

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

+ **RFA No.383/2002**

% **1st September, 2011**

SHRI. AMAR CHAND & ORS. Appellants
Through: Ms. I.Swaroop, Adv.

VERSUS

SHRI CHANDER BHAN AND ORS. Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

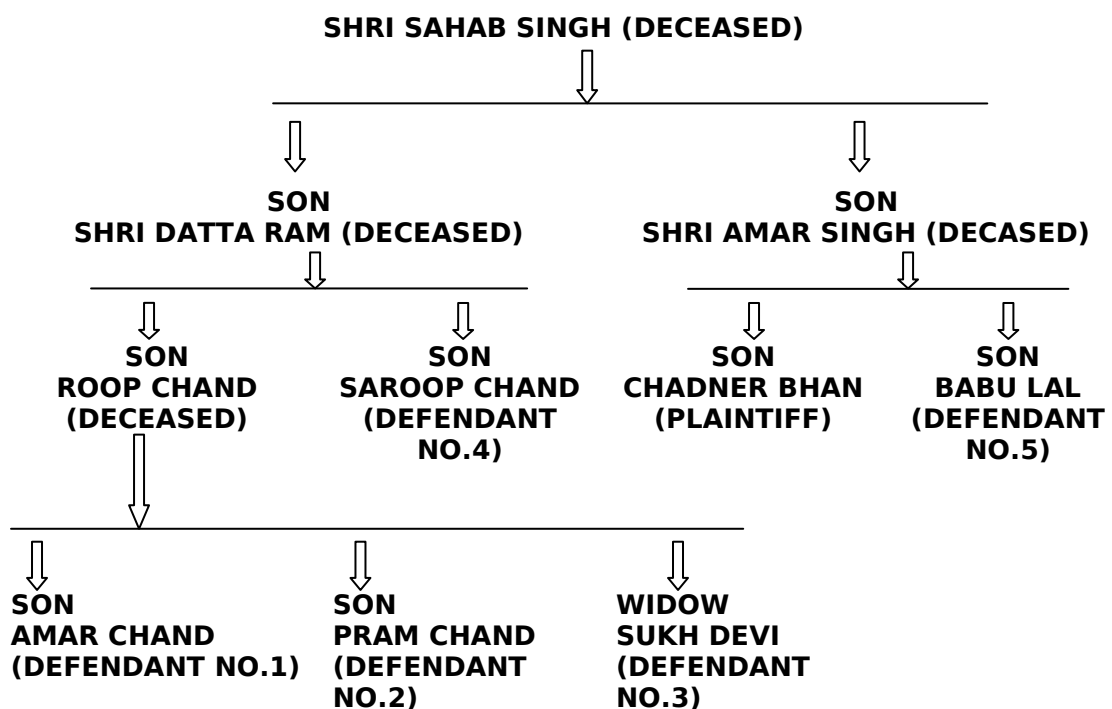
VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 is the impugned judgment of the Trial Court dated 22.1.2002, and by which judgment the Trial Court has decreed the suit of the respondent no.1/plaintiff by declaring that the respondent no.1/plaintiff was the 1/4th owner of the property no.105-A, Village Begumpur, New Delhi-17.

2. The facts as alleged in the plaint were that the suit property though purchased in the name of Sh. Roop Chand, (who was represented by his legal heirs being the defendants no.1 to 3), however the property was purchased with the joint funds of the nominal owner Sh. Roop Chand,

of the plaintiff/Sh. Chander Bhan and defendant no.5/Sh. Babu Lal. Plaintiff and defendant no.5 are brothers. The stand of the appellants/defendants no. 1 to 3 before the Trial Court was that the property was in fact purchased by their father Sh. Roop Chand from his own funds and therefore the plaintiff had nothing to do with the ownership of the suit property. It was also further pleaded that the plaintiff wrongly contends that his portion of the property was in fact built by him and the property was built and constructed by the monies of late Sh. Roop Chand.

3. In order to appreciate the relationship of the parties, the following family tree would be relevant:



4. The basic issue before the Trial Court, and also so argued before this Court, was whether the suit property was exclusively owned by Sh. Roop Chand, predecessor-in-interest of the appellants/defendants no.

