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

\+ **Date of Decision: 03.08.2015**

% **RSA 286/2015**

CHAND RAM @ RAM KISHAN ..... Appellant

Through: Mr. J.P. Sengh, Senior Advocate with Ms.Gita Dhingra and Ms. Vanessa Singh, Advocates

versus

BHATERI DEVI & ORS ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

C.M. No.13724/2015

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

RSA 286/2015 & C.M. No.13725/2015

3. The present second appeal is directed against the judgment rendered by the learned Senior Civil Judge – cum – RC (North), Rohini Courts, Delhi in RCA No.11/2014, whereby the Regular First Appeal preferred by the respondents/ plaintiffs against the judgment and decree of the learned Civil Judge-05, Central District, Tis Hazari Courts, Delhi in C.S. No.722/2014 has

been allowed and the said judgment of the Trial Court set aside. The suit of the respondents/ plaintiffs was, accordingly, decreed. Plaintiff No.1 (respondent No.1 herein) Smt. Bhateri Devi is the mother of plaintiffs No.2 & 3 – respondents No.2 & 3 herein, the appellant – defendant No.1, and respondent No.4 – defendant No.2 in the suit. The parties are permanent residents of House No.99, Village Bharola, Azadpur, Delhi.

4. The case of the plaintiffs was that the property bearing No.117, Municipal No.129, Village Bharola, Azadpur, Delhi admeasuring 80 sq. yards was the ancestral property of the parties to the suit. The said property was inherited by the parties to the suit in equal shares after the death of Sh.Bhim Singh, husband of respondent No.1 and father of the appellant and respondents No.2 to 4 on 04.06.1975.

5. The parties to the suit had joined together and filed a suit for possession in the Delhi High Court, bearing Suit No.73/1986 titled as "*Smt. Bhateri Devi & Others Vs. Rohtash Singh & Another*". The said suit was, subsequently, transferred to the District Court. The appellant requested the respondents, who were co-owners of the suit property, to execute a Power of Attorney in his favour so that he may look after the proceedings in the aforesaid suit in the High Court, and the respondents may be saved from attending the Courts. Believing upon the said representation of the appellants, all the respondents, who are the mother and real brothers of the appellant, executed a Power of Attorney in favour of the appellant. The plaintiffs stated that they did not realize the mala fide intention of the appellant behind the idea of execution of Power of Attorney. The plaintiffs stated that the appellant requested them to come to the office of the Sub-

Registrar for execution of Power of Attorney in his favour. In good faith, and believing the version of the appellant, the respondents went to the office of the Sub-Registrar on 11.06.1993 to execute the Power of Attorney specifically for the purpose of enabling the appellant to conduct the proceedings in the said suit. The plaintiffs signed the document as directed by the appellant, believing that they all were signing upon the Power of Attorney in favour of the appellant, thereby authorizing him to look after the proceedings of the said case and to appear on their behalf in the said suit. The plaintiffs stated that they were incapable of understanding English language and they signed the document as per the directions of the appellant and the same was got registered. The document was not read over and explained to the plaintiffs by anybody.

6. The plaintiffs stated that the aforesaid suit "*Smt. Bhateri Devi Vs. Rohtash Singh & Another*" was decided and possession of the property was received by the plaintiffs in that suit, i.e. the plaintiffs in the present suit, the defendants, and Smt. Prakasho Devi in execution proceedings. Plaintiffs disclosed that there is one shop in the suit property bearing No.129 in which plaintiffs No.2 & 3 were running a Sweet Meat Shop on the ground floor and, on the first floor, some labour of plaintiffs No.2 & 3, and the son of defendant No.1 were residing. Plaintiffs No.2 & 3 were running their business and earning their livelihood peacefully.

7. On 12.10.2007, the defendant No.1/ appellant came to the said shop and directed the plaintiffs No.2 & 3 (respondents No.2 & 3) to vacate the shop immediately by removing their entire goods from the same. The plaintiffs objected, whereupon the appellant stated that he is the sole owner

of the suit property, and that the other legal heirs of late Shri Bhim Singh had relinquished their shares in the suit property way back in the year 1993. The plaintiffs confronted the version of the appellant, and to substantiate the same, the appellant showed them the relinquishment deed dated 09.06.1993, which was registered before the Sub-Registrar on 11.06.1993 vide registration No.3734 in Additional Book No.1, Volume No.6192 at pages 144 to 145 dated 11.06.1993. The plaintiffs stated that the Defendant No.1/ appellant fraudulently got the said relinquishment deed executed and registered, and the same was kept as a top secret upto 12.10.2007. They stated that he never disclosed the execution of the said relinquishment deed at any time prior to 12.10.2007.

