

(2026) 08 DEL CK 4409

In the Delhi High Court, Principal Bench, New Delhi

Case No : RSA 57/2018, CM APPL. 6551/2019

Arun Birla

APPELLANT

Vs

Nirmal Singh & Anr.

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Code of Civil Procedure, 1908 — Section 100, Order XLII, XXIII Rule 1, 2 Rule 2, XXXIV
Specific Relief Act — Section 38
Arbitration and Conciliation Act, 1996 — Section 8, 34

Citation : (2026) 08 DEL CK 4409

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Mr. Kunal Kalra, Mr. Prashant Manchanda, Mr. Angad Singh, Mr. Rohan Pratap Singh, Mr. Varun

Judgement

Neena Bansal Krishna, J.

1. The Second Regular Appeal under Section 100 read with Order XLII of the Code of Civil Procedure, 1908 (*hereinafter referred to as ?CPC?*), has been filed on behalf of the Appellant against the *Judgment and decree dated 11.12.2017 of the learned District and Sessions Judge, New Delhi*, who has set aside the Judgment dated 20.07.2017 of the learned Civil Judge, Delhi, who had restrained the Defendants/Appellants from creating hindrance/obstruction in the use of the space on the lower Ground Floor, to park the car by Plaintiff/Respondent No. 1.

2. The Plaintiffs, Mr. Deshraj Saluja and Mr. Arun Birla, had filed a *Civil Suit No. 26/2016*, for directing the Defendant No. 1 to restore the guardroom and kitchen on the lower Ground Floor; to remove the construction/encroachment from the parking space in the lower Ground Floor; to restrain the Defendant No. 1 from using the lower Ground Floor portion for any other purpose than for guardroom and parking; to remove the Third Floor of the Property in question; to restrain the Defendant No. 1 for carrying out illegal and unlawful construction in the Property in question; to restrain the Defendant No. 1 from permitting installation

of a huge transmission tower on the roof of the Third Floor of the Property in question and to restrain the Defendant No. 1 from creating any hindrance/obstruction in using the parking space of the Plaintiff marked as 'P-3', in the Lower Ground Floor and further to restrain the Defendant No. 1, from using the parking space of the Plaintiff.

3. The **facts in brief** are that Sh. Som Dutt *vide* Sale Deed dated 19.11.1958, had purchased a freehold plot bearing No. C-1/E, admeasuring 360 Sq. Yds., situated at Green Park Extension, New Delhi. He sold the plot to Sh. Khajan Singh *vide* Sale Deed dated 20.05.1961, who raised the construction. Sh. Khajan Singh died on 28.01.1988, leaving behind the registered Will dated 22.05.1980, bequeathing his property to his three sons, namely, Sardar Pritam Singh, Sardar Balwant Singh and Sardar Nirmal Singh (Defendant No. 1). Sardar Pritam Singh died on 15.10.1995 and his share was transferred to his wife, Smt. Surjeet Kaur. The Property was divided amongst the three brothers, through a registered Family Settlement dated 09.07.2004, by virtue of which, the Defendant No. 1 became the absolute owner of the portion admeasuring 120 Sq. Yds.

4. The Defendant No. 1, Sardar Nirmal Singh, demolished the old construction and reconstructed his portion wherein the lower Ground Floor was kept for parking three big cars, as well as, guardroom with a toilet and kitchen was constructed. *The Defendant No. 1 executed the Sale Deed dated 12.07.2006 in respect of First Floor, in favour of Smt. Abhilasha Jain. In addition to the portion on the First Floor, the Defendant No. 1 also transferred one separate car parking on the lower Ground Floor to her.* The Plaintiff No. 1, Sh. Deshraj Saluja, purchased the First Floor from Smt. Abhilasha Jain, by virtue of registered Sale Deed dated 29.06.2007.

5. The Second Floor of the Property along with one individual car parking in the lower Ground Floor, was sold by Defendant No. 1, to Smt. Kavita Jain *vide* registered Sale Deed dated 12.07.2006. She sold the Second Floor to Smt. Anita Lubhana, through the registered Sale Deed dated 27.06.2007. The Plaintiff No. 2, Sh. Arun Birla, purchased the Second Floor from Smt. Anita Lubhana, *vide* registered Sale Deed dated 11.07.2008 whereby he became the owner of the Second Floor and one individual car parking on the lower Ground Floor. Although the Defendant No. 1 agreed to sell the upper Ground Floor to the Defendant No. 2, but certain *inter sedis* disputes arose between them and the sale documents have not been executed as the upper Ground Floor is in the possession of the Defendant No. 1.

6. It was claimed that the Defendant No. 1 got tempted to make unlawful gains for himself by illegally permitting use of guardroom for commercial activity. He allowed the Guard Room to be used for commercial use to M/s Maruti Courier. He also unauthorisedly covered one car parking space, which was meant for upper Ground Floor occupant and allowed it to be used by one Tantarik. When Smt. Anita and the Plaintiff No. 1, raised objections about this misuse, the portion given to the Tantarik, was taken back by the Defendant No. 1. However, it has

now been given to M/s Natural Hair Weaving Centre, who are running their Hair Treatment Clinic, from this portion.

