

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

- (1)

RSA-75-2008 (O&M)
Reserved on: 26.05.2023
Date of pronouncement: 02.06.2023
- Rakesh Kumar Mehtani

...Appellant
- Versus
- Mohni Mehtani and others

...Respondents
- (2)

RSA-76-2008 (O&M)
- Rakesh Kumar Mehtani

...Appellant
- Versus
- Mohni Mehtani and others

...Respondents
- (3)

RSA-467-2008 (O&M)
- Hawa Singh and others

...Appellants
- Versus
- Mohni Mehtani and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Shailendra Jain, Sr. Advocate with
Ms. Ashmita Sandhu, Advocate for the appellant
in RSA-75 and 76-2008.

None for the appellants
in RSA-467-2008.

Mr. P.S. Jammu, Advocate
for respondents No.1 to 4.

H.S. MADAAN, J.

1. By this judgment, I intend to dispose of above mentioned appeals between the same parties, having identical facts, arising out of the same judgments and decrees.

2. Briefly stated facts of the case are that plaintiff Surender Kumar Mehtani (since dead) now represented by his legal representatives i.e. Smt. Mohni Mehtani-widow, Anurag son, Anupama Kohli and Anju Mehta daughters, all residents of House No.89, GF Road No.7, East Punjabi Bagh, Delhi had brought a suit for grant of declaration and permanent injunction against defendants Rakesh Kumar Mehtani and 08 others.

3. As per case of the plaintiff, land measuring 78K-1M comprised in khewat No.282, khatoni No.404, situated within the revenue estate of Village Jamalpur, Tehsil Bawani Khera, District Bhiwani was ancestral property of the plaintiff and defendant No.1 Rakesh Kumar Mehtani and defendant No.2 Hari Singh Mehtani; they had inherited the same from their father Sh. Vikram Singh Mehtani (mentioned as Bikram Singh Mehtani in earlier litigation), who in turn had got this property by way of inheritance from his fore-fathers; the property had nature of joint Hindu family property in which plaintiff and defendants No.1 and 2 had acquired interest by birth in the family and similarly constructed house bearing No.89, Road No.7, East Punjabi Bagh, New Delhi measuring 280 sq. yards, is also joint Hindu Family Ancestral property of plaintiff and defendants No.1 & 2 because it was purchased by their father Vikram

Singh Mehtani with joint Hindu family funds; the plaintiff has been residing in half portion of the ground floor of that house whereas the remaining portion is in possession of defendants No.1 and 2; initially, Sh. Vikram Singh Mehtani, father of plaintiff and defendants No.1 & 2 was married with Smt. Charan Devi @ Gian Devi who was mother of the plaintiff and defendant No.2 and after her death, he contracted a second marriage with Smt.Shanti Devi who had given birth to defendant No.1 Rakesh Kumar Mehtani from loins of Sh. Vikram Singh Mehtani; after getting married with Shanti Devi, Sh. Vikram Singh Mehtani came under her influence and started ignoring the plaintiff; Sh. Vikram Singh Mehtani had no right to alienate the suit property; Sh. Vikram Singh Mehtani died on 22.04.1970, leaving behind his wife Shanti Devi, sons plaintiff and defendants No.1 & 2 as his legal heirs and they became joint owners in possession of the suit property in equal shares.

4. Sh. Vikram Singh Mehtani had no right to execute any Will in respect of the suit property, nevertheless, he executed a Will in favour of Shanti Devi on 16.04.1970 ignoring the plaintiff and defendants No.1 & 2; that Will was got registered in the office of Sub Registrar, Muradabad on 18.04.1970 and on the basis of that Will, mutation No.2533 was sanctioned in favour of Shanti Devi on 06.02.1976; all these proceedings were conducted on the back of plaintiff and he had no knowledge regarding the same; in the civil suit filed by him, the plaintiff had challenged Will dated 18.04.1970, mutation No.2533 and the subsequent revenue record; as the case of the plaintiff goes, Shanti Devi

had alienated agricultural land by executing different sale deeds in favour of defendants No.3 to 9; according to the plaintiff, all these sale deeds are illegal, null and void, not binding upon his rights; Shanti Devi had died on 22.01.1993 and after her death, the plaintiff and defendants No.1 & 2 are joint owners in possession of the entire property to the extent of 1/3rd share each; defendants No.1 & 2 are not absolute owners of the house in suit situated at Delhi and the Will executed by Shanti Devi in favour of defendants No.1 & 2 with respect to the house in suit is also wrong, illegal, null and void, not binding upon the rights of plaintiff; when the defendants refused to concede the claim of the plaintiff, feeling aggrieved, he brought the suit in question.

5. On being put to notice, defendants appeared and filed written statements. Defendants No.1 and 2 filed a joint written statement whereas defendants No.3 to 9 had submitted a separate written statement. In the written statement filed by defendants No.1 & 2, they had raised various legal objections challenging locus standi of the plaintiff to file the suit; the suit being not maintainable; no cause of action having arisen to the plaintiff to bring the suit; the plaintiff being estopped by his own act and conduct to file the suit; the suit being barred by limitation etc.