8. The plaintiffs further stated that they called upon the appellant to declare the aforesaid relinquishment deed as a false and void document, because the same was got signed by him with the understanding that the same was merely a Power of Attorney, only to look after the suit preferred against Rohtash Singh & Another, and since the contents of the relinquishment deed were never disclosed by the appellant to the plaintiffs with mala fide intentions. However, the appellant did not heed to the efforts made to mediate through common relatives.

9. The plaintiffs stated that respondent No.4/ defendant No.2 was also ready to challenge the relinquishment deed by filing a suit, but defendant No.1/ appellant cleverly offered half share from the said property to him, and out of greed and upon the verbal offer made by the appellant, the defendant No.2 refused to come forward with the plaintiffs to join them as plaintiffs in the suit. Consequently, respondent No.4 was joined as

defendant No.2 in the suit.

10. The plaintiffs sought a declaration against the defendants, thereby declaring the relinquishment deed allegedly executed on 09.06.1993 as null & void, and for cancellation thereof, and further declaring that the plaintiffs, defendants and Smt.Prakash Devi are joint owners of the built up House No.129, measuring 80 sq. yards situated in Village Bharola, Azadpur, Delhi. An injunctive relief was also sought by the plaintiffs thereby seeking a restraint against the defendants from interfering in the peaceful possession of the ground floor and one room on the first floor of the said property as shown in the attached site plan, and from dispossessing the plaintiff Nos.2 & 3 from the ground floor of the aforesaid property without due process of law.

11. The appellant/ defendant No.1 filed his written statement. It was claimed that the suit was barred by limitation, as the relinquishment deed was executed and registered in 1993, whereas the suit was filed only in October, 2007, and not within three years of execution of the relinquishment deed. On the basis of the relinquishment deed, the appellant/ defendant No.1 claimed that the plaintiffs had no right, title or interest in the suit property. It was claimed that the suit was not properly valued for the purposes of Court Fees and jurisdiction, since Court Fees should have been paid on the market value of the suit property, which was not less than Rs.30 Lakhs. The appellant also claimed that defendant No.2/ respondent No.4 had wrongly been stated to be resident of House No.117, Village Bharola, Delhi, whereas he was putting up at House No.99, Village Bharola, Delhi. The appellant/ defendant No.1 claimed that the suit property was earlier in

possession of Sh.Rohtash Singh Sisodia, son-in-law of plaintiff No.1, i.e. the mother of the other parties, who was carrying on his *'Halwai'* business in the said premises since 1972-73.

12. Since a dispute arose, the parties to the present suit and Smt. Prakasho Devi filed a Civil Suit bearing No.73/1986 for possession and damages on 06.01.1986 against Sh.Rohtash Singh and Smt.Shakuntala, daughter of plaintiff No.1, who is the wife of Sh. Rohtash Singh. The appellant claimed that he is the eldest brother, and his other three brothers were not doing any regular job and had no funds to prosecute the civil suit against Sh.Rohtas Singh Sisodia in this Court. They had, thus, relinquished their right, title and interest in the suit property in favour of the appellant vide relinquishment deed dated 11.06.1993, so that the appellant could conduct the proceedings in the civil suit with his own funds. The appellant claimed that he conducted and prosecuted the civil suit by spending large sums of money till its possession was obtained through orders of the learned ADJ, Delhi on 29.05.2002. Thereafter, the appeal preferred by the defendants in the said suit before this Court was also contested. The appellant claimed that no money was spent by the plaintiffs, i.e. the respondents herein, or Smt. Prakasho Devi – sister of the appellant and respondents No.2 to 4, to prosecute the suit from 1986 till its possession was taken on 29.05.2002, or even thereafter.

13. The appellant claimed that Smt. Prakasho Devi – sister of the appellant and respondents No.2 to 4, did not execute any Power of Attorney, although she was one of the plaintiffs in the said civil suit. The appellant claimed that the plaintiffs and defendant No.2 were informed, and were fully

aware of the registered release deed dated 11.06.1993. Even the Sub-Registrar, at the time of registration of the release deed, confirmed the contents of the said release deed to the executants, i.e. the plaintiffs and defendant No.2. The photographs of the releasers and releasees were also affixed on the release deed. The original release deed was in possession of the plaintiff Sh. Jagdish Raj (plaintiff No.2) from the very beginning.

