

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

% *Judgment Reserved On : September 28, 2016*
Judgment Delivered On : September 30, 2016

+ **W.P.(C) 8629/2016**

ANIL KUMAR Petitioner

Represented by: Mr.Amit Yadav, Advocate with
Mr.Kaushal Narayan Mishra,
Advocate

versus

REGISTRAR GENERAL HIGH COURT OF DELHI Respondent

Represented by: Mr.Rajiv Bansal, Advocate with
Mr.Chetan Lokur, Mr.Anurag
Tripathi, Ms.Tanya Jolly and
Mr.Nitish Chaudhary, Advocates

W.P.(C) 7863/2016

HARGURVARINDER SINGH JAGGI Petitioner

Represented by: Mr.Pradeep Bakshi, Advocate with
Mr.Hardik Luthra, Advocate

versus

REGISTRAR GENERAL, HIGH COURT OF DELHI Respondent

Represented by: Mr.Rajiv Bansal, Advocate with
Mr.Chetan Lokur, Mr.Anurag
Tripathi, Ms.Tanya Jolly and
Mr.Nitish Chaudhary, Advocates

W.P.(C) 8212/2016

DHARMENDER RANA AND ORS. Petitioners

Represented by: Mr.D.K.Sharma, Advocate with
Mr.Abhinav Sharma, Advocate

versus

HIGH COURT OF DELHI THR REGISTRAR
GENERAL HIGH COURT OF DELHI

..... Respondent

Represented by: Mr.Rajiv Bansal, Advocate with
Mr.Chetan Lokur, Mr.Anurag
Tripathi, Ms.Tanya Jolly and
Mr.Nitish Chaudhary, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. On December 18, 2015 the Delhi High Court invited applications from eligible candidates to fill up 9 vacancies by direct recruitment to the Delhi Higher Judicial Service by holding the Delhi Higher Judicial Examination-2015. The advertisement inviting applications disclosed to the eligible candidates that the examination would be in two successive stages : (i) an objective type with 25% negative marking for selection to the main examination; and (ii) a descriptive examination. Three vacancies were in the general category. Two were reserved for members of the scheduled castes and four were reserved for the members of the scheduled tribes.

2. The objective type (preliminary examination) was conducted on April 03, 2016. There were 125 questions which had to be answered. On April 08, 2016 the Delhi High Court put on its website the model answer keys simultaneously inviting objections, if any, to the model answers uploaded on the website. Many candidates filed objections to a host of

questions. The result was declared on August 26, 2016 and simultaneously it was uploaded on the website that all objections were rejected.

3. Above captioned three writ petitions were filed, with there being a sole petitioner in W.P.(C) No.7863/2016 and W.P.(C) No.8629/2016 and six writ petitioners in W.P.(C) No.8212/2016.

4. Answers to 18 questions or questions by themselves have been attacked in the three captioned petitions, but during hearing of the writ petitions, as recorded in the order dated September 28, 2016, challenge to 9 questions was given up.

5. Out of the 9 questions which were under challenge, qua one question no objection was filed when the answer key was uploaded on the website of this Court on April 08, 2016 calling upon the eligible candidates, who had given the examination, to file objections if they so desire, and therefore in view of the decision dated September 05, 2004 in W.P.(C) No.4976/2014 Salil Mahenshwari Vs. High Court of Delhi & Anr. by a Division Bench of this Court we hold that challenge to said question (which would be question No.102 in booklet series 'P') is not maintainable. Thus we decide the issue pertaining to the 8 questions which survive.

6. We note the 8 questions and simultaneously note the options provided in the question booklet. The correct answer as per the answer key is put in bold. The same would be:-

“Q.1 ‘A’, a Hindu, on, 2nd January, 2016 dies intestate leaving a wife, two unmarried daughters and a son of his wife from an earlier marriage. His estate will be inherited.

1. Equally, with the wife, the two unmarried daughters and the son of the wife from an earlier marriage each getting 1/4th share.

2. **In three parts, with the wife and the two unmarried daughters getting 1/3rd share each and the son of the wife from earlier marriage not getting a share.**

3. Only by the son of the wife from the earlier marriage, with the wife having a right of maintenance and the two unmarried daughters having a right of maintenance and marriage expenses, only.

4. Only by the wife and the son of the wife from an earlier marriage equally with the two unmarried daughters having only a right of marriage expenses and maintenance.