On merits, the answering defendants admitted their relationship with the plaintiff and with Sh. Vikram Singh Mehtani. The assertions in the plaint with regard to Sh. Vikram Singh Mehtani being earlier married with Charan Devi @ Gian Devi and plaintiff and defendant No.2 having been born from that wedlock, Charan Devi @

Gian Devi having expired and Sh. Vikram Singh Mehtani contracted second marriage with Shanti Devi and being blessed with a son namely Rakesh Kumar Mehtani defendant No.1 from that wedlock stood admitted, however, it was denied that Sh. Vikram Singh Mehtani along with his wife and sons formed any joint family or that the agricultural land and the house in suit at Delhi were joint Hindu Family Ancestral Property. According to such defendants, those were self acquired properties of Sh. Vikram Singh Mehtani. The plaintiff had been working at Bhillai (MP) during life of Sh. Vikram Singh Mehtani and he was not joint with his father in any manner.

With regard to Will executed by Sh. Vikram Singh Mehtani in favour of Shanti Devi, the same was defended as legal and valid, contending that on the basis of that Will, Shanti Devi became absolute owner of the properties inherited by her from her husband and she could deal with such property in any manner she felt like. Shanti Devi had debarred the plaintiff from inheritance of her property, since the plaintiff and his family members had turned hostile towards her and had been misbehaving with her. Shanti Devi had permitted the plaintiff to put his household articles in a portion of her house purely on humanitarian ground for some time. The plaintiff had put his articles in a portion of the ground floor of the house in the year 1987. Earlier the plaintiff was working in Bhillai Steel Plant (MP). He got pre-mature retirement in the year 1987 and shifted to Delhi. He requested Shanti Devi to permit him to put his belongings temporarily in the house in suit and Shanti Devi had

allowed him to do so. The status of plaintiff in the house was that of a licensee without payment of any license fee, however, plaintiff started misbehaving with Shanti Devi and pressurized her to give the house to him. He threatened to kill Shanti Devi, as such, Shanti served a legal notice dated 09.02.1990 upon the plaintiff asking him to remove his belongings from the house in question as his activities were harmful to her. Further Shanti Devi had got published a public notice in the newspaper to the effect that he had disowned her son Surender Kumar Mehtani and his family from moveable and immovable properties. Shanti Devi during her life time had executed a registered Will dated 06.04.1991 in favour of defendants No.1 & 2. She had died on 22.01.1993 and after her death, the answering defendants have become owners of the entire property by operation of law. Shanti Devi during her life time had already sold the agricultural land situated at Village Jamalpur, vide various sale deeds to defendants No.3 to 9. Refuting the remaining assertions, such defendants prayed for dismissal of the suit.

6. In the written statement submitted by defendants No.3 to 9, they contended that they are bona fide purchasers for consideration without notice. Prior to purchase of the land, they had made enquiries from the village as well as from the record and after satisfying themselves, they had purchased the suit land from Shanti Devi after paying full consideration amount. At the time of purchase or thereafter, the plaintiff or defendants No.1 & 2 did not raise any type of objection regarding those sale deeds. The mutation have already been sanctioned in

favour of such defendants, who are in possession over the same since the time of purchase. Those defendants also craved for dismissal of the suit.

7. Plaintiff filed replications controverting the allegations in the written statements whereas reiterating the averments in the plaint.

8. From the pleadings of the parties, following issues were framed:-

1. *Whether the plaintiff is the owner in possession of the suit land of 1/3rd share and defendants No. 1 and 2 were the owners in possession of 2/3rd share as alleged?OPP*
2. *Whether the will registered on dated 18.4.1970 executed by Vikram Singh in favour of Smt. Shanti Devi is null and void and not binding on the rights of the plaintiff and the mutation no. 2533 sanctioned on the basis of the Will is also null and void?OPP*
3. *Whether the sale deed dated 24.6.1977 executed by Shanti Devi in favour of defendants no. 3 to 5 and the mutation no. 2627 sanctioned on the basis of the sale deed and the sale deed dated 8.1.1979 executed by Smt. Shanti Devi in favour of defendants No. 4 to 7 and the mutation no. 2801 sanctioned on the basis of the sale deed and sale deed dated 22.7.1982 executed by Smt. Shanti in favour of defendant No. 8 and mutation No. 2891 sanctioned on the basis of sale deed and further sale deed dated 22.7.1982 executed by Smt. Shanti Devi in favour of defendant No. 9 and mutation no. 2870 and sale deed dated 11.8.1985 executed by Smt. Shanti in favour of defendant no. 5 and mutation no. 2972 on the basis of the sale deed are all wrong. illegal, null and void and not binding on the rights of the plaintiff? OPP*
4. *Whether the Will executed by Smt. Shanti Devi in favour of defendants no. 1 and 2 regarding the house no. 89 road*

