



2024:DHC:6435



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Reserved on : 28<sup>th</sup> May, 2024.**  
**Pronounced on: 27<sup>th</sup> August, 2024.**

+ RFA 1066/2019 & CM. APPL. No. 53739/2019  
MIRA GUPTA ..... Appellant  
Through: Mr. Jay Savla, Senior Advocate,  
Mr. Prabhat Chaurasia and Mr.  
Rajpal Singh, Advocates.  
versus

DINESH CHAND (DECEASED) THR LRS & ORS  
..... Respondents  
Through: Mr. Deepak Agarwal, Mr. Amit  
Agnihotri, Mr. Vikas Pal and Mr.  
Aditya Bundela, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

## **J U D G M E N T**

**CHANDRA DHARI SINGH, J.**

### **FACTUAL MATRIX**

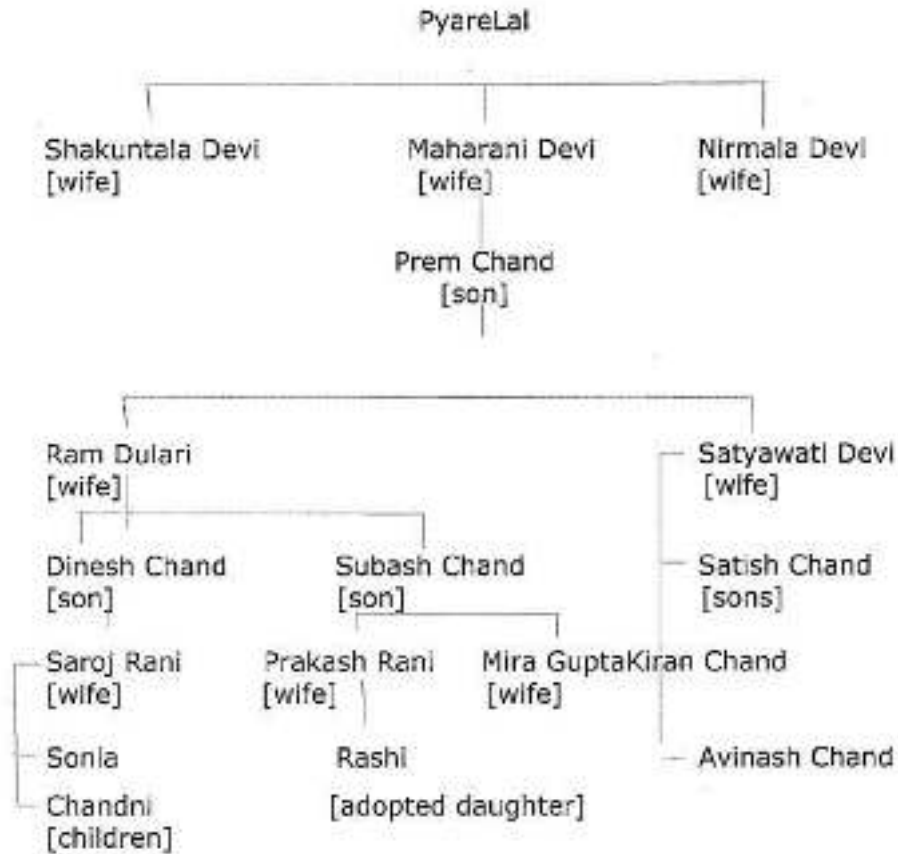
1. The instant appeal arises out of the dispute in division of the share of late Shri Subhash Chand Gupta in two properties. The details of the said properties are as under:

- i) 1607-08 Dariba Kalan, Delhi ('Dariba kalan property' hereinafter)
- ii) C-7, Geetanjali Enclave, New Delhi ('Geetanjali Enclave property' hereinafter)

2. For convenience of the stakeholders, this Court deems it appropriate to reproduce the family chart of Shri Subhash Gupta ('the deceased' hereinafter).



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3. The plaintiff/appellant herein i.e. Shri Meera Gupta is the second wife of the deceased. The deceased firstly married Smt. Prakash Kaur Rani in 1968 and had adopted Ms. Rashi (respondent no. 3 herein) in the year 1981.

4. In 1988, Smt. Kaur expired and pursuant to the same, the deceased had written a Will bearing registration no. 15423 dated 16<sup>th</sup> September, 1988, whereby, his entire assets were bequeathed to Ms. Rashi/respondent no. 3.

5. In 1990, the deceased married the appellant and the same was solemnized on 10<sup>th</sup> December, 1990. The appellant started living in her matrimonial home being the Dariba Kalan property.



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6. It is stated that in 1991, the deceased allegedly wished to change his Will and in pursuance of the same, he revoked the earlier Will on 5<sup>th</sup> March, 1991, which was allegedly attested by two independent witnesses, namely, Shri SP Gupta and Shri Jagdish Prakash. In the same year, Shri Subhash died, and the conflict arose between the appellant and the family members of the deceased where it is alleged that the family members of the deceased made efforts to dispossess the appellant from the matrimonial home.

7. Thereafter, the appellant filed a civil suit bearing no. 618953 of 2016 (original no. 3534/1991) for partition of the properties. Pursuant to the completion of proceedings, the learned Trial Court dismissed the suit *vide* order/judgment dated 30<sup>th</sup> September, 2019.

8. Aggrieved by the same, the appellant has preferred the present appeal.

### **SUBMISSIONS**

#### **(on behalf of the appellant)**

9. Mr. Jay Savla, learned senior counsel appearing on behalf of the appellant submitted that the learned Trial Court erred in appreciating the settled position of law where every circumstance is not to be considered as a suspicious circumstance to discredit the document despite it being attested and executed in the manner required under the law.

10. It is submitted that the appellant had duly proved the truth, genuineness, execution and attestation of the revocation deed dated 5<sup>th</sup> March, 1991 and therefore, alleged circumstances cannot be termed as suspicious circumstance.



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11. It is submitted that the decree passed by the learned Trial Court ought to be reversed as the appellant has proved the validity of the document of revocation and therefore, the properties are to be divided equally between the appellant and the respondent no.3.

12. It is submitted that the material on record, i.e. the revocation deed and testimonies of the witnesses clearly establishes that Shri Subhash Gupta intended to divide his property in equal shares between the appellant and respondent no. 3 and therefore, the learned Trial Court erred in rejecting the claim of the appellant.

13. It is further submitted that the learned Trial Court erroneously held the appellant to be not entitled to any maintenance out of the estate of the deceased despite recording the fact that she does not have a house to live in. Therefore, the learned Trial Court ought to have made a provision for maintenance of the appellant.

14. It is submitted that despite finding that the Dariba Kalan property is an ancestral property, the learned Trial Court erred in holding that the appellant does not have any right to be granted share in the said property as the revocation deed explicitly revokes the Will dated 16<sup>th</sup> September, 1988.

15. It is submitted that the appellant has been residing in the Dariba Kalan property since her marriage in the year 1990 and therefore she is entitled to claim her right under the provisions of Sections 19 and 20 of the Hindu Adoption and Maintenance Act, 1956 and various other statutes governing the right of a Hindu women.

16. It is submitted that the defendants/respondents herein failed to prove any coercion to support the allegations of the revocation being



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done under duress, therefore, the said revocation dated 5<sup>th</sup> March, 1991 stands correct and the appellant is entitled to half share in the property left by Shri Subhash.

17. In view of the foregoing submissions, the learned senior counsel submitted that the instant appeal be allowed and the reliefs be granted as prayed.

**(On behalf of the respondent)**

18. *Per Contra*, Mr. Arvind Nigam, learned senior counsel appearing on behalf of the respondent no.3 vehemently opposed the above said submissions and rebutted the same by stating that the learned Trial Court has rightly rejected the claim of the appellant as the alleged revocation was not proved with any corroborating evidence.

19. The learned senior counsel submitted that the writing in the revocation document is shrouded with suspicion and it cannot be said that the same was left behind by late Shri Subhash Chand Gupta, and therefore, it does not affect the validity of the Will written and duly registered by the deceased.

20. It is submitted that the document as alleged to be the revocation was not filed with the plaint and was never mentioned in the list of reliance and the same was only filed after 4 months of the written statement, therefore, raising doubts regarding the authenticity of the same.

