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

Reserved on : 29th January, 2018

Date of decision : 8th May, 2018

+ **RFA 563/2013 & CM APPLs.40427/2017, 19286/2013**

KANCHAN & ANR

..... Appellants

Through: Mr. Vibhakar Mishra, Advocate (M-9810092597).

versus

HARDAYAL

..... Respondent

Through: Mr. Deepak Kr. Dahiya, Proxy counsel (M-8586045200).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. Late Sh. Shiv Dayal purchased plot no.18 at Central Market, Lajpat Nagar, New Delhi and constructed a shop on the same (*hereinafter*, 'suit property/shop'). After his death, he appointed his wife, Smt. Dhan Bai, as his successor-in-interest. She executed a registered Will dated 12th November, 1981 in favour of her two sons, namely, Sh. Ram Dayal, father of the Appellants/Plaintiffs (*hereinafter*, 'Plaintiffs') and Sh. Hardayal, the Respondent/Defendant (*hereinafter*, 'Defendant'). Both brothers carried on business jointly from the shop. Sh. Ram Dayal expired on 25th February, 1989. He executed a registered Will dated 27th July, 1984 in favour of his wife, Smt. Krishna.

2. The Plaintiffs, Ms. Kanchan and Ms. Santosh are the two daughters of Sh. Ram Dayal and Smt. Krishna. It is their case that their mother was a *Pardanasheen* lady and was a silent partner in the shop that was being run from the suit property, and that she was also handicapped. While she was

alive the Sh. Hardayal would give her some accounts of the business being run from the suit property and some money. However, she expired on 5th September, 1989.

3. It is the case of the Plaintiffs that their uncle, the Defendant, did not provide any accounts of the business to the Plaintiffs, after the death of their mother, because he had told their maternal grandmother, who brought up the two girls after the death of their parents, that he would give them money when they attain the age of majority. It is the Plaintiffs' case that the Defendant assured them that they would also be inducted as partners in the business being run from the suit property, upon attaining the age of majority. The Plaintiffs attained the age of majority and sought partitioning of the suit property, but to no avail. Accordingly, they filed the subject suit for partition of the suit property, as also declaration of their shares, declaration that they were partners in the business, and for rendition of accounts. The prayer in the plaint was as under:

"It is therefore, prayed that this Hon'ble court is pleased to pass a decree: -

i). For partition by metes and bounds and separate possession of proportionate half share belonging to the plaintiff's in the suit shop bearing property shop site No. 18, situated at Central Fruit Market Lajpat Nager, New Delhi of area 150 Sq.Feet in favour of the plaintiff's and against the defendant as described red in the site plan enclosed herewith as Annexure P-1. by metes and bounds.

ii). A preliminary decree declaring the shares of the parties viz ½ share of the plaintiff's and ½ shares of the defendants in the suit shop.

iii). A decree for dissolution of partnership between the Defendant and Plaintiff's mother who was inducted on behalf of Plaintiff's father in the

partnership whom Plaintiff's is legal heir, by appointing a commission to take care about the assets and suit shop till the disposal of the suit.

iv). Directing the defendant to render accounts in respect of the sale and profits accounts being realised by him time to time year wise from the suit shop.

v). A decree of Permanent Injunction restraining the defendant his agents servants, associates etc. restraining from selling or creating any third party rights over/in the suit shop bearing No. 18, situated at Central Market Lajpat Nagar, New Delhi of area 150 Sq. Feet in any manner whatsoever, as described in the site plan enclosed herewith as annexure P-1."