- No. 7, East Punjabi Bagh, Delhi is null and void and not binding on the rights of the plaintiff?OPP*
- 5. Whether Vikram Singh executed a valid will in favour of his wife Smt. Shanti Devi if so to what effect? OPD (1&2)*
- 6. Whether Smt. Shanti executed a valid will in favour of defendants No. 1 and 2. If so to what effect? OPD (1&2).*
- 7. Whether the plaintiff had no locus standi or cause of action to file the present suit ?OPD*
- 8. Whether Smt. Shanti was the absolute owner of the suit property?OPD (1&2)*
- 9. Whether the civil suit No. 828 of 1990 titled as Surender Kumar Versus Shanti Devi Mehtani in the Civil Court at Delhi, if so to what effect?OPD*
- 10. Whether the suit is not maintainable in the present form?OPD.*
- 11. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.*
- 12. Whether the suit is time barred?OPD*
- 13. Whether the suit is not properly valued for the purposes of court fee and jurisdiction?OPD*
- 14. Whether the suit is false, frivolous and vexatious to the knowledge of the plaintiff?OPD*
- 15. Whether the defendants No. 3 to 9 are bona fide purchaser for consideration? OPD*
- 16. Whether the civil court Bhiwani has no jurisdiction to try and entertain the present suit?OPD.*
- 17. Whether the defendants are entitled for the special costs u/s 35-A CPC?*
- 18. Relief.*

- 9.** The parties were afforded sufficient opportunities to lead evidence in support of their respective claims.

10. After hearing arguments, the trial Court of Addl. Civil Judge (Sr. Divn.), Bhiwani by giving issue-wise findings decreed the suit of the plaintiff partly to the effect that Will dated 18.04.1970 is not proved and the same is not binding on the rights of the plaintiff. It was set aside and the plaintiff was declared to be joint owner in possession of the house situated at Delhi to the extent of 1/4th share whereas the remaining share in the house belonging to the defendants. The remaining relief claimed by the plaintiff was declined. This was so done, vide judgment and decree dated 06.10.2004.

11. Feeling aggrieved by the judgment and decree passed by the trial Court, defendant No.1 Rakesh Kumar Mehtani and legal representatives of Surender Kumar Mehtani, plaintiff had filed two separate appeals before District Judge, Bhiwani. Those were assigned to Addl. District Judge, Bhiwani and disposed of, vide a single judgment dated 13.09.2007 inasmuch as the appeal filed by defendants was dismissed whereas the appeal filed by the legal representatives of the deceased plaintiff was accepted and the suit was decreed in toto declaring the plaintiff Surender Kumar Mehtani (since dead) and now represented by his legal representatives to be entitled to 1/4th share in the suit property.

12. The judgment and decree passed by Addl. District Judge, Bhiwani left defendant Rakesh Kumar Mehtani dissatisfied and he has filed Regular Second Appeals No.75 and 76 of 2008 whereas defendants No.3 to 9 namely Hawa Singh, Musadi, Prithi, Ved Parkash, Dalbir,

Mohinder Kumar and Ram Nath have filed RSA No.467-2008.

Notices in the three appeals were issued to the respective respondents, who have put in appearance through counsel.

13. I have heard learned counsel for the parties besides going through the record.

14. In this case, the relationship between the parties inter se as well as with Sh. Vikram Singh Mehtani, the earlier owner of the property and Smt. Shanti Devi is not disputed so is the fact that Sh. Vikram Singh Mehtani was the original owner of the property. As per the case set up by the plaintiff, Surender Kumar Mehtani (since dead) now represented by his legal representatives, the suit property in the form of residential house bearing No.89, GF Road No.7, East Punjabi Bagh, New Delhi, measuring 280 sq. yards and land having area of 78K-1M situated at Village Jamalpur, Tehsil Bawani Khera, District Bhiwani had nature of joint Hindu family ancestral property, in which he being son of Sh. Vikram Singh Mehtani had acquired interest by reason of his birth and Sh. Vikram Singh Mehtani had no right to execute any Will in favour of his wife Smt. Shanti Devi and Will set up by defendants No.1 and 2 dated 16.04.1970 is not a legal and valid document and is ineffective qua his rights.

15. Now the question to be seen is as to whether the plaintiff has been able to prove such assertions, the answer is in negative.

