



\$~ 3(Appellate)

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

Reserved on: 23rd August 2022
Pronounced on: 29th August 2022

+ CM(M) 818/2022 & CM APPL.35841/2022, CM APPL.35842/2022

PURSHOTTAM DASS KHATTAR SINCE (DECEASED)
 THROUGH LEGAL HEIRS.....Petitioner

Through: Mr. Naveen Kumar Chaudhary,
 Adv.

Versus

RUKMANI RANI & ORSRespondents

Through: Mr. Rajat Aneja, Adv. for R-3

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

% **29.08.2022**

1. Hari Chand and Kamla had six children; three daughters and three sons. The daughters were Rukmani Rani, Satwant Kaur and Krishna Gulati. The sons were Ganesh Dass Khattar, Daya Nand Khattar and Purshottam Dass Khattar. Satwant Kaur, Krishna Gulati and Purshottam Dass Khattar died on 21st September 2013, in December 2015 and 11th October 2016 respectively. They, therefore, had already expired by the time CS Civ DJ 818/2017 (*Rukmani Rani v. Ganesh Dass Khattar and Ors.*) came to be instituted by Rukmani Rani as the plaintiff against:



- (i) Ganesh Dass Khattar as Defendant 1,
- (ii) Daya Nand Khattar as Defendant 2,
- (iii) Purshottam Dass Khattar as Defendant 3, represented by his wife as Defendant 3(a) and his two sons and two daughters as Defendants 3(b) to 3(e) (the petitioners herein),
- (iv) Satwant Kaur, as Defendant 4, represented by her three daughters as Defendants 4(a), 4(b) and 4(d) and her two sons as Defendant 4(e) and 4(c) and
- (v) Krishna Gulati as Defendant 5, through her two sons and two daughters as Defendant 5(a) to 5(d).

Annexed, to this judgement as Annexure A, is a family tree demonstrating this position.

2. Given the number of *dramatis personae* involved, this judgement uses their original designations in Suit No. Civ DJ 818/2017 to refer to them.

3. Respondent 1 Rukmani Rani, as the plaintiff in CS Civ DJ 818/2017, sought partition of a property situated at 17/6A-1, Tilak Nagar, New Delhi-110018 (the suit property), admeasuring 100 sq. yds. According to the plaint, instituted by the plaintiff (Respondent 1 herein), the suit property was owned by Hari Chand, who died intestate on 17th March 1967. Kamla, the wife of Hari Chand, also expired intestate on 11th May 1983.

4. The three daughters and three sons of Hari Chand, thereby, became entitled to 1/6th share each, in the estate of Hari Chand.



The plaintiff Rukmani Rani, as one of the surviving daughters of Hari Chand, therefore, sought partition of the suit property amongst the surviving legal heirs of Hari Chand, with, naturally,

- (i) Defendant 1 Ganesh Dass Khattar being entitled to $1/6^{\text{th}}$,
- (ii) Defendant 2 Daya Nand Khattar being entitled to $1/6^{\text{th}}$,
- (iii) the wife of Purshottam Dass Khattar [Defendant 3(a)] and his four children [Defendants 3(b) to (e)], being entitled to $1/30^{\text{th}}$ each,
- (iv) the plaintiff being entitled to $1/6^{\text{th}}$,
- (v) Defendants 4(a) to (e), the surviving legal heirs of Defendant 4 Satwant Kaur being entitled to $1/30^{\text{th}}$ each and
- (vi) Defendant 5(a) to (d), the four legal heirs of Defendant 5 Krishna Gulati being entitled to $1/24^{\text{th}}$ each.

5. Defendant 2 Daya Nand Khattar and the petitioners, as the legal heirs of Defendant 3 Purshottam Dass Khattar, resisted the suit instituted by the plaintiff, whereas Defendant 1, Defendant 4(a) to (d) and Defendant 5(a) to (d) supported the case of the plaintiff.

6. Defendant 2 Daya Nand Khattar, in his written statement filed in response to the suit of the plaintiff, submitted that a family settlement had been executed among the legal heirs of Hari Chand, whereunder all legal heirs, except Defendants 2 and 3, relinquished their rights in the suit property. In lieu of such relinquishment, it was submitted that Defendants 4 and 5 had agreed to receive specified sums of money. The plaintiff, however, did not claim any share in the



suit property and accepted the Relinquishment Deed, whereunder Defendants 2 and 3 alone were entitled to shares in the suit property. Monetary payments, as per the Family Settlement, it was submitted, had been made to Defendants 1, 4 and 5, who had also executed necessary documents, relinquishing their rights in favour of Defendants 2 and 3, though no formal registered relinquishment deed had been executed. In these circumstances, Defendant 2 submitted that the suit of the plaintiff was liable to be dismissed for want of any cause of action, as the plaintiff had surrendered his rights in the suit property, and rights in the suit property vested only in Defendants 2 and 3.

7. Defendants 3(a) to 3(e) (the petitioners herein), in the written statement jointly filed by them, predictably supported the stand canvassed by Defendant 2. They, too, submitted that the plaint was devoid of any maintainable cause of action. Legally, the right of the plaintiff to seek partition of the suit property was contested on the ground that the plaintiff was not a daughter of a coparcener at the commencement of the Hindu Succession Act, 1956, as amended in 2005. It was further submitted, by Defendants 3(a) to 3(e) that, on 17th March 1967, a notional partition of the suit property had taken place among the legal heirs of Hari Chand, pursuant to which the shares of the legal heirs crystallised, resulting in rights becoming vested in the parties to the suit. In respect of a coparcener who expired prior to the amendment of the Hindu Succession Act in 2005, Defendants 3(a) to 3(e) submitted that the right to succession crystallised on the date of death. The amendment of the Hindu Succession Act on 9th September



2005, it was submitted, applied only to living daughters of a living coparcener. These contentions are not of any particular relevance to the controversy in issue in the present petition.

8. Defendants 3(a) to 3(e) also, however, supported the stand canvassed by Defendant 2, echoing the submission that Defendant 1 had relinquished his rights in the suit property in favour of Defendants 2 and 3. Defendants 3(a) to 3(e), however, went a step further and pleaded that such relinquishment took place *vide* Relinquishment Deeds dated 27th July 1985 (in the case of Defendant 1) and 11th April 1994 (in the case of Defendant 4). Similar relinquishment of rights in favour of Defendants 2 and 3 had also, it was pleaded, been effected by Defendant 5. Defendants 1, 4 and 5, it was further pleaded, had been adequately compensated for thus relinquishing their rights in the suit property in favour of Defendants 2 and 3, by money. The plaintiff, however, it was averred, had not entered into any relinquishment deed, having surrendered all her rights in the suit property in good faith.

9. Thus, the plaintiff, as well as Defendants 1, 4 and 5 had agreed not to claim any right, title or shares in the suit property. CS Civ DJ 818/2017, it was submitted, had been filed in express violation of the said understanding.

10. Applications filed by Defendants 3(a) to 3(e) [the petitioners]

In the backdrop of these factual assertions and counter



assertions, the following applications, relevant to the present dispute, came to be filed by Defendants 3(a) to (e):

- (i) application dated 18th July 2018 under Order XI Rules 12 and 13 of the CPC, for a direction to Defendant 1 to produce, under oath, two receipts dated 27th July 1985, allegedly acknowledging receipt, by Defendant 1, of Rs 10,000/- in lieu of his share in the suit property,
- (ii) application dated 18th July 2018 under Order XI Rules 12 and 13 of the CPC, for a direction to Defendants 4(a) to (e) to produce, under oath, receipt dated 11th April 1994, allegedly acknowledging receipt, by Defendant 4, of Rs 50,000/- in lieu of her share in the suit property,
- (iii) application dated 29th August 2019, for examination, by the Court, of Defendants 1 and 4(a) to (e) under Order X Rule 2 of the CPC and
- (iv) application dated 25th October 2019, under Section 151 of the CPC, to take, on record the documents filed with the application, for the purpose of confronting Defendants 4(a) to (e) with the said documents during their examination under Order X Rule 2 of the CPC.

