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

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Reserved on: 12th December, 2019

Decided on : 17th December, 2019

+ **RFA 332/2010 & CM APPL No.31122/2015, 50362/2018**

RAKESH JAIN & ANR Appellants

Through : Mr.R.M.Bagai and Ms.Preeti
Sharma, Advocates.

versus

ARUN KUMAR & ORS Respondents

Through : Mr.K.Sunil and Mr.Rajesh Kumar,
Advocates for respondent Nos.1 to
7 and 13-22.

Mr.Sunil Bagai, Advocate for
respondent Nos.8 to 12.

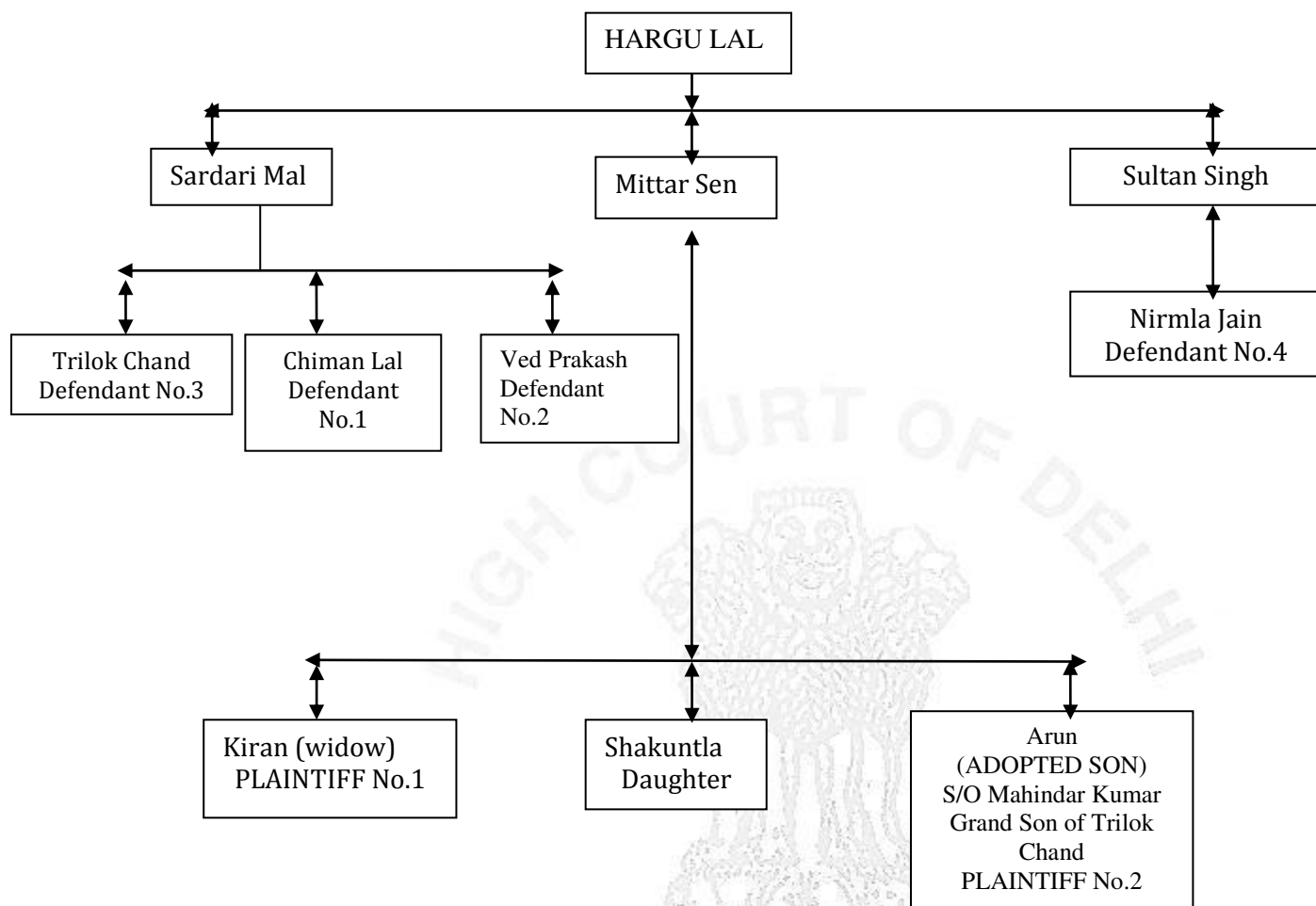
CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This appeal is preferred by the appellants against the judgment and decree dated 12.03.2010 passed by the learned Additional District Judge-1/West District, Tis Hazari Courts, Delhi (hereinafter referred as the learned '*Trial Court*') in CS No.89/2009 (*Old No.576/1979*) whereby the suit for partition filed by respondents No.2 & 3 was decreed in respect of premises bearing Nos.4504, 4505, 4505/1 and 4494 Pahari Dheeraj, Sadar Bazar, Delhi (hereinafter referred as the '*suit property*').