14. There is no dispute between the parties that possession of the disputed premises was taken on 29.05.2002. After taking possession of the disputed premises, the appellant and his three brothers, i.e. respondents No.2 to 4, started joint *'Halwai'* business in the name and style of Kataria Sweet Corner on the ground floor of the said premises. The appellant claimed that the first floor remained in his possession as the owner. He claimed that he had been living on the first floor of the disputed property since before the filing of the Civil Suit No.73/1986 against Sh. Rohtash Singh and his wife. The said suit was filed only regarding the ground floor.

15. Defendant No.1 stated that he and his three brothers jointly started *'Halwai'* business in June 2002, and all of them used to carry on the business and equally shared in profits, i.e. $1/4^{th}$ each, from the business. This position continued for a few months. Subsequently, the brothers with mutual understanding continued doing business in the disputed property one-one month each. Thereafter, two brothers did business, in turn, for six months each. Lastly, a written agreement dated 28.10.2006 was executed between the brothers (Exhibit PW-1/D-1) in order to avoid any confusion. As per the terms & conditions of the said agreement (Exhibit PW-1/D-1), it was agreed that Sh. Jagdish and Sh. Rajender, namely plaintiffs No.2 & 3

shall jointly do business in the disputed property for a period of one year with effect from 01.11.2006 to 01.11.2007, and Sh. Chand Ram @ Ram Kishan and Dinesh, i.e. appellant/ defendant No.1 and defendant No.2 shall thereafter carry on business for one year.

16. The defendant No.1 further claimed that plaintiffs No.2 & 3 had agreed to clear all dues towards electricity & water and workers payment. He further claimed that plaintiffs No.2 & 3 had agreed to pay Rs.300/- per day each to defendants No.1 & 2 as well as Rs.100/- per day to Smt. Bhateri Devi but they did not do so. The appellant/ defendant No.1 claimed that the plaintiffs had become dishonest and they had filed the suit on false averments before expiry of period of one year as they did not desire to handover the business on 01.11.2007. They also claimed that plaintiffs No.2 & 3 did not regularly pay Rs.300/- per day to him and gave only Rs.61,900/- up to 31.10.2007. Defendant No.1 claimed that the monthly income from *'Halwai'* business is about Rs.1 Lakh after deducting all expenses and employees salary. He also claimed that after expiry of one year from 01.11.2006, he took over the business in the disputed business and started doing his own *'Halwai'* business.

17. Defendant No.1 claimed that on 05.12.2007, in the morning, plaintiffs No.2 & 3 and defendant No.2, in collusion and conspiracy with one another and with the help of their associates, came to the disputed shop to take over possession of the business in the premises by force. He claimed that he and his two sons requested plaintiffs No.2 & 3 not to create a dispute and not to take over possession by illegal means. However, the said plaintiffs were adamant. Consequently, as the situation was grave, defendant No.1 closed

the shutter/ door of the disputed shop from inside and reported the matter to the Police. The Police took away defendant No.1, his two sons as well as plaintiffs No.2 & 3 and defendant No.2 to the Police Station. In the meantime, the shutter of the disputed shop was locked by the plaintiffs No.2 & 3 from outside. Consequently, no business is being carried out in the shop in question since 15.12.2007 by any of the parties.

18. On the basis of the aforesaid pleadings, the Trial Court framed the following issues:

> *"1) Whether suit of plaintiff is not barred by law of limitation? OPP*
>
> *2) Whether suit of plaintiff is properly valued for the purposes of Court Fees and jurisdiction? OPD*
>
> *3) Whether suit of plaintiff is entitled to decree of declaration as prayed for? OPP*
>
> *4) Whether suit of plaintiff and defendants are joint owners of the suit property? OPP*
>
> *5) Whether the plaintiff is entitled to a decree of permanent injunction as prayed for? OPP*
>
> *6) Relief"*

19. The parties led their respective evidence. The plaintiffs examined Sh.Jagdish, plaintiff No.2 as PW-1, who tendered his affidavit by way of evidence towards examination-in-chief as PW-1/A. He also exhibited the relinquishment deed dated 09.06.1993 as Ex.PW-1/1. Defendant No.1 led his evidence by way of affidavit towards examination-in-chief as Ex.DW-1/A. He produced Sh. Om Singh as DW-2 and filed in evidence several

documents.