A reading of the latter two applications [at (iii) and (iv) above], the relevant paragraphs of which would be extracted hereinafter, clearly disclose that their intent was to obtain an admission or an acknowledgement, from Defendants 1 and 4(a) to (e), of the factum of relinquishment, by them, of their shares in the suit property; in the case of Defendants 4(a) to (e), *vide* Relinquishment Deeds dated 27th



July 1985 (allegedly executed by Defendant 1) and 11th April 1994 (allegedly executed by Defendant 4). For this purpose, the application under Section 151, CPC [at (iv) above] sought to confront Defendants 4(a) to (e) with documents purportedly containing the admitted signatures of Defendant 4, so that, during the recording of the statements of Defendants 4(a) to (e), the fact that the Relinquishment Deed dated 11th April 1994 had indeed been executed by Defendant 4 could be proved.

Paras 4 to 8 of the application filed by Defendants 3(a) to (e) under Order X Rule 2 of the CPC may, in this context, be reproduced thus:

“4. The defence of Defendant Nos. 3 (a) to (e) of the Written Statement is that in order to give effect to the Family Settlement arrived at between the legal heirs of Late Shri Hari Chand, it was amicably decided that the Defendant No.1 as well as the Defendant Nos.4 and 5 shall be given a specified sum towards their undivided share in the Suit property, and on the receipt of which sum, they would execute the necessary documents. Whereas, the third daughter of the Late Shri Hari Chand, namely Shri Rukmani Rani (Plaintiff) voluntarily agreed not to claim any share whatsoever in the Suit property and accepted the said Family Settlement. Thus, as per the said Family Settlement, only two sons of the deceased, i.e. the Defendants Nos.2 and 3, were entitled to the said property in entirety. Accordingly, *as per the Family Settlement, the monetary amounts were paid by the predecessor-in-interest of Defendant Nos.3 (a) to (e) namely Shri Purshottam Dass Khattar and Defendant No.2 to their brother Shri Ganesh Dass Khattar (Defendant No.1) and the two sisters namely Late Smt. Satwant Kaur [predecessor-in-interest of Defendant Nos.4 (a) to 4 (e) and 4 (e) (i) to 4 (e) (iv)] and Late Smt. Krishna Gulati [predecessor-in-interest of Defendant Nos.5 (a) to (d)]; and all the said three siblings executed necessary documents comprising of the Receipt and Relinquishment Deeds in favour of the Defendant No.2 and the predecessor-*



in-interest of Defendant Nos.3 (a) to (e).

5. Upon the receipt of a sum of Rs.20,000/- (Rupees Twenty Thousand only) from the predecessor-in interest of Defendant Nos.3 (a) to (e) and Defendant No.2, in equal proportion i.e. a sum of Rs.10,000/- (Rupees Ten Thousand only) each, the *Defendant No.1 executed a Relinquishment Deed dated July 27, 1985 in favour of the Defendant No.2 and the predecessor-in-interest of Defendant Nos.3 (a) to (e), wherein, Defendant No.1 duly relinquished his 1/6 (one sixth) share in the Suit property in favour of the Defendant Nos.2 and 3. The factum of having received the said sum of money from the Defendant No.2 and predecessor-in-interest of Defendant Nos.3 (a) to (e) was duly recorded in two Receipts dated both July 27, 1985 executed by the Defendant No.1 in favour of the Defendant No.2 and predecessor-in-interest of Defendant Nos.3 (a) to (e).*

6. *The predecessor-in-interest of Defendant Nos.4 (a) to 4 (e) and 4 (e) (i) to (iv) namely Late Smt. Satwant Kaur in order to give effect to the Family Settlement also executed a Relinquishment Deed dated April 11, 1994, Receipt and Affidavit of the same date in favour of the predecessor-in-interest of Defendant Nos.3 (a) to (e) to the said effect. it is further most imperative to submit that the Defendant Nos.2 and 3 in good faith did not insist for execution of any document from the Plaintiff, though, she had also been adequately compensated in monetary terms by the Defendant Nos.2 and 3.*

7. In such scenario, the present application has been necessitated for examination of the Defendant No.1 and the Legal heirs of Defendant No.4 who are already impleaded as the Defendants No. 4 (a) to 4 (e) and 4 (e) (i) to (iv) in the present case; by this Hon'ble Court under the provisions of Order X Rule 2 CPC, *as the Defendant No.1 and the predecessor-in-interest of the Defendants No. 4 (a) to 4 (e) and 4 (e) (i) to (iv) i.e. the Defendant No.4 had executed the aforesaid documents by virtue of which the Defendant Nos.2 and 3 became the sole and absolute owner of the Suit property, however, after more than 3 (three) decades, dishonesty crept in their minds and thus, they are now maintaining conspicuous silence on the execution of the said*



documents.

8. It is imperative for this Hon'ble Court for the purpose of adjudicating the controversy involved in the above matter to orally examine the Defendant No.1 and the Defendants No. 4 (a) to 4 (e) and 4 (e) (i) to (iv), *about the execution of the aforesaid title documents by the said Defendants No.1 and the predecessor-in-interest of the Defendants No. 4 (a) to 4 (e) and 4 (e) (i) to (iv) i.e. Defendant No.4.*"

(Emphasis supplied)

A reading of the application filed by Defendants 3(a) to (e) [at (iv) above] makes it clear that the documents that Defendants 3(a) to 3(e) sought to place on the record in the said application were only intended to confront Defendants 4(a) to 4(e) during the recording of their statement under Order X Rule 2 of the CPC. On this aspect, indeed, there was no dispute even during arguments at the bar.

11. Replies filed to petitioners' applications

Replies to the applications for discovery of original documents, filed by Defendants 3 (a) to (e) under Order XI Rules 12 and 13 of the CPC, were filed by Defendant 1 as well as Defendants 4(a) to 4(e). However, to the applications under Order X Rule 2 and under Section 151 of the CPC, replies were filed only by Defendant 4 (a) to (e).

Replies filed by Defendant 1 to the application under Order XI Rules 12 and 13 filed by Defendants 3(a) to 3(e) - Qua the assertion, of Defendants 3 (a) to (e), that Defendant 1 had, in exchange for monetary consideration, relinquished his rights in respect of the suit



property in favour of Defendants 2 and 3. Defendant 1, in his reply to the application of Defendants 3 (a) to (e), under Order XI Rules 12 and 13 CPC, averred thus:

“5. The contents of para '5 are wrong and denied. There was never ever any mutual decision/agreement between the legal heirs of late Shri Hari Chand qua the suit property. When there was no mutual decision/agreement/settlement between the legal heirs of Late Shri Hari Chand, then the question of receipt of money by the defendant no.1 from the defendants no. 2 and 3 and issuance of any receipt to that effect, does not arise.

6. In reply to Para 6 the defendant no. 1 denies that he has executed any relinquishment deed in favour of defendants no. 2 and 3, qua the suit property at any point of time. It is denied that the defendant no. 1 has ever executed any receipt on 27th July, 1985, acknowledging the receipt of Rs. 10,000/- each from defendant no. 2 and 3(the predecessor in interest) in the suit property. When there was no mutual decision/agreement/settlement between the legal heirs of Late Shri Hari Chand, then the question of receipt of money by the defendant no.1 from the defendants no. 2 and 3 and issuance of any receipt to that effect, does not arise. The defendant no. 1 was always demanding his 1/6th undivided share in the suit property after the demise of his father Shri Hari Chand and mother Smt. Kamala Devi Moreover, even after the demise of the Defendant No. 3, the defendant no. 1 was demanding his share in the suit property.