7. The Plaintiff claimed that the lower Ground Floor was agreed to be used for three car parking spaces, with one car parking given to each Floor owner. The Defendant No. 1 has no right to use the guardroom and the kitchen, for the commercial purpose.

8. It was claimed that the persons using these commercial spaces, were not educated and most of them used filthy and abusive language even while talking to themselves and making indecent gestures towards the women and when they were requested to behave, they picked quarrels.

9. Since the Plaintiffs were repeatedly demanding from the Defendant No. 1, to remove the encroachment and to stop the commercial use, the Defendant No. 1, in retaliation, started giving threats to cause interference and obstruction in the parking of vehicles of the Plaintiffs and their guests. The roof of the building is meant for common facilities such as T.V. antenna, Dish Antenna, Water tanks, drying of clothes etc. *However, the Defendant No. 1 is in the process of allowing M/s Reliance Communication, to install a huge transmission tower on the roof of the Third Floor.* The generator is also installed at the terrace, to provide non-stop electricity for running this Tower. It is further claimed that the Third Floor has been raised illegally, but the foundation is not strong to take such erection of transmission Tower or the illegal construction.

10. *The Plaintiffs thus, filed the present Suit seeking to restrain the Defendants from illegal use of the lower Ground Floor, to raise unauthorised construction and to restrain the Defendant No. 1 from creating hindrance/obstruction in their using the car parking space in the lower Ground Floor.*

11. The ***Suit was contested by the Defendant No. 1, Sh. Nirmal Singh***, who took the ***preliminary objections*** that the dispute in regard to the subject matter of the Property, is under consideration before the learned Arbitral Tribunal, constituted pursuant to Arbitration Agreement dated 13.04.2005 between the Defendant No. 1, Sh. Nirmal Singh and the Defendant No. 2, Sh. Yashwant Jain. The present Suit is, therefore, liable to be dismissed.

12. It is further claimed that this suit has been filed by the Plaintiffs at the behest of the Defendant No. 2, to overreach the proceedings pending before the Arbitral Tribunal. The material facts have been in deliberately concealed by the Plaintiffs, who are not entitled to relief under the Specific Relief Act.

13. It is further submitted that the Plaintiffs have no locus standi to maintain the Suit, against the Defendant No. 2. There is no cause of action disclosed in the Plaint. Furthermore, the Plaintiffs have no personal interest in the subject matter inasmuch as, the Ground Floor of the building has been in the exclusive ownership/possession/control and use of the Defendant No.

1. The Suit has been filed *mala fide* and is not maintainable.

14. **On merits**, the contents of the Plaint, were denied. It was claimed that the Plaint has not disclosed any cause of action and is liable to be dismissed.

15. The Defendant No.1, Sh. Nirmal Singh, in his **Written Statement** explained the background of the dispute in regard to the allotment of one car parking space in the Lower Ground Floor. He stated that Defendant No.2, Yashwant Jain who is in the business of real estate, had approached Defendant No.1 Nirmal Singh in March, 2005 through a Property Dealer for an Agreement with respect to the share of Defendant in property bearing No.C-1/E, Green Park Extension, New Delhi and offered to raise four floor building on the said property after erasing old construction existing and in occupation of the Defendant No.1. The Defendant No.1 and 2 stated that the whole process of construction of four floors, would take not more than nine months to one year from the date of commencement of work. The estimated cost of construction of the building with average modern amenities were estimated by Defendant No.2 as approximately Rs.30 lakhs. Defendant No.2 agreed to pay the estimated cost of construction to Defendant No.1 and also advanced sale consideration for the purchase of flats @ Rs.23 lakhs per floor.

16. Thereafter, it was agreed that construction would be at Defendant No.1's cost and that the construction would be carried out under the joint supervision of both the parties. It was further agreed that the balance amounts towards the sale of each floor, would be payable on completion of construction, handing over of physical possession and on execution and registration of the Sale Deed, after obtaining permission from the concerned office in favour of Defendant No.2 or its nominee. It was specifically agreed between Defendant No.1 and 2 that Ground Floor would be used for commercial purpose by Defendant No.1, his nominee/ assignee and shall not be subject of sale transaction between the parties.

17. Based upon these terms, Defendant No.1 entered into an Agreement with Defendant No.2. However, the Defendant No.2 who is in the trade of real estate, etc. fraudulently obtained signatures of Defendant No.1 on various papers and documents from time to time, by wrongfully persuading Defendant No.1 herein that all the documents were in accordance with the terms and conditions as agreed above including the Agreement dated 13.04.2005.