2. Before coming to the facts of the case, it is would appropriate to look at the family tree of Hargu Lal, as under:-



3. The admitted facts of the case are Hargu Lal had three sons namely Sardari Mal, Mittar Sen, and Sultan Singh. Hargu Lal died in the year 1918 but this suit was filed in March, 1979 i.e. after 66 years of the death of Hargu Lal. The learned counsel for the appellant alleges the three brothers namely Sardari Lal, Mitter Sen and Sultan Singh so long as they were alive, they never asked for partition and it was only after their death(s), their legal heirs started fighting and came in the court for partition.

4. The case of the appellants is late Sardari Mal was an absolute owner of the suit property and he had executed a Will in favour of the

defendant No.2/Ved Prakash and whereas the contention of the plaintiffs/respondents and defendants No.3 & 4 [respondents No.13 to 18 (sons of late defendant No.3) and respondent no.19 (husband of late defendant No.4)] is that late Hargu Lal was an owner of the subject property.

5. The learned counsel for the appellant argues the defendants No.3 & 4 have supported the plaintiffs for a reason viz. defendant No.3/Trilok Chand had given his grandson in adoption to Mr.Mittar Sen/husband of plaintiff No.1/Smt.Kiran and such adopted son is Mr.Arun, plaintiff No.2; whereas defendant No.4/Mrs.Nirmla Jain is the daughter of Sh.Sultan Singh who also sided with the plaintiffs as would be benefitted by claiming Hargu Lal as an erstwhile owner of the subject property, lest she would not get anything, hence was argued by the appellants the stand taken by defendants No.3 & 4 viz. *Hargu Lal being an absolute owner of suit property* is fully collusive for reasons above.

6. *Admittedly* no sale deed, either in favour of Hargu Lal or in favour of Sardari Mal was ever proved before the learned Trial Court. The contention of the learned counsel for respondents is since there is an admission of defendants No.3 and 4 claiming Hargu Lal an owner, hence the court rightly held so.

7. However the learned counsel for the appellant says PW2 Ved Parkash had placed on record sufficient material to show Sardari Mal in fact was an absolute owner of the suit property and Hargu Lal had no interest in the premises and such material being *a)* MCD record since the year 1930; Survey Register wherein Sardari Mal is shown as an owner; *b)*

notice for enhancement of house tax being issued by the MCD of the year 1930 to which defendant No.3/ Trilok Chand filed objections on behalf of Sardari Lal; *c*) electricity connection per MCD record being in favour of Sardari Mal since the year 1923; *d*) the plaintiff did not take any action for correction of MCD record since the year 1923; *e*) late Chiman Lal/defendant No.1 got the premises vacated from defendant No.4/widow of Sultan Singh and none objected to say she had a right to stay in the suit property; and *f*) there being an admission by the defendant No.3/Trilok Chand that son of defendant No.1 namely Suresh Chand had constructed three rooms and a stair case in the subject property and none of the defendants or the plaintiffs ever objected to it. Hence, it was argued the above evidence reveal Sardari Lal was an absolute owner of the premises in dispute and the learned Trial Court had committed a grave error in decreeing the suit just because defendants No.3 & 4 did not deny the ownership in favour of Hargu Lal.

8. Admittedly, three issues were framed in the present case and same are as follows and an additional issue was framed by the Division bench as under:-

“1. Was there a family settlement between three sons of Hargu Lal in the year 1952, as alleged in the written statement of defendant No.1 under which the title of Sardari Lal was acknowledged? If so, its effect? OPD1

Additional Issue framed on 07.07.1999 by Division Bench while deciding FAO No.15/1999

a) Whether Hargu Lal owned the suit property and on his death his three sons succeeded to the same, as alleged? OPP

2. Did Sardari Lal execute any Will dated 18th October, 1952 bequeathing the property in dispute in favour of defendant No.1? If so, to what effect?