7-12 In reply to paras 7, 8, 9, 10, 11 and 12 it is submitted that the defendant no. 1 never executed any relinquishment deed dated 27 July, 1985 in favour of Defendant no. 2 and predecessor in interest defendant no.3. When there was no mutual decision/agreement/settlement between the legal heirs of Late Shri Hari Chand, then the question of receipt of money by the defendant no.1 from the defendants no. 2 and 3 and issuance of any receipt to that effect, does not arise. Since the documents referred to by the applicants in their application under reply were never ever executed by the defendant no.1, therefore the question of, defendant no. 1 possessing the said document does not arise. Further, the non



existing documents cannot have any relevancy in the present suit. Nor can be termed as indisputable. The documents, alleged to be executed by the defendant no.1 and alleged to be in his possession is the figment of imagination of the applicants i.e. Defendants No.3 (a) to (e). The present application has been moved by the applicants with malafide intentions.”

Replies filed by Defendant 4(a) to 4(e) - Defendants 4(a) to 4(e), qua the assertions of the Defendants 3(a) to 3(e) that Defendants 1, 4 and 5 and the plaintiff relinquished their rights in respect of the suit property, in favour of Defendants 2 and 3 in return for monetary consideration, submitted thus.

Reply to application under Order XI Rules 12 and 13

“2. That the plea of the alleged execution of the Relinquishment Deed, Receipt and Affidavit all dated 11.04.1994 purportedly executed by the Deceased Smt. Satwant Kaur and also allegedly witnessed by the Defendant No.4(c) could not have been rebutted and refuted by the Defendant Nos.4 (a) to 4(e) (i-iv) since, there had been no occasion and opportunity for the Defendant Nos.4(a) to 4(e)(i-iv) to file any pleading against the Written Statement filed on behalf of the Defendant Nos. 3(a) to 3(e). It is submitted that the alleged Relinquishment Deed, Receipt and Affidavit all dated 11.04.1994 are forged and fabricated documents, since signatures of Late Smt. Satwant Kaur, as the alleged Executor and also the signatures of the Defendant No. 4(c) as the alleged witness, have been forged by the Defendant Nos.3(a) to 3(e) and/or by their Predecessor in interest in connivance and collusion with the Defendant No.2, with respect to which | the Defendant Nos.4(a) to 4(e)(i-iv) reserve their rights to initiate appropriate criminal actions against them, in accordance with law.

3. That the Application under Reply is liable to be dismissed, since the same has been filed on behalf of the



Defendant Nos.3(a) to 3(e) to create a camouflage with respect to their alleged defense. It is submitted that the relief of seeking discovery and production of the alleged Relinquishment Deed and Receipt both dated 11.04.1994, by the Defendant Nos.3(a) to 3(e) from the Defendant Nos.4(a) to 4(e)(i-iv), has been made in the Application under Reply so as to show to this Hon'ble Court that at some point of time the alleged documents in the nature of Relinquishment Deed and Receipt both dated 11.04.1994 were executed by Smt. Satwant Kaur, whereby Smt. Satwant Kaur allegedly relinquished her 1/6 share in the Said Property in favour of the Predecessor-in-Interest of the Defendant Nos.3(a) to 3(e).

Reply on merits

3. That the contents of Para No.3 of the Application under Reply are wrong, incorrect and denied. It is submitted that the contents of Para No.3([V) of the Preliminary Objections of the Written Statement filed on behalf of the Defendant Nos. 3(a) to 3(e) are baseless and without an iota of evidence. It is submitted that the plea of the alleged execution of the Relinquishment Deed, Receipt and Affidavit all dated 11.04.1994 purportedly executed by the Deceased Smt. Satwant Kaur and also alleged witnessed by the Defendant No.4 (c) could not have been rebutted and refuted by the Defendant Nos.4(a) to 4(e) (i-iv) since, there had been no occasion and opportunity for the Defendant Nos.4(a) to 4(e) (i-iv) to file any pleading against the Written Statement filed on behalf of the Defendant Nos. 3(a) to 3(e). It is submitted that the alleged Relinquishment Deed, Receipt and Affidavit all dated 11.04.1994 are forged and fabricated documents, since signatures of Late Smt. Satwant Kaur, as the alleged Executor and also the signatures of the Defendant No.4(c) as the alleged witness, have been forged by the Defendant Nos.3 (a) to 3(e) and/or by their Predecessor-in-Interest in connivance and collusion with the Defendant No.2, with respect to which the Defendant Nos.4(a) to 4(e)(i-iv) reserve their rights to initiate appropriate criminal actions against them, in accordance with law.

4. That the contents of Para No.4 of the Application under Reply are wrong, incorrect and denied. It is denied that the



Defendant Nos. 2 & 3 are having the exclusive possession of the Said Property. It is submitted that the Defendant Nos.4(a) to 4(e)(i-iv) are in constructive possession of the Said Property, deriving their right/title/interest in the Said Property, through their Mother namely Late Smt. Satwant Kaur.

5. That the contents of Para No.5 of the Application under Reply are wrong, incorrect and denied. It is denied that the after the death of Smt. Kamla Devi, W/o. Late Sh. Hari Chand Khattar on 11.05.1983, it was alleged mutually decided amongst all the Legal Heirs of Late Sh. Hari Chand Khattar that the Said Property will fall to the share of the Defendant Nos. 2 & 3 and in lieu thereof, the Defendant Nos.1 to 3 will allegedly get assess the Market Value of the Said Property. It is vehemently denied that Smt. Satwant Kaur ever approached Late Sh. Purushottam Dass Khattar and allegedly asked him to pay money to her which shall be equivalent to her share in the Ground Floor of the Said Property. It is further vehemently denied that with the mutual consent of Late Sh. Purushottam Dass Khattar and Smt. Satwant Kaur, it was ever decided that Late Sh. Purushottam Dass Khattar will pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) to Smt. Satwant Kaur. It is denied that on 11.04.1994, Late Sh. Purushottam Dass Khattar paid any sum much less the alleged sum of Rs.50,000/- (Rupees Fifty Thousand only) to Smt. Satwant Kaur in a lieu of her share in the Ground Floor of the Said Property.

6. That the contents of Para No.6 of the Application under Reply are wrong, incorrect and denied. It is denied that 4 Smt. Satwant Kaur ever acknowledged the alleged payment of Rs.50,000/- (Rupees Fifty Thousand only) by Late Sh. Purushottam Dass Khattar, in lieu of her share on the Ground Floor of the Said Property. The alleged Receipt dated 11.04.1994 is a forged and fabricated document. It is denied that the Legal Heirs of Smt. Satwant Kaur want to take any undue advantage under the garb of the present Suit. It is submitted that the Defendant Nos. 4{a) to 4(e){i-iv) are within their rights to claim their respective shares in the Said Property, being devolved upon them through their Mother namely, Smt. Satwant Kaur. Rather, it is the Defendant Nos.2 & 3 who have indulged into illegal activities by forging certain documents in the nature of alleged Relinquishment



Deed, Receipt and Affidavit all dated 11.04.1994, with the malafide intention to prejudice the valuable rights of the Defendant Nos.4{a} to 4(e)(i-iv).

7. That the contents of Para No.7 of the Application under Reply are wrong, incorrect and denied. It is submitted that there could have been any opportunity for the Defendant Nos.4({a} to 4(e))(i-iv) to admit or deny the alleged execution of the Relinquishment Deed dated 11.04.1994 by Smt. Satwant Kaur and also Receipt dated 11.04.1994, since Smt. Satwant Kaur never executed any such documents in favour of Late Sh. Purushottam Dass Khattar nor ever relinquishment her 1/6 undivided share in the Said Property in favour of Late Sh. Purushottam Dass Khattar.

8. That the contents of Para No.8 of the Application under Reply are wrong, incorrect and denied. It is vehemently denied that the Defendant Nos.4{a} to 4{e}(i-iv) are in possession of the alleged Relinquishment Deed and Receipt both dated 11.04.1994 , purportedly executed by Smt. Satwant Kaur in favour of the predecessor-in-interest of the Defendant No.3{a} to 3{e}). It is further vehemently denied that Smt. Satwant Kaur ever acknowledged the receipt of a sum of Rs.50,000/- (Rupees Fifty Thousand only) from the Predecessor-in-interest of the Defendant No.3(a) to 3(e) and it is further vehemently denied that Smt. Satwant Kaur ever relinquished her share in the Said Property in his favour. The contents of Preliminary Objections and Submissions may kindly be read as part and parcel of the present Reply, as the same are not being repeated herein for the sake of brevity.