18. The Defendant No.1 claimed that he, being an uneducated person who could not read and understand any language except Gurumukhi, became a victim of fraud of Defendant No.2 and his associates. Defendant No.2 on the basis of misrepresentation that payment of balance amount would be payable on the registration of Sale Deed, completed the construction of flats and also modified the same, as suggested by Defendant No.1 from time to time. The extra facility of lift and genset on 50:50 basis of the total cost was subject to the mutual consent.

19. The sale conditions and terms were only for raising four floors on the entire area of land, in the possession of Defendant No.1. *There was no Agreement*

between the parties in respect of three individual car parking sites for three big cars on the Ground level that was to be sold by Defendant No.1. However, Defendant No.2 got prepared an Agreement dated 13.04.2005 which does not reflect the real and true terms of the Agreement between the parties. The Defendant No.1 came to know about these facts, at a much later stage. At the time of execution of Agreement dated 13.04.2005, Defendant No.2 only made a payment of Rs.7 lakhs, out of which Rs.5.50 lakhs was paid in cash and Rs.1.50 lakhs was paid by way of cheque. No subsequent payment ever was received in cash.

20. The Defendant No.1 started the work at site and in the whole process of construction, Defendant No.2 illegally created another Agreement dated 01.07.2005. With intention to defeat the claims of recovery of Defendant No.1 arising out of two Sale Deeds, executed in terms of Agreement dated 13.04.2005, Defendant No.2 first wanted the execution and registration of Sale Deed with respect to the Upper Ground Floor of the property in question and even got a Sale Deed dated 05.12.2005 prepared. When Defendant No.1 insisted for payment in terms of the Agreement, Defendant No.2 failed to make payment and under these circumstances, the registration of Sale Deed dated 05.12.2005, was put on hold.

21. However, Defendant No.2 started exerting undue pressure on Defendant No.1 and indulged in illegal Complaints and Notices. During this period, Defendant No.2 was also in touch with Defendant No.1 and had been assuring that the balance payment was being arranged and would be paid on production of proposed Sale Deed for registration and handing over of physical possession of the flats in question.

22. The Defendant No.1 thus, *agreed to execute the Sale Deeds with respect to First Floor and Second Floor and further agreed to rescind the Agreement with respect to the Upper Ground Floor.* Under the misleading assurance of Defendant No.2, the Sale Deed was executed in favour of Smt. Abhilash Jain and Smt. Kavita Jain on 12.07.2006 respectively, being nominees of Defendant No.2 who got the Sale Deeds registered for First and Second Floor respectively. The Defendant No.1 claimed that he had never agreed to execute any Sale Deed **with Parking**, as the same was never in the terms of Agreement and there was over writing in this regard in the original Sale Agreement.

23. It is submitted that after the execution of Sale Deeds in respect of First and Second Floor, Defendant No.2 failed to clear the outstanding dues of Rs.16,84,000/- with respect to First and Second Floor of the building, having fraudulently got executed and registered the Sale Deeds. He kept on deferring the payment of the balance amount on one pretext or the other. Defendant No.2 was left with no right, title, interest in the Upper Ground Floor of the property.

24. The Defendant No.1 accordingly issued Legal Notice dated 05.07.2007 to Defendant No.2 and his nominees demanding payment of the balance amount,

as well as seeking appropriate Undertaking *as to no claim and rights in the alleged Parking space on the Ground Floor*. Defendant No.2, however, failed to comply with the Legal Notice, but gave a false and frivolous Reply.

25. Although, burden of all misc. expenses and for taking steps for registration of Sale Deed on the purchaser, yet the Defendant No.2 failed to discharge his obligation of paying the balance amount after execution and registration of the Sale Deeds, in respect of First Floor and Second Floor of the property in question.

26. **Defendant No.2 filed a Suit No.123/2006 against Defendant No.1 and his family members**, around September, 2006, before the District & Sessions Court. The Defendant appeared in the said proceedings and filed an *Application under Section 8 Arbitration and Conciliation Act*, which was allowed vide Order dated 14.12.2006. The Suit was dismissed.

27. Defendant No.2 filed *RFA No.235/2007*, but this Court vide Order dated 09.09.2008, referred the parties to the Sole Arbitrator. The Defendant No.1 filed his *Counter-Claim* for recovery of sum of Rs.16,84,000/-, as being the balance amount of the agreed sale consideration of the First and Second Floor flats; to declare those Sale Deeds executed in favour of nominees of Defendant No.2 as not conferring any ownership in the Parking space as incorporated in the Sale Deed dated 12.07.2007 and to declared the Agreement dated 01.07.2005 as forged and fabricated document. The Defendant No.1 also moved a separate Application for correction of typographical error in the description of the date of Sale Deed, which was mentioned as 12.07.2007 instead of 12.07.2006.

28. The representative of **M/s Reliance Infratel Ltd. M/s Shruti Chandra** made a statement in the Court on 03.03.2009 informing that the Company was no longer intending to install Telecommunication Tower on the roof top of the property in question. She stated that the Company had abandoned the site. Plaintiff No.1 Deshraj Saluja thereafter, filed an Application under Order XXIII Rule 1 CPC withdrawing his Suit with liberty to file a separate Suit as he had a distinct cause of action. The learned Trial Court permitted Sh. Deshraj Saluja to withdraw the Suit with liberty to file a fresh one by Order dated 27.11.2012.

