



\$-

IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+

CS(OS) 589/2014

KANWAR SURJEET SINGH
S/O LATE GURBUX SINGH
AT PRESENT F-62, GREEN PARK,
NEW DELHI.

...PLAINTIFF NO.1

W G CDR AMOLAK SINGH (RETD)
S/O LATE GURBUX SINGH
RJO 152, CARRIAPPA MARG
SAINIK FARMS,
NEW DELHI-110062.

...PLAINTIFF NO.2

*(Through: Mr. Harish Malhotra, Sr. Adv. with Mr. Rajender Agarwal and
Mr. Anoop Kumar, Advs.)*

Versus

DALJIT SINGH PAL
S/O LATE GURBUX SINGH
150, CARRIAPPA MARG
SAINIK FARMS
NEW DELHI-110062.

.....DEFENDANT NO. 1

ALSO AT:
D-9, GREEN PARK
NEW DELHI-110016.

SATINDERJIT SINGH (DECEASED)
S/O LATE GURBUX SINGH



2025:DHC:3484



F-62, GREEN PARK,
NEW DELHI-110016.

.....DEFENDANT NO.2

LRS OF DEFENDANT NO.2

MRS. AMRIT SINGH

W/O LATE SH. SATINDERJIT SINGH
R /O 23 LEKEGATE DRIVE, STONEYCREEK, ONTARIO
L8E3T7 CANADA.

.....DEFENDANT NO.2(a)

MR. ROBINDER SINGH

S/O LATE SH. SATINDERJIT
SINGH R/O 23 LEKEGATE DRIVE, STONEYCREEK, ONTARIO
L8E3T7 CANADA.

DEFENDANT NO.2(b)

MS. REEMA SINGH

D/O LATE SH. SATINDERJIT
SINGH R / O 5293 DE L'ESPLANADE, MONTREAL, QUEBEC,
H2T2Z6 CANADA.

.....DEFENDANT NO.2(c)

SHRI CHARANJIT SINGH

S/O LATE SHRI BALBIR SINGH
RESIDENT OF USA, THROUGH HIS
POWER OF ATTORNEY
SHRI SATINDERJIT SINGH.
F-62, GREEN PARK, NEW DELHI.

.....DEFENDANT NO.3

MS. HARJEET KAUR

D/ O LATE SHRI BALBIR SINGH
RESIDENT OF USA, THROUGH HER
ATTORNEY SH SATINDERJIT SINGH
F-62, GREEN PARK
NEW DELHI.

.....DEFENDANT NO.4



2025:DHC:3484



(Through: Mr. Atul Nigam and Ms. Tanvi Nigam and Ms. Lubhashi Tanwar, Advs.)

%	Reserved on:	18.03.2025
	Pronounced on:	06.05.2025

JUDGMENT

The present civil suit has been instituted by the plaintiffs, seeking a preliminary decree of partition with respect to property bearing no. F-62, Green Park, New Delhi-110016 [hereinafter referred to as the “suit property”]. The plaintiffs pray for a declaration of their respective shares in the suit property as follows:- plaintiff no. 1 as the owner of 1/5th share, plaintiff no. 2 as the owner of 2/5th share, defendant no.1 as the owner of 1/5th share, and defendants nos. 2 to 4 collectively as owners of the remaining 1/5th share in the suit property.

2. The genealogical relationship between the parties is that plaintiff nos. 1 and 2, along with defendant no. 1, are real brothers. Late Balbir Singh, who was also a brother to plaintiff nos. 1 and 2 and defendant no.1, is represented in this suit by his children. This includes original defendant no.2, Satinderjit Singh [now deceased, represented by his legal heirs], defendant no.3, Charanjit Singh, and defendant no.4, daughter of late Mr. Balbir Singh. Together, defendants nos. 2, 3, and 4 claim their share in the suit property as legal heirs of late Mr. Balbir Singh.

3. The facts of the instant case indicate that the estate of late Mr. Gurbux



Singh, who was the owner, and was in possession of the suit property, is the subject matter of the suit. Mr. Gurbux Singh passed away intestate on 16.06.1964, leaving behind five sons, three daughters, and his wife.

4. Subsequently, three daughters and the widow of Mr. Gurbux Singh executed a registered a Release deed dated 02.08.1966 [Exhibit P-2], thereby relinquishing their respective shares in favor of the five sons of late Mr. Gurbux Singh.

6. In view of the same, the estate of Mr. Gurbux Singh devolved equally among his five sons:-

- Sh. Kanwar Surjeet Singh [Plaintiff no. 1].
- Wg Cdr Amolak Singh [Plaintiff no. 2].
- Sh. Daljit Singh Pal [defendant no.1].
- Sh. Balbir Singh [deceased] represented by Defendant Nos. 2, 3, and 4.
- Sh. Surinderpal Singh [deceased].

5. One of the legal heirs of Mr. Gurbux Singh, namely, Sh. Surinderpal Singh, during his lifetime, sold his undivided $1/5^{\text{th}}$ share in the suit property to Plaintiff no. 2 through a sale deed dated 08.06.1996. The aforementioned facts remain broadly undisputed by the parties.

6. Based on the above, the plaintiffs contend that:-

- Plaintiff no. 1 is entitled to a $1/5^{\text{th}}$ share in the suit property.
- Plaintiff no. 2 is entitled to a $2/5^{\text{th}}$ share, which includes the $1/5^{\text{th}}$ share acquired from Sh. Surinderpal Singh.
- defendant no.1 is entitled to a $1/5^{\text{th}}$ share in the suit property.
- Defendant Nos. 2 to 4 collectively hold a $1/5^{\text{th}}$ share in the suit property.

7. The case of the plaintiffs is that the suit property originally consisted



of five flats constructed in the year 1966, funded through equal contributions by all the brothers. Subsequently, in the year 1999-2000, two additional flats were constructed on the second and third floors with joint contributions from all the brothers. It was agreed among the brothers that the newly constructed flats would be rented out, and the rental income would be shared equally. As a result, there are currently seven flats spread across three floors on the suit property.

8. The plaintiffs further contend that plaintiff no. 1 is occupying one flat, while plaintiff no. 2 is occupying two flats. On the other hand, defendant nos. 2 to 4 collectively occupy one flat, whereas defendant no.1 is in possession of three flats. The plaintiffs argue that this distribution is inequitable and does not reflect an equal division of the estate of late Mr. Gurbux Singh.

9. Upon summons being issued, the defendants filed their written statement. Defendant no.1 contends that following the demise of late Mr. Gurbux Singh, the property initially comprised only a single-family, three-bedroom flat on the ground floor. Defendant no.1 claims that he independently financed the construction of three additional flats, i.e., two single-bedroom flats on the first floor and one single-bedroom flat at the rear side of the second floor.

10. With the subsequent increase in the Floor Area Ratio [FAR], defendant no.1 states that further construction was undertaken, converting all three additional flats into double-bedroom flats. Defendant no.1 asserts that the entire cost of this construction was borne exclusively by him.



11. In the written statement, defendant no.1 claims that the discussions regarding the division of the property were held among the brothers and their families, resulting in a mutual agreement, the details of which are as follows:-

“(i) the flat at the rear portion on the second floor along with terrace right with the right to construction and ownership, came to the share of Plaintiff no.1.

(ii) the flat at the rear portion on the ground floor went to the Plaintiff no, 2.

(iii) the flat at the front portion of the ground floor came to Shri Balbir Singh(represented by D2 to D4).

(iv) the flat at the front portion on the first floor along with the terrace right to construct and own came to the defendant no.1.

(v) the flat at the rear portion of the first floor came to the share of Sh. Surinder Pal Singh (since deceased).”

12. It is the case of the defendants that the terms of the oral partition arrived at between them were as per the desire of their mother and as per their own free will.

