



\$~

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

Reserved on: 07.04.2025
Date of Decision: 16.04.2025

+ **FAO(OS) (COMM) 36/2025, CM APPL. 12729/2025 & CM APPL. 12731/2025**

SH. VINAY JAINAppellant
Through: Mr. H.S. Thukral and Mr. S. Thukral, Advs.

versus

SH. RAKESH JAIN & ORS.Respondents
Through: Mr. Rajesh Raina, Adv.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

J U D G M E N T

%

AJAY DIGPAUL, J.

1. The present appeal impugns the order dated 10.09.2024 passed by the learned Single Judge in CS(COMM) 354/2022. The appellant, Sh. Vinay Jain, was the original defendant in the said suit filed by the respondents, Sh. Rakesh Jain & others, who are his close family members.

2. The suit pertained to a long-standing familial dispute revolving around an immovable industrial property located at Plot No. 475,



Functional Industrial Estate, Patparganj, Delhi¹, and the business affairs of M/s V. Shah & Company, a partnership firm constituted in 1984.

3. The plaintiffs asserted their entitlement to the suit property and the assets of the firm, claiming that the firm was jointly operated and the suit property was acquired using the funds generated through the partnership business. The plaintiffs contended that the property, though standing in the name of the firm, was essentially joint family property and subject to partition.

4. The defendant/appellant disputed this claim, asserting that the property was self-acquired, funded solely through his personal savings, and merely registered in the firm's name for convenience. He further relied upon a Memorandum of Family Settlement dated 27.11.2007, whereby Smt. Pratibha Jain (wife of the plaintiff) had allegedly relinquished her rights in the suit property in favour of the appellant, in exchange for a reciprocal relinquishment by the appellant's wife in an ancestral residential property at Arya Pura.

5. The plaintiffs refuted the validity and enforceability of the 2007 Memorandum, contending it was neither acted upon nor reflected a valid and binding relinquishment. They further argued that the firm was never formally dissolved, and that the appellant had continued to



occupy the property and exploit the firm's assets unilaterally post the demise of Smt. Pratibha Jain in 2012.

6. Upon completion of pleadings, the matter was listed before the learned Single Judge for settlement of issues. With the assistance of counsel for both sides, the learned Single Judge, by order dated 10.09.2024, framed the following eleven issues for trial:

“(i) Whether the plaintiffs are entitled to the relief of rendition of accounts w.r.t the Partnership Firm – M/s V. Shah and Company, if so to what extent and from which date? (OPP)

(ii) Whether the claim for rendition of accounts w.r.t. the Partnership Firm – M/s V. Shah and Company is barred by limitation? (OPD)

(iii) Whether the dissolution of the Partnership firm – M/s V. Shah and Company without distribution of the assets, suit property, profits and goods and machinery is legal and valid? (OPD)

(iv) Whether the document dated 27.11.2007 namely Family Settlement, the document dated 17.07.2012 allegedly showing the settlement of accounts of Partnership firm – M/s V. Shah and Company and affidavit dated 16.10.2012 are genuine and valid documents executed by the parties including the plaintiffno.1? (OPD)

(v) Whether the Partnership firm – M/s V. Shah & Company was validly dissolved upon the demise of Smt. Pratibha Jain, and whether the accounts of the firm were settled with the plaintiffs thereafter? (OPD)

(vi) Whether the subsequent creation of the sole proprietorship firm by defendant with the assets of the Partnership firm – M/s V. Shah and Company is illegal? (OPP)

(vii) Whether late Smt. Pratibha Jain relinquished her 50% share and ownership rights in the suit property by executing the Memorandum of Family Settlement dated 27.11.2007? (OPD)

(viii) Whether the plaintiffs are entitled to reliefs of partition of the suit property, if so to what extent? (OPP)



(ix) Whether the plaintiffs are entitled to the relief of mesne profits for the defendants use of the suit property, if yes, then from which date and to what extent? (OPP)

(x) Whether the plaintiffs are entitled to interest on the amounts claimed for rendition of accounts of the Partnership firm as well as on the mesne profits from the suit property, if so at what rate and from what time? (OPP)

(xi) Relief and Costs.”

7. Following the framing of issues, the learned Single Judge, upon considering the nature of the pleadings and the distribution of onus, invoked the principle under Order XVIII Rule 1 of the Code of Civil Procedure, 1908² and directed the defendant to lead evidence first on the issues where the burden lay upon him. The Court reasoned that the substratum of the defence, particularly in relation to issue no. (iv), which concerns the genuineness of the documents relied upon by the defendant, and issue no. (vii), which pertains to the alleged relinquishment of rights by Smt. Pratibha Jain under the Family Settlement dated 27.11.2007, rests on the documents that are within the exclusive knowledge of the defendant. In these circumstances, it was held appropriate that the defendant should begin with the evidence.

8. Accordingly, the learned Single Judge directed that the defendant shall begin the evidence on issues where the onus is on him and produce the originals of the disputed documents during trial. The impugned order thereby set down the sequence of trial beginning with the defendant's evidence.