29. The Suit was thus, *continued only in the name of Sh. Arun Birla, the Plaintiff/Appellant*. Furthermore, the original Suit was amended to add an additional prayer to seek Permanent Injunction for restraining Defendant No.1, his employees etc. from causing hindrance/ obstruction in the use of parking space of the Plaintiff and to refrain Defendant No.1 from using the Parking space for his personal use.

30. The **Plaintiff in the Replication** reaffirmed the assertions as made in the Plaint and denied the allegations made in the Written Statement.

31. The **Issues were framed on 18.04.2016**, which are as under:-

1. *Whether the plaintiff has no cause of action against the defendant number one for filing the present suit? OPD*

2. *Whether in the present suit is not valued properly for the purpose of court fees? OPD1*
3. *Whether the plaintiff is entitled to decree of mandatory injunction against the defendant number one as prayed in the clause (a)? OPP*
4. *Whether the plaintiff is entitled to decree of mandatory Injunction against the defendant number one as prayed in the clause (B)? OPP*
5. *Whether the plaintiff is entitled to decree of permanent injunction against the defendant number one as prayed in the clause (C)? OPP*
6. *Whether the plaintiff is entitled to decree of mandatory injunction against the defendant number one as prayed in the clause (d)? OPP*
7. *Whether the plaintiff is entitled to decree of permanent injunction against the defendant number one as prayed in the clause (e)? OPP*
8. *Whether the plaintiff is entitled to decree of permanent Injunction against the defendant number one as prayed in the clause (f)? OPP*
9. *Whether the plaintiff is entitled to decree of permanent injunction against the defendant number one as prayed in the clause (g)? OPP*
10. *Relief.*

32. The Plaintiff examined **PW1 Bharat Sawaria**, Record Keeper, from office of Sub-Registrar, who produced the original sale deeds Ex. PW1/1 to Ex. PW1/6.

33. The **Plaintiff examined himself as PW-2** and tendered his evidence by way of Affidavit, Ex.PW-2/A.

34. **The Defendant No.2 did not lead any evidence.**

35. The **Defendant No. 1, Sh. Nirmal Singh, appeared as DW-1** and tendered his evidence by way of Affidavit of evidence, Ex. DW-1/1.

36. The **learned Civil Judge** in the impugned Judgment dated 20.07.2017, denied the relief for removal of encroachment/ construction from the Parking space on the ground that the Plaintiff had nothing to do with Lower Ground Floor, except the Parking space as indicated at Mark P3 in the Site Plan. Likewise, the relief of removal of unauthorized construction carried out by Defendant No.1 was denied, as there was no substantial evidence in respect of the alleged unauthorized construction. Additionally, the relief for restoration of the Guard Room and to remove the commercial use of the said room was denied, on the ground of absence of evidence in this regard. Moreover, the MCD had already sealed the Guard room and it was held that no Order of Restoration as prayed by the Plaintiff, could be passed. This relief was also declined.

37. *However, the learned Civil Judge noted that in the Sale Deed dated 12.07.2008 Ex.PW1/6 vide which the Plaintiff Arun Birla had purchased the suit property from the erstwhile owner Ms. Anita Lubana, clearly provided that the Plaintiff was entitled to one Car parking space. It was also observed that the Defendant No.1 in his cross-examination had admitted his signatures on the Sale Deed Ex.PW1/4, wherein it was recorded that the Second Floor flat along with one individual car parking on the Ground Floor had been transferred to Kavita*

Jain. **DW1 had acknowledged the incorporation of sale of Car Parking in the document Ex.DW1/4.**

38. It was also the evidence of Plaintiff that Defendant No.1 was creating hindrance/obstruction in the parking of the vehicle by the Plaintiff at Point 1.

Consequently, relying on the Sale deed of the Plaintiff Ex.PW1/2 to Ex.PW1/6 it was held that the Plaintiff was entitled to the Car parking space at Point P3 in the Lower Ground Floor. Consequently, the Suit of the Plaintiff was decreed in respect of the Car parking and the Defendants were restraint from creating any hindrance/ obstruction in the Parking space at P3 of the Plaintiff

39. **Aggrieved by the partial Decree of the Suit in respect of Car parking in favour of the Plaintiff, the Defendant No.1 Nirmal Singh filed RCA DJ No.71/2017** challenging the part Decree in favour of the Respondent Arun Birla.

