



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

% **Pronounced on: 5th December 2023**

+ **CS (OS) 579/2022 (Old No. :- 1352/2009)**

LT. GEN. Y.K. MEHTA

R/o D-193, Defence Colony,
New Delhi-110024

..... Plaintiff

Through: Mr. Salim A. Inamdar, Mr.
Modassir Husain Khan & Ms.
Shruti Kapur, Advocates.

versus

1. **LT. GENERAL R.K. MEHTA**

S/o Late Sh. Balraj Mehta

R/o D-193, Defence Colony,
New Delhi-110024

.....Defendant no. 1

2. **MRS. VEENA PURI**

W/o Mr. Pravesh Kumar Puri

R/o 744, Shree Bhuvan,
Jehangir Vima, Dalal Street,
Parsee Colony, Dadar, Mumbai

....Defendant no. 2

3. **MRS. NEELAM SINGH**

W/o Major Gen. Surjeet Singh

R/o H.No. 307, Sector 37,
Gautam Budh Nagar,
Noida, U.P

....Defendant no. 3

4. **MRS. GREGORY SIMRAN**

W/o Mr. Colin Richard

R/o H.No. 307, Sector 37,
Gautam Budh Nagar,
Noida, U.P

....Defendant no.4

5. **MRS. ARCHANA SOOD**

W/o Mr. Nittan Sood,

R/o 15-E, Shivalik Aptt,
Plot No. 16, Sector 9,
Dwarka,
New Delhi

....Defendant no. 5

CS (OS) 579/2022 & connected matter

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Signing Date: 06.12.2023
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6. LAND& DEVELOPMENT OFFICE

Through Deputy Land &
Development Officer,
Ministry of Urban Development,
Nirman Bhawan, New Delhi

..... Defendant no. 6

Through: Dr. Chandra Shekhar, Advocate for
D-1.

Ms. Namita Roy & Ms. Gopa
Biswas, Advocates for D-3 to 5.

+ CS (OS) 1249/2011 & CrI.M.A. 14657/2017, IA 13981/2016

MRS. ARCHANA SOOD

W/o Mr. Nittan Sood,
R/o 15-E, Shivalik Aptt,
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..... Plaintiff

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CS (OS) 579/2022 & connected matter

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W/o Mr. Colin Richard

R/o H.No. 307, Sector 37,

Gautam Budh Nagar,

Noida, U.P

....Defendant no. 5

**6. IGI BUILDERS AND PROMOTERS
PVT. LTD.**

Through its Director Girish Chaudhary

C-581, Defence Colony,

New Delhi-110024

..... Defendant no. 6

7. M.M.M REALTORS PVT. LTD.

Through its Director Girish Chaudhary

C-581, Defence Colony,

New Delhi-110024

..... Defendant no. 7

Through: Mr. Salim A. Inamdar, Mr.
Modassir Husain Khan & Ms.
Shruti Kapur, Advocates for D-1.
Dr. Chandra Shekhar, Advocate for
D-2.

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The plaintiff, Lt. Gen Y.K. Mehta has filed the present **suit for right of Pre-Emption** under Section 22 of the Hindu Succession Act, 1956 (*hereinafter referred to as the "HSA, 1956"*), Declaration and Injunction in respect of the property bearing no. D-193, Defence Colony, New Delhi.

2. The plaintiff's father, Late Mr. Balram Mehta, retired Colonel of the Indian Army, was the owner of the property bearing no. D-193, Defence Colony, New Delhi admeasuring 343 sq. yds comprising of a ground floor, a barsaati room and a toilet on the first floor (*hereinafter referred to as the "suit property"*). The plaintiff is in possession of ground

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floor and has been managing the affairs since 01.02.2004. Col. Balraj Mehta, died on 27.11.1967 leaving behind his last and final Will dated 04.06.1951, bequeathing the suit property in favour of the mother of the plaintiff, Smt. Yashwant Kumari Mehta, whose name was substituted in the records of Land & Development Office (*hereinafter referred to as "L&DO"*) as the lessee vide Office Letter dated 10.06.1969 issued by L&DO. Smt. Yashwant Kumari Mehta died intestate in February, 2004 and after her demise, the suit property devolved upon the four siblings, namely two surviving sons namely Lt. Gen. Y.K. Mehta, the plaintiff; Lt. General R.K. Mehta, defendant no. 1; daughter Ms. Veena Puri, defendant no. 2 and pre-deceased son, Flt. Lt. Yoginder Mehta, the younger brother of the plaintiff, namely, who died in an air crash in 1976. Flt. Lt. Yoginder Mehta is represented by his legal heirs viz his wife defendant no.3, Mrs. Neelam Singh and two daughters, defendant no.4&5, Mrs. Archana Sood and Mrs. Gregory Simran. After the demise of Flt. Lt. Yoginder Mehta,, Mrs. Neelam Singh got remarried to Major General Surjit Singh on 12.09.1981 and thereby lost her right as an heir to the estate of her mother-in-law, late Smt. Yashwant Kumari Mehta. However, defendant Nos. 4 and 5 Being the daughters of pre-deceased son, Flt. Lt. Yoginder Mehta and are the co-sharers in the property.

3. The plaintiff has asserted that a *Memorandum of Understanding (hereinafter referred to as the "MOU")* dated 06.06.2008 was entered between the plaintiff, Lt. Gen. RK Mehta, Mrs. Veena Puri and defendant No. 6, M/s. I.G.I Builders and Promoters Private Limited, for division of the suit property but post MOU, no agreement could be reached between the plaintiff and defendant Nos. 1 to 5 for division of the suit property.



Subsequently, Defendant No.6 IGI Builders sent a Legal Notice dated 03.03.2009 to plaintiff, defendant No. 1 and defendant No. 2 annulling the MOU and requested defendant Nos. 1 and 2 for refund of the advance deposits. It was contended that since the MOU stands annulled by defendant No. 6, it has no connection to the Suit Property.

4. The suit property got mutated in the name of the plaintiff and defendant Nos. 1,2,4 and 5 vide Substitution Letter dated 18.05.2009 issued by Ministry of Urban Development. The plaintiff moved an application dated 29.04.2009 for getting the property converted into Freehold, which was allowed and three Conveyance Deeds dated 06.07.2009 were issued by L& DO.

5. On 18.07.2009, the plaintiff came to know that defendant No. 2 Smt. Veena Puri has allegedly negotiated to sell her share to defendant No. 6 or to some other Builder without prior Notice or first offering her share in the suit property to the plaintiff or to the other heirs and without obtaining a written *No-Objection Certificate* from the plaintiff who is residing in the suit property before agreeing to sell her share in the suit property to defendant No. 6 which is in complete violation of Section 22 of the HSA, 1956 which gives a preferential right or the right of pre-emption to Class-I heirs including the plaintiff to acquire interest in the suit property and any alleged purchaser of the share would not acquire any right to the suit property. Likewise, any such sale which may be made by any of the defendants would be similarly violative of Section 22 of the HSA, 1956 and consequentially void.

6. It was asserted by the plaintiff that he believes that the defendant Nos.4 and 5 are also intending to dispose of their respective alleged shares



in the suit property in violation of Section 22 of the Act. Such acts would cause great prejudice to the plaintiff who is resident of the ground floor of the suit property.

7. **The plaintiff, has thus sought a Permanent Injunction** restraining the defendant No.2 and the other co-heirs from selling their share to defendant No. 6 or to any other person without offering the same to the plaintiff first. **Declaration is sought** that sale of her share by defendant No. 2 to defendant No. 6 or any other person may be declared void and a **Permanent Injunction** be granted against defendant No. 6 to restrain it from transferring any part of the property to his name or to further transfer it to any other person.

8. **The plaintiff further asserted in his amended plaint** that during the pendency of the suit, he came to know that Mrs. Archana Sood and Mrs. Gregory Simran, defendant Nos. 4&5 had been adopted by Major General Surjit Singh, the second husband of Mrs. Neelam Singh subsequent to their marriage on 12.09.1981 which was prior to the demise of Smt. Yashwant Kumari Mehta in the year 2004. They had thus, ceased to be her heirs and as such do not have any right, title or interest in the suit property or any part thereof.

9. It was further asserted by the plaintiff that the suit property had been improperly mutated in the names of Mrs. Archana Sood and Mrs. Gregory Simran, on the basis of wrong and incorrect information. Accordingly, the plaintiff wrote a Letter dated 12.02.2010 to L&DO requesting the deletion of the names of Mrs. Archana Sood and Mrs. Gregory Simran from the original Conveyance Deed and for execution of a fresh Conveyance Deed in respect of the suit property in favour of the



plaintiff, defendant Nos. 1 & 2 as they three were the only joint owners of the suit property.

10. **The plaintiff thus sought that Permanent Injunction** be granted to restrain defendant No. 2 and other defendants from selling their share in the suit property to defendant No. 6 or to any other person without first offering the same to the plaintiff and the other co-heirs. **Further, Declaration is sought** that sale of her share by defendant No. 2 to defendant No. 6 or any other person may be declared as void and a **Permanent Injunction** be granted against defendant No. 6 to restrain it from transferring any part of the property to his name or to further transfer it to any other person. A **decree of Mandatory Injunction** is also sought against defendant no. 6, L&D O (impleaded **vide Order dated 02.11.2010 as defendant No.6** consequent to deletion of original defendant no.6 M/s. I.G.I Builders since the MOU stood annulled, vide Court Order dated 26.02.2010 under Order VII Rule 11 of CPC) to execute a fresh Conveyance Deed in the name of the plaintiff, defendant no. 1 and defendant no. 2, each of them having 1/3rd undivided share in the suit property.

11. **Defendant No. 2/Mrs. Veena Puri** in her **Written Statement** took the preliminary objections that admittedly she is the owner of 25 % of the share in the suit property and she cannot be restrained from selling her share. It is asserted that the plaintiff cannot take advantage of his own wrongs and cannot be permitted to blow hot and cold in the same breath. Admittedly, he along with defendant Nos. 1 and 2, and representing himself to be acting on the authorization of defendant Nos. 3, 4 and 5, had entered into an Agreement to Sell dated 06.06.2008, agreeing to sell their



respective 25 % share to *IGI Builders (deleted defendant No. 6)*. However, on account of inaction on the part of the plaintiff and defendant No. 1, who were in occupation of the suit property, the transaction could not be completed thus, resulting in financial loss to defendant No. 2. The plaintiff by entering into the MOU, has forfeited his preferential right as envisaged under Section 22 of the HSA, 1956. Therefore, no separate “*No Objection Certificate*” is required for by defendant No.2 for sale of her share in the property.

12. It is further asserted that the defendant No.2 vide registered Sale Deed dated 17.07.2009 has already transferred her share to M/s. MMM Realtors Pvt. Ltd, for valuable consideration. Though M/s. MMM Realtors Pvt. Ltd is yet to pay the balance amount to defendant No. 2, it is asserted that the sale transaction has already been completed. The sale having been concluded prior to the filing of the suit, the plaintiff cannot now claim any protection under Section 22 of the Act and the suit of the plaintiff is not maintainable and is liable to be dismissed.