9. That the contents of Para No.9 of the Application under Reply are wrong, incorrect and denied. It is vehemently denied that the alleged documents being Relinquishment Deed and Receipt both dated 11.04.1994 purportedly executed by Smt. Satwant Kaur in favour of the Predecessor-in-Interest of the Defendant No.3(a) to 3(e) are relevant for the proper adjudication of the present case. It is submitted that the alleged documents being Relinquishment Deed and Receipt both dated 11.04.1994 have no bearing in the eyes of law since they are not admissible in evidence. Prima Facie, the said documents outrightly flout the provisions of The Transfer of Property Act, 1882 and also Indian Stamps Duty Act and



are liable to be impounded by this Hon'ble Court.

10. That the contents of Para No.10 of the Application under Reply are wrong, & incorrect and denied. It is vehemently denied that the said documents are relevant. Further, seeking discovery of production of the said alleged documents from the Defendant Nos.4(a) to 4(e)(i-iv) is not tenable, since no such document was ever executed by Smt. Satwant Kaur at any point of time and thus, the question of possessing the said documents does not arise at all."

Reply to application under Order X Rule 2

"3. That the Defendant Nos.4(a) to 4(e)(i-iv) have already filed their joint Written Statement and subsequent thereto, they have outrightly denied the execution of said alleged Relinquishment Deed, Affidavit and Receipt, all dated 11.04.1994 by Late Smt. Satwant Kaur and thus, there had been no plausible reason for the Defendant No.3(a) to 3(e) to file the Application under Reply, thereby seeking the relief of oral examination of Defendant Nos.4(a) to 4(e)(i-iv), with respect to the said alleged documents. Under such circumstances, the present Application is liable to be dismissed, on this short score alone.

4. That it is submitted that the alleged Relinquishment Deed, Receipt and Affidavit all dated 11.04.1994 are forged and fabricated documents, since signatures of Late Smt. Satwant Kaur, as the alleged Executor and also the signatures of the Defendant No.4(c), as the alleged Witness, have been forged by the Defendant Nos.3(a) to 3(e) and/or by their Predecessor-in-Interest in connivance and collusion with the Defendant No.2, with respect to which the Defendant Nos.4(a) to 4(e)(i-iv) reserve their rights to initiate appropriate criminal actions against them, in accordance with law. Infact, there had been no Family Settlement at any point of time, as propounded by the Defendant No.2 & the Defendant Nos. 3(a) to 3(e), with respect to the Suit Property.

5. That the Application under Reply is liable to be dismissed on the premise that the Defendant Nos.3(a) to 3(e) in their Written Statement have made contrary pleas which



makes their defense destructive. It is submitted that as on the one hand, the Defendant Nos.3{a) to 3{e) have alleged that Smt. Satwant Kaur relinquished her 1/6 Share in the Suit Property in favour of their Predecessor-in- Interest by accepting the alleged sum of Rs.50,000/- (Rupees Fifty Thousand only) upon the alleged execution of Relinquishment Deed and Receipt both dated 11.04.1994 and on the other hand, the Defendant Nos.3{a) to 3{e) have taken the plea of non-entitlement of Smt. Satwant Kaur with respect to any right/title/interest in the Suit Property, as per the amendments made in The Hindu Succession Act, in the year 2005.

Reply on merits

3. That the contents of Para No.3 of the Application under Reply are wrong, incorrect and denied. It is submitted that the contents of Para No.3{iii) & {iv) of the Preliminary Objections of the Written Statement, filed on behalf of the Defendant Nos. 3(a) to 3(e), are baseless and without an iota of evidence. It is submitted that the alleged Relinquishment Deed, Receipt and Affidavit all dated 11.04.1994 are forged and fabricated documents, since signatures of Late Smt. Satwant Kaur, as the alleged Executor and also the signatures of the Defendant No.4(c), as the alleged Witness, have been forged by the Defendant Nos.3{a) to 3(e) and/or by their Predecessor-in- Interest in connivance and collusion with the Defendant No.2, with respect to which the Defendant Nos.4(a) to 4{e)(i-iv) reserve their rights to initiate appropriate criminal actions against them, in accordance with law.

4. That the contents of Para No.4 of the Application under Reply are wrong, incorrect and denied. It is denied that there had been any Family Settlement between the Legal Heirs of Late Sh. Hari Chand and it is vehemently denied that it was ever amicably decided that the Defendant Nos.1, 4 & 5 shall be given the alleged specified sum towards their undivided share in the Suit Property and on the receipt of the alleged sum, they would allegedly execute necessary documents. It is vehemently denied that as per the alleged Family Settlement, any monetary amount was given to Late Smt. Satwant Kaur



(Predecessor-in-interest of the Defendant Nos.4{a) to 4(e)(i-iv)) and it is further vehemently denied that Late Smt. Satwant Kaur ever executed any document, much less the alleged Receipt, Affidavit and Relinquishment Deed all dated 11.04.1994, in favour of Predecessor-in-interest of Defendant Nos. 3{a} to 3{e}.

6. That the contents of Para No.6 of the Application under Reply are wrong, incorrect and denied. It is denied that there had been any Family Settlement between the legal Heirs of Late Sh. Hari Chand. It is further denied that the Predecessor-in-interest of the Defendant Nos.4(a) to 4(e)(i-iv) namely Late Smt. Satwant Kaur, in order to give effect to the alleged Family Settlement, ever executed the alleged Relinquishment Deed, Receipt and Affidavit, all dated 11.04.1994 in favour of the Predecessor-in-interest of the Defendant Nos. 3{a) to 3{e}. It is submitted that Late Smt. Satwant Kaur was never given any monetary compensation, as alleged herein: against her share in the Suit Property or otherwise also, and therefore, the question of executing the alleged document(s) in favour of Defendant Nos. 2 & 3, does not arise at all. It is submitted that since Smt. Satwant Kaur had been duly entitled for her 1/6 undivided Share in the Suit Property, therefore, she had been consistently demanding her share in the Suit Property, through Partition.

7. That the contents of Para No.7 of the Application under Reply are wrong, incorrect and denied. It is submitted that there is no occasion or scenario for the Defendant Nos, 3{a) to 3{e} to seek the relief of examination of the Legal Heirs of Late Smt. Satwant Kaur in the present case, since it had been the consistent case of the Defendant Nos.4(a) to 4(e)(i-iv) that their Mother had 1/6 undivided Share in the Suit Property. Further, in most of the pleadings made by the Defendant Nos.4{a) to 4(e) (i-iv), it had been their consistent case that the alleged Relinquishment Deed, Receipt and Affidavit all dated 11.04.1994 are forged and fabricated documents, since signatures of Late Smt. Satwant Kaur, as the alleged Executor and also the signatures of the Defendant No.4(c}, as the alleged Witness, have been forged by the Defendant Nos.3{a)) to 3{e) and/or by their Predecessor-in- Interest in



connivance and collusion with the Defendant No.2. Even otherwise, the Defendant Nos. 2 & 3 never became the sole and absolute owner of the Suit Property. It is denied that after more than 3 decades, dishonesty crept in the minds of the Defendant Nos.4(a) to 4(e)}(i-iv) and it is further denied that they are now maintaining conspicuous silence on the execution of the said alleged documents.

9. That the contents of Para No.9 of the Application under Reply are wrong, incorrect and denied. It is denied that this Hon'ble Court's indulgence is at all required for exercising powers under Order X Rule 2 of CPC for examining the Defendant Nos.4(a) to 4(e)(i-iv) regarding the execution of the alleged documents, since the Defendant Nos.4(a) to 4(e)(i-iv) had been taking their consistent stand and rather putting forth their case that the alleged documents all dated 11.04.1994 sought to be relied / propounded upon by the Defendant Nos. 2 & 3 are forged and fabricated, since signatures of Late Smt. Satwant Kaur, as the alleged Executor and also the signatures of the Defendant No.4(c), as the alleged Witness, have been forged by the Defendant Nos.3(a) to 3(e) and/or by their Predecessor-in-Interest in connivance and collusion with the Defendant No.2. Even otherwise, the alleged documents being Relinquishment Deed, Affidavit and Receipt all both dated 11.04.1994 have no bearing in the eyes of law, since, they are not admissible in evidence.