4. In the written statement, it was claimed by the Defendant that the Plaintiffs did not have any right, title or interest in the suit property or in the partnership business. It was further claimed that an affidavit had been executed on 20th March, 1982 by the father of the Plaintiffs, by which he had relinquished his legal rights, title and interest in respect of Shop No.18 i.e., the suit property. It was further claimed that the Will dated 27th July, 1984, executed by the father of the Plaintiffs, was fabricated, manipulated and concocted. The Defendant further pleaded that the parents of Plaintiffs having expired in 1989, and the filing of the suit in 2005 is completely belated. The following issues were framed in the suit on 10th October, 2005:

"Issue No. 1:- Whether father of the plaintiff has relinquished all legal rights, title and interest in the suit shop as alleged in preliminary objection No. 4 in the written statement ?OPD

Issue No. 2:- Whether the suit shop was jointly owned plaintiff and the defendant, as alleged in Para 4 and 5 of the plaint? OPP

Issue No. 3:- Whether father of the plaintiff executed the valid Will dated 27.7.87 in favour of his wife Smt Krishana, if so, to what effect? OPP

Issue No. 4:- Whether plaintiffs are entitled to preliminary decree of partition as prayed? *OPP*

Issue No. 5:- Whether plaintiffs are entitled to final decree of partition, as prayed? *OPP*

Issue No. 6:- Whether plaintiffs are entitled to preliminary decree of rendition of accounts, as prayed? *OPP*

Issue No. 7:- Whether plaintiff are entitled to final decree of rendition, as prayed? *OPP*

Issue No. 8:- Whether plaintiff are entitled to decree of permanent injunction as prayed? *OPP*

Issue No. 9:- Relief”

5. The Plaintiff led the evidence of

- PW1 - Ms. Kanchan - Plaintiff No.1;
- PW2 - Ms. Santosh – Plaintiff No.2;
- PW3 - Ms. Shankuntala Devi - the maternal grandmother (Nani) of the Plaintiffs;
- PW4 - Sh. Satya Pal - Record Assistant of Department of Delhi Archives who proved the Will dated 12th November, 1981;
- PW-5 - Mr. Kunwar Singh - LDC, Central Zone, Enforcement Department, Lajpat Nagar-II who produced the entire record pertaining to the shops/stalls and its allotment/devolution;
- PW-6 - Sh. Ashok Kumar - maternal uncle of the Plaintiffs.
- PW-7 - Sh. Harbans Lal - the attesting witness to the Will dated 12th November, 1981 executed by Sh. Dhan Bai in favour of Sh. Ram Dayal and Sh. Hardayal.

6. Defendant led the evidence of the following witnesses:

- Sh. Hardayal, Defendant in person, DW-1.
- Smt. Seema Arora, wife of Sh. Hardayal, DW-2.

7. The Trial Court held that there was no ownership in favour of Smt. Dhan Bai which could have been transferred to the two brothers, Sh. Ram Dayal and Sh. Hardayal, as per the policy of the MCD. Hence, the shop was not jointly owned by the Plaintiffs and the Defendant. The Trial Court further concluded that as per the affidavit executed by Sh. Ram Dayal, Ex. PW-5/7, he relinquished his share in the shop/suit property and since the mutation in favour of Sh. Hardayal was not challenged in time, the challenge is not maintainable by the Plaintiffs, now. Accordingly, all the issues were decided against the Plaintiffs.

Analysis and Findings

8. A perusal of the Trial Court record shows that the initial license issued by the MCD was in the name of Sh. Hari Chand S/o Sh. Tek Chand (Ex.PW-5/1) on 25th August, 1967. Shri Hari Chand, thereafter, issued a General Power of Attorney dated 31st January, 1974 in favour of Smt. Dhan Bai. Thereafter, upon the death of Smt. Dhan Bai, the shop devolved upon the two brothers vide Will dated 12th November, 1981. Consequently, a joint application (**Ex.PW-1/E**) was filed by the Plaintiffs' father and the Defendant for mutation of the shop/suit property in their name, which reads as under:

*“The Zonal Superintendent,
Municipal Corporation of Delhi,
New Delhi Zone: Lajpat Nagar N.D.110024.*

***Sub:- Application for the mutation of stall No.18
situated at Central Fruit Market, Lajpat Nagar,
New Delhi.***

Sir,

***On the basis of legal heir we are owner of Stall
No.18 (Corner one) situated in/at Central Fruit***

Market Lajpat Nagar New Delhi.