21. It is submitted that the alleged document which was initially a Will was later on converted to a revocation document and a major portion of the same was scored off. It is further submitted that the appellant and the



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other witnesses failed to provide any satisfactory answer to such scoring off particularly when the typist was present at the time of such incident.

22. It is submitted that the attesting witnesses are closely related to the appellant and despite the presence of the brother of the deceased in the marriage event, he was not apprised of the said changes in the will, therefore, raising questions regarding the happening of the said revocation.

23. It is submitted that the earlier Will had provided a provision for education and marriage of Rashi i.e. respondent no.3 herein, however, it is unclear as to why the said provisions were revoked by the deceased.

24. It is submitted that the evidence produced by the appellant by way of witnesses have major contradictions and the same can be proved from the depositions recorded in the Trial, thus, raising doubts regarding the revocation claim as made by the appellant and supported by her close relatives.

25. It is also submitted that the written statement and the replication filed by the appellant contradict each other, where one document mentions un-cordial relations between the brothers i.e. Shri Subhash Gupta and Shri Dinesh Chand, whereas the other document mentions cordial relations between the two.

26. The learned senior counsel also contended that the factum of presence of typist, namely, Jagdish is also in dispute as the cross examination of the appellant depicts that he was present at the time of the alleged revocation as he was also attending the wedding whereas, the testimony of the typist Jagdish states that he was called 10 minutes prior to the typing of the document.



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27. Therefore, in view of the foregoing submissions, it is submitted that the present appeal be dismissed.

28. Apart from the abovesaid submissions, all the parties have filed the written submissions and the same were duly taken on record and perused by this Court.

### **ANALYSIS AND FINDINGS**

29. Heard the learned counsel for the parties and perused the records.

30. The present appeal i.e. RFA no. 1066/2019 has been filed by the appellant against the impugned order passed by the learned Trial Court whereby, the learned Court below held the appellant to be not entitled for any share in the property owned by late Shri Subhash Chand Gupta. The crux of the arguments advanced by the learned senior counsel for the appellant is that the Will dated 16<sup>th</sup> September, 1988 was revoked *via* revocation deed dated 5<sup>th</sup> March, 1991 and therefore, the respondent no.3 cannot be held entitled for all the share of the properties owned by late Shri Subhash. In support of the said claim, the learned senior counsel has relied upon various authorities to establish the validity of the said revocation and therefore, prayed for setting aside of the impugned order.

31. In rival submissions, the validity of the said revocation is disputed on the basis of alleged contradictory statements of the witnesses and the material on record and therefore, it is prayed that the appellant is not entitled for any share in the property of late Shri Subhash Gupta as the will dated 16<sup>th</sup> September, 1988 is valid and the alleged revocation does not hold any value.

32. Therefore, in light of the same, the issues for adjudication before this Court are as under:



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*i) Whether the learned Trial Court rightly held the revocation dated 5th March, 1991 to be suspicious and therefore, does not hold any validity in the eyes of law?*

*ii) Whether the learned Trial Court rightly divided the share of Shri Subhsh Chand Gupta and rightly held the same to be given solely to Ms. Rashi or not? If not, is the appellant entitled for any share in the property left by her late husband.*

33. Coming to the first issue, the validity of the revocation dated 5<sup>th</sup> March, 1991 has been disputed by the learned senior counsel on various aspects. Therefore, it is pertinent for this Court to determine if the learned Trial Court rightly held the same to be invalid on the basis of suspicious circumstances.

34. One such basis for holding the revocation to be untenable is the contradictions in the testimony of the appellant.

35. Upon perusal of the testimony of the appellant, it is made out that the appellant had given a different version of the story at different times and the same was duly recorded at the time of evidence in the Trial.

36. The perusal of the relevant documents, i.e. the impugned order, testimony of the appellant and other witnesses proves the discrepancies in the claim made by the appellant.

37. On the aspect of delay in filing the said revocation before the Court, the appellant has stated in her testimony that she was not in the right headspace to be mindful of the said delay as her father was coordinating with the lawyers, leading to omission.



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38. As per the material on record, it is not in dispute that the close family members of the appellant were present at the time of alleged revocation of the Will and therefore, omission on part of the father of the appellant cannot be held to be completely true as the father would have been well aware of the said revocation which allegedly happened during the marriage ceremony of the nephew of the appellant.

39. Another testimony of one Mr. Jagdish (typist) (PW2) is that he was called 10 minutes prior to the decision of the revocation of the Will at the time of marriage of the appellant's nephew, however, the testimony of the appellant suggests that he was one of the attendees to the event and therefore was present at the time of revocation.

40. On the question of non-appraisal of the said revocation to the Shri Subhash's brother and sister-in-law i.e. Shri Dinesh Chand Gupta and Smt Saroj Gupta despite them being present at the time of such event, the appellant answered that the deceased did not have cordial relations with his brother and sister in law, however, the replication filed by the appellant depicts the contrary, whereby, it is stated that the two brothers shared cordial relations.

41. One of the major disputes in the said alleged revocation is the scoring off done in the same, as per the appellant's testimony, the said scoring off was done by the deceased himself, whereas, the other testimony of the typist namely Shri Jagdish (PW2) contradicts the testimony of the appellant and he deposed that the deceased had handed over the said document to him for scoring off the major portions.



42. The term ‘suspicious circumstances’ has been defined and interpreted in a manner where certain situations are termed as suspicious and cannot be accepted if the same is proved.

43. The rule regarding suspicious circumstances has been discussed at length by the Hon’ble Supreme Court and this Court time and again, and as per the judicial dictum, the Courts are duty bound to look into the same on a case-to-case basis.

44. In ***Bharpur Singh v. Shamsheer Singh, (2009) 3 SCC 687***, the Hon’ble Supreme Court discussed the said principle and held as under:

*16. In H. Venkatachala case [AIR 1959 SC 443] , it was also held that the propounder of a will must prove:*

*(i) that the will was signed by the testator in a sound and disposing state of mind duly understanding the nature and effect of disposition and he put his signature on the document of his own free will, and*

*(ii) when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of propounder, and*

*(iii) if a will is challenged as surrounded by suspicious circumstances, all such legitimate doubts have to be removed by cogent, satisfactory and sufficient evidence to dispel suspicion. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated therein.*

*It was moreover held: (H. Venkatachala case [AIR*



1959 SC 443] , AIR p. 452, para 20)

*“20. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter.”*

xxx xxx xxx

**22.** We may notice that in *Jaswant Kaur v. Amrit Kaur* [(1977) 1 SCC 369] this Court pointed out that when



*the will is allegedly shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. An adversarial proceeding in such cases becomes a matter of court's conscience and propounder of the will has to remove all suspicious circumstances to satisfy that the will was duly executed by the testator wherefor cogent and convincing explanation of suspicious circumstances shrouding the making of will must be offered.*

**23.** *Suspicious circumstances like the following may be found to be surrounded in the execution of the will:*

*(i) The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.*

*(ii) The condition of the testator's mind may be very feeble and debilitated at the relevant time.*

*(iii) The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.*

*(iv) The dispositions may not appear to be the result of the testator's free will and mind.*

*(v) The propounder takes a prominent part in the execution of the will.*

*(vi) The testator used to sign blank papers.*

*(vii) The will did not see the light of the day for long.*

*(viii) Incorrect recitals of essential facts.*

**24.** *The circumstances narrated hereinbefore are not exhaustive. Subject to offer of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the will had been duly proved or not. It may be true that the will was a registered one, but the same by itself would not mean that the statutory*



*requirements of proving the will need not be complied with.*

45. Upon perusal, it is made out that in cases of suspicion, the court must be satisfied that all suspicious circumstances have been dispelled through cogent, satisfactory, and sufficient evidence. Even if the Will is registered, this alone does not relieve the propounder of the burden of proving the Will's validity, particularly when suspicious circumstances are present.