13. They further contend that the fact of oral partition and the subsequent taking possession of their respective shares by the brothers is corroborated by the following facts:-

“(a) Each of the brothers came into possession of their respective flats and started enjoying the same;

(b) The house tax is being paid separately and individually by the brothers for their respective portions;

(c) Electricity meters were also separately installed.

(d) Vide letter dated 05.03.1999, the Plaintiff no. 1 along with Smt. Ishar Kaur had written to the Executive Engineer, Delhi Vidyut Board for transfer of the electricity meter in his name in respect of the flat at the rear side of the second floor.

(e) The Plaintiff no. 1 had written a letter dated 27.07.2009. From the perusal of the said letter it is clear that Plaintiff no. 1 was the owner of the



rear portion of the second floor along with roof rights and he wanted to build the flat upon the said roof for himself. It is also admitted by the Plaintiff no. 1 in the said letter that defendant no.1 had built the flat for himself at his own cost in his portion of the said property.

(f) Another letter dated 16.08.2009 written by Plaintiff no. 1 is also demonstrative of the fact that the said property had been divided by metes and bounds and there were certain common areas which were to be maintained and maintenance charges paid by all the parties concerned.

(g) Plaintiff no. 1 had let out his flat at the rear portion of the Second Floor and the rent for the same was being regularly deposited in his account, being his income. The Plaintiff no. 1 has not only been treating this as his own income, but has been filling Income Tax Return of the same.”

14. The defendants allege that the plaintiffs, driven by greed and with an ulterior motive to harass the defendants, have instituted this false, frivolous, and baseless suit with an intent to unjustly grab the suit property. The defendants have raised several additional objections in their written statement.

15. Upon completion of the pleadings, this Court, by order dated 21.07.2017, framed the following issues:-

“(1) Whether the suit does not disclose cause of action? OPD

(2) Whether the suit is not properly valued for the purposes of court fee? OPD.

(3) Whether this suit of partition is not maintainable on the ground that the property has already been partitioned allegedly in the year 1998 and the parties are allegedly in possession of their respective portions? OPD.

(4) Whether the plaintiff is entitled to a decree of partition of the subject property, as prayed? OPP.

(5) Whether the plaintiff is entitled to a decree of permanent injunction as prayed in prayer clause (b)? OPP

(6) Whether the plaintiff is entitled to a decree of rendition of accounts against defendant No.1? OPP.

(7) Relief.”

16. The plaintiffs, in order to prove their case, have examined the



following witnesses:-

S.No	Full Name	Complete Address	Facts and Documents Sought to be Proved by Way of Evidence
1.	The Clerk Concerned, Office of Assistant Assessor & Collector.	MCD-House Tax Department South Zone, Green Park, New Delhi	a. To bring the original record/file in respect of property bearing no.F- 62, Green Park Main, New Delhi. a. To bring the original record/file in respect of CRN No.2550070699, New K. No.2551 0B23 0030 of Mr. Dalip Singh (Mr. Daijit Singh), Add.: F-62. F/F, F-47 to F-65, Green Park 16.
2.	The Clerk Concerned.	BSES Rajdhani Power Limited	b. To bring the original record/file in respect of CRN No.22550070459, New K. No.2551 L708 0009 of Mr. D. S. Pal, Add.: F-62. S/F, F/F, Green Park 16.
3.	The Clerk Concerned,	ICIC Bank, Green Park (Branch), New Delhi	c. To bring the original record/file in respect of CA No. 100137230, CRN No.2550070674 of Mr. Kanwar Surjeet Singh, Add.: F-62, S/F, Green Park, New Delhi 110016.
4.	Mr. D. S. Pal S/o Late Gurbaksh Singh	150, Kariappa Marg New Delhi 62	To bring the complete file/account statement of account no. 007101076636 of Mr. Kanwar Surjeet Singh.
5.	Mr. Satinderjit Singh S/o Late Baibir Singh	F-62, Green Park, New Delhi 16	
6.	Mr. Charanjit Singh S/o Late Baibir Singh	USA	
7.	Mr. Harjeet Kaur D/o Late Baibir Singh	USA	

17. The plaintiffs have exhibited following documents:-

No	Name/Nature of Document.	Exhibit Number
1.	Certified copy of Sale Deed Executed by Urban Improvement Housing & Construction Co Pvt Ltd in favour of Sh Gurbux	P1



	Singh duly executed on 18.04.1961.	
2.	Certified copy of Lease Deed dated 2.8.1966 between Smt Harbans Kaur and Others in favour of Shri Balbir Sineh and Others.	P2
3.	Photo Copy of Sale Deed dated 08.06.1998 executed by Shri Surinder Pal Singh in favour of Wg Cdr Amolak Singh.	PW 1/2

18. The defendants, on the other hand, have examined the following witnesses, and exhibited the following documents:-

S.no	Name/Nature of Document.	Exhibit Number
2.	Letter to Executive Engineer, Delhi Vidyut Board dated 05.03.1999 for transfer of electric meter by Smt. Lshar Kaur.	D39
3.	Letter dated 27.07.2009 issued by Mr. K. Singh and original envelop along with typed copy.	D19
4.	Letter dated 16.08.2009 written by Plaintiff no. 1 along with original envelope.	D40
5.	Letter dated 12.07.2009 written by Plaintiff no. 1 along with original envelope.	D41
6.	Letter to Executive Engineer, Delhi Vidyut Board dated 05.03.1999 for transfer of electric meter by Smt.Lshar Kaur.	D39
7.	Electricity bill dt.03.08.2009 issued by BSES in favour of Kanwar Surjeet Singh (Plaintiff no.1)	D20
8.	Electricity bill dt.27.09.2012 in the name of Kanwar Surjeet Singh (plaintiff no.1)	D28
9.	Electricity bill dt.29.11.2012 in the name of Kanwar Surjeet Singh (plaintiff no.1)	D29
10.	Receipt dt.31.03.2009 issued by MCD in favour of Kunwar Surjit Singh (Plaintiff no.1), copy of Self Assessment property tax form (2008-09) and copy of cheque along with typed copy.	D16
11.	Receipt dt.23.05.2009 issued by MCD in favour of plaintiff no.1 alongwith copy of property tax form (2009-10)	D17
12.	Receipt dt.28.10.2004 issued by MCD in favour of defendant No.1	DW1/3
13.	Annexure I of Form C, issued by MCD in favour of defendant no.1 along with typed copy.	DW1/2
14.	Receipt dated 26.07.2005 issued by MCD in favour of defendant no.1	DW1/5
15.	Property information and self assessment form (2005-06) issued by MCD in favour of defendant no.1 along with typed copy.	DW1/4
16.	Leave and Licence Agreement dated 15.10.2006 between Daljeet Singh & Sons (HUF) through its karta defendant no. 1 and Shri	DW1/27