A perusal of the judgment passed by the trial Court of Addl. Civil Judge (Sr. Divn.) Bhiwani goes to show that the trial Court relied

upon statement of PW-1 Bhima Ram, Patwari, who had produced certified copies of jamabandies had deposed that Sh. Vikram Singh Mehtani son of Girdhari Lal had become owner of land measuring 209K-8M, vide mutation No.1624 which was sanctioned on the basis of a Court decree suffered by Girdhari Lal in favour of Sh. Vikram Singh Mehtani thereby showing that Sh. Vikram Singh Mehtani had not inherited that property from his forefathers but had got it by way of decree suffered by his father in his favour. That clearly goes to show that the landed property so acquired by Sh. Vikram Singh Mehtani cannot be said to have nature of ancestral property. Furthermore, there is no evidence to show that Sh. Vikram Singh Mehtani along with his three sons formed a joint Hindu family of which he was a karta and family used to reside together and pool the income with which the assets including the residential house at Punjabi Bagh were created rather the evidence shows that Surender Kumar Mehtani had been working in a Steel Plant at Bhilai and residing there along with his family and on his retirement, they had shifted to Delhi, which was after the death of Sh. Vikram Singh Mehtani. Therefore, it was not established that the suit property in the name of Sh. Vikram Singh Mehtani was joint Hindu family ancestral property in which the plaintiff or other sons of Sh. Vikram Singh Mehtani namely Rakesh Kumar Mehtani and Hari Singh Mehtani might have acquired any right by reason of their birth in the family. It being so, Sh. Vikram Singh Mehtani is to be taken as absolute owner of the suit property with which he could deal in any manner he felt like.

16. The trial Court has rightly come to the conclusion with regard to Sh. Vikram Singh Mehtani being absolute owner of the suit property and fully competent to execute the Will. However, with regard to registered Will dated 16.04.1970 executed by Sh. Vikram Singh Mehtani in favour of Shanti, the trial Court dealt with that aspect in a very strange and unusual manner, on one hand observing that the defendants had not placed on record the original Will and had not examined the scribe or attesting witness thereof, therefore, requirement of Section 68 of the Indian Evidence Act (for short 'the Act') were not fulfilled and the Will was not proved. The plea taken up by the defendants that since the Will was a document more than 30 years old in terms of Section 63 of the Act, therefore, Will is per se admissible was rejected for the reason that in the presence of specific provision under Section 68 of the Act requiring examination of at least one attesting witness to prove the execution of Will, no presumption with regard to due execution and attestation of Will could be drawn in terms of Section 63 of the Act. It was taken notice of that certified copy of the Will which was available on the record was not per se admissible and since the Will is dated 16.04.1970 and the suit in hand was filed in the year 1996 before expiry of 30 years, no such presumption could be.

17. After saying so, the trial Court started scrutinizing the Will on merits observing that Will is surrounded by suspicious circumstances. If the trial Court was of the view that Will had not been proved on the record, there was no reason to start finding faults with the same, however,

the circumstances allegedly found to be suspicious can definitely be explained in a satisfactory manner as per explanation given by counsel for the defendants.

18. The first suspicious circumstance noticed was that the testator had not bequeathed any part of his property to any of his sons and in the absence of evidence that relations between the testator and his sons were strained, there was no reason for him to disinherit his sons and to bequeath the entire property to his wife. The explanation rendered on behalf of the defendants in the trial Court as well before this Court is that Sh. Vikram Singh Mehtani had not granted any share in his estate to any of his sons and rather desired that his residential house and landed property should go to his second wife to ensure financial security to her. The testator had not disinherited his son Surender Kumar Mehtani alone but all the three sons, who were well placed in life, whereas it was not so with regard to Shanti Devi and the endeavour of the testator was to ensure that Shanti Devi did not face any problem in maintaining herself and getting her financial needs met in future. This is certainly a valid explanation and does not constitute any suspicious circumstance.

19. Another reason given is that at the time of his death, Sh. Vikram Singh Mehtani was in grip or under influence of Shanti Devi and Sh. Vikram Singh Mehtani had died six days after executing the Will. Again the trial Court had jumped to this conclusion without any justification. The fact cannot be lost sight of that Will is a registered document which gives presumption of due execution. As it comes out

from the record, the Sub Registrar had gone to the house of testator to register the Will. Sub Registrar, a public servant, acting in discharge of his official duties would certainly not have registered the Will, if he had any iota of doubt that the Will was being executed by the testator under influence of the beneficiary or some other interested person. Death of Sh. Vikram Singh Mehtani after about six days of execution of Will can also be not taken to be a suspicious circumstance because as it appears that Sh. Vikram Singh Mehtani realized that he might not survive his illness, then he executed the Will and to add authenticity got it registered. The observation by the trial Court that Sh. Vikram Singh Mehtani was not in sound disposing mind has also has been made without there being any such evidence on record or circumstance pointing out towards that.

20. It may be mentioned here that plaintiff Surender Kumar Mehtani alone is disputing the Will when he himself had acquiesced in the matter.

Testamentary succession is deviation from the normal succession. The owner of a property has got every right to give property to any person after his death by making a Will. Sh. Vikram Singh Mehtani had died on 22.04.1970. Plaintiff Surender Kumar Mehtani did not challenge the Will in favour of Shanti Devi despite having knowledge regarding the same till he filed the civil suit in question which was on 21.05.1996. He had rather kept quiet for such a long period. The matter would have been different if Surender Kumar Mehtani was not aware of the Will executed by Sh. Vikram Singh Mehtani in favour of Shanti Devi.