13. **Defendants Nos. 3, 4 and 5, Mrs Neelam Singh, Mrs Gregory Simran and Mrs Archana Sood, respectively, in their Written Statement** had taken a *preliminary objection* that the plaintiff has no locus standi to file the present suit under Section 22 of the Act, 1956 as the same is applicable only where there is no Will. Admittedly, the property belonged to Mr. Balraj Mehta who had executed a Will in favour of his wife, Smt. Yashwant Kumari Mehta, who died in February, 2004. It is asserted that by virtue of Will of Late Sh. Balraj Mehta dated 04.06.1951 the entire estate of Shri Balraj Mehta had been bequeathed to all his heirs and Smt. Yashwant Kumari Mehta had been given only a life



interest in the suit property thus, she did not become the absolute owner of the suit property. It is claimed that the letter of Mutation issued on 10.06.1969 in the name of Smt. Yashwant Kumari Mehta, was not only wrong but also against the law since the names of actual heirs/owners of the property were not included. The plaintiff and the defendants have thus, acquired a right in the suit property on the same footing as the mother, Smt. Yashwant Kumari Mehta and hence, Section 22 of the HSA, 1956 is not applicable for which reliance has been placed on the case of Sushma Thadani vs Yatish Kumar Satija @ Another (2007) (96) DRJ 199.

14. It is further asserted that defendant No. 3 and her two daughters, defendant nos. 4 and 5 who were born from late Flt. Lt. Yoginder K. Mehta, pre-deceased son of Ms. Yashwant Kumari, are equally entitled to their right and interest in the suit property in terms of Sections 15 and 16 of the Act, 1956. It is stated that the suit property is also an ancestral property of a Joint Hindu Family guided by the Mitakshara School of Law and hence, they defendants are legally entitled to their share in the suit property.

15. Defendants Nos. 3 to 5 have further asserted that the plaintiff has not approached the Court with clean hands and has suppressed material facts in regard to the MOU dated 05.06.2008. The plaintiff cannot be permitted to take benefit of his own wrongs. He had taken a General Power of Attorney/Authority from the answering defendants and executed the MOU dated 05.06.2008 with M/s IG Builders agreeing to sell the property for Rs. 15,80,00,000/-. The sole purpose of the plaintiff is to gain time and enjoy uninterrupted stay in the suit property. The suit is nothing but a pressure tactic so as to gain a benefit of buying the suit



property on priority basis from the other legal heirs.

16. The present suit does not disclose *any cause of action* and is based on manipulated and fabricated documents. The plaintiff has also failed to pay the deficient Court Fee as per Order dated 29.07.2009 on which ground as well, the suit is liable to be dismissed.

17. It is further asserted that protection under Section 22 of the HSA, 1956 is applicable only where the property cannot be equally partitioned amongst the co-owners. The suit property herein is measuring 343 sq. yds. and can be equally partitioned amongst all the four legal heirs.

18. **On merits**, all the averments made in the suit, are denied.

19. **In the additional written statement, defendant Nos. 3 to 5** have asserted that the suit has been filed by the plaintiff in collusion with defendant Nos. 1, 2 and I.G.I Builders with an intention to usurp the legitimate shares of the other co-owners in the suit property. The plaintiff is one of the co-sharers in the property and while the specific share of the other co-owners has not been determined, the plaintiff is not entitled to the holdings of the property as claimed in the amended plaint.

20. The defendants have claimed that the plaintiff in collusion with defendant Nos. 1, 2 and I.G. Builders have fraudulently and illegally entered into the MOU dated 06.06.2008 as defendant Nos. 3 to 5, who are the co-owners, were not made a party to the Agreement as the plaintiff had misrepresented that he was authorized to enter into the Agreement on behalf of defendants Nos. 3 to 5. Further, pursuant to MOU dated 06.06.2008 the plaintiff and defendant Nos. 1 and 2 had jointly taken a sum of Rs. 1 Crore as advance from IG Builders and concealed this fact from the answering defendants. Also the plaintiff, defendant No.1 and



defendant No.2 have already sold the part of the suit property vide Sale Deed dated 17.07.2009 behind their back without their knowledge with an intent to deprive them of their share in the suit property. The Sale Deed itself states that defendant Nos. 4 and 5 are co-owners of the undivided suit property.

21. It is asserted that the plaintiff has mismanaged the property since February, 2004 and is taking undue advantage since long despite the objections of the answering defendants and is wrongfully enjoying the property to the exclusion/detriment to the interest of the other co-sharers.

22. It is denied that defendant Nos. 4 and 5, the two daughters of defendant No. 3 were legally adopted by Major General Surjit Singh at any point of time. It is asserted that there cannot be any automatic adoption of defendant Nos. 4 and 5 without the legal process of adoption and the two daughters were never given in adoption by defendant No. 3 to her second husband. The defendant nos. 4 and 5 had been rightly admitted as the legal heirs and therefore cannot be denied of their right of inheritance.

23. It is further explained that Major Surjit Singh, second husband of defendant No. 3 has retired from Indian Army in the year 1993 and in his pensionary papers and documents issued by Army Authority in the year 1992, the details of family members include defendant No. 3 and two sons namely, Captain Sandeep Singh and Shri. Paramjit Singh from his first wife. Defendant Nos. 4 and 5 have not been shown as his family members or beneficiaries. Even if in some documents Major General Surjit Singh is reflected as the father of defendant Nos. 4 and 5, it is an inadvertent mistake and error but does not lead to any inference of adoption of



defendant Nos. 4 and 5 by Major General Surjit Singh. The claim of plaintiff that defendant Nos. 4 and 5 have been adopted by the second husband of defendant no. 3, is mala fide.

24. It is asserted that the plaintiff had issued the letter dated 12.10.2010 to the defendant No.6 (L&DO) for deletion of the names of defendant Nos. 4 and 5 from the original Conveyance Deed with a malafide intention to deprive the answering defendants from their share in the suit property. The names of the defendant Nos. 4 and 5 have been correctly and legally mutated in the records of defendant No.6 (L&DO) as co-owners of the suit property after due verification and admission by the other co-owners. The plaintiff has admitted that he was instrumental in processing the mutation in L&DO and since all the papers were handed over to him, the claim of him not having knowledge of the alleged adoption by Maj. Surjit Singh during the pendency of the original plaint, is denied.

25. **I.G. Builders (erstwhile Defendant No.6) had also filed a detailed Written Statement** wherein it was admitted that it entered into the MOU dated 06.06.2008 but it was claimed that because of non-compliance with the pre-conditions of getting the suit property mutated and converted into freehold, the MOU was cancelled by Defendant No. 6. The suit bearing no. *C.S.(OS) No. 1585/2009* was filed by defendant No. 6 against the plaintiff and defendant Nos. 1 and 2 for recovery of Rs. 1 crore that was paid as advance money. Defendant No. 2 has already refunded Rs. 50,00,000/- . Till such time, the entire amount is returned, defendant No. 6 has a lien over the suit property. The defendant No.6 **has been subsequently deleted from the memo of parties vide Order dated**



26.02.2010 after the refund of entire amount.

26. **The now defendant No. 6/ L&DO in its Written Statement** took the preliminary objection that the plaintiff was guilty for suppression of material facts. It has explained that after the death of Shri Balraj Mehta, the property was substituted in the name of St Yashwant Kumari Mehta vide Letter dated 10.06.1969 after the list of Legal Heirs of Shri Balraj Mehta was declared by her and other formalities were completed. It was stated that an application for conversion of property to freehold was made on 22.05.2003 by Smt. Yashwant Kumari Mehta but as no one came forward after a call letter was issued in 10.10.2003, the process could not be completed. Thereafter, in 2008 the plaintiff himself had jointly applied for substitution application and had filed necessary affidavits/ indemnity bonds about the legal heirs of the lessee, Smt. Yashwant Kumari. On the completion of all the formalities, the property was substituted in the name of plaintiff and defendant Nos. 1, 2, 4 and 5. Subsequently, a Letter dated 12.02.2010 was received from the plaintiff seeking modification of the Conveyance Deed and the deletion of the names of the defendant Nos. 4 and 5, claiming that they never had any right in the property. Thereafter, a Notice was received on behalf of the defendant Nos. 4 and 5 claiming that their names should not be deleted and a status quo vis-a-vis mutation of the property be maintained. Thus, the actions were taken by the answering defendant as per the request of the parties.

Civil Suit bearing No. CS (OS) 1249/2011 filed by Archana Sood:

27. **During the pendency of the Civil Suit filed by Major Genreal Y.K. Mehta i.e. CS (OS) 579/2022, Mrs. Archana Sood**, daughter of late Flt. Lt. Yoginder K. Mehta and granddaughter of late Sh. Balraj



Mehta and Smt. Yashwant Kumari **filed a suit bearing No. CS (OS) 1249/2011 for Partition and Permanent Injunction claiming her share in the suit property.** It was asserted that she and defendant No. 4 i.e. Mrs. Gregory Simran were the daughters of Mrs. Neelam Singh and late Flt. Lt. Yoginder K. Mehta and that they are entitled to 1/4th share of the suit property and all the other moveable left behind by Late Col. Balraj Mehta. It was asserted that at the time of demise of the late Flt. Lt. Yoginder K. Mehta, Mrs. Gregory Simran was 5 years old, her date of birth being 20.09.1973, while Mrs. Archana Sood was in the womb of her mother, Mrs. Neelam Singh and was born posthumously on 08.01.1976. After the demise of their father, their mother was ill treated and humiliated by the family members of their deceased father and was thrown out of her matrimonial home. Her mother Mrs. Neelam Singh and her two daughters took shelter with her parents for one year in Sikandrabad and thereafter at Dehradun for 5 years. After about 6 years from the demise of her father, Mrs. Neelam got re-married to Major General Surjit Singh in the year 1981. The first wife of Major General Surjit Singh had died in 1971 and he already had two sons from his first marriage. Mrs. Archana Sood continued to stay at Dehradun with her maternal grandparents who brought her up. Her elder sister Gregory Simran got married in the year 1998 while she got married in the year 1999.

28. It is claimed that in the year 2009, pursuant to an oral Family Settlement, suit property got mutated in her name and the names of other co-owners i.e. two uncles Lt. General Y.K. Mehta, Lt. General RK. Mehta, one aunt Mrs Veena Puri, and her sister Mrs Gregory Simran.