20. On the issue of limitation, the Trial Court returned a finding in favour of the plaintiffs, while treating the same as a preliminary issue, vide order dated 03.03.2011. This order was upheld by this Court vide order dated 23.03.2012. Consequently, it stands established that the suit was filed by the plaintiffs within the period of limitation.

21. Issue No.2, i.e. with regard to the valuation of the suit for the purpose of Court Fees and jurisdiction, was decided against the plaintiffs. The Trial Court held that the suit for cancellation should have been valued as per the market value of the property, and ad valorem Court Fee should have been paid on the said valuation. The Trial Court further observed that the plaintiffs "admittedly" were not in possession of the suit property since 15.12.2007. It was held that they had failed to seek relief of possession of the suit property and should have valued the said relief on the market value of the suit property.

22. Issues No.3 & 4 were dealt with together by the Trial Court. The Trial Court held that there is a presumption of validity in respect of the registered documents, and the burden lay on the plaintiffs to rebut the same. The Trial Court held that the plaintiffs had failed to bring on record any such evidence to rebut the presumption. They had merely made averments in the plaint and in their depositions, which does not discharge the burden cast upon them. Consequently, the plaintiffs were held not entitled to the relief of declaration as sought by them. Since the plaintiffs and defendant No.2 executed the relinquishment deed in favour of the defendant No.1/ appellant,

it could not be said that the plaintiffs and defendants are joint-owners of the suit property. Thus, issues No.3 & 4 were decided against the plaintiffs.

23. Issue No.5, i.e. whether the plaintiffs are entitled to decree of permanent injunction, was decided against the plaintiffs on the premise that the plaintiffs were not in possession of the suit premises and they had not come to the Court with clean hands by disclosing the compromise agreement dated 28.10.2006 Ex. PW-1/D1 by holding that the plaintiffs' suit was based on falsehood. They were denied the relief of permanent injunction as sought by them.

24. The plaintiffs then preferred the first appeal, as aforesaid, before the learned Senior Civil Judge-cum-RC (North), Rohini Courts, Delhi. By the impugned judgment, the First Appellate Court has reversed the findings returned by the Trial Court on material issues and, by returning findings in favour of the plaintiffs, decreed the suit. The First Appellate Court dealt with the issues No.3 & 4, which were most material issues, in the following manner:

> *"14. Now I shall first of all deal with issue No. 3 and 4.*
>
> *Ld. Trial court had disposed off the said issues against the plaintiffs and in favour of defendants thereby concluding that the relinquishment deed was validly executed. The reasons which weighed before the Ld. Trial Court for so concluding are as under:-*
>
> *a) Suit filed against Rohtash Singh Sisodia was preferred in the year 1986 whereas the relinquishment deed in question was executed in the year 1993 i.e. after lapse of seven years. There was no evidence led by the plaintiffs' side that they were attending the Court proceedings and they intended to avoid the*

same and i.e. the reason for the execution of the document.

b) No evidence was led that pursuant to the execution of the deed the defendant No. 1 had signed the pleadings/documents as general power of attorney holder on behalf of other parties.

c) Thirdly, plaintiff No. 1 had executed power of attorney Ex. PW1/19 in favour of defendant No. 1 on 25.01.1991. Plaintiff No. 2 and 3 were minors at the time of filing of the suit, thus there was no occasion/need to execute any alleged power of attorney. Reliance was also placed on the judgement of Prem Singh Vs. Birbal (2006) 5 SCC 353.

15. Now in reference to the aforesaid reasons, in my opinion, Ld. Trial Court had not considered the evidence in proper perspective/ the circumstances pointed out by the plaintiffs and have rather blamed the plaintiffs for not following up the case which they had filed against Rohtash Singh Sisodia. Now first important fact which needs to be underscore is that earlier also i.e. prior to 1993 the plaintiff No. 1 had also executed a power of attorney Ex. DW1/19 in favour of defendant No. 1 - which probablises the fact that it was not unusual to execute such documents during the subsistence of the suit pending before the Hon'ble High Court. The said special power of attorney was executed on 25.11.1991. The witness to the said power of attorney is Chand Ram himself and one Abdul Khaliq. Chand Ram is the beneficiary/in a manner empowered and still he has chosen to become the witness – it suggests that their mother had implicit faith and trust in him/was prosecuting the suit/had assumed the mantle in as much as he was the eldest son.