3. If issue Nos.1 & 2 are not proved what are the respective shares of the parties in the properties as mentioned in the plaint?

9. Three witnesses were examined by the plaintiff. None of them filed any document of ownership, much less sale deed, in favour of Hargu Lal.

10. On may here refer to the deposition of *PW1*, an attorney of the plaintiff No.1, recorded on 14.01.1991. In his cross examination he deposed Hargu Lal was an owner of the property in dispute and had seen sale deed of the subject property in favour of Hargu Lal in Urgu language. Admittedly, no such sale deed is filed on record, hence an adverse inference need to drawn against existence of such sale deed. It has also come in the evidence of **D3W1** that defendant No.2 viz the appellant had constructed a room in the stair case and none of the legal heirs of Mr.Hargu Lal or Sultan Singh ever objected to it. It has also come in the evidence of *PW1*, recorded on 15.04.1991 when the lock on room occupied by the defendant No.4 was broken and such room was taken into possession by defendant No.1, no objection was ever raised by any of the plaintiffs or by defendant No.4. The statement of **D3W1** Trilok Chand recorded on 20.11.1990 do show the property stand in the name of Sardari Lal in Municipal record and taxes were all paid in the name of Sardari Lal and one of the shops in the premises given on rent; its rental being recovered by the defendant No.3/Trilok Chand, son of Sardari Lal. It is only when defendant No.1/Chiman Lal s/o Sardari Lal, had applied for mutation of the property, all the family members objected and filed this partition suit

11. Admittedly on record there is no document, muchless of ownership of the subject property in favour of Hargu Lal. Hence declaring Hargu

Lal an owner of the premises, merely on the saying of two defendants viz., defendant No.3 and defendant No.4 was not at all justified, especially when grandson of defendant No.3 was given in adoption to plaintiff No.1, giving him a motive to make statement contrary to municipal record and where the room occupied by defendant No.4 was taken over by legal heirs of late Sardari Lal, hence her deposition against Sardari Lal was motivated.

12. Thus where documents, be it of taxation, water charges, electricity charges, all being in the name of Late Sardari Lal and there being no document in the name of Late Hargu Lal, then declaring Hargu Lal, an owner of the subject property, only on the basis of oral statements of any two interested person viz. defendants No.3 and 4, was nothing but a perverse finding.

13. The relevant evidence led by the parties before the learned Trial Court is as under :

Statement of D1W3 Sh.Suresh Chand Jain recorded on 18.02.1986

My father had constructed two rooms on the second floor of the house in suit in 1973. A stair case was also being raised adjacent to the said room and then the dispute arose between me and the sons of Trilok Chand Jain, defendant No.3. Mahinder Kumar Jain and Lalit Jain are the sons of defendant No.3. They were objecting to the construction of stairs. In the evening Mitter Sain, brother of Sardari Mal intervened. He summoned Trilok Chand Jain, Chaman Lal, Mahinder Kumar, Lalit Kumar Jain and myself. During discussion Mitter Sain said that I had a right to construct the stairs as that property belonged to my father Chaman Lal. Xxxxxx

Statement of D1W4 Shri Mool Chand, Sr Clerk, DESU recorded on 15.12.1989

I have brought the record of electronic connection No.204462 installed in premises No. 3806 (old)/4505 (new), first floor, situated at Pahari Dhiraj, Main Road, Delhi. This electric connection was given to Shri Sardari Mal s/o Hargu Lal on 25.7.1923. The existing electronic connection is still working.

Cross – examination by Sh.Randhir Jain, counsel for defendant No.3.

The application dated 21st July 1937 for refund of Rs.10/- is purported to be signed by Mr.Mitter Sen for Mr.Sardari Mal as his brother. The application dated 11.2.1988 is also purported to have been signed by Mr.Trilok Chand in respect of the said electricity connection. The affidavit filed on 7.8.1980 is also in respect of the said electricity connection purported to be given by Trilok Chand Jain.

Statement of D1W5 Mr.Ram Chander, from Factories License Department, Delhi

I have brought the summoned record pertaining to factory licence of M/s. Sardari Mal & Sons at premises No.4663, Deputy Ganj, Delhi-6. The application for licence dated 8th April 1954 is purported to be signed by one Shri Chaman Lal for Sardari Mal. It is necessary to file a site plan while applying for the licence. The site plan is also purported to be signed by Sh. Chaman Lal. There is no other documents on record relating to any other previous licence excepting one licence issued in 1951 which is in Urdu. There are signatures of none else except Sh.Chaman Lal in the entire File.