Archana Sood thereafter, sought partition of the suit property amongst all the co-owners, however, Lt. General YK Mehta, his brother Lt. General R.K. Mehta and the sister Mrs. Veena Puri in collusion with M.M.M. Realtors Pvt. Ltd., sold part of the suit property behind her back and without her and her sister's knowledge. The Sale Deed dated 17.07.2009 was executed between Mrs. Veena Puri and M.M.M. Realtors Pvt. Ltd. It is specifically mentioned in the registered Sale Deed that Mrs. Archana Sood and defendant No.5 Mrs. Geogary Simran are the co-owners of the undivided property in question. Lt. General YK Mehta thereafter suppressed the material facts of the sale of part of the suit property by Mrs. Veena Puri to M.M.M. Realtors Pvt. Ltd. and filed the suit for Pre-emption under Section 22 of the Hindu Succession Act, Declaration and Injunction. It is averred that the suit for pre-emption as filed by Lt. General YK Mehta is collusive to deprive the plaintiff and other co-owners of their legitimate share in the suit property, they being the co-owners entitled to their respective shares.

29. Further, Lt. General YK Mehta represented himself to be acting on behalf of Mrs. Archana and her daughter and entered into the MOU and Rs.1,00,00,000/- taken thereunder has been misappropriated by Lt. General YK Mehta. This act of misappropriation came to the knowledge of plaintiff, her sister and mother only from the written statement filed in the Civil Suit No. CS OS 579/2022 by Lt. General YK Mehta. The said Civil Suit has been contested by them, however, have filed the suit for Declaration that they are the owner of 1/4th owner of the suit property, the Partition of suit property by metes and bounds and to grant Permanent Injunction for restraining the defendants from selling, transferring or



creating third party rights in the suit property and for Rendition of Accounts.

30. In response to the suit for Declaration and Partition filed on behalf of Mrs. Archana Sood, only **defendant Nos. 1, 2 & 7** filed a Written Statement.

31. **Defendant No.1/ Lt. Gen. Y.K Mehta in his Written Statement** took the preliminary objections that the suit is barred and is liable to be stayed under Section 10 of Civil Procedure Code, 1908, as the alleged right and title of Mrs. Archana Sood and Mrs. Neelam Singh and Mrs Simran Gregory is directly and substantially in issue in the previously instituted suit, CS (OS) No. 1352/2009 titled Lt. Gen. Y.K. Mehta vs Lt. Gen R.K. Mehta and Ors which is pending before this Court.

32. **Defendant No.1/ Lt. Gen. Y.K Mehta** further contended that the suit was not property valued for the purposes of court fees and jurisdiction and the plaintiff has failed to pay *ad valorem* court fees thereon, despite not being in physical possession of the suit property of which partition is sought. The plaint is therefore, liable to be rejected under Order VII Rule 11(b) of the Code of Civil Procedure, 1908 (*hereinafter referred to as the "CPC"*).

33. **On merits**, the facts as narrated in the Suit bearing No. CS (OS) No. 579/2022 have been put forth as the defence in the Written Statement. It has been denied that the plaintiff, her sister and mother are entitled to any share in the suit property since the mother, Mrs. Neelam Singh has already got re-married and the plaintiff, Mrs. Archana Sood and her sister have already been adopted by Major General Surjit Singh, the second husband of their mother.



34. **Defendant No.2/ R.K Mehta in his Amended Written Statement** also took similar defence as **Defendant No.1/ Lt. Gen. Y.K Mehta**.

35. **Defendant No.7/ MMM Realtors Pvt Ltd. in its Written Statement supported the contentions of the plaintiff, Mrs Archana Sood** and narrated the facts with regards to the sale of property by the parties. It was stated that Lt. Gen Y.K. Mehta, Lt. Gen. R.K. Mehta and Mrs. Veena Puri representing themselves to be the owners of the suit property, offered the same for sale to IG Builders. The three parties had further alleged that the legal heirs of their deceased brother were also entitled to a share in the suit property and Lt. Gen Y.K. Mehta while representing himself to be authorised on their behalf, entered into an MOU dated 06.06.2008 in favour of IG Builders.

36. Pursuant to the execution of the MOU, Lt. Gen Y.K. Mehta, Lt. Gen. R.K. Mehta and Mrs. Veena Puri received the advance consideration amounting to Rs 1 crore. However, thereafter, the parties failed to comply with the formalities including, Mutation/substitution of the respective owners in the records of L&DO, conversion of suit property from leasehold to freehold and they also failed to produce any authorisation/ General Power of Attorney from the legal heirs of their deceased brother i.e. Mrs. Neelam Singh, Mrs. Archana Sood and Mrs Simran Gregory. Consequently, the MOU was cancelled by M/s IG Builders.

37. It was further stated that vide registered Sale Deed dated 17.07.2009 the Answering defendant has purchased 1/4th share in the suit property from Mrs. Veena Puri. It was alleged that the execution and registration of the Sale Deed dated 17.07.2009 was in knowledge of all the parties to the present suit and the suit for Pre-emption, Injunction and



Declaration numbered CS OS 579/2022 was filed by Lt Gen YK Mehta subsequently with malafide intention and ulterior motives. Further, the sale of the 1/4th share of Mrs. Veena Puri in the suit property was done as the MOU dated 06.06.2008 with the consent of other co-owners to alienate the property. Thus, it was asserted that the suit of the plaintiff, Mrs Archana Sood be decreed and the suit property be partitioned equally amongst co-sharers.

38. The plaintiff, Mrs. Archana Sood in her Replications to the Written Statement of defendant No.1/ Lt. General Y.K. Mehta and defendant No.2/ Lt. General R.K. Mehta denied their contentions and reiterated her assertions as made in her plaint. It was alleged by her that the present suit filed by her is maintainable as the earlier suit titled CS (OS) 579/2022 filed by Lt Gen YK Mehta is a suit for pre-emption whereas the present suit is for partition of properties.

39. Issues in CS (OS) No. 579/2022 were framed on 30.11.2016 :-

- 1. Whether the defendant no.4 and 5 are entitled to have any share/ right, title or interest in the suit property in view of their adoption by Major Gen. Retired Sh. Surjit Singh prior to demise of Smt. Yashwant Kumari Mehta in the year 2004 ? OPP.*
- 2. If the answer to the issue no.1 is in negative, whether the name of the defendant no. 4 and 5 are liable to be stuck off/ cancelled from conveyance deed dated 06.07.2009 in respect of the suit property? OPP.*
- 3. Whether the plaintiff is entitled for permanent injunction restraining defendant no.2 from selling his share in the suit property to any person including defendant no. 6 without first offering to the plaintiff and obtaining no objection certificate? OPP.*
- 4. If the answer to the issue no. 3 is in affirmative, whether the sale of her share in the suit property by D-2 or any other person is liable to be declared as null and void? OPP.*



5. Whether plaintiff is entitled for relief of mandatory injunction in terms of the Clause (bc) of the prayer of the plaint? OPP.

40. Issue No. 1 & 3 were reframed on 02.05.2017 as under :-

ISSUE NO.1

1. Whether the defendants 4 and 5 are not entitled to have any share, right and title or Interest in the suit property? OPP.

ISSUE No. 3

3. Whether the plaintiff is entitled for permanent injunction restraining the defendant no.2 from selling her share in the suit property to any person without offering it to the plaintiff? OPP.

41. **Issues in CS (OS) No. 1249/2011** were framed on 18.07.2016 as under :-

1. Whether the plaintiff and defendant no.5 were adopted by Major General Surjit Singh after their mother, defendant no.4 re-married? OPD

2. Whether the plaintiff and defendant no.5 are entitled to any share in the suit property? OPP

2A. If so, the extent of share in the suit property? OPP

3. Whether the suit property can be partitioned by metes and bounds? OPP

4. Whether the plaint is properly valued and the proper court fees has been paid thereon? OPP

5. Whether there was any family settlement in the year 2009 for partition of the suit property? OPP

42. Two suits were consolidated by this Court vide Order dated 03.04.2014 and it was directed that both the suits shall be listed together and decided with a common judgment.

Evidence in CS (OS) No. 579/2022:

43. The plaintiff/**Lt. General YK Mehta** (defendant in CS (OS) No.



1249/2011) in the testimony has appeared as PW1 and tendered his affidavit of evidence as Ex PW1/A. He corroborated his claim as narrated in the plaint.

44. The plaintiff also examined PW-2 to PW-6 to prove the documents wherein Mrs Archana Sood and Mrs Gregory Simran have mentioned the name of Major General Surjit Singh as their father.

45. **PW2/Sh. Arun Kumar, Tax Assistant, Office of Income Tax Department**, produced the original application in regard to PAN Number ATZPS2386K however, he deposed that the document that were filed along with the application with respect to PAN Number ATZPS2386K are not available in their office.

46. **PW3/ Sh. Mohammed Arshad Muddassir, ITI** from Directorate of Income Tax produced the record by M/s UTIITSL in relation to application dated 29.07.2003 filed by Ms. Archana Sood for obtaining a PAN Card in her name which is Ex.PW3/1. The Letter dated 19.09.2018 issued by DDIT (SYS.)-1(3) Directorate of Income Tax (Systems) was also placed on record. He deposed that he was not aware whether there was a separate column for mentioning the step-father's name in the application.

47. **PW4/Sh. Sandeep Kumar**, who is Income Tax Inspector produced the Income Tax Returns for Archana Sood for the year 2011-12 to 2018-19 which is Ex.PW4/1 to PW4/8.

48. **PW5/Sh. Vipin Kumar Yadav**, from Election Department, District South-West deposed that the documents he was asked to produce were not available as the same were destroyed however, he placed a letter on record which is Ex. PW5/1.



49. **PW6/ Sh. Prince Raushan, Jr.** Passport Assistant, Ministry of External Affairs produced the attested copy of passport application of Mr. Archana Sood along with the supporting documents which are Ex.PW6/1 (colly). He further deposed that the records pertaining to Ms. Simran were not available in their records and have been called for from the Consulate General of India (Hong Kong). The copies of the documents are marked as PW6/2 (colly).

50. **DW1, Mrs. Neelam Singh/defendant No.3** tendered her evidence by way of affidavit Ex DW1/A and deposed about her second marriage in the year 1981 to Major Surjit Singh. She deposed that Major Surjit Singh has two sons namely, Captain Sandeep Singh and Sh. Paramjit Singh from his first wife at the time of their marriage. The younger daughter, Mrs Archana Sood continued to reside with her maternal grandparents at Dehradun and completed her schooling from Dehradun itself. She deposed that her two daughters Mrs. Archana Sood and Mrs. Geogary Simran were never adopted by Major Gen. Surjit Singh and their names were never recorded in the service/pensionary records of Major General Surjit Singh.

51. **DW2/Archana Sood** in her affidavit of evidence Ex.DW2/A corroborated the testimony of DW1 Mrs. Neelam Singh and asserted that she and her sister were never adopted by their step-father and they along with their mother are entitled to 1/4th share in the suit property as co-owners and relied on documents as Ex DW-2/1 to DW-2/3 in support of her assertions.

Evidence in CS (OS) No. 1249/2011:

52. Mrs. Archana Sood, plaintiff in this Suit, tendered her affidavit of evidence as **PW1/A** reiterating her testimony as deposed in Civil Suit No.