ii. The second important aspect is that the relinquishment deed in question is of the year 1993. I fail to understand, if such a document existed/was voluntarily executed what prevented defendant No. 1 not to assert the same/incorporate the same in the pending proceedings or more importantly seek even the mutation of the property in his name. It is understandable that till the year 2002 the property i.e. the shop at the ground floor was in possession of Rohtash Singh Sisodia however, once the *possession was taken in and around 2002 still why defendant No. 1 had not acted upon the same and continued to hide the said relinquishment deed Ex. PW1/1. There is no reason as to why he had not exercised any ownership rights in regard to the said property.*

16. The third important point is that the defendant No. 1 had also not staked his claim to the mesne profits/amount which was deposited before the Hon'ble High Court by the said Rohtash Singh Sisodia. The said mesne profits/amount was apportioned equally. There is no reason as to why the defendant No. 1 would agree for sharing of the said amount once he had specifically spelled out a case in the pleadings that the suit property was relinquished for the reasons that the plaintiffs and defendant No. 2 were finding it difficult to finance/to sustain the expenses for prosecuting the suit against Rohtash Singh Sisodia.

17. The fourth and most important point is that inspite of the fact that the shop is claimed to be exclusively owned by the defendant no.1, he had allowed use of the same as a joint property in as much as it is his case that all of them i.e. brothers were running the same, subsequently on monthly basis/six month basis and later on two brothers each were running the same on yearly basis. The usage of the property/the fact that the property was treated to be a property of all the brothers, in my opinion, to a large extent denudes the plea that by virtue of the relinquishment deed the property was transferred absolutely. This fact i.e. the property being treated as a common property of all carries great weight and even outweigh the reasons penned down by the Ld. Trial Court for dismissing the case. The only inescapable conclusion is that the deed/document in question was never intended to be even any sort of relinquishment deed/sought to be acted upon by the defendant No. 1.

18. Coming to the document in question i.e. Ex. PW1/1 the same was executed on 09.06.1993 and registered on 11.06.1994 before the Sub Registrar. In page No. 1 it mentions a *'relinquishment deed' in favour of Chand Ram by the plaintiffs and defendant No. 2. Further it is stated that Bhim Singh, father of the parties and husband of plaintiff No. 1 expired on 04.06.1975 leaving behind five legal heirs. Curiously there is no mention of daughters. Rather they have been excluded/not named. [It is also apparent on record that Bhim Singh had two daughters one Prakasho Devi and Shakuntala Devi.]*

Ld. counsel for the defendant No. 1 urged that had it been the intent to get a General Power of Attorney in that situation, Prakasho Devi would also have joined the plaintiffs and defendant No. 2. Since she is not a party to the said deed it suggests/substantiate the defendant No.1's version that it was a genuine relinquishment deed.

Now to my mind, this is a fallacious argument. For all practical purposes the legal heirs i.e. the male legal heirs and mother were to get the property and the females were not to be given any share in the property. It is to be noticed herein that all the parties were contesting a litigation against their brother in law and real sister/son in law and daughter before the Hon'ble High Court. In such a situation, it is quite probable that the females were not given any share in the property or sought any relinquishment from them. It is also the case of the defendants that subsequent to the recovery of the possession of the shop the brothers only were dealing with the same/appropriating the amount received on account of carrying out a 'halwai' business.

19. It is also otherwise highly unlikely that the relinquishment deed as projected by the defendant No.1 would only be in reference to one property. In the eventuality there would have been any release of shares/redistribution of shares then it ought to have been, in all probabilities with reference to all the properties and also there would have been any element of reciprocity/adjustment which is not the case herein.

20. Now another important aspect which needs to be noted is that the order dt. 03.03.2011 was affirmed by the Hon'ble High Court/were findings on issue No. 1. It is evident that in the *given set of facts and circumstances, the said findings on the point of limitation also goes adverse to the defendant No. 1 on these issues as well. If the suit is held within time, the only conclusion is that the document Ex. PW1/1 was fraudulently obtained.*

21. That being the situation, findings on issue No. 3 and 4 are not properly based on appreciation of evidence and are unsustainable. Same are set aside. These issues are decided in favour of the plaintiffs."

25. On Issue No.2, i.e. on the aspect of valuation of the reliefs and payment of Court Fees, the learned First Appellate Court held that the release deed/ relinquishment deed in question was without consideration. The First Appellate Court also held that even according to the appellant/ defendant No.1, the suit property after its vacation by Sh. Rohtash & Another was used as a shop by each of the brothers, i.e. plaintiffs No.2 & 3 and the two defendants. Consequently, it could not be said that the plaintiffs were out of possession of the shop in question.