1 to 3 or whether the suit property was in fact the property of Roop Chand only to the extent of 50% and 50% interest therein was of the plaintiff and defendant no.5, i.e. $1/4^{\text{th}}$ each of the plaintiff and the defendant no.5.

5. The main evidence which was relied upon by the respondent no.1/plaintiff before the Trial Court was an affidavit dated 6.4.1972, Ex.PW1/2, and which was an affidavit executed by Sh. Roop Chand in which he admitted that $1/4^{\text{th}}$ share of the suit property belonged to the plaintiff/respondent no.1. The affidavit also contains an admission that the property was actually purchased with the joint funds of Sh. Roop Chand, the plaintiff/Sh. Chander Bhan and the defendant no.5/Sh. Babu Lal. Besides the factum of execution and proof of the affidavit, Ex.PW1/2, the respondent no.1/plaintiff relied upon the records of Municipal Corporation of Delhi (MCD), which showed that the property was mutated in the joint names of plaintiff, defendant no.5/Sh. Babu Lal and Sh. Datta Ram, father of Sh.Roop Chand. The record from the Municipal Corporation of Delhi was summoned and got proved through the witness of the MCD who deposed to the factum of the affidavit, Ex.PW1/2 of Sh. Roop Chand existing in the records of the MCD, the property thereafter having been mutated in the name of plaintiff/Sh.Chander Bhan, defendant no.5/Sh.Babu Lal and Sh. Datta Ram father of Sh.Roop chand. The survey report of 1983 showing assessment of the portion of the property of the plaintiff as self-occupied and owned property was filed and also that subsequently the plaintiff also applied for inter se mutation of the property as between him and his brother, defendant no.5/Sh. Babu Lal

vide document Ex.PW1/9 of 1996. The relevant issues in this regard as framed by the Trial Court for decision were issue nos. 2, 4 and 5 and which read as under:-

“2. Whether the suit property has already been partitioned?
OPP.

4. Whether the property NO.105-A, is a joint property of the parties or self acquired of the defendant no.1 to 3? Parties.

5. Relief.”

6. While dealing with these issues, the Trial Court has referred to the arguments of the counsel for the parties and also its conclusions in detail from paras 27 to 64 of the impugned judgment. Since there is an extensive discussion running into almost 37 paragraphs, I would seek to reproduce only some of the certain relevant paras, which reproduce the arguments of counsel for the parties and also the conclusions of the Trial Court. These paragraphs are 28, 29, 34, 38, 39, 40, 41, 42, 43, 45, 41 (wrongly renumbered), 43 (wrongly renumbered), 44 (wrongly renumbered), 52, 54, 55 & 56 and which read as under:-

“28. Counsel for the plaintiff Shri S.S. Panwar has pointed out that as per the averments made in the plaint, the case of the plaintiff is based on the affidavit dt.6.4.1972. He has further pointed out that PW1 while deposing on oath has stated that affidavit Ex.PW1/2 was executed by Shri Roop Chand on 6.4.1972 in respect of the partition of the suit property. He also indentified the signatures of Shri Roop Chand at point A to C on the said affidavit. He further stated that the said affidavit was got attested by the Oath Commissioner namely Ms. Jaswant Kaur, at Parliament Street, New Delhi.

29. Similarly he pointed out that PW1 has also obviously stated that on 27.4.1963 the property in dispute was purchased from the joint funds of himself, Babu Lal and

Shri Roop Chand for the benefit of joint family. He further stated that he contributed 1/4th amount to the total consideration of Rs.1900/-. He deposed that after the purchase of plot No. 21 measuring 298 Sq.yds., 3-4 rooms were constructed thereon jointly by himself, Babu Lal and Roop Chand. All the four persons had been in actual physical possession of their respective shares since the year 1972. The rest of the portions were constructed on their respective portions by all the parties separately, after the partition. He further said that he has got his ration card, election card from the said address. The electricity bill is also in his name and the same is Ex.PW1/8.