We therefore request to you kindly transferred the stall in favour of my two brother i.e. Shri Ram Dayal & Shri Har Dayal.

I have attached herewith photostat copy of Regd WILL attorney in respect of stall No.18, & photostat copy of an Affidavit.

We shall be highly thankful to you for the act of kindness.

Thanking you,

Yours faithfully,

(RAM DAYAL & HAR DAYAL)

R/O F-II/57 Lajpat Nagar, New Delhi.”

9. In the above letter, both the brothers clearly stated that they are the owners of the stall no.18 (corner one) situated at Central Fruit Market, Lajpat Nagar, New Delhi. The later chronology of events leading to the Defendant getting the property mutated in his name, cannot take away this admission. This fact is also proved by the registered Will dated 12th November, 1981 executed by Smt. Dhan Bai, wife of Sh. Shiv Dayal. She states in the Will (**Ex.PW-1/C**) as under:

“I, Shrimati Dhan Bai wife of late Shri Shiv Dayal, aged about 70 years, resident of II-F/57, Lajpatnagar, New Delhi 24, execute this Will on this 12th day of November, 1981.

Whereas I am the substitute successor-in-interest of my late husband shri Shiv Dayal, by way of oral at the time of his death in the presence of all my sons, in respect of shop site no.18, Central Fruit Market, Lajpatnagar, New Delhi which he had purchased during his life time from one shri Hari Chand who was the previous owner of the said property, with his own funds.

Whereas two of my sons namely shri Ram Dayal & shri Hardayal are working together in the

aforesaid shop for the last 8 years. My other three sons namely shri Krishan Dayal, shri Prabhu Dayal and Shri Shankar Dayal are doing their own works.

Till I am alive, I will remain the owner of the aforesaid shop. After my death, the aforesaid property will become the ownership of my two sons namely Ram Dayal and shri Hardayal. They can transfer the said shop in their joint names in the M.C.D and other concerned departments in equal shares.

My other sons have no concern with the said shop. If they raise any objection to this, the same may be treated as null, void and ineffective. If any other body/person raises objection to this will, the same may too be treated as null, void and in-effective.

That I have made this will Volunarily, of my own Sweet Will, without any pressure from outside and in sound health and in full disposing mind. Further I may that I have instructed my Advocate Shri Rajan Saluja (Advocate) to draft this will on my behalf.

Whereas I hereby execute my sons shri Ram Dayal - as the sole executor of this will.

The contents of the will explained to me by my Advocate named above the same are admitted as correct.

In witness whereof I have have signed this deed of will, in the presence of the witnesses who have also put their signatures.

New Delhi dated 12.11.1981.”

10. From this Will it can also be seen that both the brothers were working together in the shop in question for 8 years prior to the execution of the Will, namely from 1973. The father of the Plaintiffs had repeatedly written to the MCD that he has no objection if shop is transferred in the joint name. Since

the MCD did not transfer the property in the joint name, a letter dated 25th November, 1981 was addressed by Sh. Ram Dayal in which he called upon the MCD not to transfer the shop in his brother's individual name. The said letter reads as under:

*“The Zonal Assistant Commissioner,
Municipal Corporation of Delhi,
Lajpat Nagar, N. Delhi,*

Sir,

Sub: Mutation of Shop No.18, Fruit Mkt in the joint names of Sh. Ram Dayal & Sh. Har Dayal.

I have come to know that the above said property is going to be transferred in the name of my younger brother named Sh. Har Dayal.

As per registered Will, the said property should be in the joint name namely Sh. Ram Dayal and Sh. Har Dayal. If my younger brother Sh. Har Dayal has given an application for transferring the said property in his own name, that may be please be treated as cancelled. The registered Will made by our mother is lying with me. I have no objection if the said shop No.18 Fruit Mkt be transferred in the joint name because as per registered will, I have equal share.

