



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

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*Reserved on: 9th May, 2025
Pronounced on: 20th May, 2025*

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CS(OS) 1201/2012

SHRI MAHINDER SINGH
Son of Late Sh. Sewa Singh,
R/o B-1/302, Nand Nagri,
Delhi-110093

.....Plaintiff

Through: None.

Versus

1. SMT. JASWANT KAUR (DECEASED)
Wd/O L. Sh. Sewa SinghDefendant No.1
2. SHRI KULJEET SINGH
Son of Late Sh. Sewa Singh
R/o 1/2701, Gali No. 1,
Ram Nagar, Loni Road,
Delhi-110032Defendant No. 2
3. SMT. INDU BALA
Wd/o Harjeet Singh
R/o 1/2687, Gali No. 1,
Ram Nagar, Loni Road,
Delhi-110032
- 3(a) SHRI SAGAR
S/o L. Harjeet Singh
- 3(b) SMT. JAYOTSENA
D/o L. Harjeet Singh
- 3(c) SMT. CHETANA SINGH
D/o L. Harjeet Singh



ALL R/o 1/2687, Gali No. 1,
Ram Nagar, Loni Road,
Delhi-110032

....Defendant No. 3

4. SH. GOPAL SINGH
S/o late Sh. Sewa Singh
Shop No. 75, G.B. Road-(5514)
Frash Khana, Delhi-110006

...Defendant No.4

5. SH. HARPLA SINGH
S/O Late Sh. Sewa Singh
R/o 2701, Gali No. 1,
Ram Nagar, Loni Road,
Shahdara, Delhi-110032

...Defendant No. 5

6. SH. HARDEV SIINGH
S/o late Sh. Sewa Singh
R/o 2701, Gali No. 2,
Ram Nagar, Loni Road,
Shahdara, Delhi-110032

...Defendant No. 6

7(a) SH. JASWINDER SINGH
S/o Sh. Balwinder Singh

7(b) MS. GURDEEP KAUR
D/o Sh. Balwinder Singh

7(c) MS. MINI
D/o Sh. Balwinder Singh

All R/o 1-C, 84, Namdhari Colony,
Ramesh Nagar, New Delhi.

....Defendant No. 7

Through: Mr. Kuljeet Singh, Advocate for
Respondent No.1



Mr. Vivek Sharma & Mr. Prashant
Chaudhary, Advocates for
Respondents No.2 to 7

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

REVIEW PET. 156/2025

1. The present Review Petition under Order XLVII Rule 1 read with Section 114 of the *Code of Civil Procedure, 1908* ('CPC' *hereinafter*) has been filed by the Petitioner/Plaintiff for review of Order dated 14.05.2024 passed by this Court, in the present Civil Suit.
2. The Petitioner/Plaintiff had filed the present Civil Suit No. CS (OS) 1201/2012 for Partition, Possession and Permanent Injunction in respect of of his share of property inherited from late Sh. Sewa Singh, his father against Smt. Jaswant Kaur, his mother and his six siblings and other legal heirs.
3. All the Respondents, except Kuljeet Singh, who was earlier Defendant No.2 and after demise of Smt. Jaswant Kaur is Defendant No.1, filed a joint Written Statement on 29.04.2013 wherein an averment was made that Sardar Sewa Singh, during his life time had divided his properties amongst his legal heirs and the division took place orally and the legal heirs were given the possession of their respective shares. They removed all prior



construction and raised their construction in their respective shares as per their requirement and started living in the properties separately. Some of the properties were sold and sale proceeds of those properties were distributed equally amongst the legal heirs.

4. The aforesaid Respondents (Defendants No. 3 to 6) further claimed that certain properties that devolved from deceased Sardar Sewa Singh were sold and in paragraph -E, it was mentioned that one plot No. E-9, S M Industry Area, G.T. Karnal Road, Delhi was sold and sale proceeds were distributed amongst all the legal heirs equally and out of the sale proceeds, one part i.e. Rs.40,000/- was given to Kuljeet Singh to get the mutation of all the properties in favour of all the concerned, who had become owner of the property as per the oral partition.