34. Counsel for the plaintiff pointed out that in the affidavit Ex.PW1/2 it is specifically mentioned that the above mentioned plot was purchased with the joint funds of the deponent i.e. Shri Roop Chand, Baby Lal and Shri Chander Bhan Son of Shri Amar Singh. It is further mentioned that the property had been standing in the name of Shri Roop Chand and now he (Shri Roop Chan) intend to give the same to his sons and Shri Babu Lal and Chander Bhan sons of Shri Amar Singh in their equal shares. It is further mentioned that 1/4th share of the said property is transferred in the name of Shri Chander Bhan and Babu Lal each. All the shareholders shall have a separate passage of ingress and outgress to their shares. It is also specified that as to how and in what manner the rest of the portion left in the name of Shri Roop Chand shall be bounded. The said affidavit has been attested by an Oath Commissioner on the same date i.e. 6.4.1972.

38. Counsel for the plaintiff Shr. S.S. Panwar has further pointed out that, (to rebut the contentions of the plaintiff that the affidavit Ex.PW1/2 bears the signatures of Shri Roop Chand); the defendant being the sons of Shri Roop Chand could have produced several document alleged to be bearing the signatures of Shri Roop Chand. But the defendants did not produce any such admitted signatures of Shri Roop Chand despite the fact that (Shri Roop Chand was serving as an employee and was educated person), and hence must have signed several documents during his employment. He pointed out that defendant no.1 to 3 being the sons of Shri Roop Chand were the best persons to know as to which documents Shri Roop Chand has signed during his employment or otherwise. So said fact being in the specific knowledge of defendant no. 2 & 3 they could have easily produced several documents in order to rebut the contention of the plaintiff that the affidavit was signed by Shri Roop Chand. So he pointed out that the

best evidence which defendant no.1 to 3 could have produced in this regard was withheld by them deliberately. So a presumption should be drawn against them in this regard.

39. He further pointed out that defendant no.1 to 3 could have produced admitted signatures of Shri Roop Chand and thereafter could have taken the assistance of hand writing expert in order to give an opinion that the admitted signatures of Shri Roop Chand do not tally with his alleged signatures on the affidavit Ex.PW1/2. Nothing of this kind had been done by defendant no.1 to 3.

40. Counsel for the plaintiff has further drawn attention to the statement of PW5 who is a witness from the house-tax department of MCD. PW5 brought the summoned record. PW5 stated that property No.105-A was assessed to house-tax since the year 1972 and was mutated in the name of Shri Datta Ram, Babu Lal and Chander Bhan. He further stated that Ex.PW5/1 is a letter dt.8.5.1973 sent by Asstt. Assessor & Collector and is addressed to Shri Datta Ram, Babu Lal and Shri Chander Bhan. I have perused the letter Ex.PW5/1. From the perusal of this letter it is revealed that it conveyed to the addresses that the mutation had been made in the name of Shri Datta Ram, Babu Lal and Chander Bhan as prayed for.

41. Other documents were also proved by PW5. Ex.PW5/2 is a notice for enhancement of house-tax, on the basis of enhancement of rateable value. The said notice is of the year 1983-84 and the same is addressed to Shri Datta Ram, Babu Lal and Chander Bhan. The basis of giving said notice was addition in accommodation. Vide the said notice the rateable value of the suit property was proposed to be enhanced from Rs.380/- to Rs.9720/-. Counsel for the plaintiff pointed out that this notice indicates that more construction was made on the portions of the suit plot just before the years 1983-84 and that is why there arose an occasion for the MCD to enhance the rateable value.

42. Ex.PW5/3 is the survey report dt.5.3.1983 which has shown a portion consisting of two rooms, two tin sheds in the occupation of Shri Chander Bhan besides other portions in the occupation of Shri Datta Ram and Shri Babu Lal of the house in dispute. PW5/4 is again a notice dt. 19.3.1992 for proposing enhancement of rateable value from Rs.9610/- to Rs.12,500/-. PW5/5 is again a document proved by PW5 from his record. IT is again a notice from MCD and is addressed to Shri. Chander Bhan and Babu Lal.

In this letter dt.16.2.1989 it is mentioned that dues not paid inspite of the letter, if opposed the case may be field. Vide Ex.PW5/5 the demand for payment of house tax to the tune of Rs.7925/- has been made from Shri Chander Bhan and Shri Babu Lal.