If the above said property is transferred in his name, MCD will be responsible for that if I file a suit.

Yours faithfully,

Sd/-

*Ram Dayal
25.11.1981”*

11. Thereafter, on the applications, the noting in the MCD office, dated 1st February, 1982 (**Ex.PW-5/9**) is as under:

“....Reference attached applications of Sh. Hardayal and Sh. Ram Dayal residence of II/F 56 and II/F57, Lajpat Nagar, New Delhi for the mutation of

Tehbazari shop no. 18, Rebri(sic) Stall Central Market, Lagpat Nagar, New Delhi, in the joint name, originally sanctioned in the name of Sh. Hari Chand s/o Tek Chand.

In this respect, it is submitted for your information that the applicants have submitted only the plain applications. They have not submitted any proofs in support of their claim with them. In the absence of any documents in support of their, the case cannot be considered. Moreover, the mutation in the name of the joint name cannot be considered in respect of Tehbazari site.

Submitted please.

1/2/82

The documents appear to be incomplete. Moreover, Tehbazari permission or transfer cannot be allowed in the joint name or firm. It can be considered only in individuals name in case the complete documents or reasonable claim is received. Hence may be rejected.

1/2/82”

12. It was when the MCD refused to do the mutation in the joint name that an application dated 22nd March, 1982, was filed by Sh. Hardayal claiming that his brother, Sh. Ram Dayal has given no objection, by way of affidavit dated 20th March, 1982, for transfer of the shop allotment in his name. The affidavit allegedly filed by Sh. Ram Dayal reads as under:

“AFFIDAVIT

I, Ram Dayal, son of Sh. (Late) Shiv Dayal, r/o, II-F/57, Lajpat Nagar, N. Delhi, do hereby solemnly affirm and declare as under:-

1. That my mother Smt. Dhan Bai, w/o Late Sh. Shiv Dayal, was the attorney of Sh. Hari Chand, son of Sh. Tek Chand r/o. 83, Vinobhapuri Lajpat Nagar, N. Delhi-24, who was the original allottee of Shop/Stall No.18 (Corner one) Situated in/at Central

Fruit Market, Lajpat Nagar, N.Delhi and she was the attorney for the said shop/stall.

2. *That my mother Smt. Dhan Bai, died on 7-12-1981 and before death she executed a Will dt. 12th Nov. 1981, in Addl. Block No.3, Vol No.100, pages from 105 to 106, dt. 13-11-1981, for the above stall, in respect of Sh. Ram Dayal (Deponent) and Har Dayal (my brother) i.e. she left the said stall for her two sons. (copies enclosed).*
3. **That after her death now we both are the owner of the said stall.**
4. *That now I have relinquish all my rights, or interest over the said stall that if the said stall shall be transferred in the name of Sh. Har Dayal (my brother) s/o Sh.Shiv Dayal, for which I shall not claim over the N.D.M.C./M.C.D. or Govt.*
5. *That after transferred he shall be liable to pay all the demands, taxes or any rent if any liable.*

*Sd/-
Ram Dayal*

Verification:

Verified at N.Delhi on this 20th day of March, 1982, that the content of the above affidavit are true and correct to the best of my knowledge and belief.

*Sd/-
Ram Dayal."*

13. On the basis of the said affidavit purported to have been signed by Ram Dayal, the Defendant had written letter dated 22nd March, 1982 to the MCD, seeking that the shop be transferred in his name. This was allowed by the MCD, in a matter of three days, i.e., on 25th March 1982. Sometime in 1985, the Plaintiffs' father came to know that his brother, the Defendant, had got the mutation of the suit property done in his own name. Sh. Ram Dayal

then wrote to the MCD in 1985 through his lawyer Mr. D. L. Kakkar, asking them to transfer the property in joint names. Upon noticing that the receipts for rent were being issued by the MCD in the name of the Respondent, a letter **Ex.PW-1/F** dated 22nd August 1985 was written by Sh. Ram Dayal which reads as under:

*“The Zonal Superintendent,
Municipal Corporation of Delhi,
New Delhi Zone,
Lajpat Nagar,
New Delhi.*

*Personal attn: Shri S.C. Bhalla,
Room No. 4*

*Sub: Application for the mutation of the Stall No.18,
situated at Central/Fruit Market, Lajpat Nagar, New
Delhi – 110024.*

Sir,

*Under instructions from and on behalf of my client Shri
Ram Dayal, I serve the following notice :-*

- 1. That the above property belong to both the brothers
Ram Dayal and Hardayal, residents of F-11/57, Lajpat
Nagar, New Delhi.*
- 2. That both the brothers are the owners of the above
property.*
- 3. That both of them inherited from their mother Smt.
Dhan Bai through a Will. Smt. Dhan Bai died in 1982.
Death certificate of Smt. Dhan Bai has already been
submitted by my client in your office.*
- 4. That now the receipts for rent issued by your office
are in the name of Hardayal and not in the name of my
client Ram Dayal. This is the injustice to my client,
whose right is being usurped.*
- 5. That both the brothers namely Hardayal and Ram
Dayal are the owners of the above-mentioned stall.*

That names of both the brothers should be shown on the record of the Municipal Corporation of Delhi as well as on the receipts issued by your office, whereas the name of only Har dayal is being shown.

I shall feel obliged if the name of my client Ram Dayal is entered alongwith Hardayal in the Municipal records. My client is running from pillar to post and he has not been attended to properly.

Copy kept for record in my office.

*Yours faithfully,
Sd/-
(D.L. Kakkar)
ADVOCATE”*

14. It appears that no action was taken by the MCD pursuant to the said notice. The notice having not been acted upon and both parents of the Plaintiffs i.e., Sh. Ram Dayal and his wife, having expired in 1989, the Plaintiffs were completely left to fend for themselves. So long as Smt. Krishna, wife of Shri Ram Dayal was alive, Mr. Har Dayal paid some maintenance to the two daughters and wife of Shri Ram Dayal. Thereafter, however, he left them in the lurch.

15. The fact that the shop was initially allotted to Sh. Hari Chand and was thereafter transferred in the name of Smt. Dhan Bai, through Sh. Shiv Dayal, who purchased it from Sh. Hari Chand in his wife's name, is not in dispute. Smt. Dhan Bai's Will dated 12th November 1981 is also not in dispute. She bequeathed the shop jointly in favour of both her sons, after which a joint application was made by both brothers to the MCD, seeking mutation of the suit property, in their joint name.

16. After the application for transfer in the joint names of both brothers was made, the same was rejected by the MCD on the ground it was not their

policy to register the shop jointly or in the name of a firm. It was then that Sh. Hardayal filed a set of documents with the MCD seeking mutation in his individual name, relying upon an alleged affidavit given by Sh. Ram Dayal. The fact that the MCD on the basis of the alleged documents filed by Sh. Hardayal transferred the allotment in the name of the Defendant does not mean that the Plaintiffs can be deprived of their shares in the property.

17. The fact that the affidavit by which the Plaintiffs' father had given up and relinquished the rights in the shop, relied upon by the Defendant, is dated 20th March, 1982 and thereafter, on 22nd August, 1985 request for mutation in joint name being sent by the Plaintiffs' father, clearly proves that the relinquishment affidavit filed by the Defendant before the MCD was fraudulent and forged. The Defendant has clearly misled the authorities and got the shop allotted in his name while playing a fraud upon the Plaintiffs. The attempt by the Defendant to usurp the shop in his name is dishonest to say least. The shop belonged to Sh. Shiv Dayal, and later to Smt. Dhan Bai, the mother of the two brothers, who had clearly intended to give it to both her sons Sh. Ram Dayal and Sh. Hardayal. The Defendant, thus, could not have deprived the daughters of his brother from enjoying the suit property.