Q.2 A child born of a marriage which is voidable under Section 12 of the Hindu Marriage Act, 1955 but before passing of a decree declaring it as a nullity has a share not only in the properties of his father but will also have a share out of share of his father in the ancestral properties.

1. True

2. **False**

Q.3 A fires a gun at a wedding reception leading to the death of one of the guests, whom he did not intend to hurt

1. **A has committed murder**

2. A did not intend killing the guest and thus has committed no offence

3. A has committed culpable homicide not amounting to murder

4. None of the above

Q.4 Ramesh who has an account with a branch of the State Bank of India in Dubai draws a cheque on SBI Dubai in favour of Abdullah, a resident of Dubai. The cheque is signed in Kochi and handed over to Abdullah in Kochi. The cheque when presented by Abdullah through his bank to the SBI Dubai is dishonoured. The remedy available to Abdullah is:

1. **To proceed against Ramesh in accordance with the law applicable in Dubai as regards dishonoured cheques.**
2. To follow the procedure under Section 138 of the Negotiable Instrument Act, 1881.
3. To approach the Government of India for permission to file a complaint against Ramesh.
4. To proceed against the State Bank of India in the court of the magistrate in India within whose jurisdiction its head office located.

Q.5 The winner of the Oscar Award for Best Actor in a Lead Female Role in 2015 is:

1. Cate Blanchett
2. Jennifer Lawrence
3. Helen Mirren
4. **Brie Larson**

Q.6 Plaintiff files a suit under Order 37 of CPC. The Court issues ordinary summons for framing of issues and the said summons along with copy of the plaint are served on the defendant and the defendant files a written statement on the date for which summons were issued. The plaintiff realising the mistake committed by the Court applies for summons under Order 37 CPC to be issued.

1. The written statement having been filed, the suit will be tried as an ordinary suit.

2. The defendant having along with the summons for framing of issues received the copy of the plaint showing it to be under Order 37 of CPC and having within the prescribed time not entered appearance, the suit will be decreed.

3. **The Court will correct its mistake by issuing fresh summons under Order 37 of CPC.**

4. The plaint will be rejected.

Q.7 Suit filed by 'A' for recovery of possession of immovable property is defended by 'B' contending that though he was in adverse possession of immovable property for a period of five years only prior to the institution of the suit but before the said five years 'C' was in adverse possession of the property to the knowledge of 'A' for a period of 20 years and thus the suit filed after 25 years of first 'C' and then 'B' being in adverse possession of the property was barred by time.

1. B' is not entitled to claim the benefit of the period for which 'C' was in adverse possession and the suit is within time.

2. **'B' is entitled to the benefit of the period for which 'C' was in adverse possession and the suit is barred by time.**

Q.8. 'A' enters into an Agreement at Delhi with a builder/developer company having registered office at Delhi for purchase of a flat in a multi-storied residential building under construction at Gurgaon and makes payment of 50% of the agreed construction linked sale consideration to the builder/developer at Delhi and the builder/developer deals with 'A' from its registered office at Delhi. Upon disputes arising 'A' institutes a suit for specific performance of the Agreement against the builder/developer in the Courts at Delhi. The builder/developer contends that the Courts at Delhi have no territorial jurisdiction and that its Branch Office at Gurgaon is

implementing the said project and its registered office at Delhi dealt with 'A' only because 'A' was at Delhi and on 'A's request. A preliminary issue to the said effect is framed.

1. The Courts at Delhi have territorial jurisdiction and the preliminary issue will be decided in favour of 'A'.

2. The Courts at Delhi do not have territorial jurisdiction and the preliminary issue will be decided in favour of builder/developer and plaint returned to 'A' for filing in the Court of appropriate territorial jurisdiction.

3. The issue cannot be decided as a preliminary issue and requires evidence to be led.”

7. Before dealing with the objections and the reasons in support thereof it would be useful to note the guiding principles on which objections to the answer key or the question itself need to be tested.

8. In the decision reported as (1983) 4 SCC 309 Kanpur University Vs. Sameer Gupta, laying down the scope of judicial review pertaining to an answer key, the Supreme Court had observed as under:-

“We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text books, which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect.

17.Certain books are prescribed for the Intermediate Board Examination and such knowledge of the subjects as the students have is derived from what is contained in those text-

books. Those text-books support the case of the students fully. If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalize the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong.”