11. That the contents of Para No.11 of the Application under Reply are wrong, incorrect and denied. It is vehemently denied that no prejudice shall be caused to the Defendant Nos.4(a) to 4(e)}(i-iv), if the Application under Reply is allowed, since the Defendant Nos.4(a) to 4(e)(i-iv) had been taking consistent stand by absolutely denying the execution of the alleged documents all dated 11.04.1994."

Reply to application under Section 151

"3. That the Defendant Nos.4(a) to 4(e)}(i-iv) have already



filed their joint Written Statement and subsequent thereto, wherein they have pleaded that they are jointly entitle to a share in the Suit Property and they have outrightly denied the execution of said alleged Relinquishment Deed, Affidavit and Receipt, all dated 11.04.1994 by Late Smt. Satwant Kaur and thus, there had been no plausible reason for the Defendant No.3({a} to 3{e}) to file the Application under Reply, thereby seeking the relief of placing on record the proposed documents and to put the same to the Defendant Nos.4{a} to 4f(e){i-iv} for the purposes of their examination under Order X Rule 2 CPC. Under such circumstances, the present Application is Liable to be dismissed, on this short score alone. It is submitted that the Defendant Nos.4(a) to 4(e){i-iv} have already filed a detailed Reply to the said Application under Order X Rule 2 CPC and the contents of the said Reply may be read as part and parcel of the present Reply, since the contents thereof are not repeated herein for the sake of brevity.

4. That it is submitted that the alleged Relinquishment Deed, Receipt and Affidavit all dated 11.04.1994 are forged and fabricated documents, since signatures of Late Smt. Satwant Kaur, as the alleged Executor and also the signatures of the Defendant No.4{(c), as the alleged Witness, have been forged by the Defendant Nos.3{a} to 3(e) and/or by their Predecessor-in-Interest in connivance and collusion with the Defendant No.2, with respect to which the Defendant Nos.4{a} to 4{(e){i-iv} reserve their rights to initiate appropriate criminal actions against them, in accordance with law. Infact, there had been no Family Settlement at any point of time, as propounded by the Defendant No.2 & the Defendant Nos.3(a) to 3(e), with respect to the Suit Property.

Reply on merits

4. That the contents of Para No.4 of the Application under Reply are wrong, incorrect and denied. It is denied that there had been any Family Settlement between the Legal Heirs of Late Sh. Hari Chand and it is vehemently denied that it was ever amicably decided that the Defendant Nos.1, 4 & 5 shall be given the alleged specified sum towards their undivided share in the Suit Property and on the receipt of the alleged



sum, they would allegedly execute necessary documents. It is denied that only the Defendant Nos.2 & 3 were entitled to the Suit Property, as per the alleged Family Settlement. It is vehemently denied that as per the alleged Family Settlement, any monetary amount was given to Late Smt. Satwant Kaur (Predecessor-in-interest of the Defendant Nos.4(a) to 4(e) (i-iv) and it is further vehemently denied that Late Smt. Satwant Kaur ever executed any document, much less the alleged Receipt, Affidavit and Relinquishment Deed all dated 11.04.1994, in favour of Predecessor-in-interest of the Defendant Nos. 3(a) to 3(e).

5. That the contents of Para No.5 of the Application under Reply are wrong, incorrect and denied. It is denied that there had been any Family Settlement between the Legal Heirs of Late Sh. Hari Chand. It is further denied that the Predecessor-in-interest of the Defendant Nos.4(a) to 4(e)(i-iv) namely Late Smt. Satwant Kaur, in order to give effect to the alleged Family Settlement, ever executed the alleged Relinquishment Deed, Receipt and Affidavit, all dated 11.04,1994 in favour of the Predecessor-in-interest of the Defendant Nos. 3{a) to 3{e}. It is submitted that Late Smt. Satwant Kaur was never given any monetary compensation/benefit, as alleged herein, against her share in the Suit Property or otherwise also, and therefore, the question of executing the alleged document(s) in favour of Defendant Nos. 2 & 3, does not arise at all. It is submitted that since Smt. Satwant Kaur had been duly entitled for her 1/6 undivided Share in the Suit Property, therefore, she had been consistently demanding her share in the Suit Property, through Partition.

10. That the contents of Para No.10 of the Application under Reply are wrong incorrect and denied. It is denied that the said documents are vital as the Defendant Nos.4(a) to 4(e)(i-iv) have allegedly made a vague denied with regard to the signatures of Late Smt. Satwant Kaur on the documents relied and filed by the Defendant Nos. 3{a) to 3(e) along with the written statement of the defendant Nos.4(a) to 4(e)(i-iv). It is denied that the Defendant Nos. 3{a) to 3(e) had run from pillar to post and have finally have been able to lay their hands on the documents being filed alongwith the Application



under Reply. It is submitted that the documents, sought to be placed on record by the Defendant Nos. 3(a) to 3(e), are not relevant for the purposes of adjudication of the above captioned Suit and the same are not pertaining to the Suit Property.”

A reading of the reply filed by Defendant 1 in response to the application of Defendants 3(a) to (e) under Order XI Rules 12 and 13 and by Defendants 4(a) to (e) to the applications of Defendants 3(a) to (e) under Order XI Rules 12 and 13, Order X Rule 2 and Section 151 of the CPC, leave no manner of doubt that the execution of the alleged Relinquishment Deeds dated 27th July 1985 and 11th April 1994 have been categorically denied both by Defendant 1 as well as by Defendant 4(a) to (e). They have termed the said documents as forged and fabricated. There is, therefore, no iota of prevarication or ambiguity in the stand of Defendant 1 and Defendants 4(a) to (e), *qua* the said Relinquishment Deeds dated 27th July 1985 and 11th April 1994.

The impugned Order

12. The aforesaid applications of Defendants 3(a) to 3(e) under Order X Rule 2 and Section 151 of the CPC stand rejected by the learned ADJ, *vide* the impugned order dated 16th July 2022. In so rejecting, the learned ADJ has observed and held as under:

“21. *Per contra*, the application is strongly opposed on behalf of defendants no. 1, defendant no. 4 (a) to 4(e) and defendant no. 5 (a) and 5 (d) (answering defendants). It is stated that the application under consideration is nothing but a delay tactic. It is specifically pleaded in the replies to the



applications under consideration that the alleged relinquishment deeds and receipts are forged and fabricated documents. It is also submitted that there is a specific denial of these documents by answering defendants in their reply to the earlier application of defendant nos. 2 and 3 (a) to 3 (e) under Order 11 Rule 12 and 13 CPC and these denials are also specifically recorded in order dated 15.01.2019 passed by Ld. Predecessor of this court. It is stated that although, in a suit for partition, every party should be considered as a plaintiff and defendant no. 1, 4(a) to (e) and 5 (a) to 5 (d) should have been given an opportunity to file their reply to the written statement filed by defendant nos, 2 and 3 (a) to 3 (e). However since, no such opportunity was given, the alleged relinquishment deeds could not be challenged by the answering defendants in their pleadings. However, defendants no. 1, 4(a) to 4(e) and 5(a) to 5 (e) have specifically alleged the relinquishment deeds to be forged and fabricated not only in their reply to the earlier application under Order 11 Rule 12 and 13 CPC but also in their reply to the applications under consideration. The applicants cannot be permitted to use order X Rule 2 CPC for collection of evidence. The scope of Order X CPC is limited to the extent of elucidating the matters in controversy in the suit and not for the purpose of collection of evidence. Since issues have already been framed in the matter under Order XIV CPC, the matter in controversy have already been highlighted by the court order. The matter has proceeded further for recording of evidence under Order XVIII CPC. Accordingly, there is no reason for running back to the clock and resorting to the provisions as contained under order X Rule 2 CPC. Reliance has been placed upon the decisions of our own Hon' ble High Court of Delhi in ***Pritpal Singh Kohli Vs. Surjit Kaur***¹ in support of the arguments made by answering defendants.