18. The Trial Court was clearly wrong in holding that the mutation by the MCD in favour of the Defendant would be binding. Irrespective of the policy of the MCD, the Plaintiffs could not have been divested of their ownership in the suit property. Even if the rent receipts were issued, for unknown reasons, by the MCD in the name of the Defendant, that by itself does not disentitle the Plaintiffs of their shares in the suit property. The evidence on record clearly shows that during the lifetime of the Plaintiffs' mother the Defendant was paying some maintenance and thereafter stopped.

The deposition of the Nani (maternal grandmother) of the Plaintiffs clearly shows that the shop was being jointly run and profits were being shared between the two brothers. She has not been cross-examined.

19. The Will dated 12th November, 1981 of Smt. Dhan Bai has been proved by PW-4. PW-5, LDC from the MCD, office has stated as under:

“I have brought the complete record pertaining to the shop/stall bearing no.18 (Corner one) situated in/at Central Fruit Market, Lajpat Nagar, New Delhi. As per record that this shop/stall was originally allotted to Sh. Hari Chand s/o Sh. Tek Chand R/o 83, Vinoba Pur, Lajpat Nagar and by virtue of a Registered GPA the said shop/stall was purchased by Smt. Dhanbai W/o sh. Shiv Dayal, R/o II-F/57, Lajpat Nagar, New Delhi vide registered GPA, registered Serial No.2486 dated 2.01.74. Thereafter as per our record after the death of Smt. Dhanbai on 7.12.81 the said shop/stall was transferred in the name of Sh. Ram Dayal & Hardayal by virtue of registered Will dated 12.11.81 executed by Smt. Dhanbai.”

20. On behalf of the Plaintiffs, their Mama (maternal uncle) - Mr. Ashok Kumar has deposed that the Defendant had promised to give all the amounts due to their share once they attained majority. Para 5 of his affidavit in chief reads as under:

“That after the death of plaintiff’s mother some bad intention developed in mind of defendant and he started taking advantage of helplessness of plaintiff’s minority, and as my mother was incapable to run business. The defendant with malafide intention stopped showing account to me and share income and told me that the income of shop he used to give my daughter i.e. mother of the plaintiff’s cannot be saved by the defendant

for the future of my two granddaughters i.e. plaintiff's, when the plaintiff's granddaughters attain the age of majority or reach at their marriageable age they will be given all the amount of their share before/in their marriage. It was further assured by the defendant that in case my granddaughters wishes to run the shop he will induct them in the shop in the capacity of equal partner in capital income and property of shop till that date he would deposit all income earned by him from the shop and for enhancing the capital of shop."

21. He further deposed that both the daughters have no source of income and are living a life of penury. PW-6, categorically denied the suggestion that Sh. Ram Dayal worked in the shop under his brother. The attesting witness to the Will dated 12th November, 1981, PW-7, also identified the Will.

22. On the other hand, the wife of Sh. Hardayal, Smt. Seema Arora, merely stated that Sh. Ram Dayal had relinquished his share in the property and her husband was running the shop alone. Sh. Hardayal in his cross examination clearly states that he did not remember as to where the so-called affidavit dated 20th March, 1982 of Sh. Ram Dayal, relinquishing his share in the property, was prepared. He also admitted that there was no witness in whose presence the affidavit was prepared. He admitted that as on 2010 he was earning Rs.30,000/- to Rs.32,000/- per month from the business of handloom and he had licensed a part of the suit property to four daily hawkers from whom he earned license fee of Rs. 1000 to 1500 per day. His deposition in this regard is as under:

"I am running business in the suit property since 1974. At that time I used to do the business of tea

and earn Rs.70-80 per month. Till 1991 I was doing business of tea. In 1991 also I was earning Rs.70-80 per month. After I was running the business of handloom. As of today I earn Rs.30,000/- to Rs.32,000/- per month from the business of handloom. It is wrong to say that I have licensed a part of the suit property to four daily hawkers and from whom I take daily license fee of Rs.1000/- to Rs.1500/- per day (vol. I have permitted one tailor to sit at the suit premises and I am not taking any license fee from him)."