40. The **learned District Judge** in the impugned Judgment dated 11.12.2017, observed that there was an inter-se dispute between the Defendant No.1 and 2 in respect of inclusion of Car Parking in the Sale Deeds and also in their inter-se Agreement. It was also noted that in the Sale Deed Ex.PW1/4 the words "individual parking on Ground Floor" was written by hand which was a clear interpolation. When this Sale Deed itself was under challenge, no reliance can be placed on this document and the subsequent documents/Sale Deed executed to recognize the right of the Plaintiff to any parking slot. It was observed that these photographs had been filed only on 09.03.2016 while the Suit had been filed way back in 2008. The photographs were held to be non-contemporaneous and the Plaintiff could not derive any advantage from these photographs.

41. It was further noted that Defendant No.1 in his testimony had deposed that he did not know what was written in the Written Statement or the Affidavit, but his statements made in the cross-examination were ignored by the learned Trial Court, when it concluded that Defendant No.1 had admitted his signatures on the Sale Deed Ex.PW1/4. Furthermore, DW1 had explained in his evidence that there is something over written at point C, which was not a cutting but words written in hand referring to individual car parking. Therefore, Sale Deed Ex.PW1/4 had formed the basis for recognizes any right of the Plaintiff qua the parking space. The photographs Ex.DW1/P4 and P5 were also referred to which show that when Plaintiff and Deshraj Saluja had tried to park their cars to see whether their cars could be parked in the said spaces, in consonance with the Mediation proceedings and they had immediately thereafter removed the same, which could not have been brushed aside by the Trial Court.

42. These events transpired subsequently when there was a mediated settlement dated 11.11.2013, but it was not acted upon. There could not have been a mention of this mediated Settlement in the pleadings, as it was a subsequent event.

43. It was thus, concluded that the Plaintiff could not have claimed a right to car

parking in the Lower Ground Floor, on the basis of Sale Deed Ex.PW1/4 when it was under a cloud and the issue of its authenticity and credibility, was pending before the competent Court. *Consequently, the **Appeal was allowed** and the Suit of the Plaintiff decreed partly granting relief of right to park the car in the Lower Ground Floor at Point 3 and restraining Defendant No.1 from creating any hindrance/obstruction in the use of space, **was set aside.***

44. **Aggrieved**, the Plaintiff / Appellant, Arun Birla has filed the present **Regular Second Appeal under Section 100 read with Order XLII of CPC, against the Judgment and Decree dated 11.12.2017 of the learned District & Sessions Judge, dismissing the Suit.**

45. The **grounds of challenge** are that the facts and the evidence, have not been appreciated in the right perspective. It has not been considered that there was no cutting in the Sale Deed executed between Arun Birla and Kavita Jain and the words "*individual car parking on Ground Floor*" which had been hand written in the Sale Deed, had been counter signed by Defendant no.1 who had admitted in his cross-examination that Appellant Arun Birla had nothing to do with the dispute between Defendant No.1 and Defendant No.2 and also that Plaintiff was not even in the picture at the time when the inter-se dispute between the Defendants arose.

46. There was no evidence led by Defendant no.1 to show that he had never sold the car parking to the erstwhile respective owners, from whom the property had been purchased by the Appellant. Furthermore, the Defendant No.1 had admitted that his Counter-Claim "of not selling the car parking to the erstwhile owner," was rejected by learned Arbitrator in the Arbitration Award. The Respondent No.1 had challenged the Award under **Section 34 Arbitration and Conciliation Act** and has already availed the remedy available to him under the law, **which had been dismissed** and the **Appeal preferred before this Court, had also been rejected.** His subsequent Suit for Declaration, was barred under law.

47. Furthermore, the admission of Defendant No.1 in his cross-examination that he had sold the parking area to the erstwhile respective owners from whom the Appellant had purchased the property, has also not been appreciated. The Defendant No.1 further admitted in his cross-examination that he had converted the Guard Room, Kitchen and one Car parking and had given them to the tenants, who were carrying on commercial activity.

48. Mere pendency of the subsequent Civil Suit by Defendant No.1 ought not have been the basis to conclude that the parking area had been transferred. Furthermore, this Suit for Declaration was filed in the year 2016, only to create confusion and to obtain favourable orders. The Appellate Court thus, erred in law by setting aside the Decree by relying upon a subsequent Suit which is barred by limitation.

49. It is further submitted that the Sale Deed executed in favour of the Appellant, was well within the knowledge of Defendant No.1 since the year 2008,

a fact admitted by him in his cross-examination. The subsequent Civil Suit filed by Defendant No.1 is hopelessly barred by limitation and also by law.

50. The only fact for reversing the Judgment of the learned Civil Judge in the Appeal was that the subsequent filing of Suit for Declaration, which finding is perverse and the Plaintiff/Appellant could not have been non-suited on this ground especially when the subsequent Suit for Declaration is barred on the principle of *res judicata* and constructive *res judicata*. Furthermore, the Defendant No.1 had never challenged the Sale Deed of the Appellant from 2008 till 2015 and such objection cannot in any way stand in the way of recognition of the right of the Appellant to the car parking.