22. I have heard the submissions made and carefully perused the record as well as written submissions filed by defendants no. 3 (a) to 3 (e). I find no reason for allowing the applications under Order X Rule 2 CPC as the documents which are sought to be put the answering defendant under Order X Rule 2 CPC have already been categorically denied by them in their pleadings in the form of replies to various

¹ 2001 (91) DLT 476



applications. Once, the relinquishment deeds and affidavits have been denied by them, there is no possibility of counter statement even during examination under Order X Rule 2 CPC and there is no provision of their cross examination by the applicants during their examination under Order X (2) CPC. The provision of under Order X Rule 2 CPC is not made for reconfirming the admissions or denial of the parties which are already on record. The sole purpose of Order X Rule 2 CPC is to arrive at the main points of controversy between the parties. However, in the present matter, the controversy regarding the genuineness or otherwise of the relinquishment deeds and receipts is already on record. Now, it is the responsibility of the parties relying upon the alleged relinquishment deeds and receipts to prove the same as per law. Even otherwise, evidence of all the parties is yet to be recorded and the opposite parties will be given proper opportunity for cross examining the witnesses regarding their case as well as these documents. In these circumstances, no merit is found in the application under Order X Rule 2 CPC filed by the applicants. Both the applications under Order X Rule 2 CPC are, accordingly, dismissed.”

13. Aggrieved by the aforesaid order dated 16th July 2022 passed by the learned ADJ, Defendants 3(a) to (e) have approached this Court under Article 227 of the Constitution of India.

Rival submissions, analysis and findings.

14. I have heard Mr. Naveen Kumar Chaudhary, learned Counsel for the petitioners and Mr. Rajat Aneja, learned Counsel for Respondent 3 at considerable length. Mr. Aneja has supported the submissions of Mr. Chaudhary.

15. Between them, Mr. Chaudhary and Mr. Aneja seek to submit that the learned ADJ was not justified, either in facts or in law, in



rejecting the application of Defendants 3(a) to (e) to have the statement of Defendant 1 and Defendants 4(a) to 4(e) recorded under Order X Rule 2 of the CPC. They submit that, as co-defendants, no replication was forthcoming, from Defendants 1 or 4 to the written statements filed by Defendants 2 and 3(a) to (e), wherein it had been pleaded, relying on reliable evidence, that Defendants 1 and 4 had, by written Relinquishment Deeds, relinquished their rights in the suit property in favour of Defendants 2 and 3 in exchange for monetary compensation. Additionally, as Defendants 1 and 4 are supporting the plaintiff, they would not come into the witness box, and there would be no occasion for Defendants 2 and 3 to cross examine them on the aspect of validity of the Relinquishment Deeds dated 27th July 1985 and 11th April 1994.

16. The most efficacious way of ascertaining the stand of Defendants 1 and 4(a) to 4(e), in respect of the Relinquishment Deeds dated 27th July 1985 and 11th April 1994 on which Defendants 2 and 3(a) to 3(e) were placing reliance would, therefore, be by way of recording of the statement of Defendants 1 and 4(a) to 4(e) under Order X Rule 2 CPC. This, submits learned Counsel, would also considerably facilitate expeditious trial of the proceedings and as well as a swift resolution to the dispute.

17. Mr. Chaudhary has, in support of the aforesaid submission, relied on the judgment of the Supreme Court in ***Kapil Corepacks Pvt. Ltd. v. Harbans Lal***². Mr. Chaudhary has specifically drawn my

² (2010) 8 SCC 452



attention to paras 15, 18 and 19 of the report in ***Kapil Corepacks²***, which read thus:

“15. *The object of oral examination under Rule 2 of Order 10 is to ascertain the matters in controversy in suit, and not to record evidence or to secure admissions.* The statement made by a party in an examination under Rule 2 is not under oath, and is not intended to be a substitute for a regular examination under oath under Order 18 of the Code. *It is intended to elucidate what is obscure and vague in the pleadings.* In other words, while the purpose of an examination under Rule 1 is to clarify the stand of a party in regard to the allegations made against him in the pleadings of the other party, the purpose of the oral examination under Rule 2 is mainly to elucidate the allegations even in his own pleadings, or any documents filed with the pleadings. The power under Order 10 Rule 2 of the Code, cannot be converted into a process of selective cross-examination by the court, before the party has an opportunity to put forth his case at the trial.

18. The object of Order 10 Rule 2 is not to elicit admissions. Nor does it provide for or contemplate admissions. The admissions are usually contemplated

- (i) in the pleadings (express or constructive under Order 8 Rule 5 of the Code);
- (ii) during examination of a party by the court under Order 10 Rule 1 of the Code;
- (iii) in answers to interrogatories under Order 11 Rule 8 of the Code;
- (iv) in response to notice to admit facts under Order 12 Rule 4 of the Code;
- (v) in any evidence or in an affidavit, on oath; and
- (vi) when any party voluntarily comes forward during the pendency of a suit or proceedings to make an admission.

19. The power of court to call upon a party to admit any document and record whether the party admits or refuses or neglects to admit such document is traceable to Order 12 Rule 3A rather than Order 10 Rule 2 of the Code. Nothing however comes in the way of the court combining the power under



Order 12 Rule 3A with its power under Order 10 Rule 2 of the Code and calling upon a party to admit any document when a Party is being examined under Order 10 Rule 2. But the court can only call upon a party to admit any document and cannot cross-examine a party with reference to a document.”

18. Mr. Aneja has further placed reliance on para 6 of the judgment of a learned Single Judge of High Court of Rajasthan in *Bhanwarlal Kavad v. Shyamsunder*³ which reads as under:

“6. The provisions of Or. 10, Rules 1 and 2, C.P.C., have a whole purpose behind them. The importance of oral examination of party or his pleader or the companion of party at the time of framing of the issues, has to be emphasised for the trial courts. The provisions contained in Cr. 10, Rules 1 and 2, C.P.C., are intended, to focus attention of the court as well as of the parties to the real controversies between them by examination conducted under these rules. The real controversies between the parties on such examination would come to surface and the parties would be in a position to know as to what case they are required to prove or meet. It is common experience that the pleadings generally remain obscure and vague. In order to remove that obscurity and vagueness and equivocal character or nature of pleadings, courts have been empowered under Rules 1 and 2 of Cr. 10, C.P.C., to ascertain facts and to make the pleadings more lucid and clear by examination of the party or his pleader. Prior to the substitution of Rule 2, examination of the party was not obligatory, but in clause (a) sub-rule (1) of rule 2 of Cr. 10, the word “shall” has been introduced, which make the intention abundantly clear. By the use of the expression “shall”, it has been made obligatory for the court to examine the party appearing in person or present in court with a view to elucidating matters in controversy in the suit, as it deems fit. The provisions of Cr. 10, Rules 1 and 2, C.P.C., if are freely and generally pressed into service by the courts, for imparting quick and speedy justice, these provisions have certainly a rule to play. The general use of these provisions, to my mind, would shorten the litigation. Most of the

³ 1983 SCC OnLine Raj 14



controversies, which may be there in the pleadings would not remain on examination of the parties and this is how the controversies between the parties would be narrowed down. By resorting to examination under Rules 1 and 2, of Or. C.P.C., the court can clarify the pleading putting material questions relating to the suit to the parties. Clause (a) of sub-rule (1) of Rule 2 of Or, 10, is imperative for the court to examine the parties, if they appear in person or present in court, if it deems fit, for elucidating matters in controversy. Even if they are not appearing in person or are not present in court, if the court feels necessity of getting some elucidation in relation to matters in controversy in the suit, it can direct them to appear in person. Sub-rule (5) of Rule 1 of Cr. 14, C.P.C., also envisages that issues should be framed not only on the pleadings of the parties, but after examination of the parties under Rule 2 of Cr. 10. It is true that under Rule 1 of Cr. 10, facts can even be ascertained by the court from the pleader of the party and even from the party, but Rule 2 empowers the court to examine the party for the purpose of elucidating matters in controversy in the suit, if he appears in person or present in court and the companion of the party may be examined under clause (b) of sub-rule (1) of Rule 2. Sub-rule (2) of Rule 2 further empowers the court to examine the party or his companion at any subsequent hearing. The examination can be made by the court on the questions, which may be suggested by the parties, apart from the examination, which may be conducted by the court on its own motion. In my opinion, the court should resort to the examination of the parties under Rule 2, particularly on the documents, which are said to be signed by the parties. It is true that the pleader of the party is empowered to admit and deny the documents, but it is better that the original documents are put to the party and admission or denial is obtained after visual observations by the party himself of the original documents. After looking into the documents, the party would be in a position to admit or deny the same, which would not be possible, if the same is got done by his pleader.”