Statement of D1W6 Shri Jagdish Ram, Record Keeper, House Tax Department, Pahar Ganj Zone, MCD

I have brought the Survey Register. According to the Survey Register Shri Sardari Mal Jain Saraf was the tax payer in respect of property No.4494, 4504 and 4505, Deputy Ganj, Delhi. In the first column the municipal number of the property is written as "4495". In the second column the locality in which the property is indicated i.e. Gali Raja Patna Mal. The third column indicates the owner of the property. It is Shri Sardari Mal Jain Saraf.

Cross examination by Sh.Randhir Singh, counsel for defendant No.1.

.....The entries in this register are made after inspection at the site by the inspector. xxxxxx The record of property is available since the year 1949. Xxxxx It is correct that the objections at pages 4 and 13 of the property file are signed by Shri Trilok Chand. These objections are dated 23rd January, 1970 and 19th August, 1970 respectively. Assessment order is made at page 8 of this property file. It also bears the signatures of defendant No.3, Tirlok Chand. The date of the order is 19th August, 1970.

Cross examination by Shri Ravinder Sethi, counsel for the plaintiff.

xxxx The entire record which I have brought today does not contain any document of ownership of Sardari Mal.....

Statement of D2W1 : Statement of Sh.Ved Parkash,

Cross examination by Mr.Suresh Gupta, counsel for defendant No.1

Xxxxx Shri Hargu Lal was my grand-father. Hargu Lal had three sons, Mitter sen, our father Sardari Mal and Sultan Singh. There was no partition between the three sons of Hargu Lal. I say that this property belongs to us because Mitter Sen would have claimed his share in the property if he had some share particularly when Mitter Sen was an educated person whereas we were illiterate. House-tax was being paid in the name of my father recently, but I do not know if by now some change has been made by defendant No.3.

Cross-examination by Shri Randhir Jain, counsel for defendant No.2

xxxxxx It is **incorrect to suggest that this property was joint** between Lala Sultan Singh, Sardari Mal and Mitter Sen. **This property was built by my father.** xxxxxxx. It is correct that the property tax was being deposited by defendant No.3 and he was also collecting rents.

Cross-examination by Shri Ravinder Sethi, counsel for plaintiff.

I have not seen the sale deed of the property in dispute. It is incorrect that the property was purchased by Lala Hargu Lal. **The properties were purchased by Sardari Lal.** On the death of Lala Hargu Lal only my father got the right to inherit the property since he has purchased the property and constructed. There was no question of partition since the property did not belong to anyone else except Sardari Lal.

Statement of D3W1 Shri Trilok Chand Jain

xxxxx.... The property in question stands in the name of Sardari Mal in the records of the Municipal Corporation,xxxxxx At no point of time any quarrel took place amongst the family for raising any other construction in this property. xxxxxx Arun Kumar is my grandson being son of my son Mohinder Kumar. He is adopted by Mitter Sain as his son. xxxx No talk ever took place with Chaman Lal or Ved Prakash regarding any partition of the joint property.

Cross examination by Mr.Suresh Gupta, Counsel for defendant No.1

xxxxxx **Mitter Sain and Sultan Singh had never asked Sardari Mal for partition of the property till the filing of the present suit** by writing any letter or making any oral request to defendant. I never demanded for any partition from Ved Prakash and Chaman Lal at any time after the death of my father. xxxxxx About 10 years back Shri Suresh had constructed three rooms on the second floor of the property and also constructed a staircase for the said rooms. I do not remember whether this construction took place in 1973 or not. **It is incorrect that my son Mohinder and Lalit Kumar had raised objection to the construction of the said rooms.** xxxxx Sardari Lal had a factory when he had installed machines for his jewellery business.

PW1 Sh. Mam Chand Jain, Plaintiff No.1/respondent No.1

xxxxxx **Mitter Sen adopted Arun Kumar, plaintiff no.2,** as his son in February 1978. xxxxxx **Smt.Nirmala was in possession of one room on the second floor and Chaman Lal took forcible possession of the same.**

