

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

+ **RFA No. 985/2018**

% ***Reserved on: 12th December, 2018***
Pronounced on: 17th December, 2018

CHARANJIT LAL PURI (DECEASED) THR LRS & ORS.

..... Appellants

Through: Mr. Daljinder Singh, Advocate
(Mobile No. 9810312623).

versus

MADAN LAL PURI (DECEASED) THR LRS & ORS.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. Appl. Nos. 50930/2018, 50932/2018 and 50934/2018 (for exemptions)

1. Exemptions allowed, subject to just exceptions.

C.Ms. stand disposed of.

C.M. Appl. No. 50931/2018 (for delay in filing) and C.M. Appl. No. 50933/2018 (for delay in re-filing)

2. For the reasons stated in the applications the delays of 3 days in filing the appeal and 60 days in re-filing the appeal stand condoned, subject to just exceptions.

C.Ms. stand disposed of.

RFA No. 985/2018 and C.M. Appl. No. 50929/2018 (for stay)

1(i). This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiffs in the suit impugning the Judgment of the trial court dated 25.01.2018 by which the trial court has dismissed the suit filed by the appellants/plaintiffs for partition, rendition of accounts, *mesne* profits and injunction.

1(ii). The original plaintiff in the suit was Sh. Charanjit Lal Puri who has since expired and he was thereafter represented by his four legal heirs. Thereafter, one of the legal heirs, being legal heir no. 2, who was plaintiff no. 2, namely Smt. Sunita Sapra, expired and now she is represented by her legal heirs.

1(iii). There were a total of four defendants in the suit. The main contesting defendant was defendant no. 1/Late Sh. Madan Lal Puri, the brother of the original plaintiff/Late Sh. Charanjit Lal Puri and also brother of the defendant no.2/sister/Smt. Manorama. Defendant no. 1 expired during the pendency of the proceedings and was substituted by his legal heirs. Defendant no. 2 in the suit was the sister of the original plaintiff/Late Sh. Charanjit Lal Puri and the

defendant no. 1/Late Sh. Madan Lal Puri and she supported the suit of the plaintiff/Late Sh. Charanjit Lal Puri. Defendant no. 3/Sh. Vasudev Goyal and defendant no. 4/Smt. Promila Goyal in the suit were the subsequent purchasers of one property with respect to which partition was claimed i.e. 3/9, Jaidev Park, Rohtak Road, Punjabi Bagh, Delhi.

1(iv). The appellants in this appeal are the Lr's of the plaintiff in the suit. The contesting defendant no. 1/ Late Sh. Madan Lal Puri is now represented by respondent nos. 1(a) to (c) in this appeal. Defendant no. 2 in the suit is respondent no. 2, and the defendant nos. 3 and 4 in the suit are respondent nos. 3 and 4 in this appeal.

2. The subject suit was filed by the plaintiff pleading that there were three suit properties. The first was shop no. 2773, New Market, Bansow Wali Gali, Sadar Bazar, Delhi-110006. The second premises was a tenanted shop no. 90, Swadeshi Market, Sadar Bazar, Delhi- 110006. The third property was house no. 3/9, Jaidev Park, Rohtak Road, Punjabi Bagh, Delhi-110026 situated on a plot admeasuring about 225 sq. yds. The plaintiff in the suit pleaded that the first two properties were purchased by his father, Late Sh. Ram Lal Puri, out of the funds raised from the sale of ancestral property and

from his self earned money in the year 1965-66. It was further pleaded that the father, Late Sh. Ram Lal Puri, had started trading of *phenyl goli* in the name of M/s. Puri Sales Corporation, and this business was run out of a tenanted shop no. 90, Swadeshi Market, Sadar Bazar, Delhi – 110006. From the earnings of the business and his self earned money, the father Late Sh. Ram Lal Puri, purchased the house no. 3/9, Jaidev Park, Rohtak Road, Punjabi Bagh, Delhi. Therefore, it was pleaded that the three suit properties be partitioned equally between appellants/plaintiff, respondents no. 1(a) to (c)/defendant no.1 and the respondent no. 2/ defendant no. 2 being the two sons and one daughter of Late Sh. Ram Lal Puri. It is pertinent to note that during the pendency of the suit, defendant no. 1 had sold the property at Jaidev Park, Rohtak Road, Punjabi Bagh, Delhi, and thus a decree of declaration for the cancellation of the Sale Deeds executed in respect of the property at Jaidev Park, Rohtak Road, Punjabi Bagh, Delhi in favor of respondent nos. 3 and 4/defendant nos. 3 and 4 was also prayed for the plaintiff.

