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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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RFA 594/2014

Between: -

NANDAN SINGH

S/O LATE HARPHOOL SINGH

R/O 62, VILLAGE MADANGIR,

NEW DELHI-110062

....APPELLANT

(Through: Mr. B.C. Pandey, Advocate.)

AND

1. SMT. LAXMI DEVI

(SINCE DECEASED THROUGH LEGAL HEIRS)

(I) SH. JITENDER (DECEASED) THROUGH HIS LEGAL HEIRS

(A) SH. PRABODH S/O LATE JITENDER

R/O VILLAGE PURPANCHI,

TEHSIL & P.O. GANNAUR,

DISTRICT- SONEPAT, (HARYANA)

(B) SH. ANAND @ BALI S/O LATE JITENDER,

R/O 1738, MOHALLA MAMORPUR, NARELA, DELHI

(C) SMT. SUMAN W/O SH. JAGBIR,

D/O LATE JITENDER, R/O VILLAGE BAPRAULA,

NAZAFGARH, DELHI

(D) SMT. SUSHMA, W/O SM. VINOD,



D/O LATE JITTENDER,
R/O MOHAN GARDEN, UTTAM NAGAR, NEW DELHI

(E) SMT. PRAVEEN D/O LATE JITTENDER,
W/O SH. RAJESH, R/O VILLAGE CHHAWLA,
NAZAFGARH, DELHI

**(II) SMT. SHAKUNTALA (DECEASED DAUGHTER
OF LATE LAXMI DEVI, THROUGH LEGAL HEIRS)**

(A) SH. SANDEEP S/O LATE SMT. SHAKUNTALA
(B) SH. SANJAY S/O LATE SMT. SHAKUNTALA
(C) SMT. SUBHASHINI D/O LATE SMT. SHAKUNTALA
ALL R/O J-72A, MOHAN GARDEN, RAMA PARK ROAD,
(OPP. KANHA BEKERY), DELHI

(III) SMT. SULAKSHANA W/O DR. JAGJIT KATARIA,
D/O LATE LAXMI DEVI
R/O 537/1, KHERA DEVAT ROAD,
OFF. BHIM NAGAR MOR,
GURGAON (HARYANA)

2. PRATAP SINGH (DECEASED)

S/O LATE CH. HARPHOOL SINGH (THROUGH LEGAL HEIRS)

(A) DELETED (deceased on 01.05.2024, deleted pursuant to order
dated 07.05.2024)

(B) SH. VINESH CHAUDHARY S/O LATE PRATAP SINGH

(C) SH. RAKESH CHAUDHA S/O LATE PRATAP SINGH

(D) SH. AKHILESH S/O LATE PRATAP SINGH

ALL R/O HOUSE NO. 61 MADANGIR VILLAGE, NEW DELHI-62

(E) SMT. USHA DAHIYA
W/O SH. RAMESHWAR DAHIYA,



D/O LATE PRATAP SINGH, R/O H-380,
VIKASPURI NEW DELHI-75

(F) ASHA RANI W/O YASHPAL DEBAS
D/O LATE PRATAP SINGH R/O A-5, EDEN TOWERS
PLOT NO. 20, SECTOR-5, DWARKA, NEW DELHI-75

(G) SMT. SHOBHA RANI W/O SH. BALRAJ DAHIYA,
D/O LATE PRATAP SINGH
R/O POCKET C-2, HOUSE NO. 41,
SECTOR-15, ROHINI, DELHI-110085

(H) SMT. ESHA CHAUDHARY,
W/O SH. HARJINDER SINGH,
D/O LATE PRATAP SINGH
C/O MS. NATHIA DEVI
R/O HOUSE NO. 61, MADANGIR VILLAGE,
NEW DELHI-62

**3. SMT. VIDYA WATI (DECEASED)
D/O LATE CH. HARPHOOL SINGH THROUGH LEGAL HEIRS**

(A) SMT. SUMITRA SINGH, W/O SH. GURUSHARAN SINGH
D/O LATE SMT. VIDYA DEVI
R/O 43, SECTOR - 7A, FARIDABAD, HARYANA-1121006

(B) SH. VIDENDER SINGH, I.R.S.
S/O CHAUDHARY NIRANJAN SINGH &
LATE SMT. VIDYA WATI
R/O B-64, FRIENDS COLONY (WEST),
NEW DELHI

....RESPONDENTS

(Through: *Mr.Davinder Varma, Advocate for respondent no.2*)

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Reserved on: 17.12.2024
Pronounced on: 24.01.2025

Signature Not Verified
Digitally Signed By: NEHA
CHOPRA
Signing Date: 24.01.2025
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By: PURUSHAINDRA
KUMAR RAURAV



JUDGMENT

This appeal is preferred by the appellant/plaintiff against the impugned judgment and decree dated 14.07.2014, passed by Additional District Judge-03, (West) Tis Hazari Courts, Delhi, whereby, Civil Suit No. 468/14/99 filed by the appellant/plaintiff for partition and rendition of accounts in respect of immovable properties has been dismissed.