46. Recently, the Division Bench of this Court had also discussed the rule regarding suspicious circumstances in ***Raj Bala v. State (NCT of Delhi)*, 2024 SCC OnLine Del 1633**. The relevant parts of the said judgment are reproduced herein:

*26. The attesting witness (PW-2) had affirmed that the Testator and the second attesting witness had signed in his presence. PW-2 had reiterated the same in his cross-examination as well. Thus, notwithstanding the appellants' contention that the signatures are forged, the challenge to the Will would necessarily have to be examined on the basis whether there are any suspicious circumstances surrounding the execution of the Will.*

*27. According to the appellants, there are suspicious circumstances surrounding the execution of the Will for the following reasons : (i) that there is no mention of the name of the person, who has inscribed or drafted the Will; (ii) The Will does not bear the signatures on each page; (iii) the attesting witnesses are related to the Propounder - one being the clerk of the counsel of the Propounder and the second being the classmate of the Propounder's son; (iv) that the Will contains extraneous and baseless statements to*



*the effect that the Propounder had played the role of a mentor and a guide and had engaged the Testator in operating a brick kiln run by the family firm known as “Chaudhary Bhatta”; (v) that it falsely records that the land measuring 52 Kanals and 17 marlas at village Ghasola (hereafter Ghasola land) was purchased by the Propounder in the name of the deceased (deceased Testator); (vi) Raisina land was purchased by the Propounder in the name of the deceased Testator; (vii) that the Testator was educated up to the fifth class and the Will was written in English; (viii) that the address and the age of the Testator was not mentioned in the Will; and (ix) that the deceased Testator had not agreed to transfer the Raisina land to the Propounder.*

*28. First and foremost, it is necessary to note that the evidence does not establish that the Will had been disclosed prior to the Propounder filing the probate petition. Undisputedly, the Will was not in possession of any of the immediate family members of the deceased Testator. Although, the Propounder has refuted the contention that the Will had not been disclosed, there are no material particulars as to when and how the Will was disclosed to the appellants (widow and sons of the deceased). This is considering that none of them were present when the Will was allegedly executed by the Testator.*

*29. The probate petition was filed four years after the demise of the Testator. It was claimed that the Propounder had filed the petition as the concerned authorities were not mutating the Raisina land in favour of the Propounder. However, there is no material on record to show as to when the Propounder had applied for mutation of the Raisina land on the basis of the Will. It is also material to note that the land records produced by the appellants reflect that the Testator was in possession of the*



*Raisina land. Thus, the fact that the Will was not produced immediately after the demise of the Testator and no steps were taken for securing the letters of Administration or a probate does give rise to doubts with regards to the Will.*

*30. The second aspect is that none of the family members were involved at the time of execution of the alleged Will. Neither, the widow (appellant no. 1) of the Testator nor, any of his friends were involved or were present at the time of execution of the Will. According to the Propounder, the Will was executed in the office of his counsel. In his cross-examination, the Propounder admitted that he was present at the time of the alleged execution of the Will. It is stated that the Will was attested by the clerk of the Propounder's counsel and the classmate of the Propounder's son. In his cross-examination, the Propounder had accepted that the advocate in question was his advocate since 1989. On further cross-examination, he stated that the advocate in question was his counsel since 1991.*

*31. In Niranjana Umeshchandra Joshi v. Mrudula Jyoti Rao, (2006) 13 SCC 433, the Supreme Court had observed as under:*

*“34. There are several circumstances which would have been held to be described (sic) by this Court as suspicious circumstances:*

*(i) When a doubt is created in regard to the condition of mind of the Testator despite his signature on the Will;*

*(ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;*

*(iii) Where Propounder himself takes prominent part in the execution of Will which confers on him*



*substantial benefit.*

*[See H. Venkatachala Iyengar v. B.N. Thimmajamma, 1958 SCC OnLine SC 31 : AIR 1959 SC 443 and Management Committee T.K. Ghosh's Academy v. T.C. Palit, (1974) 2 SCC 354 : AIR 1974 SC 1495]*”

*32. Thus, in cases where the Propounder takes a prominent part in the execution of the Will - which is apparent in the present case - the same would be a suspicious circumstance in cases where the execution of the testamentation instrument is called in question.*

*34. In Anil Kak v. Kumari Sharada Raje, (2008) 7 SCC 695, the Supreme Court had held as under:*

*“52. Whereas execution of any other document can be proved by proving the writings of the document or the contents of it as also the execution thereof, in the event there exists suspicious circumstances the party seeking to obtain probate and/or letters of administration with a copy of the Will annexed must also adduce evidence to the satisfaction of the court before it can be accepted as genuine.*

*53. As an order granting probate is a judgment in rem, the court must also satisfy its conscience before it passes an order.*

*54. It may be true that deprivation of a due share by (sic to) the natural heir by itself may not be held to be a suspicious circumstance but it is one of the factors which is taken into consideration by the courts before granting probate of a Will.*

*55. Unlike other documents, even animus attestandi is a necessary ingredient for proving the attestation.”*

*46. The next aspect, which is relevant, is that the Will is of three pages and the Testator's signature appears only on the last page. The last page of the Will does not contain any provision regarding the bequest. The*



same is contained on second page of the Will, which is not signed. Although, it is not necessary that the documents be signed on each page, however, it is a usual practice for the person executing a document to sign each page to obviate any further challenge. There are two documents on record, which have been executed by the Testator 'Memorandum of Settlement dated 08.09.1993', and 'Memorandum of Family Arrangement dated 05.01.1998'. Each of the two documents have been signed by the signatories on all pages. Thus, it is obvious that the Testator was fully aware of the benefits of signing each page of the document. It is important to note that according to the Propounder and Sh. Ankur Walia (PW-1 as well as PW2), the Will was executed in an Advocate's chamber. Thus, it is reasonable to assume that the Testator would have had the benefit of legal advice as well. There is no credible reason why the Testator would have confined his signature to the third page of the Will.

47. In *Bharpur Singh v. Shamsher Singh*, (2009) 3 SCC 687 : AIR 2009 SC 1766, the Supreme Court had referred to an earlier decision in *Jaswant Kaur v. Amrit Kaur*, (1977) 1 SCC 369, had observed as under:

"22. We may notice that in *Jaswant Kaur v. Amrit Kaur*, (1977) 1 SCC 369 this Court pointed out that when the Will is allegedly shrouded in suspicion, its proof ceases to be a simple *lis* between the plaintiff and defendant. An adversarial proceeding in such cases becomes a matter of Court's conscience and Propounder of the Will has to remove all suspicious circumstances to satisfy that Will was duly executed by Testator wherefor cogent and convincing explanation of suspicious circumstances shrouding the making of Will must be offered.

23. Suspicious circumstances like the following may



*be found to be surrounded in the execution of the Will:*

*i. The signature of the Testator may be very shaky and doubtful or not appear to be his usual signature.*

*ii. The condition of the Testator's mind may be very feeble and debilitated at the relevant time.*

*iii. The disposition may be unnatural, improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for the natural heirs without any reason.*

*iv. The dispositions may not appear to be the result of the Testator's free will and mind.*

*v. The Propounder takes a prominent part in the execution of the Will.*

*vi. The Testator used to sign blank papers.*

*vii. The Will did not see the light of the day for long.*

*viii. Incorrect recitals of essential facts.”*

**48.** *In the present case, undeniably, there are suspicious circumstances, which surround the execution of the Will. First, that the disposition is improbable and unfair as it excludes the natural heirs including minor sons. Second, that the Propounder had played a major part in execution of the Will. The Will was executed at the counsel's office. He was present when the Will was purportedly executed. The attesting witnesses are the clerk of his counsel and the classmate of his son, who was at that time was barely 18 years of age. Third, that the Will did not see light of the day for almost four years.*

47. Evidently, in the above cited case, the Division Bench observed that the propounder of the Will bore the burden of dispelling the numerous suspicious circumstances surrounding its execution. It was



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highlighted that the propounder had a significant role in the preparation and execution of the Will, which itself raised concerns regarding its authenticity.

48. The Court also noted that the Will was executed in the office of the propounder's counsel, with the attesting witnesses being individuals closely associated with the propounder—one being his counsel's clerk and the other a classmate of his son. This close connection between the propounder and the witnesses led to raising suspicion against the said will.