3. As already stated above, the respondent no. 2/defendant no. 2/sister admitted the case of the plaintiff. The contest to the suit was

by defendant no. 1/brother now represented by respondents no. 1(a) to (c). He pleaded that the suit properties were the self-acquired properties of the father, Late Sh. Ram Lal Puri. It was also pleaded that Late Sh. Ram Lal Puri had executed in favour of the defendant no. 1/Late Sh. Madan Lal Puri his registered Will dated 14.09.1977 bequeathing thereby the properties of the father Late Sh. Ram Lal Puri to the defendant no. 1/Late Sh. Madan Lal Puri. It was also pleaded that the plaintiff/Late Sh. Charanjit Lal Puri had left the family long back in the year 1977. The plaintiff/Late Sh. Charanjit Lal Puri was a partner in the partnership which was dissolved on 28.02.1977 when plaintiff/ Late Sh. Charanjit Lal Puri settled his account and walked out of the partnership through the Dissolution Deed dated 28.02.1977. The father, Late Sh. Ram Lal Puri, at that time had given to the plaintiff/Late Sh. Charanjit Lal Puri a sum of Rs. 10,000/- by grace and the plaintiff/ Late Sh. Charanjit Lal Puri had given in writing that he would no longer have any claim to the properties of the father, Late Sh. Ram Lal Puri. It is also pleaded that the father had created a tape recording of his Will dated 14.09.1977, and this tape recording was recorded on 22.09.1979. The father, Late Sh. Ram Lal Puri had also,

on the same date being 22.09.1979, written his note of the execution of the Will in Urdu in his handwriting. Defendant no. 1/ Late Sh. Madan Lal Puri is therefore claimed to be the sole owner of the suit property and has thus prayed for dismissal of the suit.

4. After the pleadings were complete, the trial court framed issues, and parties led evidence, and these aspects are recorded in paras 28 to 39 of the impugned judgment, and these paras read as under:

“Issues

28. On the pleadings of the parties, following issues were framed by the Ld. Predecessor vide order dated 13.03.2012:

1. Whether the plaint has not been signed by the duly authorized person? OPP-1
2. Whether the suit is not properly valued for the purpose of court fees and jurisdiction? OPD
3. Whether the suit is barred in terms of the Order 9 Rule 9 of CPC and order 2 Rule 2 of the CPC? OPD
4. Whether Sh. Ram Lal executed a legal and valid Will dated 14.09.1977 in favour of the defendant No. 1? if ye, its effect? OPD
5. Whether the defendant No. 3 and 4 are the bonafide purchasers of the property bearing No. 3/9, Jaidev Park, East Punjabi Bagh, New Delhi? OPD 3 & 4
6. Whether the suit is barred by the period of Limitation? OPD-1
7. Whether the partnership between the plaintiff and Sh. Ram Lal Puri, his father was dissolved on 28.02.1977? if yes, its effect. OPD-1

8. Whether the plaintiff is entitled for decree of declaration as prayed for in the plaint? OPP
9. Whether the plaintiff is entitled for the preliminary decree of partition as prayed for in the plaint? OPP
10. Whether the plaintiff is entitled for the decree of permanent injunction as prayed for in the plaint? OPP
11. Whether the plaintiff is entitled for the mandatory injunction as prayed for in the plaint? OPP
12. Whether the plaintiff is entitled for the rendition of account as prayed for in the plaint? OPP
13. Whether the plaintiff is entitled for the mesne profit as prayed for in the plaint? OPP
14. Relief.

Plaintiff's Evidence

29. In support of his case, plaintiff examined Smt. Amita @ Ritu Gandhi as PW-1 who tendered her affidavit in examination-in-chief as Ex. PW1/A and relied upon Site Plan Ex. PW1/1 and Special Power of Attorney Ex. PW1/2. She was cross examined. Thereafter, plaintiff closed evidence.

Defendants' Evidence

30. In defence, defendant no. 2 examined herself as D2/DW1 and tendered her affidavit in examination-in-chief as Ex. D2/DW1. She was cross examined.