51. Furthermore, without any evidence, the learned District Judge has come to the conclusion that the photographs of the Car of the Appellant being parked in the dispute space, was taken at the time of Mediation. It has not been considered that Defendant No.1 had never taken this stand that the photographs pertains to the time of entering into the Mediation Settlement. Moreover, the Defendant No.1 had admitted that Photograph Ex.DW1/P3 reflected the motor-cycle of the Appellant being parked in the Parking area of the Ground Floor.

52. It is submitted that the findings by the Appellate Court which rest essentially on the Suit for Declaration filed by Defendant No.1 in 2016, is perverse and baseless and is liable to be set aside.

53. The ***proposed Substantial Question of Law*** in the Regular Second Appeal are as under:

(1) *Whether the Appellate Court was wrong in relying upon the subsequent suit filed by the respondent No.1, as the said suit was never become part of the pleading before Ld. Trial Court?*

(2) *Whether the Appellate court was wrong in relying upon the subsequent suit filed by the respondent No.1, as the said suit is barred by law of limitation and Appellate court ought not to have considered the said subsequent suit?*

(3) *Whether the Appellate Court is wrong in coming to the conclusion that the title of the appellant is under cloud, irrespective of the fact that the title document has been proved in a court of law as a credible document?*

(4) *Whether the appellate court have overlook the jurisdictional fact that the respondent No.1 never challenged the sale deed of the appellant during the pendency of the suit filed by the appellant and hence subsequent suit filed by the respondent is barred under order 2 Rule 2 CPC?*

(5) *Whether the Appellate court was wrong in relying upon the subsequent suit filed by the respondent No.1, as the said suit is barred by principle of Res-Judicata and Constructive Res-Judicata?*

(6) *Whether the Appellate court can go into the question and record its finding on the fact, when there were no pleading in respect of it and during course of*

trial, evidence was not led with the object of meeting such plea?

(7) Whether the Appellate court had failed to consider the valuable material on record and has failed to discharge its judicial obligation having substantial impact on the rights of the appellant?

54. It is, therefore, submitted that the impugned Judgment and Decree dated 11.12.2017 of the Appellate Court may be set aside.

55. The **Appellant in his written submissions** has relied on the grounds as stated in the Appeal.

56. The **learned Counsel for the Respondent in the written submissions** has submitted that the First Appellate Court being the final Court of fact, had done a comprehensive re-appreciation of the oral and documentary evidence and has set aside the findings of the learned Civil Judge on three fundamental and inter-related aspects, which go to the root of the matter.

57. The *first* is the absence of possession, as the Plaintiff had failed to establish lawful continuous and settled possession over any specifically identifiable car parking space on the date of institution of the Suit. The material including photographs were found to be insufficient and unreliable to prove the possession at the relevant time.

58. *The second ground* is that there was a cloud over the title since the claim of the Plaintiff was based on the recital in the Sale Deed which was not free from cloud. The competency to convey exclusive rights in the Lower Ground Floor area was seriously disputed thereby rendering the claim of the Plaintiff legally uncertain and incapable of being accepted on face value.

59. *Thirdly*, there was an active and *bona fide* challenge to the Plaintiff's title which was not illusory or superficial, but was consistent and bona fide challenge by the Defendant through counter-claim and independent proceedings. On the cumulative consideration of the aforesaid aspects, the First Appellate Court has rightly interfered and set aside the partial Decree granted by the learned Trial Court.

60. It is further submitted that this being a Regular Second Appeal under Section 100 CPC, the scope of consideration is confined to *Substantial Question of Law arising from the impugned Judgment*. The findings of the Appellate Court unless shown to be contrary to law or unsupported by evidence, ordinarily do not want interference. The conclusions of the Appellate Court are based on due appreciation of the evidence on record and legal principles governing the grant of injunction.

61. The Respondent has asserted that institution of a separate Declaratory Suit by the Defendant, constitutes a legitimate exercise of substantive civil rights and cannot be treated as a procedural impropriety. It is settled that where a document relied upon by the Plaintiff creates a cloud over the rights of another

party, such party is entitled to receive affirmative relief by way of Declaration in the independent proceedings. The mere fact that such proceedings were initiated, does not disentitle the Defendant from contesting the Plaintiff's entitlement to Injunction in the present Suit.

62. It has been further explained that in the Counter-Claim filed before the Arbitrator in the year 2008 against Defendant No.2, the Respondent/ Defendant No.1 had specifically disputed the validity of the Sale Deed and the alleged incorporation of Parking rights therein. The learned Arbitrator, however, declined to adjudicate upon the said Counter-Claim on the ground of lack of jurisdiction and no relief was granted in this regard.

63. It clearly demonstrates that the Respondent had consistently and bona fide disputed the Plaintiff's alleged entitlement at every stage and *the inability to secure adjudication was only on account of jurisdictions limitations and not on merits*. The institution of independent proceedings, thereafter, were thus a legitimate exercise of his legal rights and cannot be construed as disentitling the Respondent to contest the present Suit.