9. In its decision dated September 05, 2004 W.P.(C) No.4976/2014 Salil Maheshwari Vs. High Court of Delhi & Anr., reflecting upon the aforesaid observations of the Supreme Court in Kanpur University’s case (supra), in paragraph 12 it was held as under:-

“Three propositions of law emerge from Kanpur University (supra), on the permissible extent of judicial review of an answer key. First, the answer key must be presumed to be correct and must be followed, even in the face of a mere doubt, second, only if a key answer is demonstrably wrong, in the opinion of a reasonable body of persons well-versed in the subject, it may be subject to judicial review, and third, if the answer key is incorrect beyond doubt, then a candidate cannot be penalized for answers at variance with the key. This position was reiterated in Manish Ujwal and Ors. v. Maharishi Dayanand Saraswati University and Ors., (2005) 13 SCC 744 and DPS Chawla v. Union of India, 184 (2011) DLT 96.”

10. Dealing with the first question objected to, as noted above the correct answer, as per the answer key to the first question, is the second option provided. The objection is to the sentence construction comprising the question. It was argued that a plain literal reading of the question would make it clear to the reader that ‘two unmarried daughters and a son’ i.e. three persons, would be referable by birth to the wife from an earlier marriage and thus the second option, which is based on the understanding that the son of the wife was from the earlier marriage of

the wife would be the wrong option because a reader of the question would not so understand the question.

11. The question reads : *‘A’, a Hindu, on, 2nd January, 2016 dies intestate leaving a wife, two unmarried daughters and a son of his wife from an earlier marriage. His estate will be inherited.*

12. To understand the objection we break the sentence into three parts by placing serial No.(i), (ii) and (iii). It would be : (i)‘A’, a Hindu, on, 2nd January, 2016 dies intestate (ii)leaving a wife, (iii)two unmarried daughters and a son of his wife from an earlier marriage. His estate will be inherited.

13. Concededly this could be one way to read the sentence i.e. that ‘A’ was survived by a wife and two unmarried daughters and a son of his wife from an earlier marriage. So read, it would mean that the two daughters and the son were of the wife from an earlier marriage. If so understood the answer would be that only the wife inherits the estate. But this is not the option provided for in the answers.

14. The question could equally be read, and we give the breakup: (i)‘A’, a Hindu, on, 2nd January, 2016 dies intestate (ii)leaving a wife, (iii)two unmarried daughters (iv)and a son of his wife from an earlier marriage. His estate will be inherited.

15. If so read, the answer key which lists option ‘2’ as the correct answer would be correct.

16. The instructions to the candidates guide : ***‘Choose the most appropriate option and darken the circle completely, corresponding to (1), (2), (3) and (4) against the relevant question number.’*** It is trite that if it is desired that the product must be an approximation it does not detract

from the validity of the product. It is clear that the candidates were made aware that the answer was in the options provided and not outside. That is why the candidates were informed that they had to *choose the most appropriate option*. A question, as a formula is likely to suffer the defect of imperfectness – as all things human are, and therefore the instructions.

17. Given the instructions to the candidates i.e. to choose the most appropriate option; and given the four options to the question, the possible dilemma of a reader was easily resolvable by reading the question in the second manner illustrated by us herein above, for the reason if read in the first manner and there being no option available to be chosen, the second manner of understanding was the only possible meaning of the question.

18. Further, plain English language guides us that the phrase '*of his wife from an earlier marriage*' is to be read in conjunction with the word '*son*' immediately preceding the phrase and not with the words '*two unmarried daughters and a son*'.

19. Challenge to the second question is premised not on the process of reasoning which was adopted for the first question. The challenge was with reference to the decision of the Supreme Court reported as 2011 (11) SCC 1 Revanasiddappa & Ors. vs. Mallikarjun & Ors..

20. The judgment relates to sub-section 3 of Section 16 of the Hindu Marriage Act 1955. It notes five earlier judgments on the point; taking the view that the right of a child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12 would be unaffected qua property of only the parents i.e. such a child would not have any right in the ancestral property in the hands of the father. The

judgment disagrees with the said line of reasoning and terminates with the opinion that the matter be placed before the Hon'ble Chief Justice of India for consideration of constituting a larger Bench.

21. The judgment in question does not overrule the existing law and thus we find that the second option i.e. the answer '*False*' is correct.