Since Surender Kumar Mehtani had died during pendency of the suit filed by him, his widow Smt. Mohini Mehtani, one of his legal representatives had got her statement recorded as PW2 submitting her affidavit Ex.PW2/A. Though in her affidavit, she had repeated on oath the case of plaintiff as given in the plaint but then in her cross-examination, she has made certain admissions which are quite damaging to the case of the plaintiff. She had admitted in her cross-examination that in terms of the Will, Shanti Devi had become owner of the suit property after death of Sh. Vikram Singh Mehtani and they had come to know about the Will in the year 1987, when they had shifted to house at Delhi. She stated that they had filed a suit in Court at Delhi challenging the Will when as a matter of fact that suit was for grant of mandatory and permanent injunction and Will had not been challenged at all. On getting notice, the defendants had put in appearance in that suit pleading the Will in question. Issues on merits were framed. Plaintiff Surender Kumar Mehtani had not adduced any evidence in that regard. Resultantly, his suit had been dismissed. She further admitted that Shanti Devi had sold of 63K-7M of land on 24.06.1977 to respondents No.3 to 5 stating that they had come to know about the sale in the year 1987. She further admitted that 31K-7M of area had been sold by Shanti Devi to defendants No.4 to 7 on 08.01.1979 and they had come to know about it in the year 1987 when they had gone to Village Jamalpur. They had come to know about sale deeds also at that time, then they had met Shanti Devi enquiring as to why she had sold the land to which she stated that as she was owner, they

were nobody to ask her for accounts.

21. She stated that the civil suit with regard to house at Delhi was filed in the year 1990. She admitted that the vendees of the agricultural land are in possession of the land purchased by them at the spot. Will is a registered document. Registration of a document is notice to the entire world regarding its existence. When Sh. Vikram Singh Mehtani had died on 22.04.1970 and the plaintiff was desirous of getting a share in estate of his father, he should have taken immediate action, in getting mutation entered and sanctioned in his name and that of other legal heirs of Sh. Vikram Singh Mehtani by natural succession with regard to the landed property as well as the residential house. He should have approached the municipal authorities for change of ownership from that of Sh. Vikram Singh Mehtani in the name of his sons and widow but he kept quiet.

22. Even if for a moment, it is taken that Surender Kumar Mehtani came to know about existence of Will in favour of Shanti Devi in the year 1987, he should have taken prompt action in challenging that Will and getting it set aside, since by that time, Shanti Devi had stepped into shoes of Sh. Vikram Singh Mehtani by testamentary succession and was alive, but then Surender Kumar Mehtani had not taken any action at that time also, rather he had filed a civil suit in the Court at Delhi in the year 1990.

23. A perusal of the judgment passed in that civil suit bearing No.828 of 1990 titled as 'Surender Kumar Mehtani Vs. Smt. Shanti Devi

Mehtani & Ors.', copy Ex.D1 goes to show that Surender Kumar Mehtani had filed a suit against defendants on 26.10.1990 seeking a decree for permanent injunction for restraining the defendants Shanti Devi Mehtani, Hari Singh Mehtani and Rakesh Kumar Mehtani from interfering in his possession and from alienating the suit property in any manner. In that suit, he had claimed himself to be owner in possession in respect of portion of suit property shown in red colour in the site plan, as a result of mutual settlement arrived at between the parties after death of Sh. Vikram Singh Mehtani on 22.04.1970. Therein, the plaintiff had alleged that the plot No.89/7 East Punjabi Bagh, Delhi was purchased by his father out of sale proceeds of their agricultural land of Village Jamalpur District Bhiwani and the house was constructed in the year 1965-67 when plaintiff was not in Delhi as he was serving in Steel Authority of India Ltd., posted at Bhillai (MP). In the year 1987, when plaintiff came to Delhi, he was given possession of portion in the house where he along with his family are residing. Defendant No.1 had served a legal notice dated 09.02.1990 upon him directing him to vacate the possession of the portion being occupied by him and had got published public notice in the newspapers. The defendants had contested that suit taking a specific plea that defendant No.1 was exclusive owner of the entire suit property on the basis of the Will registered with Sub Registrar Muradabad executed by Sh. Vikram Singh Mehtani and mutation had also been sanctioned in her favour on the basis of Will. The plot underneath the house was purchased by Sh. Vikram Singh Mehtani out of his earnings as an

employee with Delhi Administration and construction was raised with his savings from salary, LIC policies. The plaintiff had not contributed anything towards that. Issues on merits were framed. Plaintiff was afforded several opportunities but he did not lead any evidence. Vide judgment dated 13.09.1999, the suit had been dismissed. In that suit, despite having knowledge of the Will in favour of Shanti Devi as admitted by Mohini Mehtani in her cross-examination way-back in the year 1987, the Will was not challenged. The plaintiff had based his claim with regard to residential house only and not with regard to agricultural land being owned by Sh. Vikram Singh Mehtani.