64. It was further submitted that the Declaratory Suit filed by the Defendant, was dismissed on account of deficiency of Court Fee which was procedural in nature and was not an adjudication on the merits of the challenge raised to the Plaintiff's claim. The Defendant/ Respondent being a Senior Citizen suffers from multiple medical ailments and has limited financial means and was unable to comply with the requirement of payment of additional Court Fee within time. Such dismissal, however, neither invalidated the Plaintiff's alleged title nor precluded the Defendant from continuing to dispute the legal efficacy and scope of the purported transfer of exclusive parking rights.

65. The burden continues to be on the Plaintiff to establish a clear enforceable entitlement as well as lawful possession on the date of institution of the Suit. The Respondent has relied upon *Balkrishna Dattatraya Galande vs. Balkrishna Rambharose Gupta & Anr.* Civil Appeal No.1509 of 2019, wherein it is held that the Suit for Permanent Injunction under Section 38 Specific Relief Act, the Plaintiff must establish actual and physical possession over the Suit property as on the date of institution of the Suit.

66. The Supreme Court in *Ramji Rai vs. Jagdish Mallah* (2007) 14 SCC 200 reiterated that possession as on the date of filing of the Suit, is a sine qua non for grant of Decree of Permanent Injunction.

67. The Supreme Court in *Anathula Sudhakar vs. P. Buch Reddy* (2008) 4 SCC 594 has authoritatively laid down the general principle that a mere Suit for Permanent Injunction is not maintainable in the circumstances when a Declaratory relief or recovery of Possession is mandatorily required in the facts of given case.

68. The mere filing of a Permanent Injunction when there exists a substantial

and genuine cloud on the right of the Plaintiff to seek Parking rights exists, simpliciter Suit for Permanent Injunction was not maintainable.

69. Similar observations were made by the Supreme Court in *S. Santhana Lakshmi & Ors. vs. D. Rajammal*, SLP (Civil) No.18943 of 2024 and reiterated by the Supreme Court in *Jharkhand State Housing Board vs. Didar Singh* (2019) 17 SCC 692.

70. The learned Appellate Court has re-appreciated the evidence and has correctly observed that the learned Trial Court had misdirected itself in treating the inconclusive documentary recitals and post dispute photographs as determined to prove of entitlement and possession. The findings are well reasoned, evidence based and do not suffer from any perversity or jurisdictional error.

71. The re-evaluation of pure findings of fact and substitution of conclusions as sought by way of this present Regular Second Appeal is not permissible and is not within the limited scope of interference in the Regular Second Appeal. *It is claimed that no substantial question of law survives for consideration and the Appeal deserves to be set aside.*

Submissions heard and record perused.

72. The *Substantial Questions of Law* were framed by this Court on 09.10.2018, as under:

(i) *Whether the respondent/defendant No.1 was entitled to, instead of in his defence to the suit of the appellant/plaintiff taking a plea impugning the documents on the basis of which the appellant/plaintiff was claiming a right, file a separate suit **therefore and whether the appellant/plaintiff could be deprived of the relief in the suit merely for the reason of institution of the other suit.***

(ii) *Whether the **First Appellate Court was justified, for the reasons given at internal page 17 of the judgment, to interfere with the findings of fact of the Suit Court.***

73. This Suit pertains to a dispute in regard to **one car parking space** on the Lower Ground Floor of the Property in-question, which the Plaintiff, Sh. Arun Birla, claimed to have purchased *vide* Sale Deed dated 11.07.2008. It is not in dispute that the property in-question was owned by Defendant No.1, Sh. Nirmal Singh, who entered into an Agreement with Defendant No.2, Sh. Yashwant Jain, for demolition of the existing construction on the said plot and for reconstruction of the entire Property from the Lower Ground Floor till Third Floor.

74. Defendant No.1, Sh. Nirmal Singh and Defendant No.2, Sh. Yashwant Jain, entered into an *Advance Receipt-cum-Agreement to Sell and Purchase dated 13.04.2005* Ex.DW-1/1, wherein the entire terms of construction and the purchase of the floors were agreed and determined. In the said Agreement, it

was noted that Sh. Nirmal Singh had agreed as under:

*"And whereas the First Party has further agreed to sell, convey, transfer and assign to the Second Party / his nominee and the Second Party / his nominee has agreed to purchase the Upper Ground Floor, First Floor, Second Floor portions, each consisting of furnished three Bed Rooms, Drawing / Dining, Kitchen, Toilet-cum-bath along with all fittings, fixtures & proportionate undivided, right to use common entrance, passage, staircase, services & facilities provided in the building and **individual space for three car parking on ground level** & easement attached thereto on the said property, with all easements, rights and appurtenance attached thereto, (hereinafter referred to as the said Property) unto the Second Party and the Second Party has agreed to purchase the said property, for a total sale consideration of Rs.69,00,000/- (Rupees Sixty Nine Lacs Only).*

And WHEREAS upon the aforesaid assurance of this First Party / First Party and the Second Party has agreed to purchase the said property from the First Party, on the following agreed terms and conditions of this Agreement."