22. Pertaining to the third question, the answer key gives the answer that 'A' has committed murder. The argument of the petitioners was that the correct answer would be that 'A' has committed culpable homicide not amounting to murder i.e. option No.3 and for which the decision of the Supreme Court reported as 2014 Cri.L.J. 6 Kunwar Pal vs. State of Uttrakhand was cited. Said case was of using a gun while celebrating a marriage; a practice in some communities in India. At a marriage function a celebratory firing resulted in the death of one person. The Supreme Court held that whilst attributing intention had to be ruled out, the knowledge that the accused was likely to cause death could not be ruled out and that the offence would be culpable homicide not amounting to murder within the meaning of Section 304 Part II of the Penal Code.

23. We find that similar view as was taken by the Supreme Court was taken by two Division Benches of this Court. The decisions are reported as 2005 (79) DRJ 329 (DB) Nehru Jain Vs. State NCT of Delhi and 168(2010) DLT 139 (DB) 188 State Vs. Mukesh Kumar Gupta. The decision in Nehru Jain's case (supra) focused on illustration 'D' appearing under Section 300 of the Penal Code which reads: *A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.* The Division

Bench contrasted the eminently dangerous activity with reference to the knowledge which could be attributed to the doer of the act and opined that analogy where a bullet was fired from a fire arm could not be made to a loaded cannon being fired into a crowd of persons. The decision held that unless there was evidence that the person who used the fire arm indiscriminately was at a close proximate distance from the crowd and the fire was directed towards the crowd in total disregard for the safety of those in the crowd, the knowledge attributable would be of the lesser degree and hence the offence would be punishable under Section 304 Part-II of the Penal Code. The decision guides that unless the incriminating circumstance of : (i) close proximate distance from the crowd and (ii) positive evidence of the fire being directed towards the crowd, was established the knowledge attributable of the lesser degree. The question at hand does not state facts contemplated by law to make the offence one of murder and thus qua the third question we conclude by holding that the correct answer is option 3 and not option 1.

24. As regards the challenge to the fourth question, Section 135 of the N.I.Act is a complete answer. The illustration to the Section by itself is a complete answer. The illustration reads : *A bill of exchange drawn and endorsed in India, but accepted payable in France, is dishonoured. The endorsee causes it to be protested for such dishonor, and gives notice thereof in accordance with the law of France though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.* The main Section reads : *Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or endorsed, the law of the place where it is made*

payable determines what constitutes dishonor and what notice of dishonor is sufficient.

25. Option '1' is the correct answer and the argument that even option '2' is available and therefore both option '1' and '2' would be the correct answer is rejected.

26. The fifth question objected to is that **Brie Larson** was the winner of the Oscar Award for best actor in lead female role in the year 2016 and that **Julianne Moore** won the Oscar Award for best actor in lead female role in the year 2015. The basis of the argument was that a plain reading of the question would mean as to who won the Oscar Award for best actor in a lead female role in the year 2015.

27. The response of the Delhi High Court is that the question concerns the winner of the Oscar Award in the lead female role for a movie which was released in the year 2015. It is urged that an award always succeeds an event and thus Oscar Awards for movies released in a year is announced in the next succeeding year.

28. It is trite that where a plain grammatical construction of a sentence results in no absurdity the sentence has to be constructed giving to it a plain meaning. A plain reading of the question would result in the understanding by the reader that the person posing the question wants to know as to who won the Oscar award for the best actor in lead female role in the year 2015 and not as to who won the Oscar award for the best actor in lead female role for the movies which were released in the year 2015.

29. Therefore, it is our compulsion to hold that none of the options provided is the correct answer, requiring the questions to be deleted with

consequence to flow as per the instructions i.e. 2 marks to be given to all the candidates and if negative marking has reduced the score of a candidate by 0.5 marks, the said reduction to be taken away.

30. The challenge to the sixth question must fail in light of the known and recognized principles of law that a mistake by a Court if causes injury to a party has to be rectified and corrected by the Court.

31. The argument was that the question does not indicate that in the Summary Suit filed, by mistake the Court issued ordinary summons for settling the issues, and thus the third option stated to be the correct answer which proceeds on the assumption that the Court committed a mistake, would not be the correct answer.

32. It is trite that the right to have a suit tried under Order 37 of the Code of Civil Procedure is a substantive right and the plaintiff cannot be divested thereof owing to a mistake by the Court. That a mistake was committed by the Court is inherent in the question inasmuch as the question clearly records that the suit was filed under Order 37 of the Code of Civil Procedure and in spite thereof the Court issued ordinary summons for settling the issues and when this mistake committed by the Court was detected by the plaintiff he applied to the Court for taking corrective action.