19. Mr. Aneja has also placed reliance on Order XIV Rule 1(5) of the CPC, which reads thus:

“Order XIV – Settlement of issues and determination of

**suit on issues of law or on issues agreed upon****1. Framing of issues. –**

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements if any, and 1 [after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.”

20. Mr. Aneja sought to contend, by reference to Order XIV Rule 1 (5) that framing of issues was also required to be undertaken only after examination under Order X Rule 2. Thus, he submits that the CPC expressly acknowledges the importance of examination of the parties in dispute under Order X Rule 2.

Analysis

21. Order X Rule 2 of the CPC reads thus:

“2. Oral examination of party, or companion of party

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(1) At the first hearing of the suit, the Court –

(a) shall, with a view to elucidating matters in controversy in the suit examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(b) may orally examine any person, able to answer any material question relating to the suit,



by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person, able to answer any material question relating to the suit, by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.”

22. The expression “at the first hearing of the suit”, as employed in Order X Rule 2(1) as well as in Order XIV Rule 1(5), stands defined in *Ved Prakash Wadhwa v. Vishwa Mohan*⁴ in the following terms:

“The provisions in O. X, R.1 O. XIV R.1(5) and O. XV, R.1 of CPC (5 of 1908) can never be earlier than the date fixed for the preliminary examination of the parties, and the settlement of issues.”

23. *Kapil Corepacks*²:

The passages from *Kapil Corepacks*², on which Mr. Chaudhary placed reliance, sufficiently illumine the scope of Order X Rule 2. It is clear, from a reading of the said passages, that Order X Rule 2 cannot be used to elicit admissions from the parties. Admissions can only be in pleadings, during examination, in answer to interrogatories under Order XI Rule 8, in answer to a notice to admit facts under Order XII Rule 4 or during evidence in affidavit. The only other circumstance in which a party to the suit would make admission is

⁴ (1981) 3 SCC 667



where the party itself comes forward to admit any particular fact in dispute.

Para 19 of the report in ***Kapil Corepacks***² holds that a court may legitimately combine exercise of functions under Order XII Rule 3(a) and Order X Rule 2 of the CPC, by calling upon the party to admit a document during the course of examination under Order X Rule 2.

In para 22 of the report, the Supreme Court makes matters still clearer by clarifying that Order X Rule 2 cannot be exercised either

- (i) to identify matters in controversy, or
- (ii) to prove or disprove the matters in controversy, or
- (iii) to seek admission or
- (iv) to decide rights or obligations of the parties.

Interestingly, ***Kapil Corepacks***² has taken note of the judgment of the learned Single Judge of the High Court of Rajasthan in ***Bhanwarlal Kavad***³, without either approving or disapproving the said decision, merely holding that it was not of assistance in the dispute before the Supreme Court. The Supreme Court has categorically noted that ***Bhanwarlal Kavad***³ only recognised the power of the court to call upon a party to admit a document and could not, therefore, assist in resolution of the controversy before the Supreme Court.

In the above context, the factual background of the dispute, as was presented before the Supreme Court in ***Kapil Corepacks***², requires



to be noted, especially as Mr. Anjea placed especial reliance thereon.

The proceedings before the Supreme Court, which resulted in the judgment in *Kapil Corepacks*², emanated from a suit filed by Harbans Lal (the respondent before the Supreme Court) against Kapil Corepacks Pvt. Ltd. (KCPL), for recovery of ₹ 66,00,000/-. Harbans Lal sought to contend that the appellants had, *vide* agreement dated 7th September 2003, agreed to sell, to Harbans Lal, an industrial property for a consideration of ₹ 2,02,41,600/-. Against this, Harbans Lal claimed to have paid, to KCPL, an advanced of ₹ 33,00,000/-. As KCPL was expressing disinterest in conveying the suit property, Harbans Lal sued KCPL seeking refund of double the amount deposited by him, i.e. ₹ 66,00,000/-.

KCPL alleged that the signatures of their officers, on the agreement dated 7th September 2003, which constituted the basis of Harbans Lal's case, were forged. They denied the execution of the agreement, in the written statement filed by them. They additionally filed a counter claim for a declaration that the agreement was forged and, therefore, void. They also denied receipt of ₹ 33,00,000/- from Harbans Lal.

During the course of proceedings before the High Court, KCPL moved an application under Section 151 of the CPC for reference of the agreement dated 7th September 2003 to a handwriting expert, for examination of the signatures contained on the agreement. This application was rejected by a learned Single Judge of the High Court



vide order dated 31st July 2007, opining that the parties could, during the course of trial, lead the evidence of handwriting experts to prove their case, if they so choose. Additionally, the learned Single Judge, in the said order, directed the parties to file their original documents, to be admitted/denied by opposite parties, and directed the parties to be personally present on the next date of hearing for recording of their statement under Order X Rule 2 of the CPC.

KCPL appealed against the said decision. In the appeal, they averred that they had already obtained a preliminary report dated 4th February 2007 from a handwriting expert, who could provide expert evidence on the genuineness of agreement dated 7th September 2003.

The Division Bench of the High Court, *vide* order dated 1st November 2007, disposed of the appeal with liberty to KCPL to apply to the learned Single Judge for allowing examination of the original agreement dated 7th September 2003 by a handwriting expert, and to tender the opinion of the handwriting expert in that regard.

KCPL, therefore, applied before the learned Single Judge, under Order XXVI Rule 10-A of the CPC, to allow their handwriting expert to inspect the original agreement dated 7th September 2003 and to take photographs thereof.

On 12th November 2008, pursuant to and in compliance with the direction issued by the learned Single Judge on 31st July 2007, Appellant 2 before the Supreme Court, who was the Managing



Director of KCPL, appeared before the learned Single Judge of the High Court, who recorded his statement under Order X Rule 2. He was shown a copy of the agreement in such a manner that the signature on the agreement alone was visible and the rest of the agreement was blocked with a blank paper and was asked whether the stamp and signature on the agreement belonged to KCPL and, if so, to identify the person who had signed the agreement. Appellant 2 before the Supreme Court identified the stamp as belonging to KCPL and the signature as being his.

Noting this fact, the learned Single Judge observed thus, in his order dated 12th November 2008:

“Statement of the Managing Director of the defendant No. 1- Company has been recorded today in the court. The Managing Director has admitted his signature on the Agreement/receipt as well as stamp of the defendant No. 1 - Company on the said document. The said document was thereafter shown to the witness after removing blank paper. I may note here that the said document was denied at the time of admission/denial and in the written statement.”

In the said order, the learned Single Judge also contemplated initiating proceedings against the Managing Director of KCPL under Section 340 of the Code of Criminal Procedure, 1973 read with Section 195 of the Indian Penal Code.

Aggrieved by the said order, KCPL and its Managing Director filed an intra-court appeal to a Division Bench of the High Court which, *vide* order dated 20th January 2009 dismissed the appeal. It was against the said order that KCPL approached the Supreme Court.