49. Furthermore, the above cited cases make it amply clear that the propounder is duty bound to provide sufficient evidence to support their claim about validity of the Will or such document.

50. Now coming to the factual matrix of the instant case, it is not in dispute that on 5<sup>th</sup> March, 1991, the deceased was in Muzaffarnagar to attend the wedding ceremony of one of the relatives of the appellant, however, the perusal of testimonies of various witnesses, who were allegedly present at the time of incident, portray different versions of the incident.

51. The appellant's own cross examination contradicts the claims filed on record and therefore, the reasons of the appellant not being vigilant at the time of filing the suit for filing the revocation document do not hold water.

52. The testimonies of the other witness namely Shri Jagdish also points out flaws in the incidents narrated by the appellant as he claims to be invited specifically for the preparation of the revocation deed,



whereas, the appellant claimed him to be one of the invitees who was present in the ceremony itself.

53. During the cross examination, the appellant is also stated to contradict about the whereabouts of the said revocation document (Exhibit P6) as it is clearly evident that she firstly claimed to not know where it was kept but subsequently stated that she only told her lawyers about its whereabouts.

54. At this stage, this Court also deems it appropriate to examine the findings of the learned Trial Court with regard to the validity of revocation. The relevant part of the impugned order reads as under:

***“Issue no.1; Whether Will dated 16.09.1988 was executed by Subhash Chand? OPD-3***

*61. None of the parties have disputed the validity of this Will. Therefore, this Will stands proved.*

***Issue no.2: Whether writing dated 05.03.1991 was left behind by deceased Subhash Chand? If so, does It have the effect of revoking the Will dated 16.09,1988? OPP***

*62. This writing dated 05,03,1991 is the real bone of contention between the parties especially the plaintiff and defendant no,3 whose interests are adversely affected by the said writing. If it is established that the said writing was actually left behind by deceased Subhash Ghand and is found to be correct and genuine then the plaintiff shall have a right over half of the properties, both movable and livable left behind by deceased Subhash Chand, If the plaintiff is unable to prove that the said writing is genuine and was actually left behind by late Sh. Subhash Chand then the whole of the estate of late*



*Subhash Chand shall devolve upon defendant no.3 Smt. Rashl the adopted daughter of late Sh. Subhash Chand from his earlier wedlock with Smt. Prakash. Now let us examine the circumstances under which writing dated 05.03.1991 was produced and sought to be proved by the plaintiff. When the original plaint was filed, the claim of the plaintiff was that late Sh. Subhash Chand died intestate without leaving behind any Will. When WS was filed by defendant no.3 In which the existence of a Will dated 16.09.183.0 was alleged by defendant no.3, existence of this Will was not denied by the plaintiff but in fact she came up with a new story of the said Will having been revoked by the subsequent writing dated 05.03.1991 which bequeaths half of the properties and estate of late Subhash Chand in favour of plaintiff. There is stark distinction between the Will dated 16.09.1988 and the subsequent writing dated 05.03.1991 with respect to both the contents as well as general tenor of both the documents which are alleged to have been executed by the same person late Subhash Chand. In the Will dated 16.09.1988 all the properties of Subhash Chand have been bequeathed to defendant no.3 his adopted daughter and a provision for charity as well as his ceremonial rights after his death has also been made. In the writing dated 05.03.1991 there is no provision of charity nor any provision for his ceremonial rights. The writing dated 05.03.1991 is shrouded with suspicion. There are many reasons for the same. Now most of these reasons have already been enumerated and elaborated by defendant no.3 in her written statement. There are several unexplained circumstances which surround the execution of writing dated 05.03.1991. Firstly, there is no explanation as to why the plaintiff in her original plaint wrote that late Sh. Subhash Chand died intestate when she admitted that on 05.03.1991 she had knowledge of the existence of Will dated*



16.09.1988. Moreover, this alleged writing dated 05.03.1991 was produced after four months of filing of the plaint as well as the written statement of defendant no.3. There is no explanation till date as to why this writing dated 05.03.1991 was not cited and mentioned in the original plaint when plaintiff was aware about the same. Moreover, there is no explanation why late Sh. Subhash Chand would suddenly change his mind and execute the writing dated 05.03.1991 when he had gone for the purpose of attending marriage of brother of the plaintiff. There is also no explanation as to why late Sh. Subhash Chand would execute writing dated 05.03.1991 revoking his earlier Will dated 16.09.1988 in Hindi medium and that too with an unregistered document when the original Will was executed in English language and on top of that the same was also registered by the executant. Moreover, there are no witnesses who are personally known to the alleged executant late Sh. Subhash Chand from his side of the family who are witnesses to the alleged writing dated 05.03.1991. There is no proof on record that relations between Subhash Chand and his brother Dinesh Chand were not cordial. So, why would late Subhash Chand windup re proceedings which culminated in writing dated OS 03 1991 upon arrival of late Sh. Dinesh Chand and his wife to Muzaffar Nagar. All the above mentioned circumstances and the explanation given by defendant no.3 in her written statement regarding the suspicious circumstances surrounding the execution of alleged writing dated 05.03.1991 cannot be relied upon and is not capable of belief and being trustworthy. It does appear that the said writing dated 05.03.1991 was actually executed by late Sh. Subhash Chand and at any point of time or was executed without undue influence, coercion, duress etc. Therefoer, in view of the above mentioned discussion and explanations, this court has arrived at the conclusion that writing dated



05.03.1991 was not left behind by late Subhash Chand and therefore does not affect his earlier Will dated 16.09.1988 in any manner. Onus to prove this writing was upon the plaintiff and the plaintiff had failed to prove the same on the scale of preponderance of probabilities.

**Issue no.3: Whether the assets mentioned in Annx, A form part of Smt. Prakash's or Subhash Chand's estate? OPD**

(The issue in this form would cover whether Benami Transaction (prohibition) Act 1988 is applicable?)

**63. It is asserted by defendant no.3 that the assets mentioned in Annex. A form part of the estate of the first wife of Sh. Suhhash Chand Gupta namely Smt. Prakash. There is no evidence led or proved to the contrary. All the evidence produced and the pleadings have already been discussed above in detail. I therefore hold that the assets mentioned in Annex. A form part of Smt. Prakash's Estate and would be inherited by defendant no. 3 Ms. Rashi.**

**64. The properties belong to the family property falling to the share of late Sh Suhhash Chand and his first wife late Smt Prakash and thus the provisions of Benami Transaction Prohibition Act 1988 are not applicable.**

**65. Since the court has already arrived at the conclusion that writing dated 05.03.1991 is not original and authentic and does not have been effect of altering or modifying the Will dated 16.09.1988, therefore, it does not matter whether the assets mentioned in Annexure A form part of Smt. Prakash's estate or Sh. Subhash Chand estate because the assets detailed in Annexure A devolved upon defendant no.3, the adopted daughter of late Subhash Chand and his first wife Smt. Prakash by virtue of Will dated 16.09.1988.**



***Issue no.4 Whether the assets detailed in Annx. D do not belong to Rashi and also where these are at the moment? OPD-S***

***66 No evidence has been led by the plaintiff that the assets detailed in Annex D do not belong to Rashi whereas from the Pleadings and the collective evidences brought on record by defendants number 1 to 4, they have been able to establish that the assets detailed in annexure D belong solely to Rashi, the defendant no 3. Annex. D the assets of Rashi have been mentioned as under:-***

***The counsel for defendant no.3 submitted that the accounts i.e. Bank of India double plus (1990) Scheme and account no. 22240 with Bank of India are still with Bank of India, The reinvestment plan with UTI as above are still with Union Trust of India. The further submission of the defendant no.3 is that the shares of MGF and Telco and the jewellery mentioned therein were in possession of the plaintiff. However, no evidence has been led with regard to the possession of the shares and jewellery with the plaintiff.***

***67. The answer regarding ownership of the assets detailed in Annexure D is also the same as that of the assets mentioned in Annexure A. By virtue of Will dated 16.09.1988 defendant no.3 is the owner of all these assets. Where these are at the moment is a matter of inquiry to be conducted by the Local Commissioner after the preliminary decree has been passed.***