33. The seventh question was debated in light of the decision of the Supreme Court reported as AIR 1965 SC 1553 Gurbinder Singh vs Lal Singh. We begin the discussion by noting that Article 64 of the Limitation Act, 1963 replaces Article 142 of the Limitation Act, 1908 and Article 65 of the Limitation Act, 1963 replaces Article 144 of the Limitation Act, 1908. The decision of the Supreme Court in Gurbinder

Singh's case (supra) makes a detailed reference to a decision of the Madras High Court reported as AIR 1922 Mad. 59 Vennam Ramiah vs. Kusru Kotamma & Ors. wherein Article 142 of the Limitation Act, 1908 was under consideration and the issue was whether the law declared in the judgment reported as (1888) 13 AC 793 Agency Company vs. Short was as propounded by Vennam Ramiah and what was the law declared in the decision reported as (1889) 2 Ch.454 Wills vs. Earl. The issue arose with reference to Article 142 of the Limitation Act, 1908 which prescribed that the time from which limitation commences is the date of dispossession. The contention of the appellant that where unlawful possession by a person was followed by unlawful possession by another person, there would be a deemed vesting of possession in the plaintiff when the person first in possession was no longer in possession and thus period of limitation would be reckoned from the date the second person came in possession. On facts it was a case of succession of possession by the defendant through the first person in possession. The Court held that for purposes of Article 142 of the Limitation Act, 1908 there was no deemed vacation of the property and in whatsoever capacity they may be claiming possession as long as there was continuous successive possession limitation would commence from the date of initial dispossession. The Madras High Court did not consider Article 144 of the Limitation Act, 1908 but the two English decisions relied upon concerned the law relating to adverse possession and had held that if a trespasser vacates a property the lawful owner has to take no steps and for purposes of computing the period of limitation the second trespasser would not be entitled to add to his period of trespass the previous period

of trespass. But if it was a case of succession to possession by a subsequent trespasser of the first trespasser and if there was continuity in the possession the period would be reckoned from the initial trespass. The decision of the Supreme Court in Gurbinder Singh's case related to Article 144 of the Limitation Act, 1908, and the Supreme Court distinguish the decision of the Madras High Court on the reasoning that said decision concerned Article 142 of the Limitation Act, 1908, but concerning Article 144 of the Limitation Act, 1908 held that if the defence was of acquiring title by prescription the defendant had to prove continuous, open and hostile possession with assertion of title to the property for a period of 12 years and that if there was succession the period of preceding possession could be taken benefit of by the defendant. The finding in paragraph 10 is the law declared and it reads as under:-

“No doubt, this is an inclusive definition but the gist of it is the existence of a jural relationship between different persons. There can be no jural relationship between two independent trespassers. Therefore, where a defendant in possession of property is sued by a person who has title to it but is out of possession what he has to show in defence is that he or anyone through whom he claims has been in possess in for more than the statutory period. An independent trespasser not being such a person the defendant is not entitled to take on the previous possession of that person to his own possession. In our opinion, therefore, the respondents' suit is within time and has been rightly decreed by the Courts below. We dismiss the appeal with costs.”

34. To understand the law declared we need to picturise the entire backdrop facts of Gurbinder Singh case. The relevant facts were that late

Raj Kaur was in possession of 851 kanal 18 marla of land situated in the former State of Faridkot, with 481 kanal and 7 marla being in her possession as occupancy tenant, of which the Raja of Faridkot was the landlord; and the remaining 370 kanal 11 marla being held by her as adna malik with the Raja of Faridkot being the aala malik. Raj Kaur had two daughters: (i) Prem Kaur and (ii) Mahan Kaur. Prem Kaur had a son Bakshi Singh. Mahan Kaur had two sons : (i) Lal Singh and (ii) Pratap Singh. In the year 1896, Raj Kaur adopted Bakshi Singh, and transferred possession of the entire 851 kanal and 18 marla land to him. In turn, Bakshi Singh transferred a part of the land to Pratap Singh. On February 09, 1916, the Court of Sub-Judge Faridkot, on a suit filed by the Raja of Faridkot invalidated the adoption of Bakshi Singh by Raj Kaur. Thereafter, after the death of Raj Kaur on August 14, 1930, the Raja of Faridkot instituted suits against Bakshi Singh and Pratap Singh for recovery of possession of the land, which suit was decreed on March 12, 1938. The Raja of Faridkot took possession of the land in October, 1938 and subsequently sold the land to Kehar Singh for consideration. Thereafter, Gurbinder Singh and Balbinder Singh obtained a decree for pre-emption of the land against Kehar Singh and consequently obtained possession of the land on June 22, 1950. But before that on October 20, 1948, Prem Kaur instituted a suit for possession of the land against Raja of Faridkot and Kehar Singh on the plea that she was the legal heir of Raj Kaur. Subsequently, Gurbinder Singh and Balbinder Singh were impleaded as parties to the suit while the Raja of Faridkot was deleted as a party. On February 17, 1950, Lal Singh filed a suit for possession of the land against Raja of Faridkot, Kehar Singh, Prem Kaur and Pratap Singh.