9. Aggrieved by this direction, the appellant/defendant has preferred the present appeal, wherein the following reliefs are sought:

“a. To set aside the impugned order dated 10/09/2024, issued by the Learned Single Judge, which erroneously directs the APPELLANT to lead evidence first in the suit for partition, possession, rendition of accounts, and permanent injunctions.

b. To declare that the burden of proof lies with the respondents i.e., the original plaintiffs in the partition suit, as they are required to substantiate their claims and establish their title over the suit property.

c. To issue directions to the respondents to commence leading their evidence in accordance with established legal principles and the provisions of Order XVIII Rule 1 of the CPC”

10. We have heard the parties.

11. The main contention which has been raised by the appellant is as regard to the fact that the learned Single Judge while passing the impugned order dated 10.09.2024 has overlooked the provisions of Order XVIII Rule 1.

12. On contrast, learned Counsel for the respondents submits that the present appeal is misconceived and filed only to delay the proceedings before the learned Single Judge. It is contended that the impugned order dated 10.09.2024 was passed in the presence of counsel for the appellant, who had, during the course of the hearing, consented to lead evidence first. It is further submitted that the direction to lead evidence first is legally sound and in line with the settled principles under Order XVIII Rule 1 CPC, particularly since the burden of proof in relation to issue no. (iv) and issue no. (vii) lies



squarely on the appellant. The Respondents argue that the appellant cannot shift the burden of proof when it is he who has raised the Family Settlement as a complete defence to the plaintiffs' claim.

13. They submit that the issues framed are not party-specific but issue-specific, and where the defendant sets up facts in his special knowledge or possession, the Court is empowered to direct the defendant to begin evidence.

14. For the ready reference, we may reproduce the Order XVIII Rule 1 of CPC:

“Right to begin— The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.”

15. The rule, as prescribed under Order XVIII Rule 1, is that, it is the plaintiff who has the right to begin, unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by defendant, the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

16. The general rule is that the plaintiff is to lead the evidence and thereafter the defendant will have a chance to lead his evidence. In such a situation where the Court can direct the defendant to lead evidence before the plaintiff is only *when there is an admission by the defendant to the facts as alleged by the plaintiff and contends that either in point of law or on some additional facts, the plaintiff is not*



entitled to any part of the relief which he seeks. Thus, it is the admission, by the defendant, which is the trigger point for deciding as to whether the defendant would lead evidence before the plaintiff.

17. When we go through the impugned order under challenge, we do not find that the learned Single Judge has made any observation as regard to the admission by the defendant to the case of the plaintiff. On the contrary, the present appeal which has been filed by the defendant clearly shows that there is no admission by him to the case of the plaintiff.

18. In terms of the procedure stipulated in CPC, it is clear that a general rule is that it is the plaintiff who will lead the evidence until and unless there is an admission by the defendant to the case of the plaintiff and contention either in point of law or some additional facts alleged by the defendant. The defendant cannot be asked to lead the evidence before the plaintiff.

19. Learned Counsel for the respondent relies on the following passage from ***Jami Venkata Suryaprabha & Ors. v Tarini Prasad Nayak & Ors.***³

“18. Order XVIII Rule 1 indeed provides for plaintiff's right to begin the evidence but not the court's obligation to ask the plaintiffs to begin first. There is no impediment for the court to call upon either party to lead evidence first, depending upon the facts and circumstances of the case and the nature of the issues framed. Neither party can insist that the other one should be asked to lead it first. It all depends upon what the Court deems proper in the circumstances. Where it finds that defendant's plea strikes of the root of the case, there would be no hitch in asking him/her to prove



such plea first which can lead to disposal of the case. There can be no watertight compartmentalisation in matters of justice and all rules of procedure are designed and directed to achieve and secure ends of justice.”

20. This passage, in our opinion, does not derogate from the view we have taken while deciding the issue as regard to which party would lead evidence, the Hon’ble Supreme Court has clearly observed that there is no impediment for the Court to call upon either party to begin, depending on the facts and circumstances of the case and the nature of the issue framed. The Court cannot be seen as having relaxed the rigour of Order XVIII Rule 1 of CPC.

21. Therefore, we hold that the general rule is that it is the plaintiff who has a right to begin, unless the defendant admits all the “material allegations” in the plaint, and contends that either in point of law or some other additional facts, that the plaintiff is not entitled to the relief claimed. To deviate from the general rule, as regards who will lead the evidence, the Court has to satisfy itself that the situation is in compliant of the latter part of Order XVIII Rule 1, and as such the defendant has to begin before the plaintiff.

22. We have also perused the order passed by the learned Single Judge and do not find any observation to the effect that the defendant has admitted the material facts pleaded by the plaintiffs. Nor does the order indicate that the facts or documents relied upon by the defendant are, by themselves, capable of conclusively determining the plaintiffs’ entitlement to relief. On the contrary, the learned Single Judge has noted that in the event the defendant fails to prove issue nos. (iv) and



(vii), the plaintiffs would become entitled to seek rendition of accounts in respect of the partnership firm, M/s V. Shah & Company, as well as mesne profits from the suit property, subject to the plea of limitation. However, this observation itself suggests that the outcome of these issues, while relevant, would not by themselves resolve the fundamental dispute between the parties and they are required to discharge their respective onus of proof. In such circumstances, we are of the view that the directions given by the learned Single Judge in the impugned order dated 10.09.2024 to lead evidence, would not be justified.

23. In that view of the matter, we find that the order dated 10.09.2024 passed by the learned Single Judge in CS(COMM) 354/2022 is liable to be set aside. The plaintiffs will, therefore, have to lead the evidence in the proceedings, in accordance with law.

AJAY DIGPAUL, J.

C. HARI SHANKAR, J.

APRIL 16, 2025/an

Click here to check corrigendum, if any