CS OS 1249/11. She also produced documents which are Ex. PW1/1-Ex.PW1/6 in support of her testimony.

53. **PW2/Neelam Singh**, mother of Mrs. Archana Sood (*who had also appeared as DW1 in Civil Suit No. CS OS 579/2022*) tendered her affidavit of evidence as Ex.PW2/A re-affirming her defence that her two daughters were never adopted by her second husband.

54. **DW1/YK Mehta** (*who had appeared as PW-1/plaintiff in Civil Suit No. CS OS 579/2022*) has deposed that after re-marriage of Mrs. Neelam Singh, her two daughters were adopted by her second husband and they ceased to have any ownership rights in the suit property. It is further deposed by him that Lt. Col. Balraj Mehta, his father died on 27.11.1967 leaving behind his last and final Will dated 04.06.1951, bequeathing his entire property in favour of his wife, Smt. Yashwant Kumari Mehta. He further deposed that his mother was the exclusive owner of the suit property and after her demise, he along with his brother and sister became the co-owners of the suit property to the exclusion of daughters of deceased brother, Flt. Lt. Yoginder Mehta.

Submissions of the Parties:

55. **Ld. Counsel on behalf of Lt. Gen. YK Mehta has argued** that if any co-owner(s) intends to sell his/her share in the property, each of the co-owners have a right of pre-emption in terms of Section 22 of the Hindu Succession Act which contains the rule of pre-emption and provides for a preferential right to a share intended to be sold by a co-owner. Reliance has been placed on the case of Roshan Lal (deceased) through his LRs vs Pritam Singh and Others 2018 SCC OnLine HP 2152 which was approved in the case of Babu Ram vs Santokh Singh (Deceased) Through



His Legal Representatives And Others (2019) 14 SCC 162 wherein it was held that preferential rights were given in the right of succession to family properties and a qualification has been put on the right to transfer property to an outsider with an object to prevent any outsider from being planted in the family property.

56. It is further argued that merely because the MOU with the Builder was jointly entered into by all the co-owners, the right of preferential right to purchase did not cease. The subsequent rescission of the said Agreement/MOU would not defeat the right of pre-emption which would get revived once the MOU got cancelled. Though Ms. Veena Puri, sister of Lt. Col. Y.K. Mehta had admittedly executed a Sale Deed in favour of defendant No.6 & defendant No.7, but the preferential right existed since prior to the said Sale. There cannot be any estoppels to the statutory right as provided under Section 22 of the Hindu Succession Act, 1956.

57. It is further submitted that the two daughters had been adopted by the second husband of Mrs. Neelam Singh and they ceased to have any right, title or interest in the suit property in terms of Section 11 of the Hindu Adoption and Maintenance Act. Lt. Gen. Y.K. Mehta duly produced the documents reflecting the name of Major Gen. Surjit Singh second husband of Mrs. Neelam as their father which have not been denied by Ms. Archana Sood, Mrs. Neelam Singh and Mrs. Gregory Simran, proving adoption and there is no counter evidence to establish that they were not adopted by their step-father.

58. Learned counsel on behalf of Lt. Gen Y. K. Mehta has further argued that merely because the names of the two daughters of Mrs. Neelam Singh were entered into in the Conveyance Deed, it would not



make them an owner. In the light of the clear facts it is established that they had no right to any share in the suit property. Reliance was placed on the decision of L. Debi Prasad (Dead) by LRs v. Smt. Tribeni Devi and Others 1970(1) SCC 677.

59. In the end, legal objection has been taken that the value of the suit property is more than 20,00,00,000/-(Rs. Twenty Crores) and the court fee paid by Mrs Archana Sood is deficient.

60. **Learned counsel on behalf of Archana Sood, Mrs. Neelam Singh and Mrs. Gregory Simran** has countered the arguments addressed on behalf of Lt. Gen. Y.K. Mehta by asserting that merely because in documents pertaining to the two girls, name of Major Gen. Surjit Singh was being reflected as a father, would not be sufficient to prove adoption in the absence of the proof of any ceremony establishing the adoption of the two girls by the step-father. Moreover, in the pension documents of Major Gen. Surjit Singh, the names/features of only the two sons from his first marriage. The two girls have neither been shown as the legal heirs nor has any pensionary benefit being extended to the girls.

61. Reliance was placed on the case of M. Vanaja vs M. Sarla Devi AIR 2020 SC 1293, Rahasa Pandiani (Dead) by LRs and Ors. Vs Gokulananda Panda and Ors AIR 1987 SC 962; Kishori Lal vs Chaltibai AIR 1959 SC 504; Pentakota Satyanarayana and Ors vs Pentakota Seetharatnam and Ors. AIR 2005 SC 4362; Raghunath Behera vs Balaram Behera AIR 1996 Ori 38; Lalitha vs Parameshwari & Ors. AIR 2001 MAD 363; Rajesh Chandna and Ors. vs Aishani Chanda Mehra in FAO (OS) 51/2019 decided on 19.03.2019; M. Gurudas and Ors vs Rasaranjan and Ors AIR 2006 SC 3275; Kaliammal & Others vs K.



Mayilsamy & Others 2012 SCC OnLine Mad 1320; V. Ravichandaran vs Ramesh Jayaram and Others (1998) 3 LW 822; Suma Bewa vs Kunja Bihar Nayak AIR 1998 Ori 29, M. Gurudas and Ors vs Rasaranjan and Ors AIR 2006 SC and Lakshman Singh Kothari vs Rup Kunwar AIR 1961 SC 1378 in this regard.

62. **Submissions heard** and the written arguments filed on behalf of Lt. Col. Y K Mehta perused. *Issue-wise findings are as under :-*

Issues in CS(OS) 579/2022:

Issue Nos. 1 (as reframed on 02.05.2017):-

“1. Whether the defendant no.4 and 5 are entitled to have any share/ right, title or interest in the suit property in view of their adoption by Major Gen. Retired Sh. Surjit Singh prior to demise of Smt. Yashwant Kumari Mehta in the year 2004 ? OPP.”

In CS(OS) 1249/2011 (framed on 18.07.2016):

Issue No.1: -

“1. Whether the plaintiff and defendant no.5 were adopted by Major General Surjit Singh after their mother, defendant no.4 re-married? OPD”

Issue No. 2: -

“2. Whether the plaintiff and defendant no.5 are entitled to any share in the suit property? OPP.

2A. If so, the extent of share in the suit property? OPP”

63. Admittedly, the suit property belonged to Late Col. Balraj Mehta, who vide Will dated 4.06.1951 bequeathed the property to his wife Smt. Yashwant Kumari who became the sole owner of the suit property after
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the demise of Late Col. Balraj Mehta. She and Late Col. Balraj Mehta had three sons and one daughter from their wedlock namely, Lt. General Y.K. Mehta and Lt. General R.K. Mehta, Flt. Lt. Yoginder Mehta and Mrs. Veena Puri. Flt. Lt. Yoginder Mehta passed away in 1976 in an air crash and left behind his wife Mrs. Neelam Singh, and two daughters, namely, Mrs. Gregory Simran, who was five years old at that time and Mrs. Archana Sood who was born posthumously. Smt. Yashwant Kumari died intestate on 01.02.2004 and her estate including the suit property was inherited by all her legal heirs by virtue of Section 15 and Section 16 of the Hindu Succession Act, 1956 which read as under:

“Section 15- General rules of succession in the case of female Hindus.—

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*
- (b) secondly, upon the heirs of the husband;*
- (c) thirdly, upon the mother and father;*
- (d) fourthly, upon the heirs of the father; and*
- (e) lastly, upon the heirs of the mother.*

(2) Notwithstanding anything contained in sub-section (1),—

- (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father; and*
- (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the*



deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.”

“Section 16 - Order of succession and manner of distribution among heirs of a female Hindu.—

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestates property among those heirs shall take place according to the following rules, namely:—

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate’s death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate’s death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) to section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father’s or the mother’s or the husband’s as the case may be, and such person had died intestate in respect thereof immediately after the intestate’s death.”

64. On a conjoint reading of Section 15 and Section 16 of the HSA, 1956, it is explicit that Smt. Yashwant Kumari having inherited/ received the suit property from her husband under a Will, her three sons Lt. General Y.K. Mehta, Lt. General R.K. Mehta, daughter Mrs. Veena Puri and the children of pre-deceased son, Flt. Lt. Yoginder Mehta, i.e. Mrs. Archana Sood and Mrs. Gregory Simran are her legal heirs and they all



succeed to the suit property simultaneously. It is also pertinent to observe that Mrs. Neelam Singh, defendant No.3 is not entitled to a share in the estate of Smt. Yashwant Kumari as under the provisions of female succession in Section 15 and 16 of the HSA, 1956, widow of a pre-deceased son is not included as a legal heir. However, Mrs. Archana Sood and Mrs. Gregory Simran together take the 1/4th share of their father, Flt. Lt. Yoginder Mehta, to which he was entitled had he been alive at the time of the death of Smt. Yashwant Kumari. The distribution of the intestate property among the heirs as mentioned in Section 15(1) (a) of the Act, 1956 shall be simultaneous.

65. However, Lt. General Y.K. Mehta, while admitting the legal heirs of Late Smt. Yashwant Kumari, has challenged the status of defendant No.4 Gregory Simran and defendant No. 5 Archana Sood, daughters of his deceased brother Lt. General Yoginder Kumar Mehta to inherit the suit property on the premise that they had been adopted by Major General Surjit Singh, to whom their mother defendant No.3 Neelam Singh got married sometime prior to 2004 and before the succession opened on the demise of Smt. Yashwant Kumari in 2004. It is asserted that they ceased to have any right of inheritance in the suit property because of their adoption. However, Mrs. Neelam Singh, Mrs. Archana Sood and Mrs. Gregory Simran have vehemently contested this assertion and claimed that the two daughters were never adopted by Major General Surjit Singh.

66. To ascertain whether the two daughters of Mrs. Neelam Singh with Late Flt. Lt. Yoginder Mehta were adopted by Major General Surjit Singh, ***the law relating to "Adoption" may be discussed.***

67. *Mulla's Principles of Hindu Law, 17th Edition* defined the valid



requirements for adoption under **the old Hindu Law** which are:

"448. Requirements of a valid Adoption No adoption is valid unless:

(1) the person adopting is lawfully capable of taking in adoption.

(2) the person giving in adoption is lawfully capable of giving in adoption.

(3) the person adopted is lawfully capable of being taken in adoption.

(4) the adoption is completed by an actual giving and taking; and

(5) the ceremony called data homam (oblation to fire) has been performed. It is however, doubtful, whether the datta homam ceremony is essential in all cases for the validity of adoption."

68. The traditional law relating to adoption and maintenance amongst Hindus got codified under Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as "the HAMA, 1956"). By virtue of Section 4 of the HAMA, 1956, an overriding effect of the Act was created which reads as follows-

"Section 4. Overriding effect of Act.—Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."