***Issue no.5: If it is held that the entire estate of Subhash Chand Gupta goes to Rashi by virtue of Will dated 16.09.1988, what is the entitlement of Mira towards maintenance? OPP***

***68. Since the court has already held that by virtue of Will dated 16.09.1988 the entire estate of late***



*Subhash Chand goes to Rashi that the plaintiff is not entitled to any maintenance out of the estate of Late Shri Subhash Chand. Moreover, admittedly she was employed in the bank as officer after the death of her husband late Sh. Subhash Chand as per bank policy which more than covers her right for maintenance and alimony, if she had any, towards her second husband late Sh. Subhash Chand.*

***Issue no.6: What is the estate left behind by Subhash Chand Gupta? OP Parties***

***69 The estate left behind by Sh. Subhash Chand Gupta is mentioned in Annexure B. In Annexure B, the property left behind by Sh. Subhash Chand Gupta is mentioned. The other properties mentioned therein are movable assets left behind by him. There is no dispute with regard to the said properties except the objection of defendant no. 5 to 7 who claimed their share.***

*70 Onus to prove this issue was upon the parties. Now from the pleadings of the evidences brought on record, it is clear that now only two properties remain which are subject matter of partition and dispute. One is the property of Dariba Kalan which is admittedly an ancestral property of late Sh. Subhash Chand and is liable to be divided between all the legal representatives of late Sh. Pyare Lai and Smt. Nirmala Devi, the grandparents of late Sh. Subhash Chand. The other property is C-7, Geetanjali Enclave which was acquired by late Smt. Nirmala Devi and bequeathed to her grandsons late Sh. Subhash Chand and late Sh. Dinesh Chand. From the evidence brought on record, it stands sufficiently proved on the scale of preponderance of probabilities that the property of Geetanjali Enclave was acquired by Smt. Nirmala Devi out of her own funds and resources and therefore she was the absolute owner of the said property and by virtue of a Will dated 12.12.1973, she*



*bequeathed this property in equal portions to her grandsons late Sh. Subhash Chand and late Sh. Dinesh Chand. Therefore, apart from the movable assets of late Sh. Subhash Chand, Sh. Subhash Chand is also owner of 1/2 portion of Geetanjali property. Now as regards of Dariba Kalan property, the same being ancestral property it falls in equal shares to Smt. Nirmala Devi wife of Sh. Pyare Lal and mother of Sh. Prem Chand and half share devolved upon Sh. Prem Chand the only surviving heir of late Sh. Pyare Lal. Now by virtue of Will of late Smt. Nirmala Devi, her half share is divided equally between late Sh. Subhash Chand and late Sh. Dinesh Chand and the share of late Sh. Prem Chand is to be equally divided between his remaining survivors and legal heirs i.e. both his wives namely Smt Raj Dulari Devi and Smt, Satyawati and their five children i.e late Sh Subhash Chand, late Sh. Dinesh Chand and defendant no. 5 to 7. Therefore, estate left behind Sh. Subhash Gupta comes to half share in Geetanjali property and 1/3 share in Dariba Kalan property which again devolves upon Rashi defendant no.3. Same is the status of Sh Dinesh Chand. He also gets 1/3<sup>rd</sup> share in Dariba Kalan property and half share in Geetanjali Enclave property and defendant no. 5 to claim share each in Dariba Kalan property and no share in Geetanjali property.*

***Issue no.7: In the event of Will or revocation of the Will being not established what are the shares of parties? OP Parties***

***71*** Late Shri Pyare Lal died on 08/03/1941 leaving behind Nirmala as his wife and one son Prem Chand. One half share of the property devolved on Nirmala as the limited estate owner as per provisions of women's right to property act 1937. The remaining half devolved on Premchand. In the hands of Premchand it was ancestral property. Any property inherited from



*father, grandfather or great grandfather prior to Hindu succession act is ancestral property in the hands of the son, Grandson or great grandson as the case maybe. Therefore, his own half of the property in the hands of Premchand is mitakshra coparcenary property. Premchand died on 11/12/83. The ancestral property in the hands of Premchand would devolve as per section 6 of the Hindu succession act 1956. When first of all as per sec 6 there would be a deemed partition between Premchand and his sons. At the time of death Premchand had left five sons namely Dinesh, Subhash from his first wife Smt. Ram Dulari and Satish, Avinash and Kiran from Smt. satyawati his second wife who was alive on 11/12/83. Rules of the partition have not been codified and therefore the rule of pagition of Hindu Classical Law will apply. Whenever there is a partition between 2 generations, i.e. father and sons, then each wife of the father is entitled to a share equal to that of the son. In this case Prem Chand left behind five sons and one wife namely satyawati and on notional partition, share of Premchand comes to  $1/2$  Multiplied by  $1/7$  equal to  $1/14^{th}$  share of the property. Rest  $1/14^{th}$  each of his five sons would also get. Share of prem chand, i.e.  $1/14$  would devolve by inheritance as he has left a class 1 female heir, namely satyawati his wife, therefore his  $1/14^{th}$  share would devolve equally upon 5 sons and his surviving wife Smt. Satyawati. Therefore, each would get  $1/84^{th}$  share in addition to their  $1/14^{th}$  share. If we add  $1/84^{th}$  share to  $1/14^{th}$  then, share of each one of them becomes  $1/12$ . Smt. Satyawati died on 4/12/94 leaving behind 3 sons and her share of  $1/12^{th}$  would devolve as per section 15 and 16 of Hindu Succession Act and therefore each of her son would be entitled to  $1/36^{th}$  share in addition to their own bringing share of each son to  $1/9$  of the property of Dariba Kalan. Therefore, share of Satish chand, kishan and avinash comes to  $1/9^{th}$  of dariba*



kalan. Out of the share of Premchand, the share of Dinesh Chand and Subhash Chand was  $1/12^{\text{th}}$  each. Nirmala Devi executed a will before her death leaving behind her half share of property of Dariba Kalan equally among Dinesh and Subhash. Therefore, the share of Dinesh and Subhash becomes  $1/12^{\text{th}}$  plus  $1/4^{\text{th}}$  each i.e.  $1/3^{\text{rd}}$  each.  $1/3^{\text{rd}}$  of property of Dinesh Chand has to be equally divided between his legal Heirs which comes to  $1/9^{\text{th}}$  each as he has 3 Legal heirs. Late Shri Subhash Chand left a will as per which his share devolved on Rashi, she becoming entitled to  $1/3^{\text{rd}}$  share of property of dariba kalan. Therefore, out of this ancestral property, share of Sarojrani is  $1/9$ , share of Sonia and Chandni is also  $1/9$  each being legal heirs of late Dinesh Chand. Share of Rashi is  $1/3^{\text{rd}}$ .

72. In the event the deed of revocation not being established, the plaintiff would not inherit any share in the estate left behind by late Sh. Subhash Chand Gupta. Accordingly, Ms. Rashi Gupta (defendant no.3) would get  $1/3^{\text{rd}}$  share in 1607-1608, Dariba Kalan, Delhi and  $1/2$  share in the property C-7, Geetanjali Enclave, New Delhi. All the movable assets mentioned in Annex. A,B,C and D would also be inherited by Ms. Rashi Gupta (defendant no.3) as the plaintiff has not been able to establish her claim over any of them, either by way of ownership by any means or by claim of succession and survivorship or by any other means. Half share of the property of C-7 geetanjali enclave is also inherited by 3 surviving LRs of late Shri dinesh Chand in share of  $1/6^{\text{th}}$  each. With respect to the property of Kashmere Gate none of the parties have been able to prove that it was not belonging jointly to late Dinesh Chand and Subhash Chand, therefore none other is entitled to any share of sale proceeds of the same.



***Issue no.8: Is the plaintiff entitled to a decree for rendition of accounts against defendants 1 and 3? OPP***

73. As already established above, plaintiff is not entitled to any share both movable and immovable in the estate of late Sh. Subhash Chand, therefore, she is not entitled to decree of rendition of accounts against defendant no. 1 & 3.