31. Sh. Mohinder Nath Uppal was examined as DW-1 who tendered his affidavit in examination-in-chief as Ex. DW1/A and supplementary affidavit as Ex. DW1/B and relied upon Will dated 14.09.1977 Mark A, Receipts Mark B, Envelope containing audio cassette Mark C, writing in Urdu about the execution of Will on 22.09.1979 Ex. DW1/4 and note written by plaintiff dated 02.08.1978 Ex. DW1/5. He was cross examined.

32. Sh. Mahinder Pal Jain was examined as DW-2 who tendered his affidavit in examination-in-chief as Ex. DW2/A and relied upon Will dated 14.09.1977 Mark A and death certificate of Sh. Jagdish Lal Jain Ex. DW2/2. He was cross examined by the plaintiff.

33. Defendant no. 1 examined himself as DW3 and tendered his affidavit in his examination-in-chief as Ex. DW3/A and relied upon following documents:

1. copy of death certificate of late Sh. Ram Lal Puri Ex. DW3/1
2. copy of death certificate of late Smt. Prakash Wati Ex. DW3/2
3. Registered Will dated 14.09.1977 Ex. DW3/3
4. ANTIM ICCHA note dated 15.06.1983 Ex. DW3/4
5. Deed of Dissolution Ex. DW3/5
6. Affidavit Ex. DW3/6
7. Receipts Ex. DW3/7 (colly.)
8. certified copy of whole file of suit no. 532-A/1994 Ex. DW3/8
9. copy of death certificate of late Sh. Jagdish Lal Jain Ex. DW3/9
10. copy of death certificate of late Sh. Kishori Lal Chawla Ex. DW3/10
11. Partnership Deed dated 26.08.1968 Ex. DW3/11
12. Partnership Deed dated 04.03.1977 Ex. DW3/12
13. writing of Charanjit Lal Puri Ex. DW3/13
14. Re-conveyance Deed dated 13.06.1985 Ex. DW3/14
15. Invitation card of marriage on 06.07.1982 Ex. DW1/15
16. Invitation card of marriage on 17.04.1987 Ex. DW3/16
17. Audio Cassette Ex. DW3/17

He was cross examined.

34. Sh. Vasudev Goel was examined as D3W1 who tendered his affidavit in his examination in chief as Ex. D3W1/A and relied upon Sale Deed dated 27.02.1963 Ex. D3W1/1, Sale Deed dated 21.10.1964 Ex. D3W1/2, 'The Hindi' English newspaper dated 23.08.2007 Ex. 3W1/3, 'Rashtriya Sahara' Hindi newspaper dated 23.08.2007 Ex. D3W1/4, Sale Deed dated 07.02.2008 Ex. D3W1/5 and Sale Deed dated 07.02.2008 Ex. D3W1/6. He was cross examined.

35. Sh. Mahinder Singh Rawat, Associate, The Hindu Newspaper was examined as D3W2 who produced the register of "The Hindu" newspaper

for the month of August, 2007 containing all original newspaper for the month of August, 2007 and proved the copy of public notice dated 23.08.2007 Ex. D3W2/1. He was cross examined.

36. Sh. K.P. Giri, Public Relation Executive was examined as D3W3 who produced the certified copy of page no. 4 of newspaper “Rashtirya Sahara” published on 23.08.2007 and proved the same as Ex. D3W3/1. He was cross examined.

37. Sh. Brijesh Vats, Record Keeper, Sub Registrar IIA was examined as D3W4 and produced the original record of Sale Deeds dated 07.02.2008 and proved the same as Ex. D3W4/1 and Ex. D3W4/2. He was cross examined.

38. Sh. Shivaji Yadav, Record Custodian, Department of Delhi Archives examined as DW-4 who proved the copy of registered Will dated 14.09.1977 as Ex. DW4/1. He was cross examined.

39. Sh. S.C. Nigam was examined as DW-5 who tendered his affidavit in his examination-in-chief Ex. DW5/1. He stated that Ex. DW1/D1 was drafted by him as per the instructions of late Sh. Ram Lal Puri. He identified the signatures of Sh. Ram Lal Puri at point Y1 to Y6. He was cross examined.”