69. Thus, the law codified in the HAMA, 1956 supersedes the traditional Hindu Law for adoption with its religious basis and sacramental elements, which had earlier prevailed. Furthermore, **Section 5 of HAMA, 1956 explicitly** provides that no adoption can be made after commencement of the said Act by or to a Hindu except in accordance with the provisions contained in Chapter II thereof. An adoption made in contravention of the said provisions, is void. Thus, for an adoption to be valid, the provisions under the HAMA, 1956 have to be scrupulously complied.

70. The scheme of the HAMA, 1956 is as follows-

71. Section 6 of the said Act prescribes the requisites of a valid adoption as under-

"Section 6. Requisites of a valid adoption.—No adoption shall be valid unless—

(i) the person adopting has the capacity, and also the right, to take in adoption

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter."

72. Section 6 clause (iv) of the HAMA, 1956 provides that no adoption is valid unless inter alia the adoption is made in compliance with the other conditions mentioned in Chapter II.

73. Section 11 of the HAMA, 1956 prescribes other conditions of valid adoption and sub-section (vi) thereof, provides for the giving and taking of the child as under:-

Section 11. Other conditions for a valid adoption.-



(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up to the family of the adoption”

72. **Gopal Chandra Sarkar Sastri on Hindu Law 8th Edition**, in regard to the ceremony necessary for valid adoption stated thus:

"The ceremonies of giving and taking are absolutely necessary in all cases. These ceremonies must be accompanied by the actual delivery of the child; symbolical or constructive delivery by the mere parol expression of intention on the part of the giver and the taker without the presence of the boy is not sufficient. Nor are deeds of gift and acceptance executed and registered in anticipation of the intended adoption, nor acknowledgment, sufficient by themselves to constitute legal adoption, in the absence of actual gift and acceptance accompanied by actual delivery; a formal ceremony being essential for that purpose."

74. Similarly **Mayne's Hindu Law, 11th Edn.**, stated thus:-

"The giving and receiving are absolutely necessary to the validity of an adoption. They are the operative part of the ceremony, being that part of it which transfers the boy from one family into another. But the Hindu Law does not require that there shall be any particular form so far as giving and acceptance are concerned. For a valid adoption, all that the law requires is that the natural father shall be asked by the adoptive parent to give his son in adoption, and that the boy shall be handed over and taken for this purpose."

75. The Apex Court in the case of Lakshman Singh Kothari (supra) discussed the law on adoption and emphasized on the essential requirement of the ceremony of **‘giving and taking’**. It referred to the



aforementioned texts on Hindu Law and observed thus:

*“10. The law may be briefly stated thus: Under the Hindu Law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that **can be done only by the ceremony of giving and taking**. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. **But a ceremony there shall be, and giving and taking shall be part of it**. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party.”*

76. In the case of L. Debi Prasad (dead) by LRs (supra) the Apex Court observed that **the ceremony of “giving and taking”** is absolutely necessary for an adoption to be held as valid. All that is required is that the natural father be asked to give the child to the adoptive parent, and that the child be handed over and taken for this purpose.

77. In the case of Kaliammal (supra), the Madras High Court while referring to *Mulla’s Principles of Hindu Law* observed that the performance of *data homam* is not one of the essential ingredient to prove adoption which must be proved by adducing evidence of giving and taking by natural parents to adoptive parents and that both of them are capable of giving and taking the child in adoption.



78. Thus, a ceremony of ‘*giving and taking*’ of the child which is required to be performed for a valid adoption as per Hindu Law, is also a necessity under the provisions of the HAMA, 1956.

79. *Now it is pertinent to examine how such a ceremony is to be proved and who must prove the same by leading evidence.* The basic fundamentals of Burden of Proof are succinctly encapsulated in the three following maxims. The maxim *Affirmatis est probare* which means he who affirms must prove. The maxim *Affirmanti non neganti incumbit probatio* means the burden of proof lies upon him who affirms and not upon one who denies. These two maxims indicate that the burden of proof is on the person who affirms a fact to prove it. Further, the maxim *In re dubia magis infitatio quam affirmatio intelligenda* provides that in a doubtful matter, the negation is to be understood rather than the affirmation.

80. The basic principles of burden of proof in the case of adoption was considered by the Privy Council in the case of *Dal Bahadur v. Bijai Bahadur* AIR 1930 P.C. 79 who observed that a very grave and serious onus rests upon a person seeking to displace the natural succession of property by alleging an adoption. It was explained that the proof of such an adoption is strict and requires a severe scrutiny.

81. Emphasis was placed on the strict standard of proof in cases of adoption, in the case of *Padmalav vs Fakira Debia* AIR 1931 P.C. 84. It was observed by the Privy Council that the evidence led by the parties should be free from all suspicion and fraud. Furthermore, it should be so consistent and probable that it leaves no occasion for doubting its truth. If an adoption is improbable and not supported by evidence led and the case of the party setting up the adoption is highly suspicious, the adoption



cannot be held to have been valid.

82. In the case of Pratap Kishore v. Gyonandranath AIR 1951 Orissa 313, it was observed that the onus of proving the adoption is very heavy especially in cases where there is no contemporaneous deed of adoption.

83. In L. Debi Prasad (Dead) by LRs (supra), the Supreme Court discussed the mode and burden of proving the adoption and observed that in the case of all ancient transactions, it is but natural that positive oral evidence would be lacking. Passage of time gradually wipes out such evidence. In judging whether an adoption pleaded has been satisfactorily proved or not, the Court has to bear in mind the lapse of time between the date of the alleged adoption and the date on which the concerned party is required to adduce proof. In the case of an adoption which has taken place years back, the most important evidence is likely to be that the alleged adoptive father held out the person claiming to have been adopted as his son; the latter treated the former as his father and their relations and friends treated them as father and son. There is no pre-determined way of proving any fact. If after taking an overall view of the evidence adduced in the case, the Court is satisfied that the adoption pleaded is true, the Court must necessarily proceed on the basis.

84. **It is thus, settled law that the party setting up the adoption must prove the same by leading cogent evidence.**

85. Thus, the burden to prove the factum of adoption was on Lt. Gen Y.K. Mehta, who is seeking to disrupt the natural succession of property by alleging that Mrs. Archana Sood and Mrs. Gregory Simran were adopted by Major General Surjit Singh, and he was required to prove the same by adducing cogent evidence.



86. The easiest way to prove the adoption was if there was any document of adoption which raises a statutory presumption that the adoption was done in accordance with law in terms of Section 16 of the HAMA, 1956, which reads as under:-

Section- 16. Presumption as to registered documents relating to adoption.—*Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.*”

87. In the present case, there is no registered document relating to adoption; it is not produced and there is no averment made that an *Adoption Deed exists*. The Supreme Court in the case of Addagada Ragavachamma and anr. vs Addagada Chenchamma and anr., AIR 1964 SC 136, held, in cases where there is no deed of adoption, and there is no proof of giving and taking of the child, the inference of adoption can be drawn from the recitals in the other documents. However, the documentary evidence led must manifest one consistent pattern of conduct which can lead to an inference of an adoption having taken place. If there are rival sets of contradicting documents from which an inference of adoption could be made, it cannot be said that the burden of proving the adoption has been discharged.

88. In the case of Kishorilal (supra), as there was no formal adoption deed, the appellant had sought to prove the same by adducing evidence. In this background, it was observed by the Apex Court that the evidence to support an adoption must be free from all suspicion of fraud and must be



so consistent and probable that there is no occasion for doubting its truthfulness. Such high standard of proof has been held to be necessary, as an adoption results in changing the course of succession and can deprive a person of their right in a property.

89. In Rahasa Pandiani (Dead) by LRs and Ors. Vs. Gokulananda Panda and Ors. AIR 1987 SC 962, the Supreme Court observed that since the adoption divert the normal and natural course of succession, the Court must be extremely alert and vigilant to guard against being ensnared by schemers who indulge in unscrupulous activities. If there are any suspicious circumstances, the burden is on one who claims to have been adopted to dispel the same beyond reasonable doubt. In a case of an adoption which is not supported by a registered document or any other evidence of a clinching nature if there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the Court by the party contending that there was an adoption.

90. The Supreme Court in the case of Rahasa Pandiani (Dead) by LRs and Ors. (supra) referred to the case of Kishorilal (supra) and explained the burden of proof in cases of adoption as follows-

“4. ...When the plaintiff relies on oral evidence in support of the claim that he was adopted by the adoptive father in accordance with the Hindu rites, and it is not supported by any registered document to establish that such an adoption had really and as a matter of fact taken place, the Court has to act with a great deal of caution and circumspection. Be it realized that setting up a spurious adoption is not less frequent than concocting a spurious will, and equally, if not more difficult to unmask. And the Court has to be extremely alert and vigilant to guard against being ensnared by schemers who indulge in unscrupulous practices out of their lust for property. If there are any suspicious circumstances, just as the propounder of the will is obliged to dispel the cloud of suspicion, the burden is on one who claims to have been adopted to dispel the same beyond reasonable doubt. In the case of an adoption which is

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*not supported by a registered document or any other evidence of a clinching nature if there exist suspicious circumstances, the same must be explained to the satisfaction of the : conscience of the Court by the Parity contending that there was such an adoption. Such is the position as an adoption would divert the normal and natural course of succession. Experience of life shows that just as there have been spurious claims about execution of a will, there have been spurious claims about adoption having taken place. **And the Court has therefore to be aware of the risk involved in upholding the claim of adoption if there are circumstances which arouse the suspicion of the Court and the conscience of the Court is not satisfied that the evidence preferred to support such adoption is beyond reproach.**"*

91. In the case of Nagayasami Naidu and others vs Kochadal Naidu and others, AIR 1969 Mad 329, the law on adoption was discussed and it was observed:

"...if there is no contemporaneous deed of adoption and if there is no satisfactory proof of the giving and taking and If the inference of adoption is to be drawn from the recitals in the documents and the assertion of rights in documents dealing with the estate as the adopted son, etc. etc. the documentary evidence must manifest one consistent pattern of conduct and if there were rival competing sets of documents, it cannot be said that the grave and serious burden could be said to be discharged"

92. In Pentakota Satyanarayana (supra), the Apex Court referred to the heavy onus that lies upon a person who stays out of a case for adoption and observed that while considering the question whether an adoption is genuine or not, the propounder is obliged to dispel the cloud of suspicion and must satisfy the conscience of the Court about such an adoption. The case of Rahasa Pandiani (Dead) by LRs and Ors. (supra) was also reiterated in Pentakota Satyanarayana (supra).

93. In the present case, in the light of absence of the Adoption Deed, a heavy and serious burden lies on Lt. General Y.K. Mehta for establishing



that such an adoption took place by leading other cogent evidence .