	Sung Rak Cho.	
17.	Leave and Licence Agreement dated 15.11.2006 between Daljeet Singh & Sons (HUF) through its karta defendant no.1 and Shri Raaj Sah.	DW1/28
18.	Leave and Licence Agreement dated 29.12.2006 Daljeet Singh & Sons (HUF) through its karta defendant no.1 and Shri Segna Livid.	DW1/29
19.	Inventory list dated 28.06.2009 along with typed copy.	D-18
20.	Deposit slip dated 04.08.2009 for Rs. 1 lac deposited in the account of Kanwar Surjeet Singh along with typed copy.	D21
21.	Deposit slip dated 18.08.2009 for Rs.50,000/- deposited in the account of Kanwar Surjeet Singh along with typed copy.	D22
22.	Deposit slip dated 17.01.2012 for Rs.120,000/- deposited in the account of Kanwar Surjeet Singh (plaintiff no.1) along with typed copy.	D23
23.	Letter dated 25.03.2012 written by plaintiff no.1.	D24
24.	Letter dated 01.07.2012 along with typed copy.	D25
25.	Original letter dated 05.07.2012 issued to defendant no.1 by plaintiff no.1 along with typed copy.	D26
26.	Deposit slip dated 14.06.2012 for Rs.50,000/- deposited in the account of Kanwar Surjeet Singh (plaintiff no.1) along with typed copy.	D27
27.	Leave and Licence Agreement dt. 28.12.2012 between Kunwar Surjeet Singh (plaintiff no.1) and Shri Ashok Chowdhary.	D30
28.	Deposit slip dated 29.12.2012 for Rs.1,00,000/- deposited in the account of Kunwar Surjeet Singh (plaintiff no.1) along with typed copy.	D31
29.	Letter dated 14.01.2013 issued by Kishan Bhaniramka issuing cheque amount to Rs. 1,20,000/- in favour of Kanwar Surjit Singh.	D32
30.	Deposit slip dated 20.02.2013 for Rs.500,000/- deposited in the account of Kanwar Surjit Singh (plaintiff no.1) along with typed copy.	D33
31.	Deposit slip dated 20.02.2013 for Rs.30,000/- deposited in the account of Kanwar Surjit Singh (plaintiff no.1) along with typed copy.	D34
32.	Deposit slip dated 06.03.2013 for Rs.30,000/- deposited in the account of Kanwar Surjit Singh (plaintiff no.1) along with typed copy.	D35
33.	Deposit slips dated 15.04.2013 for Rs.25,000/- & Rs.30,000/- deposited in the account of Kanwar Surjit Singh (plaintiff no.1) along with typed copy.	D36



34.	Deposit slip dated 30.04.2013 for Rs.60,000/- deposited in the account of Kanwar Surjit Singh (plaintiff no.1) along with typed copy.	D37
35.	Deposit slip dated 06.05.2013 for Rs.25,000/- deposited in the account of Kanwar Surjit Singh along with typed copy	D38
36.	Email dt. 31.05.2013.	PW1/D22

19. The Court shall now proceed to adjudicate the issues framed on 21.07.2017.

20. The onus of proving Issue No. 1, relating to the absence of a valid cause of action, and Issue No. 3, concerning the alleged oral partition of the suit property in the year 1998, lies upon the defendants. Given their interrelated nature, these issues shall be considered conjointly. The outcome of Issues No. 1 and 3 will necessarily inform the determination of the subsequent Issues No. 4, 5, 6, and 7, which pertain to the valuation of the suit and require prior adjudication. As regards Issue No. 2 being whether the suit has been properly valued for the purposes of court fees, it is noted that during the course of arguments, the defendants did not advance any substantive contention(s) on this issue. Neither was the same emphasised by any party nor dealt with by the Court in detail. Accordingly, the Court considers it appropriate to refrain from recording any finding on Issue No. 2.

21. The substantive issues encapsulated in Issue No. 1 and 3 pertain to the maintainability of the suit, on the grounds that the plaint does not disclose a cause of action and that the suit property was purportedly partitioned in the year 1998, thereby rendering the present suit for partition untenable, are required to be addressed conjointly. Should these issues be adjudicated in favour of the defendants, the necessity of examining the remaining issues would not arise.



22. The present civil suit has been instituted for the partition and possession of the suit property. The plaintiffs assert that the suit property remains undivided and unpartitioned. Until such partition is duly effected, it is their contention that each co-sharer is legally deemed to be in constructive possession of every portion of the suit property. Reference can be made to a decision of the Division Bench of this Court in **Rajbir v. Padma Devi**¹, wherein reliance has been placed on the decision of the High Court of Punjab in **Sant Ram Nagina Ram v. Daya Ram Nagina Ram**², wherein, the following position of law has been settled:-

“29. Law is clear that possession by one co-sharer, in the eyes of law, is possession of all and a mere occupation of a large portion or even of an entire joint property necessarily does not amount to an ouster or a proof of partition. In the decision AIR 1961 Punjab 528, Sant Ram Nagina Ram v. Daya Ram Nagina Ram, it was held as under:

“(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner is in the eye of law, possession of all, even if all but one are actually out of possession.

(3) A mere occupation of a larger portion, or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any

¹2008 SCC OnLine Del 1291

²AIR 1961 Punjab 528



body to disturb the arrangement without the consent of others except by filing a suit for partition.”

23. The determination of Issues Nos. 1 and 3, concerning the alleged oral partition, necessitates a thorough examination of the evidence presented by the parties. Furthermore, the defendants contend that the suit is barred as the suit property has already been partitioned, thereby negating any claim for fresh division. Given that both issues challenge the maintainability of the suit and the existence of a cause of action, the onus to prove these issues rests entirely upon the defendants.

Submissions on behalf of the defendants on Issues No.1 and 3:-

24. Mr. Atul Nigam, learned counsel for the defendants, submits that the division of the suit property took place in 1998, whereby, the respective flats were allotted to the parties as per their shares. The said allotment as per the version of the defendants is reproduced hereunder:-

S.No	Name of the Party	Share in the Subject Property.
a.	Plaintiff no.1	Flat at the rear portion of the second floor along with terrace right with the right to construct.
b.	Plaintiff no.2	Flat at the rear portion on the ground floor
c.	Defendant No.1	Flat at front portion on the first floor along with terrace right with the right to construct.
d.	Defendant No.2 to 4	Flat at the front portion on the ground floor.
e.	Late Mr. Surinder pal Singh.	Flat at the rear portion on the first floor.

25. He asserts that the oral partition in 1998 is evidenced through various



communications, letters, and other contemporaneous documents, along with the conduct of the parties over the years. He further submits that the manner in which the parties have dealt with the property post the year 1998, such as the collection and distribution of rental income, payment of property taxes, settlement of utility bills, and maintenance of individual portions, corroborate the fact that the oral partition had already been effected and acted upon. According to him, the overall conduct of the parties clearly indicates their recognition of the partition, and the present suit is an afterthought, aimed at unsettling an arrangement that has been in place for decades.

26. Learned counsel for the defendants places reliance on various documents to substantiate the claim that an oral partition had indeed taken place in 1998 and was acted upon by all the parties. He draws the attention of the Court to the letter dated 27.07.2009 (Exhibit D-19) by plaintiff no. 1. According to learned counsel for the defendants, this letter records an admission by plaintiff no. 1, acknowledging ownership of the rear second-floor flat along with roof rights. The letter further reflects that plaintiff no. 1 desired to construct an additional flat on the said roof, similar to defendant no.1, who had built a flat over his allotted portion after the partition. However, due to legal restrictions, plaintiff no. 1 was unable to do so, and was persuading defendant no.1 to construct it for him. Additionally, the letter seeks a settlement of accounts concerning common areas of the suit property, proposing division into seven portions corresponding to the seven flats in the building.

27. He further takes the Court through letter dated 16.08.2009 (Exhibit D-



40) by plaintiff no. 1, wherein, according to him, this letter reflects that after the partition by metes and bounds in 1998, common expenditure of the property was limited to maintenance charges for the common areas, which Plaintiff no. 1 acknowledged as his concern.

28. Learned counsel then drew the attention of the Court through the cross-examination of plaintiff no. 2, wherein plaintiff no. 2 purportedly admitted during cross-examination that he had been paying separate electricity and water charges through an independent water connection, indicating exclusive ownership and independent possession. Additionally, the electricity connection for flat in possession of plaintiff no. 1 was transferred from the mother of the brothers, pursuant to her letter dated 05.03.1999 (Exhibit D-39), which explicitly recognized plaintiff no. 1 as the owner of the rear-side flat of the suit property.