26. The First Appellate Court also took notice of the fact that the mesne profit/ amount deposited before this Court by Sh.Rohtash & Another was also apportioned between the parties to the suit. The Court held that the plaintiffs had only to seek cancellation of the document (Ex.PW-1/1), and for that purpose they should have valued the suit upon the consideration stated in the document as per the ratio of the judgment reported as ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Others***, (2010) 12 SCC 112. The Court held that, in substance, the suit of the plaintiff was for seeking a decree of cancellation of the relinquishment deed. Consequently, the said issue was decided in favour of the plaintiffs and against the defendants.

27. Issue No.5, i.e. whether the plaintiffs were entitled to decree of permanent injunction as prayed for, was also decided by the Appellate Court in favour of the plaintiffs by holding that there was no concealment of a material fact by the plaintiffs and, thus, it could not be said that they were not entitled to seek the discretionary relief of injunction. The First Appellate Court held that the substantive relief sought by the plaintiffs was a declaratory relief/ cancellation of Ex.PW-1/1, and the injunctive relief was only incidental, flowing from the main relief, i.e. their possession be not disturbed. The First Appellate Court held that Ex.PW-1/1 was surreptitiously gotten signed by plaintiffs and defendant No.2 on the pretext of it being a General Power of Attorney. Further, concealment of fact is fatal, only when a party actively and intentionally suppresses some information, which has a vital bearing on the outcome of the case, with a view to get a favourable relief. In the present case, the failure of the plaintiffs to make a disclosure regarding Ex.PW-1/D1 – which was brought on record by the appellant/ defendant No.1 himself, had not caused any prejudice to him.

28. The submission of learned senior counsel for the appellant Mr. J.P. Sengh, firstly, is premised on issue No.2, namely with regard to the valuation of the suit and payment of Court Fees by the plaintiffs. Mr. Sengh submits that plaintiffs had admitted in their replication that the defendant No.1/ appellant had placed his locks on the shop on the ground floor of the suit premises on 15.12.2007 at about 06:00 a.m. in the morning, and disturbed the right of the plaintiffs intentionally with mala fide intentions. Thus, admittedly, the plaintiffs were not in possession of the suit property.

Consequently, it was incumbent for the plaintiffs to value the suit property at the market value, and pay ad valorem Court Fees thereon. Mr. Sengh submits that the finding returned by the First Appellate Court on issue No.2 is, therefore, patently illegal.

29. I do not find any merit in this submission of Mr. Sengh. The plaintiffs narrated in the plaint that on 12.10.2007, the defendant No.1/ appellant came to the shop on the ground floor of the property in question and directed plaintiffs No.2 & 3 to vacate the shop immediately. However, the said plaintiffs objected to this threat of defendant No.1. Pertinently, in his written statement, defendant No.1/ appellant himself conceded that under the written agreement dated 28.10.2006 (Exhibit PW-1/D-1) plaintiffs No.2 & 3 jointly started doing business in the disputed property for a period of one year with effect from 01.11.2006. The turn of the defendants to carry on business for the next one year would have commenced only from 01.11.2007. Defendant No.1, himself stated in his written statement:

> "***The plaintiffs became dishonest and filed the above suit totally on false averments before expiry of period of one year as they did not desire to handover the business on 1.11.2007*** *… … … … … However, after expiry of the period of one year from 1.11.2006 the answering defendant took over the business in the disputed premises and started doing his Halwai business.* ***However, on 15.12.2007 in the morning hours the plaintiffs No.2 and 3 as well as defendant No.2 in collusion and conspiracy with one and another as well as with the help of their associates came to the disputed shop to take possession of the business and premises by force. The answering defendant and his two sons who were in the shop doing regular business requested the plaintiffs No.2 and 3 as well as defendant No.2 not to create dispute and not to have***

possession by illegal means but they did not agree and were bent upon to fight and to attack the answering defendant and his two sons. Considering the situation as grave the answering defendant closed the shutter/ doors of the disputed shop from inside and reported the matter to the police. *The police came to the spot and took away the answering defendants and his two sons as well as the plaintiffs Nos.2 and 3 and defendant No.2 to the police station.* ***In the meantime the outer shutter of the disputed shop was got locked by the plaintiffs Nos.2 and 3 and no business is being carried in the said shop since 15.12.2007 by any of the parties***."