5. Respondents further averred about transfer of another property as devolved from Sardar Sewa Singh Property, bearing No. 1/2701, Ram Nagar, Loni Road, Delhi in favour of Hardev Singh, brother of the Petitioner, to claim that the Petitioner/Plaintiff does not have right, title and interest in the properties and hence, no cause for the said Suit has been disclosed.

6. In Paragraph -E of their Written Statement, it was further stated that the Petitioner/ Plaintiff had executed General Power of Attorney dated 03.11.1983 in the presence of Kuljeet Singh / Defendant No.2, in favour of Jaswant Kaur/Defendant No.1, to sell his share of property located at Loni Road, Delhi. The mother significantly sold the share of the Plaintiff to Hardev Singh and the sale proceeds were received by the Plaintiff himself.



7. In support of the aforesaid transfer of property situated at Loni Road, Delhi, which had devolved from Sardar Sewa Singh in favour of Hardev Singh, the Respondents/Defendants No. 3 to 6 had further referred to Relinquishment Deed dated 15.01.1990 executed by the Plaintiff in favour of his mother late Jaswant Kaur/ Defendant No.1. However, the Relinquishment Deed relied upon, has not been produced by the concerned Respondents along with Written Statement or in the rest of the documents filed on 29.04.2013. In view of the aforesaid circumstances, it is clear that the Plaintiff had no right, title or interest in the said property and accordingly, has no *locus standi* to file the Suit against the Defendants.

8. It was further submitted by Kuljeet Singh that the properties in question had already been partitioned *vide* Memorandum of Partition dated 18.07.1975 and all, except the Plaintiff were in their respective shares. In Paragraph -2 of the preliminary submissions, it was stated all legal heirs had accepted the said partition and were in their respective shares except the Plaintiff as his share was under the possession of the Defendants. Moreover, Defendant No.2-Kuljeet Singh was residing separately from other Defendants and the Plaintiff had the right to sue other Defendants and not Defendant No.2, who had no concern with the share of the Plaintiff. It was also clarified that the properties mentioned in the Suit are as per new numbers, while in the Memorandum of Partition, the properties were referred to by their old numbers.

9. *Kuljeet Singh/Defendant No.2* had further alleged in his Written Statement in paragraph No.3 that after the above Memorandum of Partition amongst the parties, the answering Defendant is in possession of his



respective share as per the arrangement made by their late father Sardar Sewa Singh.

10. It is further submitted that the Plaintiff in his Replication dated 26.09.2013 to the Written Statement of Defendant No.1 and Defendants No. 3 to 6, had denied the averments of non-maintainability of the Suit and asserted that the same are based on false and frivolous facts. The stated in Paragraph No.7 of the Reply to the preliminary Objections that the details of the properties left by the deceased have not been properly mentioned by the answering Defendant. It was submitted that the total area of the property located in Loni Road was about 180 sq yards. The Defendants have also not mentioned about two shops situated at Farsh Khana, Delhi. Smt. Lakhjeet Kaur, daughter of Sardar Sewa Singh has already expired.

11. Further, in Para-C the Plaintiff had denied that Sardar Sewa Singh during his life time had divided the properties amongst the legal heirs and the division had already taken place orally and the legal heirs were given possession of their respective shares.

12. It was also denied that they had removed the construction and raised construction in their respective parts as per their requirements and had started living separately. It was further denied that the sale proceeds realized from the sale of the properties was distributed amongst the legal heirs of the deceased.

13. The Plaintiff in Paragraph No. D of his Replication to the Written Statement filed by the Defendants No.1 to 6, denied that Plot no.E-9, S.M. Industrial Area, G.T. Karnal Road, Delhi was sold and the sale proceeds were distributed among all the legal heirs equally and one part of



Rs.40,000/- was given to Kuljeet Singh to get the mutation of all the properties in favour of all the concerned.

14. He also denied that the ownership of property no. 112701, Gali No.1 Ram Nagar, Loni Road, Delhi-32 measuring 200 sq. yds. was transferred in the name of Hardev Singh and submitted that all the legal heirs have equal share in the said property.