29. He also places reliance on the rental transactions by plaintiffs and defendants to contend that plaintiffs nos. 1 and 2 have independently let out their respective flats and collected rent without any interference from their brothers. Similarly, the defendants have also leased out their portions and collected rent individually without sharing any rental income among themselves. This pattern of conduct, according to the defendants, unequivocally supports the existence and implementation of an oral partition.

30. On the acquisition of the first-floor rear flat by plaintiff no. 2 from Mr. Surinder Pal Singh through a direct sale, learned counsel contends that the same has taken place, without the involvement of his brothers. Learned



counsel for the defendants contends that, based on this transaction between the plaintiff and Mr. Surinderpal Singh, without any permission/release/consent from the other defendants, he contends that the flat of Mr. Surinderpal Singh was considered as his distinct, separately owned property, post-partition.

31. Based on these documents and admissions, learned counsel for the defendants asserts that the plaintiffs have unequivocally treated their respective portions of the property as independently owned, further substantiating the claim that the suit property was indeed partitioned in 1998.

Submissions on behalf of the plaintiffs on Issues No.1 and 3:-

32. Mr. Harish Malhotra, learned senior counsel appearing on behalf of the plaintiffs, vehemently opposing the submissions advanced on behalf of the defendants, has drawn the attention of the Court to the cross-examination of defendant no.1, and submits that the testimony of defendant no.1 is rife with contradictions and inconsistencies, which cast serious doubt on the veracity of his claim regarding the alleged oral partition in 1998. He guides the attention of the Court to the deposition of DW1, who in his written statement has categorically asserted that partition of the suit property was effected among the family members in 1998. In his affidavit of evidence, he reiterated this claim, stating in para 3 as follows:-

“The suit is not maintainable as partition of the property has been effected by metes and bounds in 1998 amongst five brothers i.e., the sons of Gurbax Singh.”



33. However, learned senior counsel submits that, when subjected to cross-examination, the responses given by defendant no.1 revealed significant inconsistencies. In response to Question No. 6, he confirmed that the oral partition was effected in the presence of six individuals, i.e., the five brothers, and their mother. In response to Question No. 7, he stated that their mother had convened a meeting wherein the suit property was divided into five shares. Further, in response to Question No. 11, he insisted that the meeting was held in November or December of the year 1998, and that all five brothers were present.

34. However, in response to Question No. 135, Defendant No.1 admitted that in June 1998, Surinderpal Singh had sold his undivided share in the suit property to Plaintiff no.2, Wg Cdr Amolak Singh, through a registered sale deed. In response to Questions No. 141 and 142, he admitted that after the sale, possession of the first-floor rear flat was handed over to Plaintiff no.2, and Surinderpal Singh moved out of the suit property and left for Karnal.

35. The most significant inconsistency, according to the plaintiffs, emerged in response to Question No. 143, where defendant no.1 was specifically confronted with the fact that plaintiff no.1, Kanwar Surjeet Singh, who resides in the UK, had never visited India in 1998, including during November and December of 1998. Upon being confronted, defendant no.1 conceded that plaintiff no.1 may not have been in India at the time, however, he then attempted to qualify his earlier statements by asserting that he did not remember the exact month or year of the partition but that plaintiff no.1 was present in Delhi when the partition was effected.



36. Learned senior counsel submits that the responses given by defendant no.1 to Questions No. 144 to 150 further exposed the shifting nature of his stance. Initially, he set up a definite case that an oral partition had taken place in 1998, specifically in November or December of 1998. However, upon being confronted with evidence establishing that plaintiff no.1 was not even in India during that period, defendant No.1 retracted from his earlier stand and became evasive, stating that he could not recall the exact year or date when the partition took place. It is, thus, contended that this contradiction between the written statement, affidavit of evidence, and oral testimony clearly belies the credibility of the claim of defendant no.1 that an oral partition had taken place in 1998.

37. Learned senior counsel further submits that this shifting stand and clear attempt to backtrack from the original assertion, only when confronted with documentary evidence, demonstrate that the plea of oral partition is nothing more than a belated afterthought, aimed at defeating the legitimate rights of the plaintiffs over the suit property.

38. Learned senior counsel contends that the reliance placed by the defendants upon the letter dated 16.08.2009 (Exhibit D-40) is misplaced, as the letter merely indicates the existence of seven distinct portions within the suit property and provided for an apportionment of maintenance costs into seven shares. He submitted that the said letter, by itself, does not reflect, establish or evidence for any concluded oral partition among the parties.

39. Further rebutting the letter dated 27.07.2009 (Exhibit D-19), learned senior counsel submits that the contents of this letter are merely indicative of



correspondence exchanged between the parties for the purpose of exploring the possibility of further construction upon the suit property. He submits that this communication, on a plain reading, does not even remotely suggest or establish the existence of an oral partition among the parties. Thus, according to him, none of the documents cited by the defendants substantiate their case regarding an oral partition.

40. I have heard learned counsel for the parties and have perused the record on Issue No. 1 and Issue No. 3.

41. As noted earlier, Issue No. 1 and No. 3 relate specifically to the contentions of the defendants that the plaint fails to disclose any cause of action, and further, that the suit property already stood partitioned in the year 1998, thereby rendering the present suit for partition not maintainable. The Court is of the considered view that if issue no. 1 and issue no. 3, the burden of which rests upon the defendants, are decided in their favour, it would obviate the necessity of adjudicating upon the remaining issues.

42. The fate of the instant suit, as gleaned from the arguments advanced, hinges on the existence of a valid oral partition allegedly effected in 1998 among all the sons of late Mr. Gurbux Singh and their mother. Before examining the factual aspects to determine whether such an oral partition took place, it is necessary to first consider the legal position as to whether a partition effected orally, without being formalized through a written document or instrument, can be regarded as valid in law.



43. In **H. Vasanthi v. A. Santha**³, the Supreme Court has observed that there is no prohibition against effecting a partition through means other than a written instrument, provided the requirements of law are duly complied with. The relevant portion of the said decision reads as under:-

“15. We are alive to the principle that there is no prohibition to effect a partition otherwise than through an instrument in writing by duly complying with the requirement of law. In other words, the division may also be effected under a settlement or oral understanding...”

44. Thus, it is seen that the aforementioned does not prohibit the validity of oral partition. However, the Supreme Court in **Vineeta Sharma v. Rakesh Sharma**⁴, has outlined the contours of the stringent requirements for proving the existence of an oral partition. The Court cautioned that an oral partition or an unregistered memorandum of partition can be fabricated at any point in time and, in the absence of any contemporaneous public document, must be rejected in all but exceptional cases. The Court further noted that partition should not be inferred merely on the basis of the preponderance of probabilities. Historically, execution of a registered partition document was not always a necessity, and parties would rarely approach the Court, unless reconciliation within the family was impossible.

45. It is important to contextualize the said *dictum*. The observations in **Vineeta Sharma** arose in the specific backdrop of succession rights of women under the amended Hindu Succession Act, 1956, and the Court therein was primarily cautioning against the routine invocation of an oral partition as a defence to defeat statutory inheritance rights of daughters. In

³2023 SCC OnLine SC 998

⁴(2020) 9 SCC 1



contradistinction, the present case does not involve any issue concerning the inheritance rights of a female heir or the application of any beneficial legislation intended to protect the interests of a specific class. Rather, the present dispute pertains exclusively to the question of partition among five brothers, and no special statutory protection is pleaded or attracted in the factual matrix of this case.

46. It is a settled principle of law that in civil proceedings, the standard of proof is not that of proof beyond reasonable doubt, but one based on the preponderance of probabilities. While adjudicating issues arising in a civil suit, the Court is required to weigh the evidence on the scale of probabilities, assessing which version appears more probable in the light of the surrounding circumstances. This position has been consistently reiterated by the Supreme Court, including in *N.G. Dastane (Dr) v. S. Dastane*⁵, wherein it was held that the normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities.