24. According to the plaintiff, he had acquired interest in the house since the plot underneath the house was purchased with the money received by sale of the landed property at Village Jamalpur and construction was also raised with those funds. That contention of plaintiff was obviously wrong, since as discussed above, such land in hands of Sh. Vikram Singh Mehtani is not proved to be ancestral coparcenary property, rather, that comes out to be his absolute property. If that was so, the plaintiff and other sons of Sh. Vikram Singh Mehtani did not acquire any interest in the agricultural land or residential house by reason of their birth in the family. Interestingly in that suit, the plaintiff wanted to get a declaration that he is owner of the portion of the house in his possession in the garb of injunction which is not permissible under law. He was talking of some arrangement said to have been arrived at between the parties after death of Vikram Singh Mehtani but he did not bring on

record any evidence to prove that assertion, rather, version set up by the defendants that the plaintiff had been allowed to reside in portion of the residential house as a licensee, comes out to be much more plausible and convincing. The plaintiff having not sought a specific declaration that he is in possession of portion shown in red colour attached with the plaint as absolute owner on the basis of natural succession from Sh. Vikram Singh Mehtani or that the Will dated 16.04.1970 executed by Sh. Vikram Singh Mehtani in favour of Shanti Devi which was registered in the office of Sub Registrar, Muradabad on 18.04.1970 is illegal, null and void despite having specific knowledge in that regard not challenging the sale deeds executed by Shanti Devi in favour of defendants No.3 to 9, the present suit is obviously barred under Order 2 Rule 2 CPC as well as constructive res judicata.

25. Learned counsel for the appellant has referred to various judgments in that regard. First being **Life Insurance Company of India Vs. Sanjeev Builders Private Ltd. & Anr.** in Civil Appeal No.5909-2022 arising out of SLP (C) No.22443-2019. In that judgment, it was observed that the Legislature thought it fit to debar a plaintiff. Paras No.45 and 46 of this judgment are quite relevant and are being reproduced for ready reference:-

“45. The expressions "omits to sue" and "intentionally relinquish any portion of his claim" give an indication as to the intention of the legislature in framing the said rule. The term 'sue' can mean both the filing of the suit and prosecuting the suit to its culmination, depending on the context of the provision. In the present case, the legislature

thought it fit to debar a plaintiff from suing afterwards for any relief which he/she has omitted without the leave of the court or from suing in respect of any portion of his claim which he intentionally relinquishes. Order II Rule 2(1) provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action.

46. The provision of Order II Rule 2 of the CPC has been well discussed by the Privy Council in the case of Mohd. Khalil Khan & Ors. v. Mahbub Ali Mian & Ors., AIR 1949 PC 78, held as under:

“The principles laid down in the cases thus far discussed may be thus summarized :

(1.) the correct test in cases falling under Or. 2, r. 2, is “whether the claim in the new suit is, in fact, founded on a cause of action distinct from that which was the foundation for the former suit.” (Moonshee Buzloor Ruheem v. Shumsoonnissa Begum.) (2.) The cause of action means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment. (Read v. Brown.) (3.) If the evidence to support the two claims is different, then the causes of action are also different. (Brunsden v. Humphrey.) (4.) The causes of action in the two suits may be considered to be the same if in substance they are identical. (Brunsden v. Humphrey.) (5.) The cause of action has no relation whatever to the defence that may be set up by the defendant, nor does it depend on the character of the relief prayed for by the plaintiff. It refers “to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.” (Muss. Chand Kour v. Partab Singh.) This observation was

made by Lord Watson in a case under s. 43 of the Act of 1882 (corresponding to Or. 2, r. 2), where plaintiff made various claims in the same suit.”

26. Learned counsel for the appellant had further referred to judgment **Vurimi Pullarao Vs. Vemari Vyankata Radharani**, (2020) 14 SCC 110. As per the facts of that judgment, earlier a suit for injunction was instituted which contained recital of agreement to sell, price fixed for the bargain between the parties, payment of earnest money, handing over of possession, demand for performance and the failure of defendant to perform the contract and cause of action for suit for specific performance had arisen. The plaintiff was entitled to suit for specific performance, however, plaintiff omitted to do so. No leave of the Court was obtained and second suit was filed for specific performance which was found to be barred under Order 2 Rule 2 CPC. It had been observed that a plaintiff who has omitted to sue or has intentionally relinquished any portion of the claim within the meaning of Order 2 Rule 2 (2) CPC was not afterwards be entitled to sue in respect of the portion so omitted or relinquished.

27. In support of his contention that principle underlining Order 2 Rule 2 CPC is that no should can be vexed twice over same cause of action, learned counsel for the appellant had referred to judgment **Parmod Kumar & Anr. Vs. Zalak Singh & Ors.**, 2019 AIR (SC) 2465.

28. In judgment **Dadu Dayalu Mahasabha, Jaipur (Trust) Vs. Mahant Ram Niwas & Anr.**, in Civil Appeal No.3495 of 2008 (arising

out of SLP (C) No.10317 of 2007), decided on 12.05.2008, while discussing the scope of Order 2 rule 2 CPC, it was observed that when entire relief is not claimed in the first suit provisions of Order 2 Rule 2 bars the jurisdiction of the Court in entertaining a second suit where the plaintiff could have but failed to claim the entire relief in the first one.