Cross-examination by Mr.Suresh Gupta, Advocate for D-1

xxxxx I had seen the sale deed of the house of Pahari Dhiraj. Mitter Sen had shown me the said title deed and I was told that when the said property was purchased, there were only small structures in the shape of huts and Hargulal had constructed the property. Hargulal had died prior to my marriage. As I was treated as family member, **that is why he shown me the title deed and told me the facts.** There was no special occasion for showing the title deeds. It was only a casual talk that he showed me the title deeds. The title deeds were in Urdu language but I did not read the same. I do not remember of what year the said title deeds were. I do not know whether **Hargulal died in the year 1913 or not. It is possible that Sardari Mal was the major and his two brothers were minor that time.** I must have seen the said title deeds about 2-3 years after my marriage. xxxxxx When Miter Sen adopted Arun Kumar,

*he expressed the desire for partition. Mitter Sen died after about three weeks of adoption. xxxxx. I never told Mitter Sen that Sultan Singh had told me that he wanted partition. **No quarrel took place when Chaman Lal allegedly broke open the lock of the room of Nirmala.** I do not know whether any notice was given in respect of the said incident or any police case was registered or not. I do not know whether Nirmala had any time objected to her room being taken away like this. Nirmala had told me this fact. Xxxxxx*

Statement of Smt.Kiran, Plaintiff No.1

Cross examination by Mr.Suresh Gupta, Advocate for LR's of defendant No.1

xxxxx Although the house remains in the name of Sardari Lal in the Corporation records, but my husband used to pay the house-tax of the said house. Xxxxxx. Trilok Chand had given in adoption one of his sons to his aunt (father's sister). Arun is the grandson of Trilok Chand. Question of partition had been raised only after adoption of Arun.

14. Per evidence above, late Sardari Lal is shown as a recorded owner of the suit property in municipal records, though sale deed in favour of late Sardari Lal could not be proved either. Admittedly Hargu Lal died in the year 1918. Sardari Lal was having a factory and jewellery business at that time and was an earning member of his family. PW1 has rather *admitted* the possibility of Sardari Lal being major and his other brothers viz. Mitter Sen and Sultan Singh, being minors at the time of death of their father - Hargu Lal. Admittedly there is no document on record to show this property was purchased prior to 1918 by Hargu Lal. The first document on record qua the subject property, *admittedly* is an electricity bill of the year 1928 in the name of Sardari Lal. Admittedly Hargu Lal was dead by the year 1923 (he died in 1918).

15. Admittedly, the property was assessed to House Tax in the name of Late Sardari Lal. The electricity connection in the such property was obtained in the year 1923 by Late Sardari Lal. The evidence do reveal various objections qua quantum of house tax etc. were filed on behalf of Late Sardari Lal by Trilok Chand (defendant No.3) and Mitter Sen S/o

Hargu Lal. They never alleged before the municipal authorities that the property belong to Late Hargu Lal. Even when defendant No.4 viz daughter of Sultan Singh, was unceremoniously kicked out of the property, no one supported her claim viz the subject property belong to Hargu Lal or she had any right to stay in the property. Similarly, when defendant No.1 viz. son of Late Sardari Lal had constructed two rooms and a stair case in the property, none objected. It only started when defendant No.3, gave his grandson – Arun (plaintiff No.2) in adoption to plaintiff No.1 and when the legal heirs of Sardari Lal applied for mutation the dispute started. The learned trial court rather proceeded to pass the impugned judgment on the admissions of defendants No.3 and 4 holding Hargu Lal, an owner of the property.

16. The relevant portion of the impugned judgment is as under :

“.....There is no dispute over the well settled law, regarding onus of proof and burden of proof, in the above referred to case cited by learned counsel for L.R. No.(ii) of defendant No.2-Ved Prakash. Herein, although the plaintiffs have not placed on record any sale deed or document of title in the name of Sh. Hargu Lal in respect of the suit property, from the admissions made by defendant No.3 and 4, it cannot be said that plaintiffs have failed to discharge even the initial onus of proof put on them while framing this additional issue. Defendant No.3 is brother of defendant No.2 Ved Prakash and grandson of Sh.Hargu Lal whereas Smt.Nirmala daughter of Sultan Singh-brother of Sh.Sardari Lal. There is nothing on record to suggest that admissions by these two defendants are inadmissible in evidence or as to why the admission by these two defendants cannot be taken into consideration so far as factum of ownership of Sh. Hargu Lal in respect of the suit property is concerned.

xxxx

Herein defendant Nos.1 and 2 have not led any documentary evidence to suggest that the suit property was purchased by Sh.Sardari Lal. Furthermore, in his written statement, defendant No.2 admitted that Hargu Lal was the common ancestor of the parties and that he died leaving behind three sons who succeeded to his estate to the extent of 1/3rd share. However, he denied that Hargu Lal was the owner of the building i.e. property in dispute. As further pleaded by the defendant, actually his father Sh. Sardari Lal was the real owner. This goes to show that firstly the defendant did not dispute that the three sons of Sh. Hargu Lal succeeded to his estate to the extent of 1/3rd share, but at the

same time put forth self contradictory version by denying that Sh. Hargu Lal was the owner of the suit property in dispute.