43. Counsel for the plaintiff has further pointed out that during the cross examination of PW5 the document Ex.PW5/D1 to PW5/D3 have been proved. He pointed out that Ex.PW5/D1 is an indemnity bond given by Shri Chander Bhan to the MCD on 5.1.1989. Ex.PW5/D2 is a photo copy of partition deed which bears the signatures of Shri Chander Bhan and Shri Babu Lal. The same is dt.5.1.1989. In this partition deed it is clearly mentioned that the property had been mutually divided and the portion fell to the share of Shri Babu Lal has been described therein.

45. Counsel for the plaintiff further pointed that the version of defendants in their written statement as well as in their respective statements recorded in the Court is that the plaintiff, defendant no.4 and defendant no.5 were the licensees of their father Shri Babu Lal and had been residing in a portion of the house in the said capacity. He pointed out that if such would have been the case Shri Babu Lal or defendant No.1 to 3 would have challenged the mutation before the MCD and would not have slept over it on this aspect for a period of 20 years.

41. He further pointed out that DW1 to DW3 have categorically stated that the affidavit Ex.PW1/2 was never executed by their father/husband. They have even denied the signatures of Shri Roop Chand on the said affidavit. DW1 to DW3 have categorically stated that Shri Roop Chand was not the cashier of the said Society and has never signed the documents Ex.PW2/1 and PW2/2. The said documents do not bear the signatures of Shri Roop Chand.

43. His other contention is that simply the name of Shri Chander Bhan, plaintiff and the other defendants appeared in the record of the house-tax, it would not confer ownership on them. He has drawn my attention to the affidavit Ex.PW1/2 wherein in the first line of the first para, it is mentioned that he purchased plot no.21. Firstly he pointed out that it indicates that if the affidavit would have been dictated at the instance of Shri Roop Chand he would have mentioned that I purchased instead of "he purchased". So the mentioning of the work "he purchased" indicates that the affidavit was drafted at the instance of

the plaintiff and hence is a forged and fabricated document.

44. His second contention is that in para No.4 of the affidavit it is mentioned that Shri Roop Chand intend to give a portion of the said property to his cousin Shri Babu Lal and Shri Chander Bhan. So he pointed out that the said wording indicates that no partition took place between the parties. Rather it indicates that the portion, if any, might have been gifted by Shri Roop Chand to Shri Chander Bhan. He further argued that a gift deed of the value more than RS.100/- is a compulsorily registrable under the Registration Act. He pointed out that the affidavit Ex.PW1/2 being unregistered document does not confer any ownership on the plaintiff and cannot be read in evidence. He further pointed out that no witness has signed the affidavit Ex.PW1/2.

52. PW5/1 is a letter sent by Asstt. Assessor & Collector of the MCD and is addressed to Shri Datta Ram. Babu Lal and Chander Bhan. It is obvious that Shri Babu Lal also must have received this letter besides other persons. Vide the said letter it was conveyed that the mutation of the suit property had been made in the name of aforesaid three persons. The said letter is of the year 1973. So as long back as 1973 Shri Babu Lal the predecessor of the defendants became aware of the fact that the suit property had been mutated in the name of Shri Chander Bhan as well. But he chose not to raise any objection with the MCD in this regard. Thereafter the heirs of Shri Roop Chand i.e. defendant no.1 to 3 also must have become aware of this fact at that juncture. But they have also not raised any objection with the MCD for more than two decades till the date of the filing of the suit i.e. till 1996. Even till date there is no evidence that the defendants have filed any objections to the making of the said mutation in the name of plaintiff Shri Chander Bhan. So the conduct of Shri Roop Chand and his heirs i.e. the defendants indicates that the partition had already taken place.

54. It is the case of the defendants, as well, that the possession of the portion in occupation of the plaintiff was handed over to him in or around the year 1975-76. So the construction prior to 1983-84 in the portion occupied by the plaintiff would have been made by the plaintiff and by none else. Similarly another notice Ex.PW5/3 was given in March 1992 by the MCD proposing to enhance the rateable value from Rs.9610/- to Rs.12,500/-. This fact also indicates that in between the year 1983-84 and the year 1992 some

construction was raised over the suit property and that's why an occasion arose for the MCD to propose the enhancement of the rateable value. During this period as well the plaintiff was admittedly in possession of his portion. So the construction, if any, on the portion of the plaintiff during this period must have been made by him by none else.