The issue before the Supreme Court was, therefore, whether the High Court had correctly examined the Managing Director of KCPL in accordance with Order X Rule 2 of the CPC. The Supreme Court held, in conclusion in its judgment, that, in examination under Order X Rule 2 CPC, it was not open to Harbans Lal to confront the Managing Director of KCPL with agreement dated 7th September 2003 after covering a part thereof and obtain an admission from the Managing Director regarding the signatures on the agreement.

In *Kapil Corepacks*², therefore, the Supreme Court was concerned with whether an admission could be extracted from the Managing Director of KCPL in the manner in which it was extracted, under Order X Rule 2 of the CPC.

The enunciation of the law, in paras 15, 18 and 19 of *Kapil Corepacks*², to which Mr. Chaudhary drew my attention, represent declaration of the legal position under Article 141 of the Constitution of India. *It is clear, from a reading of the said passages that, Order X Rule 2 is intended only to elucidate matters in controversy in proceedings and can be pressed into service only where there is a want of clarity in the pleadings. If, therefore, the pleadings of the parties were wanting in clarity then, in order to identify the exact issue in controversy in the suit, the court could justifiably resort to examination under Order X Rule 2 so as to clear the cobwebs.*

24. That this is the correct manner in which Order X Rule 2 is to be



applied is, in fact, clarified by Order XIV Rule 1 of the CPC, on which Mr. Aneja relies. Mr. Aneja has drawn my attention to Clause (5) of Order XIV Rule 1. A reading of the said clause indicates that the reference, therein, to examination under Order X Rule 2 is so as to enable the court to ascertain the propositions of facts or on law on which parties were at variance, before settling issues. This, in turn, relates back to the very definition of “issues”, as contained in under Order XIV Rule 1(1), which contemplates the arising of issues when, on a material proposition of fact or law, one party affirms a proposition and other denies the proposition. *If, therefore, there is any want of clarity on the question of whether the proposition, of fact or of law, was being affirmed or being denied, that want of clarity could be resolved by examining a party under Order X Rule 2, so that the exact issues in controversy between the parties could be identified. It is for this reason that Order XIV Rule 1(5) envisages the exercise of examination, under Order X Rule 2, as preceding the framing of issues.*

25. The learned ADJ has, in the present case, noted that there is no such want of clarity in the pleadings of the parties, insofar as the Relinquishment Deeds dated 27th July 1985 and 11th April 1994 are concerned.

26. Defendants 1 and 4(a) to (e) had, in clear and express terms, denied the said Relinquishment Deeds dated 27th July 1985 and 11th April 1994 and castigated them as forged and fabricated. The onus, then, would shift to Defendants 2 and 3(a) to 3(e) who sought to rely



on the said documents, to prove that they were genuine and had in fact been executed. That onus would have to be discharged by leading evidence. Order X Rule 2 could not be used as a shortcut to obtain an admission from Defendants 1 or 4(a) to 4(e) regarding the execution of the said documents or regarding their signatures thereon.

27. The applications filed by Defendant 2 and Defendants 3(a) to 3(e) under Order X Rule 2 make it apparent that the prayer for examination of Defendants 1 and 4(a) to 4(e) is only to extract, from them, oral evidence contrary to their specific denials, in the replies filed by them to the applications of Defendants 2 and 3(a) to 3(e), of the genuineness and veracity of the Relinquishment Deeds dated 27th July 1985 (allegedly executed by Defendant 1) and 11th April 1994 (allegedly executed by Defendant 4), *inter alia* by comparison of signatures with the documents that Defendants 3(a) to 3(e) seek to introduce under their application under Section 151, CPC.

28. This would amount, in no uncertain terms, to gathering of evidence, and obtaining admissions from Defendants 1 and 4(a) to 4(e), which Order X Rule 2, read with the decision in ***Kapil Corepacks***², specifically proscribes.

29. Neither Mr. Chaudhary nor Mr. Aneja has been able to contend that there was any want of clarity in the pleadings either of Defendant 1 or Defendants 4(a) to 4(e), regarding their stand with respect to the Relinquishment Deeds dated 27th July 1985 and 11th April 1994.



30. The decision of the learned ADJ that no case was made out, for summoning Defendant 1 or Defendants 4(a) to 4(e) under Order X Rule 2, for recording of their statement, does not, therefore, suffer from any infirmity either on facts or in law, for two reasons, viz.

- (i) there is no want of clarity in the pleadings of Defendants 1 and 4(a) to (e) regarding the Relinquishment Deeds dated 27th July 1985 (in the case of Defendant 1) and 11th April 1994 (in the case of Defendant 4) on which Defendants 2 and 3(a) to 3(e) seek to rely, and
- (ii) the avowed objective of the applications, filed by Defendants 2 and 3(a) to 3(e), is to obtain admissions, from Defendants 1 and 4(a) to 4(e) regarding the Relinquishment Deeds dated 27th July 1985 (in the case of Defendant 1) and 11th April 1994 (in the case of Defendant 4), and to prove the documents by comparison of signatures, which cannot be permitted to be achieved under Order X Rule 2.

31. Inasmuch as the application under Section 151 of the CPC, to produce documents, was specifically only for the purpose of confronting Defendant 1 and Defendants 4(a) to 4(e) with the aforesaid Relinquishment Deeds dated 27th July 1985 and 11th April 1994, the rejection of the said application also does not call for any interference. This, however, shall not preclude the petitioners from separately applying for placing the said documents on record for any other reason. If any such application is moved, the learned ADJ would proceed to decide the application in accordance with law.



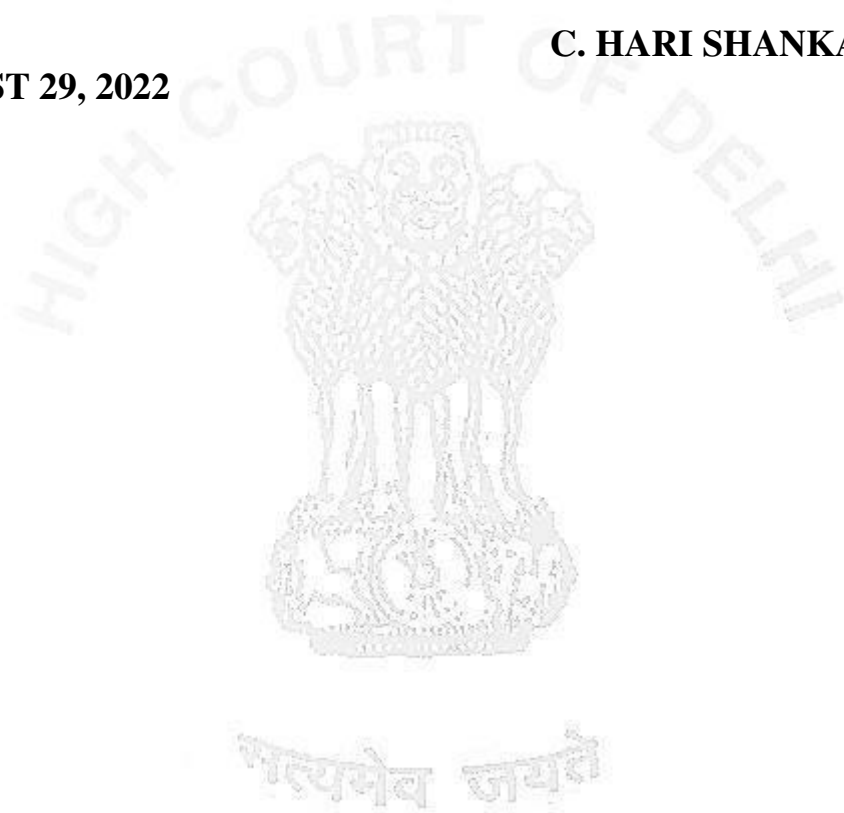
Conclusion

32. No case being, thus, made out to interfere with the impugned order dated 16th July 2022 passed by the learned ADJ, the present petition, under Article 227 of the Constitution of India, is dismissed, with no orders as to costs.

C. HARI SHANKAR, J.

AUGUST 29, 2022

dsn



ANNEXURE - A
Family Tree