47. As explained therein, under Section 3 of the Indian Evidence Act, 1872, a fact is said to be proved when the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent person, when faced with conflicting probabilities, is expected to act upon the supposition that the fact exists if,

⁵(1975) 2 SCC 326



on weighing the various probabilities, the preponderance lies in favour of the existence of that fact. The first step in this process is to exclude the impossible; and the second is to reject the improbable. Within the broad range of possibilities, it is this choice that ultimately determines where the preponderance of probabilities lies. As the Court further noted, “*the nature and gravity of an issue necessarily determine the manner of attaining reasonable satisfaction of the truth of the issue,*” and therefore, issues affecting the status of parties may demand closer scrutiny than comparatively routine matters.

48. Even within the framework of the standard of preponderance of probabilities, the Court recognized that the degree of probability required is necessarily dependent on the nature and gravity of the subject matter. As observed by the Supreme Court in State of **U.P. v. Krishna Gopal**⁶, that “*The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge.*”

49. The present case, being one seeking partition and declaration of shares in ancestral or joint family property, is manifestly a civil dispute governed by the general principles applicable to civil adjudication. It is well

⁶(1988) 4 SCC 302



settled that a suit for partition is essentially a civil proceeding, to be tried in accordance with the Civil Procedure Code, 1908, and the Indian Evidence Act, 1872. The standard of proof in such matters is that of preponderance of probabilities and not proof beyond reasonable doubt. In **Devendra v. State of U.P.**⁷, the Supreme Court, while dealing with a petition to quash criminal proceedings wherein the core dispute pertained to partition between co-sharers, observed, relying upon **Kamaladevi Agarwal v. State of W.B.**⁸, that a partition dispute is, in essence, a civil dispute, and must be resolved on the basis of probabilities, unlike criminal cases which require strict standards of proof. Accordingly, even in partition suits, the Court must assess the oral and documentary evidence with reference to what appears more probable in the given facts and circumstances.

50. Accordingly, this Court finds no legal impediment in evaluating the existence and effect of the alleged oral partition on the touchstone of preponderance of probabilities, as is ordinarily applied in civil adjudication.

51. Furthermore, the determination of fact that, whether an oral partition has taken place, can also be assessed through corroborative evidence, as elucidated in **Subraya M.N. v. Vittala M.N.**⁹, wherein, the Supreme Court observed that when the terms of a family settlement or arrangement are reduced in writing, registration becomes mandatory. However, the Court also noted that the conduct of the parties and surrounding circumstances must be examined to determine whether there was an actual division in the

⁷(2009) 7 SCC 495

⁸(2002) 1 SCC 555

⁹(2016) 8 SCC 705



status of the suit property. The conduct of the parties assumes significance, as it may establish whether there was indeed a severance of joint status. The alleged oral partition must be assessed in light of the subsequent actions of the parties, how they have dealt with their properties, and any corroborative evidence reflecting a settled understanding among them. Observing thus, the Court therein further observed that the Courts below have erred in mechanically rejecting the claim of partition without examining the conduct of the parties and evidence.

52. In *Thulasidhara v. Narayanappa*¹⁰, the Supreme Court held that even in the absence of registration, a written document reflecting a family settlement or arrangement may serve as corroborative evidence to explain the terms of the arrangement and the conduct of the parties. The Court further observed that any unregistered document pursuant to such oral partition can be used as corroborative evidence, not as an independent instrument of partition requiring registration, but as proof of the arrangement and the subsequent conduct of the parties.

53. In *Prasanta Kumar Sahoo v. Charulata Sahoo*¹¹, the Supreme Court, placing reliance on the decision in *Vineeta Sharma*, has analyzed the scope, applicability, and evidentiary contours with respect to oral partitions in joint Hindu family properties. The Court clarified that oral partitions that were effected prior to the Hindu Succession (Amendment) Act, 2005, were valid under the law as it stood then, and would not require compulsory

¹⁰(2019) 6 SCC 409

¹¹(2023) 9 SCC 641



registration. However, post-2005, the amended Explanation to Section 6 of the Hindu Succession Act, 1956, explicitly provides that a partition must be either by a duly registered partition deed or effected by a decree of a Competent Court. This, according to the further observations made therein, was done with an underlying intent to safeguard the co-parcenors rights by preventing the frivolous, fraudulent, or collusive claims of oral partition designed, specifically to deprive female heirs of their legitimate rights. However, in the instant matter, the case of the defendants is that the oral partition has purportedly taken place in the year 1998. Thus the rigors that apply to partition(s) that have taken post the year 2005, with respect to registration, do not apply in the instant case.

54. Furthermore, reference may also be made to the decision of the Madras High Court in ***Family Manager v. Ramasamy Gounder (Deceased)***¹² dated 22.11.2016, wherein reliance was placed upon the earlier judgment in ***Mutha Mudali v. Kuppanna Goundan***¹³. The Madras High Court held that an oral partition between the members of a joint family is legally permissible, as partition neither involves extinguishment nor creation of any new right nor does it constitute a transfer of property, and thus no written instrument is necessary. However, to establish an oral partition, two essential ingredients must be proven:-

- a. firstly, the joint owners voluntarily agreed to partition the property by metes and bounds;

¹²Second Appeal No.856 of 1998

¹³1955 SCC OnLine Mad 235



b. secondly, pursuant to such agreement, each joint owner took possession of their respective share and acted accordingly upon the said oral partition.

55. Moreover, the High Court of Patna, in **Krishna Pandey v. Ram Nagina Pandey**¹⁴, has observed that if a plea of oral partition is raised, the same must be substantiated clearly, legally, and beyond suspicion. The Court further observed that when the authenticity of the ground of oral partition is disputed, such a partition must be demonstrated unequivocally through cogent and credible evidence, free from any suspicion or ambiguity.

56. Partition, in its essence, is the severance of joint status and such severance may be accomplished orally or through a written instrument as noted earlier. However, where an oral partition is asserted, it must be substantiated by cogent evidence, such as separate mutation entries and independent payment of taxes, cesses, or other levies, failing which the claim of partition remains tenuous. It is not the mere recitals or statements of the parties, but their conduct and actual relations with the estate that determine the veracity of the alleged partition. If a purported partition is found to be a façade, the joint family status remains undisturbed, and the family continues to be considered joint in the eyes of law.

57. For partition to be undertaken in the eyes of law, there must exist an unequivocal expression of intent by a member to separate himself from the family and to hold his share distinctly. The absence of physical division by metes and bounds does not *ipso facto* negate partition. An agreement among

¹⁴2020 SCC OnLine Pat 1205



family members to hold and enjoy the property in defined shares as distinct owners also operates as a valid partition.

58. Applying these settled principles to the facts of the instant case, the intention of the parties remains the cardinal test. Once such intention is established, severance of the joint family status stands effectuated. The requirement of actual physical division of property is not a *sine qua non* and it is sufficient that the parties have agreed to hold and enjoy the property in defined shares as separate owners.

59. Thus, keeping in perspective the essential legal ingredients elucidated above, the facts of the present case shall be tested on the anvil of the aforesaid ingredients to determine whether the defendants have successfully established their plea of oral partition.