94. At the outset it must be noted that Lt. General Y.K. Mehta in his affidavit by way of evidence Ex. PW1/A has stated that the adoption took place sometime prior to 2004 and has not provided specific details regarding the factum of adoption. He has no personal knowledge of adoption and his claim is based only on conjectures. He has deposed that Mrs Archana Sood and Mrs. Gregory Simran have mentioned Major General Surjit Singh as their father in all their official and government documents. To support his assertions, he examined PW2 Sh. Arun Kumar, PW3 Sh. Mohammed Arshad Muddassir, PW4 Sh. Sandeep Kumar, PW5 Sh. Vipin Kumar Yadav and PW6 Sh. Prince Raushan who produced documents of Mrs. Archana Sood and Mrs Gregory Simran such as Income Tax Returns and Passport Applications wherein Major General Surjit Singh had been shown as the father of the two girls.

95. First and foremost, Lt. General Y.K. Mehta had limited interaction with the wife and children of his brother Late Flt. Lt. Yoginder Mehta after his demise and has practically no knowledge about their life. He has admitted in his testimony that he, Lt. Gen. Y.K. Mehta contacted Mrs. Neelam Singh who gave him the address of Mrs. Archana Sood whom he met and with her consent he got the Conveyance Deed got executed in the joint names of all the legal heirs of late Smt. Yashwant Kumari in the year 2009. Till then he had no inkling of there being any adoption of the two girls. Subsequently, when he noticed the name of Major General Surjit Singh as their father in various documents, he presumed that the two daughters had been adopted. It is evident that Lt. General Y.K. Mehta's claim of adoption is only presumptive and not on any facts.



96. Similar facts came up for consideration in the case of Kaliammal & Others (supra). It was observed that the documents such as the Secondary School Leaving Certificate, applications filed by the child for getting B.C. Scholarship, community certificate issued in his favour, passport, income tax certificate and sale deeds executed wherein he was described as the son of Krishnan Chettiar (alleged adoptive father) would not prove the adoption merely because he was described as the son of Krishnan Chettiar. It was further observed that the same may be used as corroborative evidence only when the adoption has been proved to the satisfaction of the court.

97. Likewise, in the case of Lalitha Vs. Parameshwari Alias Ramabai and Ors. AIR 2001 Mad 363, the Division Bench of the Madras High Court held that in the invitation card printed for the puberty function, celebration of the marriage of the plaintiff and the school certificate, the name of an individual finds a place as the father of the plaintiff, would not establish that the plaintiff was adopted by such person.

98. Similarly, in the present case, even though the name of the step father came to be reflected as the father of two girls, cannot lead to any inference of adoption especially in the absence of any cogent evidence to even hint that the ceremony of "*giving and taking*" of the two girls had ever taken place.

99. Ms. Archana Sood in her cross-examination admitted that her official documents such as PAN Card, Passport, income tax returns had the name of Maj Gen Surjit Singh's as her father. She explained that she mentioned her father's name as Major General Surjit Singh in all public documents since her mother got remarried to him and as he is her



stepfather.

100. The most material witness to the factum of adoption was Mrs. Neelam Singh the mother of the two girls namely, Ms. Gregory Simran and Ms. Archana Sood, who appeared as PW2 (in *CS OS 579/2022*) and DW1 in (*CS OS No. 579/2022*). She deposed that on the demise of her husband Flt Lt. Yoginder Kumar Mehta, she got married to Major General Surjit Singh in the year 1981 who had two sons namely Captain Sandeep Singh and Shri. Paramjit Singh from his first wife. She categorically denied having given the two girls ever in adoption to her second husband Major General Surjit Singh. Even after her remarriage, the younger daughter Mrs. Archana Sood continued to reside with her maternal parents at Dehradun from where she completed her schooling.

101. She explained that though in the various documents the name of Major General Surjit Singh may have been reflected as their father, but the children were never formally adopted by Major General Surjit Singh and the deceased Flt Lt Yoginder Kumar Mehta always remained the natural father of the two girls.

102. That there was no adoption is also evident from the fact that their names were never entered in the service/pensioner records of Major General Surjit Singh Ex. PW1/6 (*in C.S. OS No. 1249.2011*) which reflect that he had declared his two sons Captain Sandeep Singh and Shri. Paramjit Singh from his first marriage, as his legal heirs or the nominees and the name of the two girls are not reflected therein.

103. The best witness to prove the '*giving and taking*' ceremony for adoption was Ms. Neelam Singh, the mother of the two girls since the giving ceremony could have been proved by her. She has categorically



denied that the children were ever given in adoption to her second husband Major General Surjit Singh. This fact is fully corroborated from the pensionary/ service records of Major General Surjit Singh. However, not only are their names conspicuously missing but the names of the two sons from his first marriage have continued to be shown as his legal heirs. Further, Archana Sood has also denied being given in adoption. Had the girls been in fact adopted then in the ordinary course of events, their names would have definitely found mention in the pensionary record. In this context, it may be observed that in the peculiar situation of Ms. Neelam having lost her husband at young age and having two children to take care of, her destiny led her to remarry Major General Surjit Singh who had two sons from his first marriage. The two may have picked up the scattered strains of their respective life to rebuild their nest but this fact of remarriage itself is not sufficient to draw the inference of adoption. The girls may have started mentioning the name of Major General Surjit Singh as their father but neither is there any cogent evidence of performance of “*giving and taking*” ceremony nor any consistent conduct pattern to lead to the inescapable inference of adoption.

104. Applying the principles enumerated in the judgements discussed above, simply from the documents i.e. passport, application for Pan Card etc. Ex. PW 6/1, PW 6/2 and PW 3/1 relied upon by Lt. Gen. Y.K. Mehta, no inference of the adoption of two girls can be drawn especially in the light of testimony of DW1Ms. Neelam Singh denying having given her daughters in adoption.

105. It is thus, concluded that Mrs. Archana Sood and Mrs. Gregory Simran were never adopted by Major General Surjit Singh and



continue to be the legal heir of Smt, Yashwant Kumari Mehta through their deceased father and are entitled to a share in her estate.

106. Thus, as per the provisions of female succession in Section 15 and 16 of the HSA, 1956 explained above, Mrs. Archana Sood and Mrs. Gregory Simran together take the 1/4th share as legal heirs of Ms. Yashwant Kumari.

107. The issues are accordingly decided in favour of Mrs. Archana Sood and Mrs. Gregory Simran.

Issue No. 5 in CS(OS) 1249/2011: -

“5. Whether there was any family settlement in the year 2009 for partition of the suit property? OPP”

108. Mrs. Archana Sood in her affidavit of evidence Ex.PW1/A in {CS(OS) 1249/2011} had deposed that there was an oral Family Settlement amongst all the co-owners in the year 2009, for partition of the property in question and the suit property was accordingly mutated in the records of Land and Development Office. Conveyance Deed dated 06.07.2009 Ex. PW1/3 was accordingly issued in the name of all the co-owners namely, Lt. General Y.K. Mehta, Lt. General R.K. Mehta, Mrs. Veena Puri, Mrs. Gregory Simran and Mrs. Archana Sood.

109. The execution of Conveyance Deed has been corroborated by Lt. General Y.K. Mehta in his affidavit of evidence Ex. DW1/A in CS DJ 211791/2016. However, Lt. General Y.K. Mehta in his testimony had explained that the Conveyance Deed only stated and acknowledged that all the four legal heirs of Smt. Yashwant Kumari, were entitled to a share. He had explained in his cross-examination that being under the mistaken belief that Mrs. Archana Sood and Ms. Gregory Simran have not been adopted by Major General Surjeet Singh and jointly held 1/4th share in the

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suit property, he got their names included as co-owners in the suit property and the Conveyance Deed dated 06.07.2009 was executed by L&DO. The L&DO had also admitted in its Written Statement that it is Lt. General Y.K. Mehta who himself had submitted all the documents for requisite process.

110. Lt. General Y.K. Mehta in his cross-examination further explained that his mother died on 01.02.2004 and sometime in 2006/2007, his younger brother, Lt. General R.K. Mehta and the sister, Ms. Veena Puri decided to settle the affairs of the suit property, it was mutually decided that they must give a share to the two children of their deceased brother. Accordingly, re-establishing the contact with Ms. Neelam Singh, wife of Late Major General Surjit Singh, he met her and apprised that 1/4th share in the house belonged to the two daughters, namely, Mrs. Archana Sood and Mrs. Gregory Simran, but Mrs. Neelam Singh told him to contact them directly and informed that Mrs. Gregory Simran was settled in Hong Kong while Mrs. Archana Sood was settled in Dwarka, Delhi. Lt. General Y.K. Mehta then met Mrs. Archana Sood and apprised her of the entire situation and the papers for mutation were processed and eventually the suit property got mutated in the name of all the co-owners. The mutation was carried and the Conveyance Deed was issued on 06.07.2009.

111. It is evinced from the testimony of Mrs. Archana Sood that there was an oral agreement for mutation of the property in the joint name of all the co-owners, and not in respect of a partition. The share of the deceased Flt Lt. Yoginder Mehta was to be equally shared by his two daughters, namely, Mrs. Archana Sood and Mrs. Gregory Simran. Thus, their names were added in the Conveyance Deed along with that of all the other co-



owners/co-sharers in the records of Land and Development Office. The Conveyance Deed dated 06.07.2009 Ex. PW1/3 was accordingly issued in the name of all the co-owners, namely, Lt. General Y.K. Mehta, Lt. General R.K. Mehta, Ms. Veena Puri, Mrs. Gregory Simran and Mrs. Archana Sood. It is thus, concluded that by the family settlement, no partition took place by metes and bounds, but there was only an acknowledgement of all having a share in the suit property in the Conveyance Deed as discussed above.

112. The issue is accordingly answered.

Issue No. 2 in CS(OS) 579/2022 framed on 18.07.2016: –

“If the answer to the issue no.1 is in negative, whether the name of the defendant no. 4 and 5 are liable to be struck off/ cancelled from Conveyance Deed dated 06.07.2009 in respect of the suit property? OPP.”

113. The only ground now being taken to claim that Mrs. Archana Sood and Mrs. Gregory Simran, the two daughters of the deceased brother Mr. Yoginder Mehta, are not entitled to any share in the suit property was that they were adopted by the step-father Major General Surjeet Singh. It has already been held in the previous issues that the two girls were never adopted by Major General Surjeet Singh and that they continued to be the daughters of Mr. Yoginder Mehta and Mrs. Neelam Singh. It is, therefore, held that the two daughters are entitled to his share to the extent that they together are entitled to 1/4th share in the suit property. Hence, their names are not liable to be struck off from the Conveyance Deed dated 06.07.2009.

114. **The Issue No. 2 in CS(OS) 579/2022 is accordingly answered in favour of Mrs. Archana Sood and Mrs. Gregory Simran.**

Issue No. 3 in CS(OS) 579/2022 reframed on 02.05.2017: –

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“3. Whether the plaintiff is entitled for permanent injunction restraining defendant no.2 from selling his share in the suit property to any person including defendant no. 6 without first offering to the plaintiff and obtaining no objection certificate? OPP.