55. I also feel the necessity of mentioning here that both these notices Ex.PW5/2 and PW5/3 of the years 1983-84 and 1992 were addressed to the plaintiff Chander Bhan as well beside Shri Babu Lal and Datta Ram. These notices also must have been received by Shri Data Ram or his heirs i.e. Roop Chand and the defendants no. 1 to 3. Even on these two occasions there is nothing on record which may indicate that either Data Ram or his sons Roop Chand or the heirs of Shri Roop Chand i.e. defendants no. 1 to 3 raised any objection before the MCD for treating the plaintiff as one of the co-owners of the suit property.

56. The affidavit Ex.PW1/2 came from the custody of the plaintiff and may or may not be a genuine document. Ex.PW5/D1 is an indemnity bond given by Shri Chander Bhan to the MCD. This document was brought on record during the cross examination of PW5. As this document came from the custody of MCD its genuineness cannot be doubted. Moreover, I must mention here that this document was placed on record at the instance of the defendants during the cross examination of PW5."(underlining added).

7. A reference to the aforesaid paragraphs show that the Trial Court has rightly relied upon the affidavit, Ex. PW1/2 dated 6.4.1972 and the same having been acted upon by seeking and getting mutation done by the plaintiff in the municipal records, and which position prevailed for over 24 years before filing of the suit as enough proof of plaintiff's 1/4th share in the suit property. One of the best methods to determine whether a document is genuine or not, is to see whether the parties have acted upon the same or not. If the document is kept in private possession and not declared to the world, at large and especially to a public authority

there can be valid doubts as to the authenticity of such document. However, the main document being the affidavit, Ex.PW1/2 was of the year 1972 and the witness who appeared from the MCD deposed that this document was on their records. The witness also deposed that pursuant to this affidavit, mutation took place in the joint names of plaintiff, defendant no.5 and Sh. Datta Ram. The witness also deposed that thereafter, the property has continued to remain joint in the records of the MCD till the witness deposed. The witness also deposed that the plaintiff has thereafter applied for sub division of his property individually to a 1/4th share and which sub-division of 1/4th of plaintiff and 1/4th of defendant no.5/Babu Lal was also allowed, however, the same was not implemented because arrears of house tax were not paid. Since the statement of witness from the MCD, PW5 is extremely important and relevant, I would seek to reproduce the complete statement of this witness as under:-

“PW5 SHRI BHAGAT RAM SON OF LATE SHRI SUNDER LAL
AGE 59 YRS.

RECORD CLERK FROM A&C DEPTT. SOUGHT ZONE GREEN
PARK, NEEW DELHI

ON S.A.

I have brought he summoned record of property No.10A Begampur, New Delhi. According to report property No. 105 A is assessed to house-taz since 1972. This property stands mutated in the name of Shri Data Ram, Babu Lal and Chander Bhan in municipal record. The copy of the letter dtd. 8.5.73 is Ex.PW5/1. The notices for enhancement of the assessment of the rateable value were issued to Shri Data Ram, Babu Ram and Chander Bhan for the year 1983-84. The copy of the same notice is Ex.PW5/2. Earlier to this notice was issued in the year 1963. The house-tax has not been paid regularly6 and the approximate sum of Rs.26,000/- stand as arrears of house-tax in the name of Data Ram. Babu Lal nad

Chander Bhan. A survey was conducted by the department of property No.105A Begumpur in the year 1983. The copy of the survey report is Ex.PW5/3. Shri Babu Lal has filed objections against enhancement of rateable value of this property. Notice U/s 124 of DMC Act was also issued to Shri Babu Lal. The mutation was sanctioned in favour of Shri Date Ram, Babu Lal and Chander Bhan on the basis of documents filed by them. Shri Babu Lal and Chander Bhan applied for sub division of separate mutation of property No.F-105A Begumpur, New Delhi. The same was not permitted because the arrears of house-tax was not paid. However, the order regarding division has been passed by Head Clerk on 19.1.1979 and the rateable value in the name of Shri Chander Bhan, Babu Lal and Date Ram has been separately determined in the order for purpose of sub division Notices U/s 126 of DMC Act, 1957 were issued to Shri Data Ram and Shri Babu Lal in the year 1992. The copy of the same is Ex.PW5/4. After assessment the demand was sent to Shri Chand Bhan and Babu Lal about mutation/sub division. Copy of the same is Ex.PW5/5. Shri Chander Bhan son of Shri Amar Singh R/o 105A, Begumpur, New Delhi-17 applied for sub division /individual assessment of property No.105A Begampur vide application dtd. 19.4.1996 received vide entry No.647 dtd. 19.4.1996. Photocopy is already Ex.PW1/9. The matter was considered. However, final division was not effected because the municipal dues were not cleared. Along with the said application the said Shri Chander Bhan filed his site plan. Copy of which is already Ex.PW1/3.

xxxxxx by Shri T.R. Arora counsel for the defendants no. 1 to 3.