(Emphasis supplied)

30. Thus, even as per the appellant/ defendant No.1, at the time of filing of the suit, which was filed on or about 29.10.2007, the plaintiffs were in possession of the suit property. Admittedly, after the filing of the suit, the appellant/ defendant No.1 claimed to take over the business in the suit premises with effect from 01.11.2006, and on 15.12.2007, the premises was locked by the plaintiffs No.2 & 3. Admittedly, since then the shop is lying locked. Thus, it certainly cannot be said that on the date of filing of the suit, the plaintiffs were not in possession of the suit property, or that the suit was not properly valued for the purposes of Court Fees and jurisdiction. Moreover, the subsequent developments leading up to the locking of the shop by plaintiffs No.2 & 3 on 15.12.2007, whereafter the shop is lying locked, clearly militates against the appellants claim that the plaintiffs are no longer in possession of the suit premises. Pertinently, the appellant did not seek any perpetual injunction, or even interim protection of his alleged occupation of the suit premises during pendency of the suit – which would have been claimed, had he been in exclusive and settled possession of the suit property.

31. The next submission of Mr. Sengh is that the relinquishment deed (Exhibit PW-1/1) is dated 11.06.1993, whereas the suit was filed only on or about 29.10.2007, i.e. after a lapse of over 14 years. He submits that the suit was barred by limitation. The issue of limitation was treated as a preliminary issue by the Trial Court, and the finding returned was in favour of the plaintiffs. C.M.(Main) No. 295/2002 preferred by the appellant/ defendant No.1 was dismissed with costs by this Court. This Court in its decision categorically held that the said issue had been finally concluded and it could not be re-agitated before the Trial Court. Thus, the issue of limitation now sought to be raised is not open for the appellant to raise. Moreover, the appellant could not lead any evidence to establish the knowledge of the plaintiffs in respect of the relinquishment deed (Exhibit PW-1/1) prior to 12.10.2007. In fact, the conduct of the appellant, even after the execution of the relinquishment deed (Exhibit PW-1/1) militates against the plaintiffs' knowledge of the said instrument. After the execution of the relinquishment deed (Exhibit PW-1/1), the appellant did not demonstratedly exercise his right over the suit property to the exclusion of the plaintiffs and defendant No.2. No application was moved by him under Order XXII Rule 10 CPC to seek deletion of the plaintiffs and defendant No.2 from the array of plaintiffs in the suit filed against Sh. Rohtash Singh and his wife. That would have been the natural consequence, had the relinquishment deed been openly and consciously executed by the plaintiffs and defendant No.2 in favour of the appellant. Even after obtaining possession of the shop in question in execution proceedings from Sh.Rohtash Singh and his wife, the brothers of the appellant, admittedly, continued to enjoy the suit premises with him jointly. This was so disclosed

by him in his written statement. He did not exercise any right over the suit property, consistent with his claim of exclusive ownership, nor claimed exclusive ownership, or exclusive right to use and enjoy the suit premises. The premises was initially used for running a *'Halwai'* business by all the four brothers and profits were shared equally for a few months. Thereafter, each of the brothers started running the business from the shop in question one month each, and thereafter, two brothers did business in turn for six months each. Admittedly, thereafter the agreement (Exhibit PW-1/D-1) dated 28.10.2006 was executed. Under this agreement as well, all the four brothers were entitled to use the suit premises in terms set out therein. Thus, the conduct of the defendant No.1/ appellant clearly shows that he recognized the plaintiffs and defendant No.2 as equal owners of the suit premises along with him, and that is why they exercised their right to use and occupy the said premises to run their business. In this background, it certainly cannot be said that the suit of the plaintiffs was barred by limitation, as the period of limitation would commence from the date the plaintiffs learnt of the execution of the relinquishment deed (Exhibit PW-1/1), i.e. on 12.10.2007. The suit was filed by the plaintiffs within a matter of few days of their learning of the fraud played upon them by defendant No.1, i.e. on 29.10.2007. It was, thus, clearly within limitation.

32. The next submission of Mr. Sengh is that the findings returned by the First Appellate Court on issues No.3 & 4 is based on mere preponderance of probabilities. In this regard, he submits that the First Appellate Court held that since the plaintiffs had even earlier executed Power of Attorney (Exhibit DW-1/19) in favour of the defendant No.1/ appellant, the fact that they

claim to have executed another Power of Attorney, as desired by defendant No.1/ appellant (which, in fact, turned out to be the relinquishment deed dated 09.06.1993) was probable.