***Issue no.9: Is the plaintiff entitled to permanent injunction restraining the defendants from dispossessing her from the portions of the property 1607-8, Dariba Kalan, Delhi in her occupation and from objecting to the visit of near relations of the plaintiff?***

74 In view of my decision in issue no,5 that she is not entitled to a residence in her matrimonial household of Dariba Kalan property, she is not entitled to permanent injunction restraining the defendants from dispossessing her from the property at Dariba Kalan which comes under her occupation. So far as objecting to the visits of near relatives of the plaintiff is concerned, this court does not have powers to grant this relief as the court cannot supervise and monitor the visits of near relations of the plaintiff.

***Additional Issue that was framed later on by the court: Whether Sh. Subhash Chand and Sh Dinesh Chand were not the only two co-owners of the suit properties, and that the suit properties belonged to a larger HUF of Sh, Prem Chand, father of Sh. Subhash Chand and Sh. Dinesh Chand? If so, its effect? (OPD 5 to 7)***

75 Onus to prove this issue was upon defendant no. 5 to 7 who were subsequently added and impleaded as defendants after many years of institution of the suit. In their written statement, it was alleged by defendant no. 5 to 7 that apart from the property of Dariba



*Kalan, property of Chhota Bazar, Kashmere Gate that was sold by Sh. Subhash Chand and Sh. Dinesh Chand as well as property of Geetanjali Enclave were both HUF properties of which their father Sh. Prem Chand was karta and therefore, all the properties are liable to be partitioned equally between all the five brothers.*

76 Now, it is an admitted fact that property of Dariba Kalan was ancestral property with regard to that there is no dispute. Now, the property of Chhota Bazar, Kashmere Gate was admittedly given to Lala Prem Chand by father of his first wife Smt. Raj Dulari Devi who is natural mother of late Sh. Subhash Chand and Sh. Dinesh Chand. Defendant no. 5 to 7 have failed to prove that both the properties of Chhota Bazar as well as property of Geetanjali enclave were thrown into common hotchpotch of the joint Hindu undivided family either by Sh. Pyare Lal or by Lala Prem Chand. Defendant no.5 to 7 have also failed to establish that the property of Geetanjali Enclave was purchased by Lala Prem Chand or by the funds or resources of Lala Prem Chand. Since, they have failed to discharge their burden of onus of proof, it cannot be held that the property of Chhota Bazar or the property of Geetanjali Enclave was joint Hindu undivided property and liable to be partitioned equally between all the five brothers.

### **Relief.**

*In view of my above findings, plaintiff has failed to prove her case. Hence, suit of the plaintiff is hereby dismissed. A preliminary decree is passed in favour of defendants with respect to the suit properties both movable and immovable as detailed above in the findings of all the issues that were framed. Defendant no 3 Rashi is entitled to one half share in the property of C-7, Geetanjali Enclave and 1/3<sup>rd</sup> share in the*



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*property of Dariba Kalan. She is also entitled to all the properties detailed in Annexures A,B,C and D. All the 3 LRs of late Dinesh Chand are entitled to 1/6''' share each in the property of C-7, Geetanjali Enclave and 1/9\*' share each in the property of Dariba Kalan. Defendants number 5 to 7 are entitled to 1/9''' share each in the property of Dariba kalan and have no share in any of the other suit properties. Plaintiff is not entitled to any share whatsoever in either movable or immovable properties which are the subject matter of the suit.”*

55. Upon perusal, it is made out that the learned Trial Court had also relied upon the deposition of various witnesses and therefore held the revocation dated 5<sup>th</sup> March, 1991 to be untenable in the eyes of law.

56. The bare perusal of the transcript of cross examination of the appellant and the other witnesses clearly establishes that the parties were narrating different stories of the incident and there were several gaps between the same.

57. Therefore, keeping in mind the principles as discussed above, this Court is of the view that the learned Trial Court rightly held the alleged revocation dated 5<sup>th</sup> March, 1991 to be not tenable in the eyes of law and therefore, it cannot be held that the will dated 16<sup>th</sup> September, 1988 was revoked by the deceased.

58. Accordingly, the first issue is held in favor of the respondent and against the appellant and thus, the appellant is not entitled to 50% share in all the properties left by the deceased.

59. Having adjudicated the first issue, the only question left for determination by this Court is if the appellant is entitled to any share in



the property of the deceased. In order to adjudicate the same, it is important for this Court to first discuss the position of law regarding division of a property belonging to Hindu Undivided Family ('HUF' hereinafter).

60. To first understand the concept of ancestral property, it is important to reiterate that any property inherited up to four generations of male lineage from the father, father's father or father's father's father i.e. father's grandfather, etc. is termed as ancestral property.

61. The rule regarding partition and succession has evolved many folds since independence and various rulings given by the Hon'ble Supreme Court have acted as the guiding principles for the Courts of this Country.

62. In ***Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum***, (1978) 3 SCC 383, the three Judge Bench of the Hon'ble Supreme Court adjudicated the issue of division of an ancestral property and held as under:

*"5. Since the view of the High Court that the suit properties belonged to the joint family and that there was no prior partition is well-founded and is not seriously disputed, the decision of this appeal rests on the interpretation of Explanation 1 to Section 6 of the Hindu Succession Act, (30 of 1956). That section reads thus:*

*"6. When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:*

*Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims*



*through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.*

*Explanation 1—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.*

*Explanation 2—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.”*

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**11.** *We see no justification for limiting the plaintiff's share to 1/24th by ignoring the 1/4th share which she would have obtained had there been a partition during her husband's lifetime between him and his two sons. We think that in overlooking that 1/4th share, one unwittingly permits one's imagination to boggle under the oppression of the reality that there was in fact no partition between the plaintiff's husband and his sons. Whether a partition had actually taken place between the plaintiff's husband and his sons is beside the point for the purposes of Explanation 1. That Explanation compels the assumption of a fiction that in fact “a partition of the property had taken place”, the point of time of the partition being the one immediately before the death of the person in whose property the heirs claim a share.*

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**13.** *In order to ascertain the share of heirs in the property of a deceased coparcener it is necessary in*



*the very nature of things, and as the very first step, to ascertain the share of the deceased in the coparcenary property. For, by doing that alone can one determine the extent of the claimant's share. Explanation 1 to Section 6 resorts to the simple expedient, undoubtedly fictional, that the interest of a Hindu Mitakshara coparcener "shall be deemed to be" the share in the property that would have been allotted to him if a partition of that property had taken place immediately before his death. What is therefore required to be assumed is that a partition had in fact taken place between the deceased and his coparceners immediately before his death. That assumption, once made, is irrevocable. In other words, the assumption having been made once for the purpose of ascertaining the share of the deceased in the coparcenary property, one cannot go back on that assumption and ascertain the share of the heirs without reference to it. The assumption which the statute requires to be made that a partition had in fact taken place must permeate the entire process of ascertainment of the ultimate share of the heirs, through all its stages. To make the assumption at the initial stage for the limited purpose of ascertaining the share of the deceased and then to ignore it for calculating the quantum of the share of the heirs is truly to permit one's imagination to boggle. All the consequences which flow from a real partition have to be logically worked out, which means that the share of the heirs must be ascertained on the basis that they had separated from one another and had received a share in the partition which had taken place during the lifetime of the deceased. The allotment of this share is not a processual step devised merely for the purpose of working out some other conclusion. It has to be treated and accepted as a concrete reality, something that cannot be recalled just as a share allotted to a coparcener in an actual partition cannot*



*generally be recalled. The inevitable corollary of this position is that the heir will get his or her share in the interest which the deceased had in the coparcenary property at the time of his death, in addition to the share which he or she received or must be deemed to have received in the notional partition.*

*14. The interpretation which we are placing upon the provisions of Section 6, its proviso and Explanation I thereto will further the legislative intent in regard to the enlargement of the share of female heirs, qualitatively and quantitatively. The Hindu Law of Inheritance (Amendment) Act, 1929 conferred heirship rights on the son's daughter, daughter's daughter and sister in all areas where the Mitakshara law prevailed. Section 3 of the Hindu Women's Rights to Property Act, 1937, speaking broadly, conferred upon the Hindu widow the right to a share in the joint family property as also a right to demand partition like any male member of the family. The Hindu Succession Act, 1956 provides by Section 14(1) that any property processed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as a full owner thereof and not as a limited owner. By restricting the operation of the fiction created by Explanation I in the manner suggested by the appellant, we shall be taking a retrograde step, putting back as it were the clock of social reform which has enabled the Hindu woman to acquire an equal status with males in matters of property. Even assuming that two interpretations of Explanation I are reasonably possible, we must prefer that interpretation which will further the intention of the legislature and remedy the injustice from which the Hindu women have suffered over the years."*

63. The above cited judicial dictum makes it crystal clear that the wife of the deceased is entitled for a share in the ancestral property in the



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hands of the coparcener husband at the time of his death by way of notional partition and therefore, it would be assumed that partition took place right before the death of the husband and thus, the wife would become entitled to the share in the ancestral property equal to that of the son.