It is correct that house-tax of the property is assessed only in the name of the owner. NO document was filed by Shri Chander Bhan, Baby Lal and Data ram regarding the ownership of the property. The copy of the sale certificate is in the name of the property. The copy of the sale certificate is in the name of Shri Roop Chand S/o Shri Data Ram which is in our record. The same is already Ex.PW1/1. The photo copy of affidavit of Shri Roop Chand dtd. 6.4.1972 duly attested by Oath Commissioner is also on our record. The copy of the same is already Ex.PW1/2. The pltf. Has also filed the document of ownership i.e. indemnity bond and ownership. Shri Chander Bhan and Babu Lal filed indemnity Bond and partition deed along with site plan for purpose of sub division of property No.105A Begampur, New Delhi. The copy of the same is

Ex.PW5/D1 and PW5/D2. The site plan is Ex.PW5/D3. It is correct that any person who files the affidavit for the purpose of mutation and house-tax of any property, the same is not done. It is correct that property can be divided between mother and legal heirs. It is correct that the affidavit dtd.6.4.1972 is a photostat copy. It is correct that Ex.PW5/2 is the carbon copy in our record. The original of Ex.PW5/2 has been sent to assessee. It is correct that in Ex.PW5/2 the name of Shri Chander Bhan has been included subsequently at point A. IN the site plan Ex.PW5/D3 at the bottom squate at point A, is in pink colour, B is in Yellow colour and C is in Blur colour. In the photo copy Ex.PW5/D3 the portion C at the bottom has been shown as house of Data Ram. According to record brought by me today there is no other document of ownership of property No.105A except affidavit dtd.6.4.72, indemnity bond and partition deed has been filed by Shri Chander Bhan, Baby Lal and Data Ram. There is no order from Court in our record which shows the partition of property No.105A. It is wrong to suggest that pltf. In collusion with MCD has got the mutation and house-tax assessment in his name in respect of property No.105A Begampur New Delhi to grab the property of defendant No.1 to 3. It is wrong to suggest that I am deposing falsely.”

8. In my opinion, in view of the statement of PW5, who is an independent witness from a public authority, there cannot be any doubt raised to the findings and the conclusions of the Trial Court.

9. Learned counsel for the appellant very vehemently argued the following issues in support of the appeal and for setting aside of the impugned judgment and decree:-

- i) The affidavit dated 6.4.1972, Ex.PW1/2, is a forged and fabricated document to which exhibit number was wrongly given. It was also argued that there is no identification by an Advocate of signatures of Roop Chand on this affidavit, and which sets naught its efficacy.

ii) If the partition of 1972 was allegedly valid, then one of the names which would have come in the house tax records along with the plaintiff/Chander Bhan and the defendant no.5/Babu Lal was of Roop Chand, however, the name of Roop Chand is not found in the house tax record and the name is only of Sh. Datta Ram.

iii) The house tax assessment notice, Ex. PW5/2 for the assessment year 1983-84, is a forged and fabricated document because the name of Chander Bhan/plaintiff has been subsequently added and shown encircled at point A.

iv) The Trial Court has wrongly held that the signatures on the affidavit, Ex.PW1/2 are similar to Ex.PW2/1 and Ex.PW2/2, and in fact, the Trial Court ought not to have taken on the onus of comparison of the signatures, which is best left to a hand writing expert.

v) The affidavit, Ex.PW1/2, being a partition deed, ought to have been registered and since it has not been registered the same cannot have any legal effect.