Similarly, defendant No.2 also admitted in the written statement that Sh.Hargu Lal, common ancestor of the parties died in 1913 leaving behind three sons, widow and daughter and that three sons succeeded to his estate, each leaving 1/3rd share, but at the same time denied that Sh. Hargu Lal was the owner of the suit property in dispute. And as such, he too put forth self contradictory plea regarding ownership of the suit property.”

“.....In view of nature of evidence available in the statement of D1W6, I find merit in the contention of learned counsel for the plaintiff that simply because the property was being assessed to house tax, it cannot be said that Sh. Sardari Lal was owner of the suit property. From the material available on record, this Court comes to conclusion that case of plaintiffs that Sh. Hargu Lal was the owner of the suit property, stands duly established.

Additional Issue No.1(a) is therefore decided in favour of the plaintiffs.”

17. Now defendant No.2 in his written statement *never admitted* suit property ever belonged to Hargu Lal or that all his three sons namely Sultan Singh, Mitter Sen and Sardari Lal had 1/3rd share each in subject property.

18. The written statement of defendant No.2 is on record, which when perused would reveal defendant No.2 only alleged the property belonged to his father Sardari Lal and on his death need to be distributed amongst his three sons. The defendant No.2 never admitted Hargu Lal was an owner of the suit property or after his death, all his three sons would *succeed* to this very property to an extent of 1/3rd each.

19. The learned Trial Court then discussed the evidence *viz* house tax record but held the assessments in favour of late Sardari Lal would not mean ownership in his favour. D1W6 – a Record Keeper from House Tax Department deposed the Survey Register show Sardari Lal to be a tax payer, being assessed to House Tax since the year 1961; but the said witness could not bring any record or assessment since the year 1947,

(the reason being old municipal numbers were not available). Though the learned Trial Court did not give much weightage to statement of *DIW6* yet did not divulge as to how Sardari Lal's name came to be recorded in the Survey Register. The learned Trial Court even ignored the fact that defendant No.3/ Trilok Chand, himself had filed objections against assessment orders on 23.01.1970 and 19.08.1970 and that too in the name of his late father Sardari Lal. However as sale deed in the name of Sardari Lal could not be brought on record or proved hence Sardari Lal was held not to be an owner of the suit property.

20. A bare perusal of the impugned judgment could reveal instead of deciding issue (a) viz. *if Hargu Lal was an owner of suit property* the learned Trial Court took pain to find if Sardari Lal was not an owner despite there being house tax record, Survey Register, electricity bills in his name. The burden to prove issue No.(a) was upon the plaintiff, but the plaintiffs did not lead any cogent evidence in support of their claim, hence, the learned Trial Court erred in holding Hargu Lal an owner of suit property by ignoring the documents in favour of late Sardari Lal by only relying upon depositions of two interested family members. The suit ought to have failed since no cogent *assertive* evidence was ever led by the plaintiff in favour of Hargu Lal to show him an owner of the subject property. Rather there was absolutely no document on record in favour of Hargu Lal which could even relate him to the subject property, except he being the family head. This, of course, would not make him an owner of property, especially when all municipal documents since 1923, are in the name of late Sardari Lal. Oral testimonies when pitted against

municipal record/ the conduct of parties since 1923, the later shall have more weightage.

21. Thus, the issue no.(a) is decided against the plaintiffs and in favour of the appellants herein.

22. Issue No.(1) qua family settlement and Will dated 18.10.1952 of Sardari Lal; though the impugned order records such documents were never proved, but this part of the judgment is not challenged by the learned counsel for the appellant before me. The appellants appear to be satisfied by the finding on issue No.1(a). Since issues No.(1) and (2) are not pressed and issues No.3 being linked to issues No.(1) and (2), I need not give any finding on this issue too.

23. In the circumstances, the impugned judgment passed by the learned Trial Court is set aside in terms of the above. The suit stands dismissed. The appeal is allowed to the above extent. The pending applications, if any, also stands disposed of. TCR be remitted forthwith. Parties to bear their own costs.

DECEMBER 17, 2019

M/VLD

YOGESH KHANNA, J.