5. The main issue which was argued before this Court on behalf of the appellants/plaintiff was as to whether or not the father, Late Sh. Ram Lal Puri, died leaving behind his Registered Will dated 14.09.1977. This was the subject matter of issue no. 4 framed by the trial court. The trial court has held this issue in favour of the defendant no. 1/Late Sh. Madan Lal Puri by holding that the Will has been proved through the Advocate, Sh. S.C. Nigam, who deposed as DW-5 that he had drafted the said Will and was also present at the time of

execution and attestation of the Will. One of the attesting witnesses to the Will was Sh. Jagdish Lal Jain who had expired, and the signatures of Late Sh. Jagdish Lal Jain on the Will as an attesting witness were proved through the son of Late Sh. Jagdish Lal Jain namely, Sh. Mahinder Pal Jain, who deposed as DW-2 besides such attestation being proved through Sh. S.C. Nigam, Advocate deposing as DW-5. This Court notes that when the attesting witness has expired, a Will can be proved in accordance with Section 69 of the Indian Evidence Act, 1872 by proving that the attestation of atleast one attesting witness is in the handwriting/signature of the attesting witness. Nothing adverse to the case of defendant no. 1/Late Sh. Madan Lal Puri was elucidated in the cross-examinations of Sh. Mohinder Nath Uppal who deposed as DW-1 and Sh. S.C. Nigam who deposed as DW-5. The Will in the own voice of the deceased father, Sh. Ram Lal Puri, was recorded by a tape recorder on 22.09.1979 and was proved in terms of a tape recorded cassette Ex. DW-1/3. The writing in Urdu of Late Sh. Ram Lal Puri stating about the execution of the Will in his own handwriting was proved as Ex. DW-1/4. The trial court has also noted that the Will Ex. DW-1/D-1 dated 14.09.1977 (also proved as

Ex. DW-3/3) was more than 30 years old at the time when it was tendered in evidence and therefore there is a presumption to its validity under Section 90 of the Indian Evidence Act. The trial court, accordingly, held that the registered Will dated 14.09.1977, Ex. DW-1/D-1 (also proved as Ex. DW-3/3) stands proved. The relevant paras of the judgment of the trial court in this regard are paras 53 to 57, and these paras read as under:-

**“ISSUE No. 4: Whether Sh. Ram Lal executed a legal and valid Will dated 14.09.1977 in favour of the defendant No. 1? if yes, its effect?
OPD**

53. Onus to prove this issue is upon the defendant. In order to prove the Will dt 14.09.1977 Ex DW3/3 (also exhibited as DW1/D1). Plaintiff (sic: Defendant) examined Shri Mohinder Nath Uppal as DW1, Mahinder Pal Jain S/o of the attesting witness namely Shri Jagdish Lal Jain as DW2 and Shri S. C. Nigam Advocate who drafted the Will in question as DW5.

54. DW5 Shri S.C. Nigam in his examination -in-chief deposed that he drafted the said Will and it bear his signature as its draftsman. He further deposed that Will was executed in his presence and in the presence of witnesses. He identified the signatures of late Shri Ram Lal Puri on all the five page of the document. In cross examination he deposed that when the Will was finalised and executed Ram Lal Puri was accompanied by somebody beside the witness who attested the same. He further deposed that he could not say if Ram Lal Puri was under any pressure of the witnesses brought by him for execution of the Will. He denied the suggestion that he did not draft the Will on the instruction of Late sh. Ram Lal Puri or that the Will Ex DW1/D1 was not signed by the witnesses and Ram Lal Puri in his presence. Thus, the suggestion that Will was not signed by witnesses and Ram Lal Puri in his presence involves the admission of the plaintiff that it bears the signatures of Ram Lal Puri and witnesses and what is disputed is the presence of DW5. Moreover, there is no suggestion that he did not draft the Will at all or he had not signed the said Will on the day of execution or that he was in collusion with any of the defendants or that he signed the Will at later date to help defendants.

Plaintiff did not give any suggestion as to who instructed DW5 to draft Will if the Will was not drafted on the instruction of Ram Lal Puri. Thus, it stands proved that Will was drafted by him on the instruction of Late Sh. Ram Lal Puri, that he signed the same on the day of execution, that Ram Lal Puri and witnesses signed the Will and that he was not in collusion with any of the defendants.