29. In judgment State Bank of India Vs. Gracure Pharmaceuticals Ltd., in Civil Appeal Nos. 10531-10532 of 2013 (arising out of SLP (C) Nos. 5945-5946 of 2009), decided on 22.11.2013, while dealing with provisions of Order 2 Rule 2 CPC, it was observed by the Apex Court that order 2 Rule 2 enjoins on the plaintiff to include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action and if the plaintiff omits to sue or intentionally relinquishes any portion of his claim it is not permissible for him to sue in respect of the portion so omitted or relinquished afterwards because the plaintiff cannot be permitted to draw the defendant to Court twice for the same cause by splitting up the claim and suing in the first instance in respect of a part of claim only.

30. The present suit is clearly barred by Order 2 Rule 2 CPC and by limitation even.

The Legislature in its wisdom had enacted the Limitation Act providing a specific period of limitation for a person to approach the Court for redressal of his grievances because the Damocles sword of litigation cannot be kept hanging over heads of the persons against whom a particular person nurses a grudge of being wronged at his/their hand(s).

31. Section 3 of the Limitation Act provides that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although, limitation has not been set up as a defence. Article 58 of the Limitation Act provides that to obtain a declaration, the period of limitation is three years which begins to run when the right to sue first accrues.

32. In this case, the right to sue accrued to the plaintiff for the first time on 22.04.1970 when Sh. Vikram Singh Mehtani, the original owner of the suit properties had expired because the succession opened at that very time. There is no denying the fact that succession does not remain in abeyance but then the beneficiary or likely beneficiary in the estate of the deceased has to stake his claim at the earliest rather than going into slumber and not enforcing his right at the earliest. In this case, the plaintiff had filed a suit in Court at Delhi in the year 1990 wherein he had asserted his right in the residential house, although, in a very vague and ambiguous manner. Subsequently, he had brought a suit in Court at Bhiwani which was in the year 1996 i.e., after 26 years of death of Sh. Vikram Singh Mehtani and execution of registered Will by him in favour of Smt. Shanti Devi. Under the circumstances, the suit was clearly time barred and the plaintiff was estopped by his own act and conduct from bringing the suit. It is not that one can sleep over one's rights for a long time and one fine morning get out of slumber and after 26 years of arising of cause of action file a suit. The suit is clearly time barred. As already observed, the suit is hit by Order 2 Rule 2 CPC and further the plaintiff is

estopped by his own act and conduct from filing the suit.

33. Reverting back to the judgment passed by the trial Court, it had not taken into consideration the legal bars under Order 2 Rule 2 CPC, estoppel and limitation for filing of the suit and granted relief to the plaintiff with regard to 1/4th share in the residential house ignoring the Will dated 18.04.1970 when on the basis of testamentary succession, Shanti Devi had become owner of the house in question and the plaintiff could not get any share in that house. Learned counsel for the appellant had submitted that the suit is bad for constructive res judicata because in the previous suit filed by plaintiff in the Court at Delhi which was dismissed in the year 1999, the plaintiff had not specifically taken the plea that he is entitled to 1/4th share in the suit property on the basis of same being joint Hindu family property. In support of his contention, he had referred to judgment **Aanaimuthu Thevar deceased by LRs Vs. Alagammal & Ors.**, in Civil Appeal No.2592-2593 of 2000 decided on 12.07.2005.

34. However, the trial Court was justified in refusing the remaining relief to the plaintiff with regard to sale deed executed by Shanti Devi in favour of defendants No.3 to 9 as regards the agricultural land situated at village Jamalpur, District Bhiwani. As has been discussed in the earlier part of the judgment, that land in hands of Sh. Vikram Singh Mehtani has been found to be his absolute property and he could very well execute the Will in that regard in favour of his wife Shanti Devi. After his death, Shanti Devi stepped into his shoes acquiring

ownership of that agricultural land. Mutation was sanctioned in her name and then she had sold of the land to defendants No.3 to 9 by different sale deeds. It is specific case of defendants No.3 to 9 that they are bona fide purchasers for consideration without notice. They had statedly made enquiries with regard to revenue record and from other persons finding that Shanti Devi was owner of the land and then purchased the same from her. Even Mohini Mehtani in her cross-examination has admitted the fact regarding Shanti Devi having sold the land to defendants No.3 to 9. Such purchasers of the land are certainly protected under law. However, the trial Court fell in error in coming to the conclusion that suit was time barred with regard to sale deeds executed by Shanti Devi in favour of defendants No.3 to 9 but not as far as challenge to Will dated 18.04.1970. The suit to that extent was also barred by limitation.