60. The facts of the case would indicate that when the predecessor of the parties has passed away, the suit property existed in a manner as illustrated hereunder:-

Kanwar Surjeet Singh	S.F	
Surinderpal Singh.	F.F	Daljit Singh Pal
Amolak Singh	G.F	Balbir Singh

61. Subsequently, Mr, Surinderpal Singh transferred his share in the property in favour of Wg Cdr Amolak Singh. This remains undisputed between the parties. The same resulted in a revised ownership structure of the suit property, which emerges as follows:-



Kanwar Surjeet Singh	S.F	
Amolak Singh	F.F	Daljit Singh Pal
Amolak Singh	G.F	Balbir Singh

62. Furthermore, post the purported oral partition stated to have occurred in 1998, defendant no.1 undertook the construction of two additional floors upon the front portion of the suit property, stated to be at his own expense during the period of 1999–2000. Consequently, the property stood in the following manner:-

		Daljit Singh Pal (Additional Construction)
Kanwar Surjeet Singh	S.F	Daljit Singh Pal (Additional Construction)
Amolak Singh	F.F	Daljit Singh Pal (Originally existing roof)
Amolak Singh	G.F	Balbir Singh

63. The documents placed on record, particularly Exhibits DW 1/2 to DW 1/24, unequivocally reveal that defendant no.1 has independently paid property taxes for the First, Second, and Third Floor front portions of the suit property consistently, from the assessment years 2004-05 to 2014-15, without any contribution or interference from the other co-sharers. Similarly, plaintiff no.1 has separately paid property taxes exclusively for the Second Floor back portion, as admitted through Exhibits D-16 and D-17.

64. Additionally, each party has individually let out their respective units under separate lease and license agreements, independently collecting license fees without pooling income. This is particularly clear from Exhibits DW1/26 to DW1/28 concerning defendant No.1, and Exhibits D-30 and D-



31 concerning plaintiff no.1.

65. Moreover, defendant no.1, as attorney-holder for plaintiff no.1, had collected license fees for plaintiff no.1's unit and duly deposited the same into plaintiff no.1's bank account, as demonstrated by multiple bank deposit slips and acknowledgments (Exhibits D-21 to D-38). The same is further reinforced by the letters exchanged between the parties with respect to the disputation regarding the timely deposit of the rent in their respective accounts.

66. Another critical aspect that warrants careful consideration is the sale deed dated 08.06.1998 executed between late Mr. Surinderpal Singh, who is the brother of the parties, and plaintiff no. 2. The terms of this sale deed unequivocally indicate that the transaction was exclusively between these two individuals, without involvement, consent, or participation of the other brothers. The sale deed reflects a transaction conducted as if the parties thereto had exclusive and distinct rights over their respective portions of the suit property. The relevant portions of the sale deed dated 08.06.1998, read as under:-

"SALE DEED FOR Rs. 7,00,0000/-

*Stamp Duty Paid ... Rs. 21,000/-
Transfer Duty Paid Rs. 35,000/-
Total Rs. 56,000/-*

*This Sale Deed is executed at New Delhi on this 8th Day of June 1998
by:-*

*Shri Surinder Pal Singh S/o Late Sardar Gurbax Singh R/o F-62, Green
Park, New Delhi, hereinafter called "THE VENDOR":*

IN FAVOUR OF:-

Wg. Cdr. Amolak Singh S/o Sardar Gurbax Singh R/o F-62,



Green Park, New Delhi – 110016, hereinafter called “THE VENDEE”;

The expression of the Vendor and the Vendee shall mean and include them their legal heirs, legal representatives, administrators, successors, executors nominees and assignees.

Whereas Shri Gurbax Singh, S/o S. Sawan Singh was the owner of the free hold property bearing no. f-62, situated at Green Park, New Delhi, measuring about 327 sq. yds, and which is bound as under:-

NORTH: Plot No. F – 61.

SOUTH : Plot No. F- 63.

EAST : Plot No. F-29.

WEST : ROAD.

Having been purchased from M/s Urban Improvement Housing & Construction Compnay Private Limited, F-32, Connaught Place, New Delhi, by Shri Mohan S. Lakhani, its Manager and as Attorney of Bhai Pratap Daildas, vide Sale Deed regd. As document No. 3175, in Addl. Book No. I, Volume No. 648, on pages 143 to 145 on 02-05-1961, in the office of the Sub- Registrar, New Delhi.

And whereas subsequent upon the death of said Shri Gurbax Singh, the Vendor has become the owner of 1/5th undivided share in the said property by virtue of the Release Deed regd. As document no. 5766, in Addl. Book No.I, volime 1583, on pages 84, on 08-08-1966, in the office of the Sub-Registrar, New Delhi. And whereas the Vendor is in exclusive and absolute possession of First Floor back portion flat, alongwith one servant quarter on the Third Floor of the said property

And whereas the Vendor for his Bonafide needs and requirements has agreed to sell the said share in the said property and the Vendee has agreed to purchase the same for a total sum of Rs. 7,00,000/- (Rupees seven lac only)

NOW THIS SALE DEED WITNESSETH AS UNDER:-

.....
And the receipt of the same is hereby admitted and acknowledged in respect fo the said 1/5th undivided share along with possession of First Floor back portion and one servant quarter on the third floor in the same property bearing no. F-62, Green Park, New Delhi, measuring about 327 sq yds in full and final settlement from the Vendee”

6. That the vendor hereby declares and assures that the aforesaid share in the siad property sold is in the exclusive property of the Vendor and that none-else except the Vendor has any right, title and interest therein and the title which is hereby transferred, subsists and the Vendor has full power good title and absolute authority to transfer the same.”



67. If the suit property had indeed been jointly held at the time of the execution of the said sale deed, it would have been incumbent upon all joint owners to either participate directly in the sale or explicitly authorize such a sale through a valid power of attorney. In this context, reliance may be placed upon the judgment of the Supreme Court in **Janardan Das v. Durga Prasad Agarwalla**¹⁵, wherein it was categorically held that in transactions involving multiple co-owners, it is imperative that either all co-owners personally execute the agreement or duly authorize an agent through a valid and subsisting power of attorney. Further elucidating the principle governing co-ownership, the Supreme Court in **Sk. Golam Lalchand v. Nandu Lal Shaw**¹⁶, has clarified that a sale deed executed by only one co-owner cannot convey title in the entire jointly-owned property, but only to the extent of the executing co-owner's individual share, in accordance with Section 44 of the Transfer of Property Act, 1882.

68. The subsequent affidavit dated 21.02.2000, filed by late Mr. Sardar Balbir Singh, the original defendant no.4 (Exhibit DW-1/X2), which states that the deponent therein is aware of the transaction between the two other brothers-parties also provides insight into the nature of the transaction. The affidavit states that late Mr. Surinderpal Singh has sold his 1/5th share in the suit property to Wg Cdr Amolak Singh, i.e. defendant no.2, to which the deponent has no objection to the said transaction. The said affidavit is reproduced hereunder for the sake of clarity:-

“1. That I am aware that my brother Shri Surinder Pal Singh s/o

¹⁵2024 SCC OnLine SC 2937

¹⁶2024 SCC OnLine SC 2456



Sardar Gurbax Singh r/o House no. 938 Sector 6, Karnal, Haryana, has sold his 1/5 share of property of no. 5-62, green park, new delhi – 110016, to our younger brother Wg Cdr Amolak Singh (Retd) s/o Sardar Gurbax Singh r/o 152 Cariappa Marg Sainik Farm, New Delhi -110062.

- 2. that I have no objection to this said transaction of sale.*
- 3. That it is my true statement.”*

69. The said affidavit, while indicating the knowledge of one of the parties to the transaction to have taken place, nowhere meets the threshold laid in the decision of **Janardan Das**.

70. Applying these settled principles to the present case, and considering the undisputed legal validity of the sale deed dated 08.06.1998 as affirmed by all parties herein, only two conclusions are logically possible; either an oral partition among the parties had indeed occurred contemporaneously with or around the time of the said sale deed, thus confirming the parties' exclusive and individual ownership rights, or, alternatively, if no such oral partition had occurred, as is the case of the plaintiffs, then plaintiff no. 2 could have lawfully acquired only the individual 1/5th share belonging to late Surinderpal Singh in the unit being the rear portion of the first floor, and no further.