55. DW2 is the son of Jagdish Lal Jain who is the attesting witness to the Will Ex DW1/D1. He deposed that his father expired on 11.11.1987. He identified the writing and signatures of his father from point 'A' to 'B' on page No.5 of the Will and signatures at point 'C' on the back side of the Will. In cross examination he deposed that Ram Lal Puri had family terms with his father for the last of 30-25 years. He (witness) was not having any relations with Madan Lal Puri. Neither he nor his father had family relation with plaintiff. He denied the suggestion that his father signed the Will on the asking of Madan Lal Puri. He admitted that neither he was present when his father signed the Will nor did his father tell him about the execution of Will. He did not have personal knowledge about the Will and the circumstances prevailing at the time of preparation or execution of the Will. He denied the suggestion that his father did not sign the Will. Thus, it can be seen that plaintiff after admitting signature of Jagdish Lal on the Will i.e. his father signed on the asking of Madan Lal Puri or that he was not present when his father signed the Will, gave suggestion that it did not bear his signature. Son is the better person to tell whether the signature is that of his father or not and not the plaintiff that did not bear the signatures of Jagdish Lal Jain.

56. DW1 in his examination in chief Ex DW1/A and Ex DW1/B deposed that he was the eye witness to the execution of the Will which was drafted by S. C. Nigam Advocate and was registered on 26.09.1977. Ram Lal Puri also put the Will in his own voice over tape recorder on 22.09.1979 which he had witnessed. The tape recorded cassette is Ex DW1/3. He also deposed that registration of the Will was not done in his presence but he was not attesting witness to it. He further deposed that Ram Lal Puri also wrote in Urdu on 22.09.1979 about the execution of Will. Said Urdu writing in the hand of Shri Ram Lal Puri is Ex DW1/4. In cross examination he deposed that Ram Lal Puri was his brother-in-law (Saddhu) i.e. his wife and that of Ram Lal Puri were sisters. He met Ram Lal Puri at the residence of Mr. Nigam Advocate who had prepared the Will at Bhogal an reaching he Bhogal he met Kishori Lal Chawla and Jagdish Lal Puri. He was not asked to sign the Will as two witness had already signed the Will. He admitted that Will was typed and signed in the office of Advocate at Bohgal. Plaintiff's this question amounted to admission on the part of the plaintiff that Will was typed and signed in the office of the advocate at Bhogal. He was not given suggestion that Ram

Lal Puri did not execute the Will nor that he (witness) was not present at the office of the advocate nor that that will was not registered in his presence or that Ran Lal Puri did not write about the execution of Will in Urdu or recording the same over tape recorder in cassette.

57. On the day when the Will Ex DW1/D1 was tendered in evidence it was more than 30 years old. In fact when the same was filed on the court record it has already completed 30 years of its execution and was placed from safe custody. Therefore, there is presumption in favour of its execution in view of Section 90 of Indian Evidence Act. Thus only by way of presumption but also by way of requirement of Section 69 of the Indian Evidence Act, defendant has been able to proved the registered Will 14.09.1977 Ex DW3/3 (also exhibited as Ex DW1/D1). The effect of the Will shall be considered while deciding the issue No.9.”

(Underlining Added)

6. I completely agree with the aforesaid reasoning, discussion and conclusion of the trial court and nothing could be argued on behalf of the appellants to dislodge the factum of proving of the Registered Will of the father, Late Sh. Ram Lal Puri, dated 14.09.1977 which was proved through the witnesses DW-1/Sh. Mohinder Nath Uppal and the Advocate Sh. S.C. Nigam, who deposed as DW-5, and he in his professional capacity as an Advocate had drafted the Will and witnessed its execution and attestation. The challenge by the appellants to the decision of Issue no. 4 in favour of the defendant no. 1/Late Sh. Madan Lal Puri is, therefore, rejected.

7. The only other issue which is to be examined is as to whether the suit properties were HUF properties. In this regard, I may note

that in the plaint except mentioning that the first two properties situated at Sadar Bazar were purchased from ancestral properties, no further averment was made as to how the HUF came into existence. There is no averment in the plaint that the father, Late Sh. Ram Lal Puri, inherited any property from his paternal ancestors prior to 1956 when the Hindu Succession Act, 1956 came into force. Once this is the position, even if Late Sh. Ram Lal Puri inherited any properties from his paternal ancestors, and which would be after 1956, inheritance by Late Sh. Ram Lal Puri of such properties from his father or paternal ancestors was as self-acquired properties and not as HUF properties in view of the judgments of the Supreme Court in the cases of *Commissioner of Wealth Tax, Kanpur and Others v. Chander Sen and Others*, (1986) 3 SCC 567 and *Yudhishter v. Ashok Kumar*, (1987) 1 SCC 204. In fact this court would also like to note that averments with respect to the ancestral properties allegedly coming to the hands of the father late Sh. Ram Lal Puri is a completely vague averment as the query of what were the ancestral properties remains unanswered i.e. their specific details have not been mentioned in the plaint nor stated in the deposition of any of the