10. In my opinion, none of the arguments as advanced by the learned counsel for the appellants, though very passionately put, are such that they can disturb the finality of the conclusions/findings of the impugned judgment. Firstly, I have already held that the best way to understand whether the document is genuine or not is to find out whether the document was acted upon. I have already referred to the fact that the document was acted upon immediately after it was executed by it being

given to the MCD and mutation being applied for and obtained on that basis. I have also reproduced the complete statement of the witness, Ex.PW5 from the MCD and as per the record of the MCD as produced by the said witness, right from 1972, affidavit, Ex.PW1/2 is on the record of the MCD, though the original was returned back to the assessee and only the copy of the same was on record. The witness from the MCD referred to and so has the Trial Court to various assessment notices issued, and which show the plaintiff as one of the co-owners of the property. I may at this stage also note that the very fact that construction was raised after 1972 and which is indicated in some of the notices issued by the MCD proposing to increase the rateable value, is also an indication of the ownership of the plaintiff/respondent no.1 of his portion of the suit property. Merely because the signatures on an affidavit are not authenticated by an Advocate, would not mean that the said Ex.PW1/2 cannot be referred to at all. After all whether in the nomenclature and form of an affidavit or otherwise, the said document is a document in terms of the Evidence Act which is a relevant piece of evidence and I do not agree that merely because the signatures of late Sh. Roop Chand were not attested by an Advocate, the affidavit cannot be looked into at all.

11. Further, when this affidavit Ex.PW1/2 was exhibited, no objection was raised to the exhibiting of this affidavit and therefore it does not lie in the mouth of the appellants to today urge that the exhibit mark was wrongly put on the document vide the judgment of the Supreme

Court in the case of ***R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple 2003 (8) SCC 752.***

12. On the issue that the name of Datta Ram appears instead of Roop Chand I feel that Roop Chan himself would have got it so done because Datta Ram was the head of the branch of his side of the family and there is nothing unusual to have the share of the property shown in the name of the head of a the family and this was so to the knowledge of Roop Chand for eight years till his death.

13. Further, the argument of learned counsel for the appellants is that the document in question is a partition deed cannot be accepted because a reference to the contents of the documents shows that it is only recognition of an existing state of facts of the property having been purchased by joint funds and consequently of ownership vesting in different persons, including of the plaintiff. Since the document only recognizes the existing state of facts, the same on its own does not create any right and therefore there was no requirement for registration of the same vide ***Bakhtavar Singh Vs. Gurdev Singh AIR 1988 SC 881.*** In any case, for the sake of arguments even if the affidavit, Ex.PW1/2 is ignored, yet, the very fact that for as many as for 24 years in the house tax record, the plaintiff is shown to be the owner of the property, and which period includes a period of 8 years in the lifetime of Sh. Roop chand, is sufficient to sustain the findings and the conclusions with regard to ownership of 1/4th share in the property being of the plaintiff. That Roop Chand died in 1980 is stated in the present memo of appeal.

14. Of course, the argument as raised by learned counsel for the appellants is correct that the Trial Court should not have taken the onus of comparison of the signatures, more so because the signatures on the disputed affidavit, Ex.PW1/2 and that on Ex.PW2/1 and Ex. PW2/2 are prima facie not wholly identical, however, even if I accept this argument, yet, that does not in any manner shake the overall findings and conclusions of the impugned judgment of ownership of the plaintiff/respondent no.1 as evidenced by the affidavit, Ex.PW1/2 and also the fact of its being acted upon in the records of the MCD for no less than 24 years prior to filing of the suit. Also, adding of the name of plaintiffs subsequently in Ex.PW5/2 in the assessment notice for 1983-84 does not take away the finality of the affidavit Ex.PW1/2 and mutation on that basis.

15. A civil case is decided on balance of probabilities. There are always evidences for and against a party. A civil court carefully scrutinizes the respective evidences and after putting them in a melting pot sees what is the picture which should finally emerge. The Trial Court has held, and to which conclusion I completely agree, that the picture emerges is of the ownership of the plaintiff with respect to 1/4th share in the suit property. The Trial Court has taken one plausible and possible view. Unless the view is illegal or perverse, I need not interfere in the appeal, and I do not propose to do so.

16. In view of the above, I do not find any merit in the appeal. The appeal therefore being devoid of merits is dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

September 01, 2011
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VALMIKI J. MEHTA, J.