71. Further, reference can be made to various correspondence between the parties as gleaned from Exhibits D-19, D-24, D-25, D-26 and D-31. The letter dated 12.07.2009 (Exhibit D-41), which was exchanged between the plaintiffs also indicates towards the settlement of expenses based on rent collected from the respective portion of the parties. The relevant portion of the true typed copy of the letter dated 12.07.2009 reads as under:-



“I trust by now you have received the money I sent for you. Any other balance remaining can be either settled on my next visit or by adjustment from my rent money if and when the flat is let out. Also, please let me know my monthly contribution towards the cleaning and other services, i.e. water, guards, electricity and house tax etc. (I paid electricity bill + house tax). Perhaps I can leave money for all these in advance with you for the whole year (Once I know the amount).”

72. Furthermore, vide letter dated 27.07.2009 (Exhibit D-19), plaintiff no. 1, acknowledged defendant no. 1's ownership of the rear second-floor flat along with roof rights, expressing therein, his intention to construct an additional flat on the roof portion of his own flat, akin to the construction previously carried out by defendant No. 1. In the same communication, plaintiff no. 1 candidly admitted his inability to independently undertake the proposed construction due to the legal constraints, consequently seeking assistance from defendant no. 1. The relevant portion of the said letter dated 27.07.2009 reads as under:-

“Dear Daijit & Bindy 27th July 2009

Loving Sat Sri Akal

I trust this finds you all In good health.

Further to our today's telephone conversation, please find enclosed herewith a cheque for Rs.25,000/- for Raj Bajaj as asked for.

I believe this settles Mr. Bajaj's fee/charges etc In full. It is encouraging to know that Day + Night guards are now operational at the premises.

It is very important to maintain peace & harmony amongst brothers and other family members - particularly where corporate dealings are Involved.

I therefore suggest, (as before) please work out the exact amount of expenditure Involved per month. The total can then be divided Into 7 equal contributions (I.e. for 7 flats) and money pooled accordingly. It always looks decent, honest and honourable If the accounts are kept clean, transparent and straight forward.

You must therefore not hesitate to put the breakdown of the costings In details, so that there Is no room left for any criticism by any one.

Although, I believe kuckoo too will appreciate this Idea, but he should also be taken Into confidence and consulted/notified accordingly, so



that he knows when he stands with us.

As regards the toilet facilities for the guards are concerned, I strongly oppose the idea of building toilet **on my roof just for them.**

However, I may not object for them to use toilet once the roof part is built the way I want it.

Therefore, if you have the slightest inclination to help me build on the roof, I can send you a sketch plan for my proposal.

I know, you keep on rubbing on me that it is not allowed and hence can't be built.

I was not born yesterday and I am not daft either. Just be sincere and honest with me (like I am with you) and think if it was allowed to build your 3rd floor in the front and my floor at the back is not allowed (which is not even visible from outside). O' come off it.

Perhaps you can get it built the same way for me as you did for yourself.

I am willing to pay bribe/penalty and/or anything else. I firmly believe if there is a will there is a way. I have said my piece and now leave the ball in your court. Perhaps you will like to kick it now.

You may say I am a funny old character, but I am assure you. I am sincere, honest and straight forward but blunt indeed very blunt. With me you get what you see. At least I am not a 2 faced person. You fully well know where you stand with me. Any way I don't wish to dwell on it. This cheque of 25 k should only be cashed after the cheques for deposit + rent are paid in and cashed. Because there is only 10 K in this account & the cheque for 25 k will be dishonoured. Please ensure that his doesn't happen - thanks.

Well nothing more left to pen now, otherwise I would keep on writing till the cows come home. Last but not the least, I would once again sincerely thank the pair of you from the bottom of my heart for everything, you have done for me. I am a person who doesn't and will not easily forget the kindness & the help I have been receiving from you lately. Good luck and God bless you all."

73. Additionally, plaintiff no. 1 proposed an amicable settlement of accounts pertaining to maintenance expenses of the common areas, suggesting apportionment into seven distinct shares corresponding to each of the seven flats. This position was reiterated by plaintiff no. 1 in his subsequent letter dated 16.08.2009 (Exhibit D-40). While referencing to the letter dated 12.07.2009, plaintiff no.1 categorically stated that he should not be expected to bear the common expenses, including the painting of the



common shaft, more than his share. At the end of the letter, he has further stated that the money to be drawn for his share of the common expenses, via cheque, should not be drawn until the rent cheque has been encashed. The relevant portion of the letter dated 16.08.2009 reads as under:-

"I believe it is excessive because when I left India, I was given a final account to settle as around Rs. 259K, that was increased from about 3 days earlier's final account around Rs. 236K or so.

I was not even told what is this increase for and I too, do not want to question it either, because of my un-shaken trust in you.

As a result, I sent you 2^{1/2} lakhs to settle the major part of the final account, leaving a small balance of few thousands to be settled from my rent money.

This is what I said in my letter of 12th July 2009 to you. As far as the cost of painting of the shaft area behind the kitchen is concerned, I am more than willing to pay my share because I believe this is a common shaft to all flats. Bindy – in fairness, you must not expect to me pay this cost alone. You did the same before when the staircase was painted. I actually feel very embarrassed to pick up things like this. Please do not make me feel small. You see, when costing details are not clarified, it only creates a cloudy situation which is very un-healthy for good relations. So, please try to avoid such situation and always provide clean & detailed accounts ---- just like I normally do. By doing so, I am confident you will enjoy more comfortable and happier life.

You know well about my bank account situation. So please only present your cheque for cashing-up once my August rent cheque has been chased in --- thanks.

I have another request to make for your help.

You may remember, where the workers were breaking and dismantling my bathrooms, some damage was done to Amolak's flat down below, that I promised to make it good for him.

He did ring me up to remind me of my promise.

So, please can you do me a favour of getting this little paintwork etc. done, let me know the cost involved and I will pay you for this promptly."

74. For further sake of clarity, the relevant portions of the letter dated 12.07.2009, which has been referenced in the letter dated 16.08.2009, are also reproduced as under:-



“...I trust by now you have received the money I sent for you. Any other balance remaining can be either settled on my next visit or by adjustment from my rent money if and when the flat is let. Also, please let me know my monthly contribution towards the cleaning & other services, i.e. water, guards, electricity & house tax etc(Ipaoid elect bull + house tax). Perhaps I can leave money for all these in advance with you for the whole year (once I know the amount)...”

75. Furthermore, not only the house taxes and rentals being collected and being tallied as if a partition had already taken place, in fact, there exist distinct electricity connections procured by each brother for their respective units, evidenced by separate electricity bills and payment receipts, such as Exhibit DW1/25 for defendant no.1 and Exhibits D-20, D-28, and D-29 for plaintiff no.1. These aspects further reiterate separate and exclusive consumption of electricity in view of the separate electricity meters were independently installed in the names of the parties. In fact, this arrangement seems to have precipitated close to the timeline of the purported oral partition. It can also be seen that *vide* letter dated 05.03.1999, plaintiff no. 1, along with his later mother, expressly requested the Executive Engineer, Delhi Vidyut Board, to transfer the electricity meter into his name with respect to the rear second-floor flat, further substantiating the independent nature of occupation and enjoyment of each portion. The said contents of the letter dated 05.03.1999 read as under:-

To
The Executive Engineer
Delhi Vidyut Board
R.K. Puram
New Delhi

“DT: 5/3/99

Sub. : TRANSFER OF ELEJCTRIC METRE.
K-3614976 BOOK NO.L 708 SUB TYPE DL
K-3614968_B00K NO.L 708 SUB TYPE DP



Dear Sir,

*Above mentioned Metre K Nos standing in my name In the flat of f-62
(Rear side) Green Park Main, New Delhi-110016.*

*I am an old lady of 95 years of age. I want to transfer my electric metre
in the name of my son Kanwar Surjit Singh who is the legal owner of
this flat and oblige.*

Thanking you.