Issue No. 4 in CS(OS) 579/2022 framed on 30.11.2016:

4. If the answer to the issue no. 3 is in affirmative, whether the sale of her share in the suit property by D-2 or any other person is liable to be declared as null and void? OPP.”

115. DW-1 Lt. General Y.K. Mehta in CS (DJ) 211791/2016 had deposed in his cross-examination that an MoU dated 06.06.2008 Ex. PW1/5 was entered into between the parties on 06.06.2008, wherein all the co-owners agreed to get the maximum value of the suit property through MMM Realtors Private Limited for the benefit of all the co-sharers. It is also admitted that he signed the said MoU dated 06.06.2008 for and on behalf of the two sisters i.e., Mrs. Archana Sood and Mrs. Gregory Simran even though he had not taken any Power of Attorney or Authority from them for the purpose of entering into the MoU dated 06.06.2008 on their behalf. Pursuant to the aforesaid MoU dated 06.06.2008, Mrs. Veena Puri was to execute a Sale Deed in favour of the builder, for the consideration of Rs. 3.95 crores.

116. Lt. General Y.K. Mehta further deposed that the MoU dated 06.06.2008 was cancelled by the Builder on 19.07.2011. He further admitted that the process of conversion got completed on 06.07.2009.

117. Lt. General Y.K. Mehta thus, admittedly entered into the MoU dated 06.06.2008 with the MMM Realtors Private Limited. Admittedly, the said MoU dated 06.06.2008 stands cancelled by the Builder on 19.07.2011. It is also an admitted fact that Mrs. Veena Puri has sold her

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1/4th share in the suit property *vide* Sale Deed dated 17.07.2009 Ex. DW2/2 (*in CS(OS) 579/2022*), to MMM Realtors Private Limited which is the sister concern of IG Builders, with whom parties had admittedly entered into the MoU dated 06.06.2008.

118. Lt. General Y.K. Mehta has raised a claim that he had a preferential right to acquire the share sold by Mrs. Veena Puri in the suit property in accordance with the **Section 22** of the *Hindu Succession Act, 1956* and that the Sale Deed dated 17.07.2009 is liable to be declared as void.

119. Section 22 of the Hindu Succession Act, 1956 deals with the preferential right to acquire the property in certain cases which reads as under: -

“Section 22. Preferential right to acquire property in certain cases.— (1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.”



120. According to Clause 1 of Section 22 of the Hindu Succession Act, 1956 whenever there is a joint interest in the immovable property inherited by two or more legal heirs specified in Class 1 of the Schedule, then the other legal heirs have a preferential right to acquire the interest proposed to be transferred.

121. The intention behind the enactment of Section 22 of the Hindu Succession Act, 1956 was explained in the case of Roshan Lal (deceased) through his LRs (supra). It was observed thus:-

“62. The intention behind to give preferential right to a heir(s) as envisaged under Section 22 of the Act, to acquire property of other heirs in certain cases, therefore, is with the sole object to prevent the fragmentation of the estate and introduction of strangers in the family business and estate..... The consideration for acquisition of that interest either may be mutually agreed upon between those two heirs and in the absence of any such agreement, the matter has to be decided by the Court on an application to be filed under Section 22 of the Act.”

“65. As already noticed, the object behind it is very noble i.e. to prevent the fragmentation of holdings, the entry of a stranger to the immovable property and business left behind by an intestate and on the top of it to give some solace to the intestate at his heavenly abode that after his/her death the successors do not allow any third person or stranger to enter upon the estate/business, he/she left behind. It is a hard fact that agriculturists are emotionally attached with the holdings came in their hands from their forefathers. No one wants to part therewith by way of its transfer to a stranger. In a case of inheritance by more than one heir, sometime a scrupulous and cunning heir sells off his share in the joint property to a stranger either to torture the other heirs or take revenge from them or teach a lesson to them for variety of reasons, including jealousy or inimical relations with them. Therefore, Section 22 of the Act not only protects the rights of other heirs in the estate left behind by an intestatee but also saves them from mental torture, harassment and also put fetters on such scrupulous heir from transferring his share in the joint property he inherited to a third person/stranger.”

122. The basic policy behind such preferential right is that no stranger



should be allowed to thrust himself upon the co-sharer in a property against their will and to prevent apprehended inconvenience to the co-sharer.

123. In the context of pre-emptory right which is similar to the preferential right envisaged under Section 22 of the Hindu Succession Act, 1956, the Supreme Court in the case of Raghunath (Dead) By Legal Representatives vs. Radha Mohan (Dead) Through Legal Representatives and Others (2021) 12 SCC 501, had opined that the pre-emptor has two rights: *first*, the inherent or primary right i.e., right for the offer of a thing about to be sold. The *second* is the *secondary right* of pre-emption which is simply a right of substitution in place of an original vendee, and the pre-emptor is bound to show not only that his right is as good as that of that vendee, but that it is superior to that of the vendee. Such superior right has to subsist at the time when the pre-emptor exercises his right.

124. The aforesaid proposition was summed up in the case of Bishan Singh vs. Khazan Singh AIR 1958 SC 838 which reads as under: -

“11. ... (1) The right of pre-emption is not a right to the thing sold but a right to the offer of a thing about to be sold. This right is called the primary or inherent right. (2) The pre-emptor has a secondary right or a remedial right to follow the thing sold. (3) It is a right of substitution but not of re-purchase i.e., the pre-emptor takes the entire bargain and steps into the shoes of the original vendee. (4) It is a right to acquire the whole of the property sold and not a share of the property sold. (5) Preference being the essence of the right, the plaintiff must have a superior right to that of the vendee or the person substituted in his place. (6) The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place.”



125. From the above discussion, it may be stated that to be successful in a claim for preferential right under Section 22 of the HSA, 1956 following conditions need to be satisfied:

- (i) *it should be a property inherited from an ancestor, in which all are the co-owners;*
- (ii) *one or more co-owners intend to sell their undivided share;*
- (iii) *each co-owner has a preferential right to purchase the undivided share before it is offered to a stranger;*
- (iv) *this right can be exercised only at the time of first sale and not every subsequent sale;*
- (v) *then too, the right is to be substituted by purchasing the sold share from the vendee and not to avoid the sale.*

126. The facts of this case may now be analysed on these aspects to determine whether the plaintiff is entitled to any preferential right as claimed. In the present case, admittedly the suit property had devolved upon the legal heirs of the deceased Ms. Yashwant Kumari, who became the co-owners in the suit property. They all became entitled to a preferential right to acquire the interest proposed to be transferred, in terms of Section 22 of HSA. **What needs to be examined is whether this preferential right under Section 22 of the HSA, 1956 has been waived or ceased to be available to the parties in the facts of the present case.**

127. **Admittedly**, Lt. General Y.K. Mehta on his behalf and on behalf of Mrs. Archana Sood and Mrs. Gregory Simran along with Lt. General R.K. Mehta and Mrs. Veena Puri entered into the MoU dated 06.06.2008



with IGI Builders and Promoters, wherein they all agreed to sell the property. The value of the share of Mrs. Veena Puri under the MoU dated 06.06.2008 was mentioned to be Rs. 3.95 crores. This was the first time an expression of intent to sell was manifested by all the parties. The terms of the MOU are as under:-

“MOU/ACKNOWLEDGEMENT

Received a sum of Rs. 1,00,00,000/- (Rs. One Crore only) as follows:

Rs. 50,00,000/- (Rupees Fifty Lacs only) vide P.O. No. 010446 dated 5 June 2008, drawn on .HDFC Bank, S. Ex.li, New Delhi, favouring Veena Puri.

Rs. 50,00,000/- (Rupees Fifty Lacs only) vide P.O. No. 010447 dated 5th June 2008, drawn on FIDFC Bank, S. Ex.11, New Delhi, favouring Lt. Gen. Rajinder Kumar Mehta.

*from I.G. Builders & Promoters Pvt. Ltd., through Its Director, Mr. Gireesh Chaudhary, having its regd. Office at 0-581, Defence Colony, New Delhi, (Buyer)' as advance **towards the sale of our share in the property No. D-193, Defence Colony, New Delhi, measuring'343 Sq. Yds. (Total sale price of the entire property bearing No. D-193, Defence Colony, New Delhi, measuring 343 Sq. Yds. has been settled at Rs. 15,80,00,000/- (Rs. Fifteen Crores Eighty Lacs only) between all the owners and the buyer.***

The above mentioned property No. D-193, Defence Colony, New Delhi belonged to our mother Late Mrs. Yashwant Kumari Mehta w/o Late Col. B.R. Mehta. After her death, the said property has been inherited by us.

The above said property is free from all encumbrances, legal disputes, charges, liens, attachments, liabilities, family disputes, and no notice of requisition of acquisition in verbal or written from any authority has been received by the owners in respect of the said property. Owners further agree to keep the said property free from all sorts of encumbrances during the pendency of this Agreement. And if there are any encumbrances of any sort. It shall be the responsibility of the Owners to get the said property cleared



from such defects.

Lt. Gen. Yuvraj Kumar Mehta PVSM, AVSM(Retd.) S/o Late Lt. Col. B R. Mehta acting for self and on behalf of (1) Mrs. Neelam Singh, W/o Maj. Gen. Surjeet Singh (Retd.) and ex-wife of Late Lt. Gen. Yoginder Kumar Mehta, (2) Mrs. Simran, (3) Mrs. Archna both D/o Late Lt. Gen. Yoginder Kumar Mehta confirms the above said transaction and undertakes to complete the necessary, formalities and get the transaction completed in favour of the buyer or his nominees.”

128. From the MoU dated 06.06.2008, it is quite evident that all three co-owners, Lt. General Y.K. Mehta, Lt. General R.K. Mehta and Mrs. Veena Puri intended to sell the property and none of them intended to exercise their preferential right. The plaintiff and Lt. General R.K. Mehta had chosen not to exercise their preferential right to purchase the share of Mrs. Veena Puri. In fact, all concertedly agreed to the MOU and decided to sell their shares in the suit property to IG Builders.

129. After the MOU did not materialize, Mrs. Veena Puri sold her undivided 1/4th share in the suit property to MMM Realtors Private Limited vide Sale Deed dated 17.07.2009 in furtherance of the MOU entered into dated 06.06.2008.

130. ***The next question which thus, arises for consideration is whether the preferential right continues to exist at the time of first intended sale or is available at the time of every subsequent sale as well.***

131. Similar facts were considered in the case of Ghulam Jilani vs. Hassan Khan PLR (1905) 6 P&H 338, wherein it was observed that it is only the first sale which can be objected to and once the option has not been exercised, it cannot be held to be in perpetuity and the right for pre-emptory can be exercised in respect of the subsequent sales as well.



132. In Mangti Ram vs. Onkar Sahai 1994 SCC OnLine Raj 662, it was observed that the right of pre-emption was held to have been given up on account of an earlier compromise deed with respect to the sale of the suit property to which the plaintiff did not object.