23. Despite having such a high income, he stated that he does not file an income tax returns. He completely denied having any knowledge of the notice issued by learned counsel for Sh. Ram Dayal to the MCD dated 22nd August, 1985. While, in his cross examination on 24th July, 2010 he admits to be making huge earnings of license fee from four daily basis hawkers, he resiles from the same on 16th November, 2010 and states that he only earned Rs.8,000/- to Rs.9,000/- per month from the suit property. The credibility of the Defendant is seriously in doubt, inasmuch as he appears to have got wiser by the time the second cross-examination took place.

24. On an overall assessment of the pleadings and evidence on record, it is clear that the shop and the business was the joint property of the two brothers Sh. Ram Dayal and Sh. Hardayal. The mutation by the MCD in the name of Sh. Hardayal does not disentitle the Plaintiffs from claiming joint rights in the shop and the business. Sh. Hardayal, being the uncle was earning from the business which was jointly shared between him and his brother. The Plaintiffs being the daughters of Sh. Ram Dayal are declared as 50% owners of the shop and the business. The Trial Court committed an error in dismissing the suit by holding that the title of Smt. Dhan Bai was

not proved. That was not even the issue in the case. What is also strange is the manner in which Sh. Hardayal's rights to enjoy the property are recognised by the Trial Court by dismissing the suit, when he at best has only derived title from Smt. Dhan Bai, his mother vide Will date 12th November, 1981. The business conducted from the suit property, as per the evidence of Sh. Hardayal is quite lucrative. He has made huge monetary gains and completely disregarded the interests of his brother's family which had equal rights. As per the evidence of Sh. Hardayal, he earns Rs.30,000/- to Rs.32,000/- per month from the shop. He also earns licence fee of Rs. 1000/- to 1500/- per day from four licensees. Thus, his monthly income from the shop is to the tune of Rs. 1,50,000/- per month.

25. Even if over the years, an average amount is considered, the earnings of the Defendant have been considerable. Accordingly, a judgment and decree is passed in favour of the Plaintiffs in the following terms:

- a) The Plaintiffs are declared to be the joint owners of 50% of the suit property namely shop no. 18, situated at Central/Fruit Market, Lajpat Nagar, New Delhi with area measuring 150 sq. feet.
- b) On the basis of the evidence given by Mr. Hardayal on 24th July, 2010, the Defendant is directed to pay a sum of Rs.10,000/- per month from the date when the mutation took place in favour of the Defendant till the date when the Plaintiffs filed the present suit. This amount would be Rs.28,26,000/- calculated from 25th March, 1982 to 12th September, 2005, when the suit was filed.
- c) A sum of Rs.30,000/- per month would be liable to be paid from the date of the suit i.e. 13th September, 2005 till 1st May, 2018, which is Rs. 45,90,000/-.

d) From the date of this judgement, the Plaintiffs are permitted to run the business along with the Defendant from the shop in question and are entitled to 50% of the revenue earned from the shop. No impediment shall be created by the Defendant in the Plaintiffs' participation in the business. The said revenue shall be split 50-50 between the two Plaintiffs i.e. each of the Plaintiffs would be entitled to 25% of the total revenue from the shop.

e) The Defendant shall not create any third party interest in the suit property or part with possession of the suit property. For all purposes, the Plaintiffs shall be deemed to be joint owners of the suit property and the business carried thereon.

26. The total amount i.e., Rs. 74,16,000/- as calculated above shall be paid to the Plaintiffs in ten equal instalments of Rs.7,41,600/- paid every three months beginning from 1st June 2018.

27. Appeal is allowed in the above terms. No order as to costs. All pending applications stand disposed of.

PRATHIBA M. SINGH, J.
Judge

MAY 8, 2018/Rahul/dk