33. I do not find any merit in this submission of Mr. Sengh, or perversity or patent error in the approach of the First Appellate Court in appreciating the evidence and arriving at findings based thereon. In a civil proceeding, issues are decided by applying the yardstick of preponderance of probabilities in the established fact scenario. The Court, on the basis of the evidence brought on record, has to assess as to whether the case set up by the plaintiff, or the defendant, as the case may be, is probable or not, keeping in view the natural course of human conduct. The evidence brought on record as discussed by the First Appellate Court clearly points to the fact that the plaintiffs and defendant No.2 were defrauded by the appellant/ defendant No.1 who was their eldest brother and was, admittedly, following up the suit filed against Sh. Rohtash Singh and his wife.

34. The justification provided by the appellant for the plaintiffs and defendant No.2 relinquishing their valuable rights in the suit property is extremely weak and unconvincing. The appellant has claimed that the relinquishment deed was executed because the plaintiffs and defendant No.2 had no resources to fund the litigation against Sh. Rohtash Singh and his wife. The oblique suggestion of the appellant is that in consideration of the appellant funding the entire litigation against Sh. Rohtash Singh and his wife, the plaintiffs and defendant No.2 relinquished their valuable rights in the very same property, i.e. the suit property in his favour. This plea of the appellant does not appeal to one’s sense of reasoning. In respect of a

property inherited by siblings and their mother on the demise of the original owner, merely to meet the expenses of the litigation, it does not stand to reason that all other co-sharers would give up their right and relinquish the same in respect of the same property, in favour of one person, so that that person may be able to pursue the litigation. If this submission were to be accepted, it would mean that there was nothing to be gained by the plaintiffs and defendant No.2 by giving up their rights in the suit property. If they were not to partake of the benefits of the decree obtained against Sh.Rohtash Singh in the suit property, it would mean that the relinquishment deed was executed by them without any consideration. Viewed from another angle, it would mean that it was the plaintiffs and defendant No.2, who really funded the litigation, as appellant purportedly became the owner thereof, to the exclusion of the plaintiffs and defendant No.2. Pertinently, it is not the case of the appellant that the relinquishment deed is executed by the plaintiffs and defendant No.2 out of love and affection, and for no other consideration.

35. The plaintiffs denied in their replication the claim of defendant No.1 that they had no source of income of their own, and that the entire expenses in litigation against Sh. Rohtash Singh were met by defendant No.1 alone. No evidence on the said aspect was led by the appellant/ defendant No.1 to establish that he alone had personally met the entire expenses incurred in the litigation against Sh. Rohtash Singh. Thus, in my view, there is no infirmity, much less perversity in the findings returned by the First Appellate Court on Issues No.3 & 4.

36. The last submission of Mr. Sengh is that the Appellate Court has taken into consideration the fact that mesne profit/ amount deposited in this

Court by Sh. Rohtash Singh was apportioned between all the parties to the suit – which fact was neither pleaded by the plaintiffs, nor proved in evidence before the Trial Court. It appears that at the appellate stage the said aspect was placed before the First Appellate Court, and that is how the said aspect has found mention in the impugned judgment. The appellant has not disclosed as to how the said fact was brought to the notice of the First Appellate Court. It was for the appellant to make a complete disclosure in his memorandum of appeal, which he has failed to do.

37. Firstly, even if one were to ignore the said fact, it would make no difference to the finding returned by the First Appellate Court on issue Nos.3 & 4, in view of the evidence brought on record and the admitted case of the defendant/ appellant that after obtaining possession of the said premises from Sh. Rohtash Singh, the suit property was equally enjoyed and exploited by all the four brothers and not by the appellant alone, till the filing of the suit.

38. Secondly, it is interesting to note that the appellant does not dispute, as a matter of fact, the position that the mesne profit/ damages deposited by Sh. Rohtash Singh in this Court, were indeed shared between all the four brothers. In his 'Grounds of Appeal' before this Court, the appellant, *inter alia*, states in ground (r): ... ... *if the appellant allowed the mesne profits to be divided equally it does not mean that the respondents did not execute Relinquishment Deed. Moreover the said judgment was not proved before the Ld. Trial Court nor any party was examined on this point as to why appellant agreed to divide the mesne profits*.

39. Thus, I do not find any infirmity, much less perversity, in the impugned judgment passed by the Appellate Court and, in my view, the First Appellate Court has rightly decreed the suit of the respondents/ plaintiffs. The appeal does not raise any substantial question of law for consideration of this Court. The same is, accordingly, dismissed.

VIPIN SANGHI, J

AUGUST 03, 2015
B.S. Rohella