2. The original description of the parties before the Trial Court is retained.

BRIEF BACKGROUND OF THE CONTROVERSY

3. A brief account of the facts of the case at hand would manifest that the appellant/plaintiff and respondent/defendant are close family members, descendants of a common ancestor, namely, Chaudhary Harphool Singh (deceased). Respondents/defendants no. 1 and 3 are the sisters and the respondent/defendant no.2 is the brother of the plaintiff. The father of the contesting parties, Chaudhary Harphool Singh had four children i.e. two sons and two daughters, out of which three children have unfortunately died, and the only son, who is the appellant herein now survives.

4. For the purpose of the present appeal, it is noted that the appellant/plaintiff had initially instituted a civil suit for partition *simpliciter*. However, he subsequently amended the said suit and incorporated the relief of rendition of accounts against the legal heirs of his brother, respondent/defendant no. 2, Mr. Pratap Singh (deceased). Later, the legal heirs of respondent/defendant no. 1 and 3 were directed to be impleaded as parties *vide* Court order dated 08.12.2011.



5. It is an admitted case between the parties that both the daughters of Chaudhary Harphool Singh, had relinquished their respective shares in favour of the appellant/plaintiff and respondent no.2/defendant no.2. Respondent no.1/defendant no.1 and respondent no.3/defendant no.3, therefore, have neither contested the civil suit nor are contesting the instant appeal. The dispute now, therefore, remains between the two brothers.

6. It is the case of the appellant/plaintiff that Chaudhary Harphool Singh was the owner of residential as well as agricultural properties in the village Madangir, New Delhi. The agricultural land had already been acquired by the Government of India under the provisions of the Land Acquisition Act, 1894 and, therefore, it is the residential properties which are the subject matter of the dispute.

7. As per the case of the appellant/plaintiff, he along with respondent no.2/defendant no.2, late Mr. Pratap Singh, inherited in equal shares, the following properties, left behind by late Chaudhary Harphool Singh:-

"(i) The built up property bearing Municipal No. 61 measuring 430 Sq. Yds. Comprised of Khasra No.11, situated in the extended Lal Dora of Village Madangir, New Delhi, more correctly shown in the site plan annexed herewith as Annexure - A.

(ii) Built up property No. 62 measuring about 360 Sq. Yds. and comprised in Khasra No.11, situated in the extended Lal Dora of Villages Madangir, New Delhi, more specifically shown in the site plan annexed herewith as Annexure - B.

iii) Built up property bearing Municipal No. 34 measuring 100 Sq. Yds. situated in the village Abadi of Village Madangir, New Delhi, more specifically shown in the site plan annexed herewith as Annexure 'C'.

iv) Built up property bearing No.38, measuring about 25 Sq. Yds. situated within the village Abadi of Village Madangir, New Delhi, more specifically shown in the site plan annexed as Annexure-D."



8. According to him, since no formal partition by meets and bounds had taken place between the appellant/plaintiff and late respondent no.2/defendant no.2, property no.61 was in occupation of respondent no.2/defendant no.2 and property no.62 was in possession of appellant/plaintiff. The appellant/plaintiff submitted that property no.34 and 38 were in the occupation of several tenants, however, the appellant/plaintiff and late Mr. Pratap Singh had been collecting the rent from the tenants, which was later divided in equal shares between them. Therefore, they were in constructive and symbolic possession of the aforesaid properties by mutual convenience.

9. According to the appellant/plaintiff, as the family members of the parties have grown up and it had become impossible and impracticable for the parties to keep the properties as joint and undivided, therefore, he requested for a partition. Since the request was not acceded to, therefore, he had to institute the civil suit. According to the appellant/plaintiff, respondent no.2/defendant no.2 is in occupation of a bigger portion i.e. 430 sq. yds. whereas, the appellant/plaintiff is in occupation of 360 sq. yds property and therefore, respondent no.2/defendant no.2, being in an advantageous position, avoided the partition of the properties in question with *mala fide* intent.

10. The respondent no.2/defendant no.2, through his legal heirs, contested the civil suit and countered the submissions made in the plaint. According to the case of respondent no.2/defendant no.2, a family settlement had already taken place during the lifetime of Chaudhary Harphool Singh, and on relinquishment of the share by Ms. Laxmi Devi and Ms. Vidya Wati, daughters of Chaudhary Harphool Singh, the properties were partitioned by



metes and bounds in favour of the appellant/plaintiff and respondent no.2/defendant no.2.

11. It is the case of the respondents/defendants that approximately three decades ago, the properties in question were partitioned. Property No. 62, admeasuring 360 sq. yds, endowed with dual access points from both side roads, a main thoroughfare and a notable historical gate facing the main road, was allocated to the appellant/plaintiff. Conversely, Property No. 61, admeasuring 430 sq. yds., situated at the rear and accessible solely via a side lane with limited construction comprising merely one room, was allocated to respondent no.2/defendant no.2. This partition delineated distinct advantages and limitations for each party, underlining the unique characteristics and value assessments attributed to each property.

12. It is the case of respondent no.2/defendant no.2 that the parties occupied their respective portions as per mutual convenience, and they are enjoying their possession as per their respective shares independently and exclusively.

