstly, the licence is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the licensee acting upon the licence executes work of permanent character and incurs expenses in execution. Section 60 is not exhaustive. There may be a case where the grantor of the licence may enter into agreement with the licensee making the licence irrevocable, even though, neither of the two clauses as specified under Section 60 are fulfilled. Similarly, even if the two clauses of Section 60 are fulfilled to render the licence irrevocable yet it may not be so if the parties agree to the contrary.....

.....The parties may agree expressly or impliedly that a licence which is prima facie revocable not falling within either of the two categories of licence as contemplated by Section 60 of the Act shall be irrevocable. Such agreement may be in writing or otherwise and its terms or conditions may be express or implied. A licence may be oral also in that case, terms, conditions and the nature of the licence, can be gathered from the purpose for which the licence is granted coupled with the conduct of the parties and the circumstances which may have led to the grant of the licence.....”

Thus, the gist of the said judgment is that Sec.60 of The Indian Easements Act, 1882, is not exhaustive and there may be other situations as well where grantor of licence may enter into an agreement with the

licensee making the licence irrevocable even though the conditions specified U/Sec.60(b) are not fulfilled.

9.7 On the said aspect, factual matrix of the present case makes a very interesting reading. Plaintiff got the possession of basement and first floor of defendants' building in property bearing no.20/48, Malcha Marg, New Delhi vide Lease Deeds dated 02.11.1993 **Ex.PW1/4 & Ex.PW1/5** respectively whereby he became a tenant and enjoyed / obtained the protective shield of Delhi Rent Control Act, 1958. Pertinent to note that in so far as the premises taken on rent by the plaintiff – the basement of the said property was under the tenancy of M/s. Allied Computers Technique (P) Ltd. (Mr. Vijay Dhawan was the Director of the said company) who was admittedly paying a rent of Rs.15,000/- per month at that time. The possession from him was directly taken by the plaintiff as there is a document **Ex.PW1/DB** which substantiates the fact that the possession was taken by the plaintiff from Sh. Vijay Dhawan. The reduction of rent or the differential amount has not been paid by the plaintiff to the defendants – at least there is nothing on record in this regard.

In so far as the first floor portion is concerned, the same was in the occupation of Late Sh. Surinder Nath – father of the defendants. The plaintiff during his cross-examination stated that Sh. Surinder Nath had shifted from New Friends Colony to the suit property but later on admitted during cross-examination that he shifted from first floor of property bearing

no.20/48, Malcha Marg to the suit property. Meaning thereby that Late Sh. Surinder Nath had shifted from his own property to the suit property as a licensee – the same does not appeal to reason. Hence, the contention that the two transactions were unconnected, appears to be highly implausible and not made out. Thus, these circumstances also afford another ground for concluding the licence to be an irrevocable one, irrespective of the factum of construction thereon. To put it pithily, the swapping of the properties at the contemporaneous time and reduction of rentals – all make it one composite / inseparable transaction which can't be segregated by splitting the same as sought to be done by the plaintiff. These were reciprocal arrangements and understandings which were co-terminus. Thus, the facts of the present case, dehors the grounds enumerated U/Sec.60(b) of The Indian Easements Act, 1882, makes out the case that the licence granted to Late Sh. Surinder Nath was an irrevocable one. As such, I hold that the plaintiff is the owner of the suit property. However, the defendants have acquired an irrevocable licence qua the suit property and thus, at present, the plaintiff is not entitled to a decree for possession of the suit property.

Issues accordingly stand decided.

ISSUE No.4 : Whether the plaintiff is entitled to a decree for a sum of Rs.28,50,000/- against the defendants? OPP

ISSUE No.5 : If issue no.3 is decided in favour of the plaintiff, whether the plaintiff is entitled to pendentelite and future interest, if so, at what rate? OPP

ISSUE No.6 : Whether the plaintiff is entitled to a decree for mesne profits, if so, at what rate and for what period? OPP

10. These issues are taken up together and findings of issues no.1, 2 & 3 are adopted herein. I need not burden the judgment by again reproducing the factual matrix of the case, but is re-emphasizing para no.6 of the order dated 20.01.2006 passed by Hon'ble High Court, which is reproduced as under:

“6. There is yet another reason for doing so. The property of the defendants at Malcha Marg is an occupation of the plaintiff as tenant. This would itself be sufficient security for the plaintiff in case the plaintiff ultimately succeeds in the suit.”

10.1 The plaintiff is already in possession of the basement and first floor of the property of the defendants at 20/48, Malcha Marg, New Delhi at a paltry sum of Rs.3,000/- per month – Rs.1,500/- each for basement and first floor. There is evidence to the fact that the market rent of the said property would be much more than what the plaintiff is paying. Also, it needs to be noted that the term of original lease had expired long back. As already observed by me that the transactions of letting and giving property are co-terminus, in the fitness of things, the same fact situation requires to be kept as it is / should be continued as it is. Thus, in these circumstances, the question of payment of licence fees, does not arise at all.

Issues accordingly stand decided.

11. Relief.

In view of my aforesaid discussion, the suit of the plaintiff stands dismissed. No order as to cost. Decree sheet be prepared accordingly and **file be consigned to record room after necessary compliance.**

**Announced in the Open Court
Dated: 18.12.2018**

**(Shunali Gupta)
Addl. District Judge-(06)
South Distt. Saket Courts,
New Delhi.**