133. The waiver of right to pre-emption was discussed in the case of Ghanshyam vs. Chand Bihari 2008 SCC OnLine Raj 826. It was observed that where a co-sharer does not exercise his option to show his willingness to purchase the property that is to be sold by the other co-sharers, when the other sharers transfer their right to a third party, sought to transfer their share to a third party, then he cannot subsequently claim a right of pre-emption or to avoid a sale by his conduct, he has waived the right to claim pre-emption.

134. Likewise, in the case of Rukmani Devi vs. Prabhu Narayan 2007 SCC OnLine Raj 472, it was held that once the plaintiff waives or gives up a right without raising any objection when the property is intended to be sold to a third party where the plaintiff cannot seek any subsequent right to exercise the right of pre-emption.

135. The above cases were referred to in the case of Prahlad Kumar vs. Kishan Chand 2009 SCC OnLine Raj 796, though in the context of a right of pre-emption. It was observed that the plaintiff is estopped from claiming his right of pre-emption, if he has waived his right when the property was sold at an earlier date and the right of pre-emption was not exercised.

136. The legal proposition which thus, emerges from the aforesaid judgments is that the preferential right is not available every time when a co-sharer intends to sell the property. ***Indeed, it can be exercised only in***



the first instance when the property is intended to be sold; if such right is not exercised then, it cannot be claimed at any subsequent stage.

137. As already noted above, in the present case, Lt. General Y.K. Mehta, Lt. General R.K. Mehta and Ms. Veena Puri had jointly entered into the MoU dated 06.06.2008 to sell the property to a Builder. Having once expressly intended to sell the property and not to purchase the share of each other/co-owners, their preferential right to purchase the property came to an end.

138. *The next significant aspect which needs to be considered is what is the right available to the co-owner after the Sale Deed has been entered into by Ms. Veena Puri:* is it a right to avoid the Sale Deed or to be substituted in place of the vendee?

139. As has been held in the case of Bishan Singh (supra), once the property has been sold, the only right that a co-owner can exercise is to be substituted in place of a vendee, provided he is willing to pay the sale price for the entire property.

140. In the present case, Lt. General Y.K. Mehta having already waived his preferential right, he cannot seek to cancel the Sale Deed. Even if for the sake of arguments, he is seeking any preferential right after the execution of the Sale Deed, he can only claim substitution on payment of the sale consideration to the subsequent purchaser, which he has not claimed.

141. **It is, therefore, concluded that there is no preferential right that Lt. General Y.K. Mehta has as he has waived his preferential right and there is no ground to set aside the Sale Deed. Moreover, Lt. General Y.K. Mehta has not sought any right of substitution which**



could have been claimed as a secondary right.

142. The issues are, therefore, decided against Lt. General Y.K. Mehta.

Issue No. 5 in CS(OS) 579/2022 framed on 30.11.2016: -

“5. Whether plaintiff is entitled for relief of mandatory injunction in terms of the Clause (b) and (c) of the prayer of the plaint? OPP.”

143. The plaintiff/Lt. General Y.K. Mehta has sought a ***Mandatory Injunction*** to restrain the defendant No. 2/Veena Puri and other co-owners from selling their shares in the suit property without first offering him a right to purchase their respective shares.

144. As already held above, as Ms. Veena Puri has already sold her share *vide* Sale Deed dated 17.07.2009 there does not survive any preferential right in the plaintiff to claim that the suit property may be offered to him before it is sold to a third party by the co-legal heirs.

145. As held in Issue No. 3 in CS(OS) 579/2022, no preferential right survives in favour of the plaintiff viz-a-viz., co-owners and, therefore, he is not entitled to the mandatory injunction as prayed for.

146. The issue is accordingly decided against Lt. General Y.K. Mehta.

Issue No. 4 in CS(OS) 1249/2011 framed on 18.07.2016-

“4. Whether the plaint is properly valued and the proper court fees has been paid thereon? OPP”

147. In the present case, the plaintiff Anita Sood together with her sister Mrs. Simon Gregory, has asserted a right to 1/4th share in the suit property. She has valued the suit property at more than 20 crores for the purpose of territorial jurisdiction. Being one of the co-owners of the suit property having 1/4th joint share along with Mrs. Neelam Singh and Mrs Gregory Simran, and being in joint possession of the suit property with CS (OS) 579/2022 & connected matter

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other co-owners/ defendants, she valued the suit for the purpose of Court Fees for the relief of partition at Rs 200 and paid Rs 20 thereon. For the relief of Declaration and Permanent Injunction she valued the suit at Rs 200 and Rs 130 respectively, and paid Rs 20 thereon and Rs 13 respectively thereon.

148. **Lt. Gen Y.K. Mehta in his Written Statement** has contended that the suit was not property valued for the purposes of court fees and jurisdiction. The Plaintiff, Mrs. Archana Sood not only failed to value the suit correctly but also not paid *advalorem* court fees thereon, despite not being in physical possession of the suit property of which partition is sought. The plaint is therefore, liable to be rejected under Order VII Rule 11(b) of the CPC. A similar objection was also taken by **Lt. Gen R.K. Mehta in his Written Statement.**

149. The Supreme Court in the case of P.V. Gururaj Reddy Rep. by GPA Laxmi Narayan Reddy and Anr. Vs. P. Neeradha Reddy and Anr., (2015) 8 SCC 331 held as follows:

"5. Rejection of the plaint under Order VII rule 11 of the CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that has to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is



only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

150. For the purposes of deciding whether ad valorem court fee is payable, the court must look at the averments and determine whether Mrs. Archana Sood was in the possession of the suit property of which partition is sought.

151. It was held by this court in Prakash Wati vs Dayawanti, (1990) 42 DLT 421, that it is a settled principle of law that in the case of co-owners, the possession of one is in law the possession of all unless ouster or exclusion is proved. It was stated that when the plaintiff asserts shared possession of the property for which partition is requested, whether actual or constructive, the plaintiff is only required to pay a fixed court charge in accordance with Article 17(vi) Schedule II of the Court Fees Act, 1870.

152. Thus, ad volarem court fee under Section 7(iv) (b) of the Court Fees Act, 1870 can be applied only when the plaintiff has been ousted from its enjoyment of the suit property and seeks restoration of the joint possession by way of a suit as was held in Asa Ram Vs. Jagan Nath and others, AIR 1934 Lahore 563.

153. To appreciate implication of denial of title in a suit property and the necessary ingredients of ouster, a reference may be made to the judgement of the Apex court in Nagabhushanammal (Dead) vs C.Chandikeswaralingam, (2016) SCC 434, which placed reliance on judgement in Vidya Devi vs Prem Prakash, (1995) 4 SCC 496 wherein the meaning and connotation of the term "ouster" was expounded as follows:



“28. “Ouster” does not mean actual driving out of the co-sharer from the property. It will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession. Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co- owner. They are (i) declaration of hostile animus, (ii) long and uninterrupted possession of the person pleading ouster, and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner. Thus, a co-owner, can under law, claim title by adverse possession against another co- owner who can, of course, file appropriate suit including suit for joint possession within time prescribed by law.”

154. In the case of Nisheet Bhalla Vs. Malind Raj Bhalla, AIR 1997 Delhi 60, as well Coordinate Bench of this Court had held that in order to decide the question of court fee, averments made in the plaint are to be seen and the decision cannot be influenced by the pleas taken in the written statement or by the final decision of suit on merits. It is only when the ouster or the exclusion from the property is proved that the question of ad valorem Court Fee may arise. So long as there is joint possession in law, it is not necessary that the plaintiff should be in actual possession in whole or part of the property.

155. This court in Krishna Gupta And Anr. vs M/S Rajinder Nath & Co Huf And Ors, 2013 SCC OnLine Del 547 held that while ascertaining if the plaintiff had been ousted from the suit property, the same must be



indisputably admitted by the plaintiff in their plaint. Specific sentences and paragraphs in the plaint cannot be read in abstract while determining an ouster especially when the plaintiff has categorically stated that they are in joint and constructive possession of the suit property. Thus, once an express plea of constructive possession has been made, the onus to prove ouster for the payment of *ad volarem* court fee shifts on to the defendants.

156. From the aforesaid judgements, it is clear that a party claiming partition of the property is liable to pay *ad volarem* court fee only in those circumstances where the plaintiff has been ousted from its enjoyment of the suit property.

157. A bare perusal of the plaint shows that nowhere had Mrs. Archana Sood contended that she was ever ousted from possession of the suit property, and thus it is observed that she has been in constructive possession of the suit property.

158. The claim of the plaintiff is for a partition being the legal heir of Smt. Yashwant Kumari. Therefore, the objection by Lt General YK Mehta and Y.K. Mehta that *ad volerum* fee was payable on the ground of Mrs. Archana Sood not having physical possession of the suit property is not tenable.

159. Issue is decided against Lt General YK Mehta.

Issue No. 3 in CS(OS) 1249/2011 framed on 18.07.2016: -

“3. Whether the suit property can be partitioned by metes and bounds? OPP”

160. Since, it has been held that the plaintiff/Lt. General Y.K. Mehta, Lt. General R.K. Mehta and Mrs. Veena Puri are entitled to 1/4th share each



and Mrs. Archana Sood and Mrs. Gregory Simran are together entitled to 1/4th share in the suit property.

161. Accordingly, the share of the parties are divided in the manner below:

- (i) Lt. General Y.K. Mehta is entitled to 1/4th share.
- (ii) Lt. General R.K. Mehta is entitled to 1/4th share.
- (iii) Mrs. Veena Puri is entitled to 1/4th share.
- (iv) Mrs. Archana Sood and Mrs. Gregory Simran are together entitled to 1/4th share.

162. The Preliminary Decree of Partition is accordingly passed.

Relief:

In CS (OS) 579/2022

163. In light of the findings on the Issues discussed above, the Suit filed by Lt. Gen. Y.K. Mehta seeking right of Pre-emption, under Section 22 of Hindu Succession Act, 1956 and Declaration and Injunction, is hereby dismissed.

164. Parties to bear their own cost.

165. Decree Sheet be prepared accordingly.

In CS (OS) 1249/2011

166. In light of the findings on the Issues discussed above, a Preliminary Decree of Partition is hereby passed in respect of suit property defining the shares of the parties as under: -

- (i) Lt. General Y.K. Mehta is entitled to 1/4th share.
- (ii) Lt. General R.K. Mehta is entitled to 1/4th share.
- (iii) Mrs. Veena Puri is entitled to 1/4th share.
- (iv) Mrs. Archana Sood and Mrs. Gregory Simran are together entitled to 1/4th share.

167. List on 15.12.2023 before the Roster Bench for further proceedings in respect of Final Decree, subject to Orders of Hon'ble Judge In-charge (Original Side).

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 5, 2023/S.Sharma/NK

CS (OS) 579/2022 & connected matter

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