In which suit Pratap Singh was transposed as a plaintiff. The Trial Court consolidated both the suits and rejected the claim of Prem Kaur. However, the Trial Court decreed half share in the property to Pratap Singh and Lal Singh. Prem Kaur on the one and Gurbinder and Balbinder Singh on the other, preferred separate appeals against the judgment and decree of the Trial Court. Pratap Singh and Lal Singh preferred cross-objections. The appeals and cross-objections were dismissed. Further appeals and cross-objections in the High Court were likewise dismissed. As a consequence, Gurbinder and Balbinder Singh preferred an appeal before the Supreme Court.

35. Issue before the Supreme Court was whether the suit filed by Lal Singh and Pratap Singh was barred by limitation and whether Gurbinder Singh and Balbinder Singh had acquired title by prescription. According to Gurbinder Singh and Balbinder Singh, the suit instituted by Pratap Singh and Lal Singh was governed by Article 142 of the Limitation Act, 1908 and was barred by limitation while Pratap Singh and Lal Singh contended that the suit was governed by Article 144 of the Limitation Act, 1908 and was not barred by limitation. The Supreme Court opined that in order for Article 142 to be applicable, Gurbinder Singh and Balbinder Singh needed to prove that they were in possession of the property initially and had been dispossessed by Pratap Singh and Lal Singh or someone through whom they claimed or alternatively, that Gurbinder Singh and Balbinder Singh had discontinued possession. According to Court, while Pratap Singh and Lal Singh were claiming the property as heirs of Raj Kaur as per the rules of succession contained in dastur-ul-amal, since it was not pleaded that Lal Singh had ever been in

possession of the land and possession of a part of the land by Pratap Singh was not as an heir of Raj Kaur, but by way of transfer by Bakshi Singh, it could not be said that that Pratap Singh or Lal Singh had ever been in possession of the property as heirs of Raj Kaur. As a consequence, the Court held that Article 142 was not applicable to the case at hand.

36. With respect to the application of Article 144 of the Limitation Act 1908, the Court noted that the period of Limitation under Article 144 was deemed to start '*when the possession of the defendant became adverse to the plaintiff*'. The Court noted that as per the dastur-ul-amal, upon the death of Raj Kaur on August 14, 1930, her daughters Prem Kaur and Mahan Kaur became entitled to the possession of the land. The Court opined that even if it was assumed that Prem Kaur and Mahan Kaur became absolute owners of the land upon succeeding Raj Kaur as had been contended by Gurbinder Singh and Balbinder Singh, then Bakshi Singh and Pratap Singh who were in possession of the land up till October 1938 would be in adverse possession of the land to the true owners. Thereafter, the Raja of Faridkot, who actually entered into possession in October 1938 after obtaining a decree for possession in March 1938, would be adversely in possession to the owners of the land, the surviving heir of Raj Kaur, Prem Kaur and those claiming under her; namely, Pratap Singh and Lal Singh. Mahan Kaur having died on July 13, 1938, Kehar Singh who was a transferee under the Raja of Faridkot and Gurbinder Singh and Balbinder Singh who obtained a decree for pre-emption against Kehar Singh would stand in the position of the Raja as trespassers to the possession of land by Prem Kaur and her heirs.