35. The fact cannot be lost sight of that the plaintiff did not challenge the Will during life time of Shanti Devi inasmuch as in the previous suit filed by him in Court at Delhi, he did not do so despite having an opportunity to challenge the Will and doing it after a period of 26 years of arising of cause of action and even if it is believed that he had acquired knowledge regarding the same in the year 1987 as admitted by wife of deceased plaintiff in her cross-examination, the present suit was filed in the year 1996 i.e. after 9 years of gaining knowledge that a cloud has been cast over his title. The bar of limitation does come into play. The Will was challenged when the beneficiary under the Will had expired. The matter could not have been reopened after such a long time, saying

that the succession does not remain in abeyance and the person affected by testamentary succession can file a suit at any time, that would render the provisions of Limitation Act redundant and if that logic is considered, then the Will could have been challenged after a longer period even, say after 50 years, 70 years and so on of opening of the succession but that cannot be.

36. Learned counsel for respondents No.1 to 4 had also referred to few judgments. First being Alka Gupta Vs. Narender Kumar Gupta, 2010 (3) Apex Court judgments 545 (SC), Venkategowda Vs. Shivanegowda & Anr., 1990 CivCC 435 but for the reasons mentioned above, these judgments are not helpful to the case of respondents No.1 to 4 i.e. LR of deceased plaintiff.

37. He had further referred to judgment Mohinder Singh & Anr. Vs. Kashmira Singh, AIR 1985 P & H 215 in support of his contention that inheritance does not remain in abeyance. However, the facts of that judgment were quite different and the observations made were that inheritance does not remain in abeyance and the heirs after death of the last male holder succeed to the property of the deceased in accordance with law. As per facts of that case, son of the deceased owner was found entitled to 1/3rd share in the land in dispute and it was observed that he was not required to file any suit for possession on the basis of inheritance, however, it was observed that when a heir is not in possession of the property, in that event the suit for possession may have to be filed which is governed by the provisions of Article 65 of the

Limitation Act i.e. within a period of 12 years from the date when the inheritance opens. Even otherwise, the facts of the present case are quite different from the facts of the judgment in question. As discussed supra, Surender Kumar Mehtani being aware of existence of the Will by his deceased father Vikram Singh Mehtani in favour of his stepped mother Shanti Devi which had cast a cloud over his rights, choose to keep mum for a long time and as has been discussed earlier, the estoppel came in his way of filing the present suit besides bar of Order 2 Rule 2 CPC and constructive *res judicata*. Although earlier the law was to the effect that limitation does not apply to a void order and one could challenge that order at any point of time without bar of limitation coming into play but it is not so now because even a void order has to be challenged within a period of limitation so as to get it set aside and if it is not so done, the void order attains finality and cannot be got set aside later on.

38. Similarly a wrongful action needs to be challenged and got set aside within a period of limitation and if a person in whose favour cause of action arises keeps quiet and allow that order/action to exist as such by his acquiescence and inaction, then he cannot challenge its legality and validity after the period of limitation. Law requires a person to be alert and conscious of his legal rights and in case he feels aggrieved, to avail legal remedy at the earliest within a fixed time period provided by the Limitation Act and the law does not come to rescue of a person who is grossly negligent, sluggish and careless. Sometimes, a person aggrieved is not aware of any actionable wrong done to him by

some other person, in that case, provision is made for condonation of delay if the same is found to be unintentional and valid reasons for condoning the delay comes out to be there, but no such reason exist in this case.

39. Similarly the other judgment referred to by learned counsel for respondents No.1 to 4 **Ram Chander Vs. Prito & Ors.**, in RSA-5086-2012 decided on 20.09.2022 is not helpful to the case of such respondents in any manner.

40. The judgment and decree passed by the trial Court to the extent of declaring the plaintiff joint owner in possession of the house situated at Delhi to the extent of 1/4th share was wrong, however, that wrong was further compounded by learned Addl. District Judge, Bhiwani when in the judgment passed by him disposing of appeal No.112 of 2004 filed by defendant Rakesh Kumar Mehtani and Civil Appeal No.113 of 2004 filed by legal representatives of Surender Kumar Mehtani namely Mohini Mehtani etc., he had dismissed the appeal filed by Rakesh Kumar Mehtani while allowing the appeal filed by the plaintiff decreeing the suit in toto, declaring the plaintiff Surender Kumar Mehtani (since deceased) and now represented by his legal representatives be entitled to 1/4th share in the suit property. That judgment was result of misappraisal of evidence and wrong interpretation of law. As has been discussed in detail earlier, plaintiff Surender Kumar Mehtani now represented by his LRs did not acquire any interest in the residential house or agricultural land and the suit deserve dismissal in toto. Therefore, the impugned judgments and

decrees are set aside that is of trial Court to the extent of granting Surender Kumar Mehtani (since deceased) 1/4th share and that of Addl. District Judge, Bhiwani decreeing the suit of plaintiff in toto setting aside the sale deed executed by Shanti Devi in favour of defendants No.3 to 9. The appeals filed by Rakesh Kumar Mehtani bearing Nos. RSA-75 and 76 of 2008 and Hawa Singh and others bearing No.467 of 2008 are allowed and suit of the plaintiff is ordered to be dismissed in toto.

02.06.2023

sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No