15. The Plaintiff denied execution of Power of Attorney of 30.11.1998 *qua* the Loni Property and also denied execution of Relinquishment Deed dated 15.03.1990. It was also submitted that Power of Attorney was not registered and that the Relinquishment Deed had not been filed along with documents filed by the Defendants.

16. **The Plaintiff in his Replication** has also denied all the averments made in the Written Statement. The Plaintiff had specifically averred that being the legal heirs of the late Fauja Singh, late Sardar Sewa Singh had the right in the said properties. The original Memorandum of Partition was not filed in the Court and it was forged and fabricated. He further stated that even the said Memorandum of Partition, does not bear the signatures of the Plaintiff.

17. It has been further asserted that on 17.12.2018, the Plaintiff appeared before the learned Joint Registrar and admitted the Memorandum of Partition Ex. D2/P1 due to inadvertence and lack of knowledge, in the absence of his counsel. Therefore, Application bearing **IA No. 4072/2019** seeking modification of Order dated 17.12.2018 was filed and the Application was directed to be listed before this Court *vide* Order dated 01.05.2019. In the interim, Application under Order 12 Rule 6 CPC was



filed by Defendants No. 3 to 6 which was eventually allowed vide impugned Order dated 14.05.2024, which suffers the errors apparent on the face of the record, which are as under:-

- (i) In the impugned Order, while in the title of the Suit has been mentioned as CS(OS) 1201/2012 and also IA No. 4072/2019, but in the body of the judgment it merely states IA No. 3715/209. Thereby, IA No. 4072/2019 challenging admission of Memorandum of Partition has been omitted from consideration which was material, as it intended to withdraw the admission of Memorandum of Partition, which is the basis of the Judgment.
- (ii) The Para No.1 of impugned Order it is stated that, *"By way of present Application, under Order XII Rule 6, CPC, 1908 the applicants/Defendant Nos. 3 to 6 seek Judgment/Decree in their favour and against the Plaintiff (i.e. dismissal of the plaint) on the basis of the admissions made by the Plaintiff."*, whereas, no such prayer for **dismissal of the Plaint** of the Plaintiff has been made in the said Application which merely prays that, *"pass the judgment and decree in favour of the Defendant no. 3 to 6 and against the Plaintiff, by considering the aforesaid admission on part of the Plaintiff."*
- (iii) In Paragraph No.3 of impugned Order, it is stated that *Defendant Nos. 1, 3 to 6 as well as Defendant No. 2/Kuljeet Singh in their respective Written Statements have raised the preliminary objection that the Oral Partition has already taken*



place between the legal heirs of Late Shri Sardar Sewa Singh during his lifetime vide Memorandum of Partition dated 18.07.1975. Defendant no.2 now Defendant No.1 i.e. Kuljeet Singh, nowhere mentioned in his Written Statement that any oral partition has taken place but had merely relied upon the Memorandum of Partition to assert that partition had already taken place.

- (iv) In paragraph No.17 of the impugned Order, it was stated that the oral partition had taken place way back in 1975 and the properties had already been distributed by metes and bounds. However, there is no mentioned of the partition having taken place in the year 1975. Defendant No.2 Kuljeet Singh in his Written Statement has made no claim about the oral partition and had merely made a reference to the Memorandum of Partition dated 18.07.1975.
- (v) Paragraph -20 of the impugned Order deals with the admission of the said Memorandum of Partition citing the execution and the said document does not bear his signature. Without advertng to the fact that the same was an additional pleading in addition to the denial of the said document in the replication of the Plaintiff, he had also claimed that that the said document appears to be forged and fabricated.
- (vi) In paragraph 21 of the Order, reference of admission to the Relinquishment Deed in favour of the mother was referred to,



but infact the Plaintiff had denied executing any relinquishment Deed in favour of his mother.

- (vii) In Paragraph 7, it was observed that vague averments have been made in the Plaint without any details or supporting documents, which reflect that no material particulars have been disclosed by the Plaintiff to sustain the claim. It is asserted that once the Defendants in their Written Statement had admitted to the properties of late Sardar Sewa Singh, no further details were required to be given by the Plaintiff.