64. The aforesaid judicial decision was reaffirmed by the Hon'ble Court in the case of ***State of Maharashtra v. Narayan Rao, (1985) 2 SCC 321***, and therefore, the law regarding the same is settled.

65. In the instant case, it is not in dispute that the Dariba Kalan property is an ancestral property owned by the HUF. The deceased got entitled for a share in the property by way of intestate succession.

66. The respondent no.3, i.e. Ms Rashi has been given share in the Dariba Kalan property by testamentary succession, however, the settled position of law as held in the case of ***Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1*** provides for treating the daughters as coparceners. The relevant part of the said judgment reads as under:

*“68. Considering the principle of coparcenary that a person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognised and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in Section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage has been given a concrete shape under the provisions of Sections 6(1)(a) and 6(1)(b). Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be*



*living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in Section 6(1), it is not necessary that there should be a living coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment i.e. 9-9-2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).*

**69.** *The effect of the amendment is that a daughter is made coparcener, with effect from the date of amendment and she can claim partition also, which is a necessary concomitant of the coparcenary. Section 6(1) recognises a joint Hindu family governed by Mitakshara law. The coparcenary must exist on 9-9-2005 to enable the daughter of a coparcener to enjoy rights conferred on her. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener. In case living coparcener dies after 9-9-2005, inheritance is not by survivorship but by intestate or testamentary succession as provided in substituted Section 6(3).*

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**73.** *It is by birth that interest in the property is acquired. Devolution on the death of a coparcener before 1956 used to be only by survivorship. After 1956, women could also inherit in exigencies,*



*mentioned in the proviso to unamended Section 6. Now by legal fiction, daughters are treated as coparceners. No one is made a coparcener by devolution of interest. It is by virtue of birth or by way of adoption obviously within the permissible degrees; a person is to be treated as coparcener and not otherwise.*

*74. The argument raised that if the father or any other coparcener died before the 2005 Amendment Act, the interest of the father or other coparcener would have already merged in the surviving coparcenary, and there was no coparcener alive from whom the daughter would succeed. We are unable to accept the submission because it is not by the death of the father or other coparcener that rights accrue. It is by the factum of birth. It is only when a female of Class I heir is left, or in case of her death, male relative is left, the share of the deceased coparcener is fixed to be distributed by a deemed partition, in the event of an actual partition, as and when it takes place as per the proviso to unamended Section 6. The share of the surviving coparcener may undergo change till the actual partition is made. The proviso to Section 6 does not come in the way of formation of a coparcenary, and who can be a coparcener. The proviso to Section 6 as originally stood, contained an exception to the survivorship right. The right conferred under substituted Section 6(1) is not by survivorship but by birth. The death of every coparcener is inevitable. How the property passes on death is not relevant for interpreting the provisions of Section 6(1). Significant is how right of a coparcener is acquired under Mitakshara coparcenary. It cannot be inferred that the daughter is conferred with the right only on the death of a living coparcener, by declaration contained in Section 6, she has been made a coparcener. The precise declaration made in Section 6(1) has to be*



*taken to its logical end; otherwise, it would amount to a denial of the very right to a daughter expressly conferred by the legislature. Survivorship as a mode of succession of property of a Mitakshara coparcener, has been abrogated with effect from 9-9-2005 by Section 6(3).*

*75. The decision in Bireswar Mookerji v. Ardha Chunder Roy Chowdhry [Bireswar Mookerji v. Ardha Chunder Roy Chowdhry, 1892 SCC OnLine PC 3 : (1891-92) 19 IA 101] , was relied upon to contend that adoption is only of a male and not a female as held in Amarendra Mansingh v. Sanatan Singh [Amarendra Mansingh v. Sanatan Singh, 1933 SCC OnLine PC 29 : (1932-33) 60 IA 242 : AIR 1933 PC 155] , a male becomes a coparcener by birth or adoption. There is no dispute with the custom, which was prevalent earlier that there could be the adoption of a male child and not that of females. There is no dispute with the proposition that a coparcenary right accrued to males under the prevalent law by birth or adoption. In the same manner, right is accrued by birth to the daughter under the provisions of Section 6. The legislature in Section 6 used the term that a daughter becomes coparcener by birth. The claim based on birth is distinguishable and is different from modes of succession.*

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*77. It was argued that in the eventuality of the death of a father or other coparcener, the parties would have not only partitioned their assets but also acted in pursuance of such partition. However, partitions have been taken care of by the proviso to Sections 6(1) and 6(5). Parliament has not intended to upset all such*



*transactions as specified in the proviso to Section 6(1).*

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*80. A finding has been recorded in Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] that the rights under the substituted Section 6 accrue to living daughters of living coparceners as on 9-9-2005 irrespective of when such daughters are born. We find that the attention of this Court was not drawn to the aspect as to how a coparcenary is created. It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends. Survivorship is the mode of succession, not that of the formation of a coparcenary. Hence, we respectfully find ourselves unable to agree with the concept of “living coparcener”, as laid down in Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] . In our opinion, the daughters should be living on 9-9-2005. In substituted Section 6, the expression “daughter of a living coparcener” has not been used. Right is given under Section 6(1)(a) to the daughter by birth. Declaration of right based on the past event was made on 9-9-2005 and as provided in Section 6(1)(b), daughters by their birth, have the same rights in the coparcenary, and they are subject to the same liabilities as provided in Section 6(1)(c). Any reference to the coparcener shall include a reference to the daughter of a coparcener. The provisions of Section 6(1) leave no room to entertain the proposition that coparcener should be living on 9-9-2005 through whom the daughter is claiming. We are*



*unable to be in unison with the effect of deemed partition for the reasons mentioned in the latter part.*

xxx xxx xxx

**114.** *In the instant case, the question is different. What has been recognised as partition by the legislation under Section 6, accordingly, rights are to be worked out. This Court consistently held in various decisions mentioned above that when the rights are subsequently conferred, the preliminary decree can be amended, and the benefit of law has to be conferred. Hence, we have no hesitation to reject the effect of statutory fiction of the proviso to Section 6 as discussed in Prakash v. Phulavati [Prakash v. Phulavati, (2016) 2 SCC 36 : (2016) 1 SCC (Civ) 549] and Danamma [Danamma v. Amar, (2018) 3 SCC 343 : (2018) 2 SCC (Civ) 385] . If a daughter is alive on the date of enforcement of the Amendment Act, she becomes a coparcener with effect from the date of the Amendment Act, irrespective of the date of birth earlier in point of time.*

xxx xxx xxx

**137.4.** *The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in*



*coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.*

**138.** *We understand that on this question, suits/appeals are pending before different High Courts and subordinate courts. The matters have already been delayed due to legal imbroglio caused by conflicting decisions. The daughters cannot be deprived of their right of equality conferred upon them by Section 6. Hence, we request that the pending matters be decided, as far as possible, within six months.*

67. Upon perusal, it is made out that the living status of the father has no bearing upon whether the daughter would be considered as coparcener. The above said judgment overruled an earlier case titled ***Prakash v. Phulavati, (2016) 2 SCC 36***, whereby, it was held that if the father died before the 2005 amendment coming into force, then the daughters would not be considered as coparceners.

68. Since the impugned order was rendered by the learned Trial Court in the year 2019 and the appeal against the same was duly filed in the same year, the dictum laid down by the Hon'ble Supreme Court in ***Vineeta Sharma (supra)*** case applies here and the Courts are required to consider daughters as coparceners while deciding the question of partition.