witnesses of the plaintiff. The trial court has also further reasoned that both PW-1/Amita @ Smt. Ritu Gandhi/daughter of the deceased plaintiff and defendant no. 2/Smt. Manorama/sister of the deceased plaintiff who supported the plaintiff, could not prove that the suit properties were not the self-acquired properties of Late Sh. Ram Lal Puri. In fact, PW-1 conceded in her cross-examination that the property at Jaidev Park, Rohtak Road, Punjabi Bagh Delhi was purchased by Late Sh. Ram Lal Puri through a Sale Deed in his own name and his two brothers and subsequently Late Sh. Ram Lal Puri purchased the share of his two brothers by a registered Sale Deed. PW-1 also admitted that Late Sh. Ram Lal Puri had mortgaged the plot with the Government and raised a loan to construct the property. PW-1/ Amita @ Smt. Ritu Gandhi further admitted that the loan was repaid by Late Sh. Ram Lal Puri and therefore a Conveyance Deed dated 13.06.1985 /Ex. DW-3/14 was executed by the government in favour of Late Sh. Ram Lal Puri.

8. Accordingly, the trial court has held and rightly so, that the suit properties were not HUF properties and were the self-acquired properties of the father Late Sh. Ram Lal Puri by observing as under:

“66. Hon'ble Supreme Court in *Commissioner of Wealth Tax v. Chander Sen*; 1986 AIR 1753 and in *Uttam v. Saubahg Singh & Ors* bearing Civil Appeal No. 2360/2016 arising out of SLP No. 6036/2014 decided on 02.03.2016 has held that when a Hindu male inherits property from his ancestors he inherits the same as his personal property vis-a-vis his own sons. Thus, the properties in the hands of Ram Lal Puri was his personal properties even if he received the same from his own father or fore father.

67. In any case plaintiff himself in his earlier suit Ex DW3/8 has admitted/pleaded that both properties was his father's exclusive/absolute properties. In the present case also PW1 the sole witness of the plaintiff in her cross examination admitted that property No. 3/9 Jaidev Park was purchased as a plot vide registered Sale Deed by Sh. Ram Lal Puri and his two brothers and subsequently Ram Lal Puri had purchased the share of his two brothers in this property by registered Sale Deed. She further admitted that Ram Lal Puri had mortgaged the plot with the government and raised loan to build this property. She further admitted that said loan was repaid by Sh. Ram Lal Puri and Re-Conveyance Deed dt 13.06.1985 Ex DW3/14 was executed between the Government and Sh. Ram Lal Puri. Neither plaintiff nor his witness PW1 ever disclosed which property Ram Lal Puri had inherited from his predecessor or how much compensation or money Ram Lal Puri had received from his predecessor. Thus, plaintiff even otherwise also has not been able to prove that any share or money or any property Ram Lal Puri had inherited from his own ancestors.

68. Testimony of the defendant No.2 who is supporting the case of the plaintiff is also of no help to the plaintiff as she in the cross examination deposed that her father had told her that both properties were purchased by his father form ancestral funds but she admitted that she had not pleaded that her father had told him so. She was unable to tell as to from which property or from the funds generated from which business the suit properties were purchased. She did not remember which type of business was carried out by her father or how much income was derived from the said business. She further deposed that she could not identify the signature of her father if shown to her and she did not know if her father had executed registered Will during his lifetime. She could not say if any funds was given by her grandfather to her father for purchase of the property. Even defendant No.2 was not able to prove that properties in the hand of Ram Lal Puri was not his personal properties.

69. Thus, the properties in the hand of Ram Lal Puri was his personal properties in respect of which he made testamentary disposition in favour of defendant No.1 by way of registered Will dt 14.09.1977 Ex DW3/3 (also exhibited Ex DW1/D1) and therefore neither deceased plaintiff nor defendant No.2 is entitled to any share in the properties, business left behind by late Shri Ram Lal Puri. Hence, issue No.9 is decided against the plaintiff and in favour of defendants.”

9. In view of the aforesaid discussion, I do not find any merit in this appeal and the same is hereby dismissed.

DECEMBER 17, 2018

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VALMIKI J. MEHTA, J



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