18. It is thus, asserted that there are material errors in observing that denial of Plaintiff is evasive and without details of ownership and that the Plaintiff has never been in possession of the said properties and the Defendants have also only made bald assertions of sale of property without providing the details of the same and as such, the denial of documents is all what the Plaintiff could have done in the given circumstances. Thus, setting aside of impugned Order dated 14.05.2024 is sought.

19. Counsel for the Respondents have been duly served and were appearing; however no appearance is marked.

20. ***Submissions heard and record perused.***

21. At the outset it may be stated that the challenge, which has been made to the impugned Order on various grounds, as detailed above, infact go to the merits of the case and is beyond the scope of the Review Application. Be as it may, the grounds in the Application for Review of the Order dated 14.05.2024 is hereby discussed as under.



22. The **first objection** taken on behalf of the Plaintiff is that while on the top of the Order, both the Suit Number as well as IA No. 4072/2019, *vide* which the objection had been taken by the Plaintiff to his admission to Memorandum of Partition at the time of admission and denial of documents, was reflected, but in the heading of the Order, reference is made to IA No. 3715/2019, under Order 12 Rule 6 read with Section 151 CPC.

23. Pertinently, the arguments on the Application IA No. 3715/2019 were heard from both the Counsels on 09.05.2025 and at that time the Plaintiff had not pressed his Application IA No. 4072/2019. Furthermore, by the impugned Order, IA No. 3715/2019 was decided and it rightly finds mention at the heading of the impugned Order. On the top of the Memo of Parties, the Suit Number and pending Application are incorporated. There is no error in reflecting the Suit Number and the Application in the manner it has been done. There is no merit in this objection.

24. The **second objection** taken by the Applicant is that while in Paragraph 1 of the impugned Order it has been mentioned that Application under Order 12 Rule 6 CPC had been filed on behalf of the Defendants No. 3 to 6 for Judgment in their favour and against the Plaintiff i.e. for *dismissal of the Suit*, but in the Application under Order 12 Rule 6 CPC, there is no specific reference to dismissal of the plaint.

25. It is significant to observe that Order 12 Rule 6 CPC, empowers the Defendant to make an Application under Order 12 Rule 6 CPC for dismissal of the Suit, on the basis of admissions. Though it was not specifically mentioned in the Application under Order 12 Rule 6 CPC for dismissal of the Suit by way of Application under Order 12 Rule 6 CPC, mere mention



that the Defendants were seeking dismissal of the Suit, it cannot be said that there is any error in so stating in the opening paragraph of the Order dated 14.05.2024. The second objection is without any basis.

26. The **third objection** taken is that it has been stated that Defendant No.1 and Defendants No. 3 to 6 as well as Defendant No.2-Kuljeet Singh in their respective Written Statement, have raised preliminary objection that oral partition has already taken place between the legal heirs during his life time *vide* Memo of Partition dated 18.07.1975.

27. In this context, it may be noted that Defendants No. 3 to 6 in their Written Statement have taken a specific plea that oral partition had already taken place during the life time of their father Sardar Sewa Singh. Kuljeet Singh, defendant No. 2, had relied upon the Memo of Partition dated 18.07.1975. In this Memo of Partition, there is a specific mention that the Oral Partition had already taken place on 30.06.1975 while the Memo of Partition was executed on 18.07.1975. In the Memo of Partition duly relied upon by Defendant No. 2, there was a specific mention that the oral partition had already taken place on 30.06.1975. To say that there was no admission of oral partition by Respondent No.2 is incorrect, since the documents relied upon by him, itself mentioned about the oral partition.

28. Fourth plea taken by the Petitioner was that Memorandum of Partition dated 18.07.1975, did not bear his signatures. It is also pertinent to note that the Memo of Partition was executed between Sardar Sewa Singh, his wife Jasmeet Kaur and his four sons, Kuljeet Singh (D-2), Harjeet Singh, represented by Inder Bala (D-4), and Gopal Singh (D-5). In the body of the Memo of Partition itself, it was stated that Sardar Sewa Singh and his wife



Jaswant Kaur had six sons, including Hardev Singh, Mahender Singh who were minors and one granddaughter Lakhjeet Kaur, who was represented by their father Sardar Sewa Singh, who are the members of the Hindu Undivided Family.