69. Upon the death of Shri Prem Chand, the notional partition of Dariba Kalan property took place due to which all of the coparceners including Late Prem Chand, along with his surviving widow were allotted 1/14<sup>th</sup> share. Now, the 1/14<sup>th</sup> share of Late Prem Chand devolved upon his surviving widow and 5 sons through intestate succession. Therefore, each



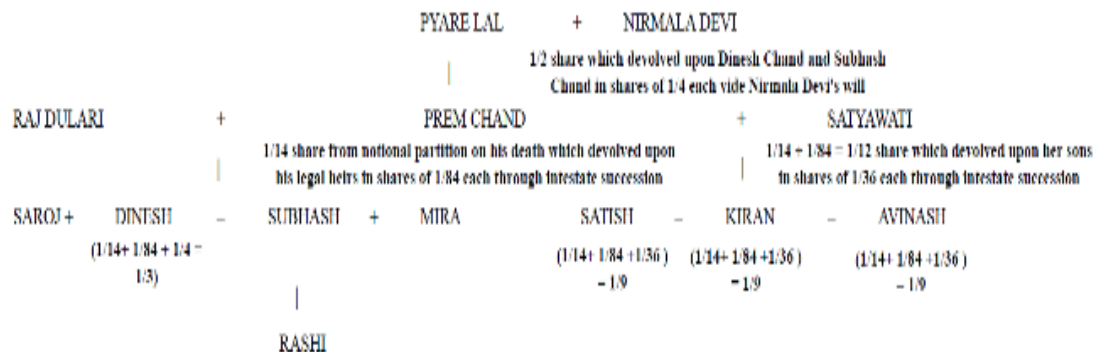
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son and Smt. Satyawati acquired an additional  $1/84^{\text{th}}$  share out of the share allotted to Shri Prem Chand.

70. Property inherited from a grandmother is not ancestral property. Therefore, the  $1/4^{\text{th}}$  share received by Subhash Chand through the will of his grandmother Shri Nirmala Devi will not be considered his ancestral property, and hence would be considered his separate property which he can dispose of according to testamentary succession i.e. Will.

71. For the purposes of convenience, this Court deems it apposite to create a chart depicting the eligible share for Shri Subhash Gupta.



72. Upon perusal of the said chart and as per the foregoing discussion, it is clear that Shri Subhash had 2 shares in the Dariba Kalan property which turns out to be  $1/84^{\text{th}}$  through intestate succession culling out of the separate share of Shri Prem Chand and secondly,  $1/14^{\text{th}}$  share carving out of the coparcenary share pursuant to death of Shri Prem Chand.

73. Apart from the said shares, the deceased also had  $1/4^{\text{th}}$  share in the Dariba Kalan property through the Will of his grandmother Shri Nirmala Devi and the same shall be considered as his separate property.



74. Now the question for adjudication before this Court is limited to the division of the said shares to the heirs of Shri Subhash Chand.

75. In order to answer the said query, this Court deems it apposite to refer to the decision of the Hon'ble Supreme Court in the case of ***Rohit Chauhan v. Surinder Singh*, (2013) 9 SCC 419**, where the question of the nature of share received by coparcener was answered. The relevant parts reads as under:

*11. We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr Rao. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.*

*14. A person, who for the time being is the sole surviving coparcener as in the present case Gulab Singh was, before the birth of the plaintiff, was entitled to dispose of the*



*coparcenary property as if it were his separate property. Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten. But, in the present case, it is an admitted position that the property which Defendant 2 got on partition was an ancestral property and till the birth of the plaintiff he was the sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. As observed earlier, in view of the settled legal position, the property in the hands of Defendant 2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth Defendant 2 could have alienated the property only as karta for legal necessity. It is nobody's case that Defendant 2 executed the sale deeds and release deed as karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale deeds and release deed, the parties can work out their remedies in appropriate proceeding.*

*16. In the result, we allow this appeal, set aside the judgment and decree of the lower appellate court as affirmed [Rohit Chauhan v. Surinder Singh, RSA No. 1992 of 2011, order dated 4-5-2011 (P&H)] by the High Court and restore that of the trial court with the liberty aforementioned. In the facts and circumstances of the case, there shall be no order as to costs.*

76. Upon perusal, it is made out that post partition in an ancestral property, a share therein is received by a issue-less coparcener and the same remains the self-acquired property of such coparcener and hence, he



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can dispose of this property as he may wish. However, upon having a male child, the property with such coparcener loses its “self-acquired” character and becomes “ancestral property” in his hands.

77. Since Ms. Rashi would be considered a coparcener by birth in the same manner as a son and according to *Vineeta Sharma (supra)*, daughters are to be considered coparceners in partition suits which are pending final decree or appeal. Therefore, notwithstanding the year of death of their father, the 1/14<sup>th</sup> share received by the deceased upon the notional partition that took place on the death of his father Prem Chand, would be considered as ancestral property, and hence it cannot be disposed of by Subhash Chand by the way of Will.

78. The Section 6 of the Hindu Succession Act prior to the amendment in 2005 duly provided for transfer of share of a deceased person in the coparcenary property after notional partition by intestate or testamentary succession in case a female class I heir exists.

79. Therefore, the 1/84<sup>th</sup> share and 1/14<sup>th</sup> share (equivalent to 1/12<sup>th</sup> share in Dariba Kalan) would be considered as ancestral property in the hands of Subhash Chand, while the 1/4<sup>th</sup> share received by him through Nirmala Devi would be considered his separate property.

80. Since Subhash Chand has ancestral property in his hands, and he is not the sole surviving coparcener in his branch because respondent no. 3 i.e. Ms. Rashi would be considered a coparcener, this property (1/12<sup>th</sup> share) will not be subject to testamentary disposition.

81. Therefore, such property would be subject to notional partition which would be deemed to have taken place upon the death of the deceased. Despite this, the 1/4 share received by Shri Subhash Chand



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through the will of Nirmala Devi will be his separate property and hence will not be subject to partition and the same shall devolve upon Rashi through Shri Subhash Chand's Will.

82. In view of the foregoing discussion, the share of the legal heirs of late Shri Subhash Chand Gupta in the Dariba Kalan property is as follows:

- a) *Out of 1/12th of ancestral property share in the hands of Subhash Subhash, Mira Gupta gets 1/36, while Rashi gets 2/36.*
- b) *Rashi also gets an additional  $\frac{1}{4}$  share in Dariba Kalan Property, which is Subhash Chand's separate property, therefore Rashi's total share becomes  $\frac{2}{36} + \frac{1}{4} = \frac{11}{36}$ .*

## **CONCLUSION**

83. The issue of division of ancestral property has witnessed many developments since Independence. After amendment in 2005, the daughters are treated at par with the sons and therefore are eligible for the equal share in the ancestral property.

84. The judicial dicta as discussed in the foregoing paragraphs also provides for share of the wives of the deceased, therefore, depriving the same would be huge injustice to the appellant widow.

85. In the instant case, even though the appellant has duly gotten the job in place of the deceased and is not entitled for maintenance, she is wrongly denied a share in the ancestral property of the deceased and therefore, this Court deemed it appropriate to grant her the legally entitled share in the Dariba Kalan property.



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86. On the issue of share in the Geetanjali property, it is the claim of the respondents no. 5-7, the said property is also an ancestral property, however, the said controversy does not need any indulgence by this Court as the material on record clearly shows that the brother of Smt. Nirmala Devi was one of the promoters of the Geetanjali colony and he had allotted the said plot in the name of her sister Nirmala Devi.

87. Therefore, there cannot be a quarrel on the issue whether the said property can be termed as an ancestral property. Since, Smt. Nirmala Devi had given the said property in the name of her grandchildren, the share of deceased shall automatically go towards the respondent no.3.

88. Accordingly, the impugned order dated 30<sup>th</sup> September, 2019 passed by the learned Additional District Judge-02 (Central), Delhi is partly modified to the extent of grant of share to the appellant in the Dariba kalan property.

89. In view thereof, the instant appeal stands disposed off, along with pending applications, if any.

**(CHANDRA DHARI SINGH)**

**JUDGE**

**AUGUST 27, 2024**

**rk/av/mk**