Yours faithfully

SMT. ISHWAR KAUR

F-62, Green Park

New Delhi-110016.

Kanwar Surjit Singh”

76. With respect to the decision relied upon by the learned senior counsel for the plaintiffs on the aspect of lack of a specific date of oral partition, the facts of the case in ***Lala Om Prakash v. Hari Ram***¹⁷ are distinguishable in certain aspects. In ***Lala Om Prakash***, the appellate Court therein found that the plea of oral agreement was not substantiated by precise or cogent pleadings, nor was any material placed on record to establish the circumstances or necessity of the alleged oral agreement. The claim was found to be vague and unsupported by specific assertions regarding the date, month, or year of the purported oral settlement. Further, there was no corroboration from independent witnesses, nor was there any documentary evidence to demonstrate the conduct of parties pursuant to such an alleged oral arrangement.

77. However, in the instant case, the assertion of oral partition is instead borne out from a consistent course of conduct over the past two decades. In

¹⁷ 2004 SCC OnLine Del 1065



the cross-examination, defendant no.1 was not able to specify the exact date and time as to the oral partition. However, a perusal of the sale deed dated 08.06.1998 would provide a proximate and reasonable timeframe as to the occurrence of the oral partition. The sale was conducted as between two brothers alone, without the participation of other co-owners, thus indicating an arrangement based on clear demarcation and understanding of respective shares. In ***Lala Om Prakash***, the context and occasion of the oral settlement remained unexplained. Here the execution of the sale deed provides a clear anchor as to the transfer of rights in the specific portion. The payment of electricity bills may alone not stand as proof of oral partition as noted in ***Lala Om Prakash***. However, in the instant case, the license agreements in respect of specific units (Exhibits DW1/26 to DW1/30), and bank records showing receipt of license fee from tenants into separate accounts indicate exclusive and conscious enjoyment of specific units by the respective brothers, consistent with a family partition. Furthermore, unlike in ***Lala Om Prakash***, the present case is replete with acknowledged documents and communications, letters written by plaintiff no.1 (Exhibits. D-19, D-24, D-25, D-26, D-40), which indicate towards sharing expenses based on the units held by the parties and not on the actual 1/5th shares.

78. Thus, whereas mere possession in the nature of temporary accommodation or electricity bills alone may not have supported the case of the defendants, the conduct of the parties and their internal correspondence provides further light into the existence of an oral partition.

79. As regards the contention raised by the plaintiffs with respect to the alleged material inconsistencies in the cross-examination of DW-1,



particularly with respect to the assertion that an oral partition had taken place in the year 1998 in the presence of all siblings and the mother, the Court is of the considered view that the discrepancies or variations in the witness's recollection of time, date, or sequence of events, especially when the events in question occurred several decades ago, cannot by themselves render the substantive defence of the defendants untenable.

80. It is well established that when testifying to incidents long past, some inconsistency in memory or narration is not only natural but expected, and such inconsistencies cannot override cogent documentary evidence and the overall conduct of the parties. In the present case, although DW-1 initially stated that the oral partition took place in 1998, certain inconsistencies arose upon confrontation with the passport entries of one of the plaintiffs, suggesting their absence from India at the relevant time. However, the evidentiary significance of such inconsistencies is considerably diluted in view of the unimpeached documentary evidence. The undisputed facts, such as the parties occupying separate premises for a prolonged period, separately paying municipal taxes and utility charges, and engaging in independent correspondence regarding their respective properties, collectively establish a consistent course of conduct pointing unequivocally towards a mutually accepted family arrangement or oral partition prior to the year 2000.

81. It is trite law that minor inconsistencies in oral testimonies cannot prevail over credible documentary evidence. Reference can be made to the decision of ***Hankari Devi v. Rajbhawani Devi***¹⁸, wherein, it was held that

¹⁸ 2007 SCC OnLine Pat 162



discrepancies in oral evidence must yield to overwhelming documentary evidence. In the said decision, the Court observed that despite certain inconsistencies in the oral testimonies, the presence of overwhelming documentary evidence established the partition between the parties. The Court explicitly held that documentary evidence is to be preferred when evaluating claims of oral partition, particularly when such evidence is reliable, consistent, and corroborative of the parties' independent conduct, such as separate enjoyment and management of properties. The relevant portion of the said decision reads as under:-

“23. On the basis of the above discussions, I have come to the conclusion that there, are overwhelming documentary evidence on record in support of this fact that in the year 1920 itself the partition had taken place between the parties, and I am of the view that the Plaintiffs of Title Suit No. 164 of 1967 has successfully discharged the on us of proving partition by adducing sufficient and reliable documentary evidence.

24. As regards the oral evidence, I find that the evidence of P.W. 4 Basudeo Singh, P.W. 10 Abdul Rahim, P.W. 13 Satya Narain Mishra, P.W. 18 Mathura Raut are on the point of partition. It is true that there are some discrepancies in their evidence but in view of the overwhelming documentary evidence on the point of partition these discrepancies are of not much value. It appears that in support of joint possession the Defendants of Title Suit No. 164 of 1967 had examined several witnesses, namely, D.W. 1 Sheo Ratan Baitha, D.W. 3 Sajawal Singh, D.W. 4 Thakur Singh-, D.W. 5 Mahadeo Mahto, D.W. 6 Sheo Gulam Mahto, D.W. 8 Magister Singh, D.W. 9 Thakur Singh, D.W. 10 Ramdeni Sah, D.W. 11 Satyanarain Singh, D.W. 13 Bishun Singh, D.W. 17 Hari Nandan Singh, D.W. 19 Ram Dayal Singh, D.W. 20 Subedar Singh and D.W. 21 Hankari Devi but their evidences were not found trustworthy by the Trial Court for which the Trial Court has given cogent reason. I am also of the view that in view of the overwhelming documentary evidence on the point of partition, the Trial Court-has rightly disbelieved the oral evidence adduced on behalf of the Defendants of Title Suit No. 164 of 1967.

25. Thus, on the basis of the discussions made above, I find and hold that there was no unity of title and unity of possession between the



parties with respect to the suit land and there was complete partition by metes and bound between the parties in the year 1920 itself. Point No. I is answered accordingly.”

82. Therefore, the inconsistencies in DW-1’s cross-examination are not fatal to the case of the defendants. On the contrary, the contemporaneous documentary evidence and the long-standing conduct of the parties constitute strong indicia of the existence of a family arrangement or partition. Accordingly, the defence set up by the defendants remains sustainable and stands substantiated through unimpeachable evidence, despite the insignificant infirmities in the oral deposition.

83. Taking into consideration the same, the Court is of the considered opinion that the conduct of the parties clearly demonstrates that they have acted upon and treated the suit property as having been partitioned pursuant to the oral arrangement. This observation is fortified by the fact that the parties have been in separate and exclusive possession and enjoyment of their respective portions, as evidenced by consistent, distinct, and independent dealings with their units.

84. In view of the overwhelming evidence indicating separate possession and enjoyment of their respective portions of the suit property, over a significant period of time, it remains concluded that an oral partition was indeed acted upon by the parties. The documentary evidence amply supports the conclusion that independent and clearly delineated rights in the suit property have been created.

85. Thus, Issues Nos.1 to no.3 stand adjudicated in favour of the defendants. In view of the same, further issues are not required to be dealt



2025:DHC:3484



with. The claim for a fresh partition, or reopening of settled rights lacks merit and is unsustainable.

86. The case of the plaintiffs fails. The instant civil suit stands dismissed. The parties shall bear their own costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

MAY 6, 2025
AKS/SP