29. It is relevant to note that in the Memorandum of Partition itself provided that Mahender Singh being a minor, was represented through his father Sardar Sewa Singh and mother Jaswant Kaur. His plea that the Memo of Partition did not bear his signatures is untenable for the simple reasons that he was represented by his father and mother and the Memo of Partition was duly signed by both the sons as well as representative of Mahender Singh, the Plaintiff. It is worth mentioning that the Memorandum was never challenged or refuted by the Plaintiff either on attaining majority or at any time. It is being refuted in the present Suit for the first time and that too, in the Replication to Defendant No. 2. **Clearly this plea is an afterthought, intended to wriggle out of the Memorandum of Partition.**

30. Next, the Plaintiff has asserted that he had denied the execution of the General Power of Attorney and Relinquishment Deed in favour of his mother. It is pertinent to note that on the basis of the documents so executed way back in the year 1990 i.e. the Relinquishment Deed, the property stands already sold and they have never been questioned or challenged by the Plaintiff, but has been questioned for the first time by filing the Suit in 2012.

31. Even though the Plaintiff has denied the execution of these documents but the appropriate remedy for him to question these documents and to challenge the consequent sale of the property, was by way of appropriate suit within three years of the sale of the property. However, the



very fact that this is now being taken as a defence in his replication is not only *mala fide* but also barred by law.

32. The ***main contention of the Plaintiff*** is that he had admitted the Memorandum of Partition during admission and denial as his Counsel was not present and he was influenced to do it by the Counsel of the defendants. This Objection had been taken by him in his *Application IA No. 4072/2019*, which never came up to be decided. Even though the said Application had been filed, but it was never addressed at any stage, especially when the arguments were address by both the sides on the Application under Order 12 Rule 6 CPC. The Plaintiff has categorically stated that he had admitted the Memorandum of Partition and to say that he had admitted it under influence by the counsel for the defence, is nothing but an afterthought which is intended only to withdraw the admission by him.

33. Therefore, even though the Plaintiff was denying the Memo of Partition or the oral partition, but he admitted the Memo of Partition as a document and therefore, his contention that he never admitted the oral Memo of Partition, is clearly untenable. ***His admission to this document is sufficient to prove the partition by virtue of Memo of Partition.***

34. **Another ground** which has been taken to retract from his admitting the Memo of Partition, is that it was only a photocopy. Pertinently, in the case of *Bipin Shanti Lal Panchal Vs. State of Gujarat* AIR 2001 SCC 1158 and *Lachhmi Narain Singh v. Sarjug Singh* 2021 SCC OnLine SC 606, it has clearly been observed that once a document has been admitted and it is only the mode of proof which is challenged subsequently at the appellate stage, then such challenge cannot be entertained.



35. In the present case also the Plaintiff had admitted the Memo of Partition and thus, even though it was a photocopy, his admission is sufficient to constitute his admission over the document and the facts stated therein.

36. To sum up, the Petitioner has admitted the Memorandum of Partition. Also, this document was relied by Defendant No2. Kuljeet Singh. The other defendants had also admitted the oral Partition. From the comprehensive and meaningful reading of the pleadings and the documents, it is evident that the factum of Partition was admitted by all the parties.

37. Before concluding, it is pertinent to observe that the Plaint does not mention the status of ownership of any of the properties of Sardar Sewa Singh and as already observed, his plaint is absolute vague in claiming partition of the properties of Sardar Sewa Singh. Though the details of the properties of which the alleged partition is sought, is mentioned, but no document whatsoever, have been filed to establish their ownership. It has been rightly observed that the suit of the Plaintiff for partition was based on vague and non specific averments.

38. In light of the aforesaid discussion, it is held that there is no ground for Review of the impugned Order dated 14.05.2024.

39. The Review Petition is hereby, dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 20, 2025

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