75. Defendant No.2, Sh. Yashwant Jain, invoked arbitration in respect of this Agreement to Sell. Undeniably, *Defendant No.1 Sh. Nirmal Singh, executed the Sale Deed dated 12.07.2006 Ex.PW-1/4 in the name of Smt. Kavita Jain, Nominee of Defendant No.2, in respect of Second Floor of the Property in question.* In this Agreement to Sell, while describing the Suit Property, i.e. unfinished Flat on Second Floor, it was described that it comprised of three Bed Rooms, Drawing / Dining, Kitchen, two Toilet-cum-bath, Balcony with proportionate, undivided, indivisible rights in the land underneath together with the right to use common entrance, passage, staircase, submersible pump facility as provided in the building and the easements attached thereto. The words '**one individual big car parking on the Lower Ground Floor**' was inserted with pen. The entire claim of Defendant No.1 was that there was an interpolation in the Sale Deed executed in favour of Ms. Kavita Jain, as he had never agreed to sell one big car parking space on the Lower Ground Floor. He asserted that he was an illiterate person and the Clause had been inserted fraudulently.

76. It is not in dispute that the construction of the property was carried out in terms of Agreement to Sell, but thereafter, disputes arose between Defendant Nos.1 and 2 and Defendant No.2 invoked the Arbitration, before whom Defendant No.1 Sh. Nirmal Singh, filed a Counter-claim challenging that there was no Agreement in respect of the three car parking, in the Lower Ground Floor.

77. The said **Counter-claim of Defendant No.1 was dismissed by the learned Arbitrator**, and Defendant No.1 failed to succeed in his objections under Section 34 of Arbitration and Conciliation Act, 1996, and further in the Appeal, preferred against the dismissal of the objections under Order XXXIV CPC.

78. Not succeeding in the Arbitration proceedings, Defendant No.1 filed a Suit for Declaration to claim that there was no Agreement of Selling the car parking along with the three individual Floors. However, it has not been denied that this Suit had been filed much in 2016, after the dismissal of the Appeal to the Arbitration Award, to challenge the Agreement to Sell dated 13.04.2005.

However, this Declaratory Suit has also been dismissed.

79. Defendant No.1 though asserted that he never agreed to sell a big car parking space and there was an interpolation in the First Sale Deed executed by him in favour of Ms. Kavita Jain, and that, being an illiterate person, he been taken advantage of, however, as already noted above, *all his endeavours to challenge this Sale Deed, met with no success.*

80. Furthermore, in the original Agreement to Sell dated 13.04.2005 Ex.DW-1/1 between Defendant Nos.1 and 2, *it was specifically agreed that the three Floors, i.e., 1st, 2nd and 3rd Floor, would have one big car parking space each in the Lower Ground Floor.* When this was the original understanding and the Agreement between Defendant Nos.1 and 2, it was wrongly asserted by Defendant No.1 that there was an interpolation in regard to mentioning of the car parking in the Sale Deed executed by him in favour of Ms. Kavita Jain / Nominee of Defendant No.2.

81. **Learned Civil Judge had rightly appreciated the documents** and held that in fact, this Sale Deed in favour of Ms. Anita Lubana had been duly signed on each page by both Mr. Nirmal Singh as well as Ms. Anita Lubana and only much later, he had tried to unsuccessfully challenge the Sale Deed.

82. It is significant to observe that the property had been purchased by Ms. Anita Lubana vide the Registered Sale Deed dated 27.06.2007 Ex. PW1/5 from Ms. Kavita Jain and thereafter, by the Plaintiff Mr. Arun Birla vide Sale Deed dated 11.07.2008 Ex.PW1/6. *In the Sale Deed of Ms. Anita Lubana and Mr. Arun Birla, it has been clearly typed in running in their respective Sale Deed, that sale of the flat was along with one car parking in the lower ground floor.*

83. **Therefore, learned Civil Judge has rightly held that the Plaintiff was entitled to car parking space in the Lower Ground Floor.**

84. However, the learned Appellate Court heavily relied upon the challenge of Defendant No.1 to the Sale Deed before various forums and the pendency of the challenge to the Sale Deed before the Court and also the pendency of the Civil Suit. ***However, all litigation including Civil Suit have been decided against Defendant No.1, thereby establishing Plaintiff's right to have one car parking in the Lower Ground Floor.***

85. In view of these findings and also the subsequent events, *it is evident that the findings of learned District Judge in the impugned Judgment were patently perverse and there was no reason to interfere with the well-reasoned Judgment of the learned Civil Judge or deny the car parking space to the Plaintiff.*

86. In light of the aforesaid discussions, impugned Judgment and decree dated 11.12.2017 of the learned District and Sessions Judge is hereby, set aside and **the Judgement and Decree dated 20.07.2017 of learned Civil Judge is restored.**

87. Accordingly, the Appeal is **allowed** and disposed of, along with the pending Applications.