Therefore, the cumulative period of adverse possession of the Raja of Faridkot, Kehar Singh, and Gurbinder Singh and Balbinder Singh could be relied upon by Gurbinder Singh and Balbinder Singh to claim adverse possession. However, the Court noted that since the possession of the Raja began in October, 1938 and the suit by Lal Singh was instituted in February, 1950, the suit not instituted beyond a period of 12 years as specified under Article 144. The Court rejected the contention of Gurbinder Singh and Balbinder Singh that even the period of possession of the land by Bakshi Singh and Pratap Singh from the death of Raj Kaur in August 1930 up till October, 1938, which was trespass against the possession of the lawful owners of the land, Prem Kaur and Mahan Kaur, ought to be included while determining whether the suit was barred by limitation under Article 144. The Court negated the reliance placed by Gurbinder Singh and Balbinder Singh on the judgment reported as AIR 1922 Mad 59 *Vennam Ramiah v. Kusru Kotamma & Ors.* According to the Court, the decision in *Ramiah's* case (supra) related only to cases where Article 142 of the Limitation Act was applicable, since under Article 142 the onus was on the plaintiff to prove that he had been in possession of the property within 12 years of the institution of the suit. Therefore, even if successive independent trespassers were in possession of the land, thereby excluding the possession of the Plaintiff for a period of more than 12 years, the trespass of successive unconnected independent trespassers would not help the plaintiff prove that he had possession as long as the successive trespass by the independent trespassers was continuous. The Court contrasted this position with the position of law under Article 144 of the Limitation Act, wherein the onus

was on the defendant to prove that he had been in possession of the land for a period of 12 years prior to the institution of the suit and therefore, possession by an unconnected independent trespasser could not be relied upon by the defendant. The Court opined that the phrasing of Article 144 of the Limitation Act whereby the limitation period was deemed to start *‘when the possession of the defendant became adverse to the plaintiff’* and the definition of the term ‘defendant’ under section 2(4) of the Limitation Act which provided that *‘defendant includes any person from or through whom a defendant derives his liability to be used’* clearly supported the view that the defendant could only rely upon his adverse possession or the adverse possession of someone with whom he had a jural relationship, that is, someone through whom he claims, to prove that he had been in possession of land for more than 12 years as required under Article 144. The Court opined that no such jural relationship could be said to exist between independent trespassers and therefore, the period of trespass by an independent trespasser could not be relied upon by the defendant under Article 144 of the Limitation Act. The Court opined that no jural relationship between Bakshi Singh and Pratap Singh on the one hand and the Raja of Faridkot and those claiming under him, namely Kehar Singh, Gurbinder Singh and Balbinder Singh on the other could be said to exist and therefore, they were independent trespassers. Accordingly, the Court held that the suit by Pratap Singh and Lal Singh was within time.

37. Thus, the correct answer provided is wrong and the correct answer would be option No.1 on account of the fact that in the question it is not stated that ‘B’ acquired possession under a jural relationship with ‘C’.

Had the question incorporated the fact that acquisition of possession by 'B' was under a jural relationship with 'C', the answer would have been correct.

38. As regards the last question we find that a similarly worded question came up for consideration in a judgment of this Court reported as 188 (2012) DLT 627 (DB) Gunjan Sinha Jain vs. Registrar General, High Court of Delhi. In view of the conflicting decisions of this Court and the matter awaiting authoritative pronouncement by the Supreme Court it was held that currently the question at hand did not have a definite answer because the position in law was fluid. Option '1' and option '2' given in the instant case were the ones in said case and were held to be non definitive because the position in law was fluid. The question was therefore directed to be deleted.

39. Incorporating the reasoning by a Co-ordinate Bench of this Court concerning said question, which reasoning and decision has attained finality, we direct said question to be deleted and as per instructions two marks to be given to all candidates and if the question was attempted and wrong answer given and as a consequence '0.5' marks deducted, the said deduction be removed.

40. We therefore terminate the discussion and dispose of the petitions directing :-

(i) The answer key qua question No.3 above noted be corrected with option No.3 as the correct answer.

(ii) Question No.5 above noted be deleted with consequence flowing as above indicated.

(iii) The answer key to question No.7 above noted be corrected with option No.1 as the correct answer.

(iv) Question No.8 above noted be deleted with consequence flowing as above indicated.

41. No costs.

CM No.32525/2016 in W.P.(C) No.7863/2016

CM No.34038/2016 in W.P.(C) No.8212/2016

Stay of the ensuing written examination : Delhi Higher Judicial Service Examination-2015 is prayed for in the two captioned civil miscellaneous applications till decision is pronounced in the writ petitions. Since the writ petitions in which the civil miscellaneous applications have been filed have been decided today the two civil miscellaneous applications are disposed of as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

SEPTEMBER 30, 2016

Mamta/dk/skb