13. In the replication filed by the appellant/plaintiff, all claims of partition of the suit properties during the lifetime of their father were denied by him. He further denied a strict allocation of the properties in demarcated shares by his father and averred that the family settlement remained confined only to the relinquishment of shares by the deceased defendant/respondent sisters in favour of the appellant/plaintiff and the respondent/defendant no.2.

14. The Trial Court after completion of the pleadings has framed the following issues for its consideration:-

"(1) Whether the partition in respect of property bearing no. 61,62,34 &38 of Village Madangir had already been acted upon between the parties as alleged in the written statement? OPD



(2) Whether the suit is bad for misjoinder of necessary parties as alleged in the written statement? OPD

(3) Whether the suit is not properly valued for the purpose of court fees and jurisdiction as alleged in the written statement? OPD

(4) Whether the suit of the plaintiff is without cause of action? OPP

(5) Whether the plaintiffs the owner of the suit property, if so, to what extent? OPP

(6) Whether the plaintiffs entitled to a decree of partition as claimed? OPP

(7) Whether the plaintiff is entitled to a decree for rendition of accounts as claimed? OPP

(8) Whether the plaintiffs entitled to any interest, if so, at what rate, at what amount? OPP

(9) Relief"

15. On consideration of the evidence and the material available on record, the Trial Court, by impugned judgment and decree, dismissed the Civil Suit and held that the subsequent conduct of the parties reinforced the fact of oral partition which had taken place way back during the lifetime of Chaudhary Harphool Singh and which has been duly acted upon by the respective parties. The Trial Court found that the parties had re-constructed their respective portions and therefore, once the partition of the property had taken place, there was no necessity to direct for further partition. The relevant finding of the Trial court has been extracted below:-

"16. In view of the above discussion of the evidence on record in relation to all the four suit properties, it is evident that partition by metes and bounds of the properties no. 61, 62, 34 & 38, Village Madangir, New Delhi had been duly effected between the plaintiff and the defendant no.2 during the life time of their father Ch. Harphool Singh and that they had also been put in separate and exclusive possession of their respective shares by the father. The subsequent conduct of the parties in relation to the portions in their possession also lead to the inference that the said division of suit properties was not only accepted but was also acted upon by them. Accordingly, the issues no. 1 & 4 are decided in favour of the



defendants no. 2(i) to (viii) and the issue no. 5 is decided against the plaintiff.”

16. It is the aforesaid judgment and decree which has been challenged by the appellant/plaintiff in the instant appeal under Section 96 of the Code of Civil Procedure, 1908.

SUBMISSIONS

17. Mr. B.C. Pandey, learned counsel appearing on behalf of the appellant/plaintiff submits that the impugned judgment and decree is illegal and improper. The same has been passed without appreciating the material available on record in right perspective and has over looked significant evidence. According to learned counsel, the alleged oral partition had never taken place and in absence of there being satisfactory evidence which ought to have been adduced by the respondent no.2/defendant no.2, the theory of oral partition should not have been accepted by the Trial Court. Learned counsel submits that the alleged partition is completely disproportionate. The appellant/plaintiff who occupies property no.62 is of 360 sq. yds., whereas, the property no.61, stated to have fallen in the share of respondent no.2/defendant no.2 Mr. Pratap Singh, is of 430 sq. yds. He, therefore, submits that such a disproportionate partition could not have occurred at all. He further submits that vague pleadings by the legal heirs of Mr. Pratap Singh would not completely discharge the onus of proving valid and legal partition. He, further, submits that respondent no.2/defendant no.2 was required to prove, the year, month, and the date of the alleged oral partition. Learned counsel submits that there is no evidence to establish the oral partition.



18. Learned counsel appearing on behalf of the petitioner has also placed reliance on a decision in the case of *Lala Om Parkash v. Hari Ram*¹. He, then contends that occupation of the parties of their respective portions and construction, renovation or alteration in respect of their respective portions will not lead to a conclusion that there had been an oral agreement or any independent right emerged in relation to the said property, unless actual partition has taken place. He emphasised on paragraph no.13 of the aforesaid decision.

19. The aforesaid contentions are strongly refuted by legal heirs of Mr. Pratap Singh. Learned counsel Mr. Davinder Varma, appearing on behalf of respondent no.2/defendant no.2 submits that the instant Civil Suit came to be filed in the year 1999, whereas, the partition had taken place way back during the lifetime of Chaudhary Harphool Singh, before the year, 1984.

20. Learned counsel for respondent no.2/defendant no.2 while drawing the attention of this Court to the pleadings made in the plaint, emphasised that according to the appellant/plaintiff himself, the family settlement had taken place where, the sisters of appellant/plaintiff and Mr. Pratap Singh, relinquished their respective shares. Learned counsel then emphasised that this family settlement itself establishes the factum of family partition.

21. It is the case of respondent no.2/defendant no.2 that the appellant/plaintiff deliberately and intentionally did not file the Civil Suit for partition during the lifetime of respondent no.2/defendant no.2, Mr. Pratap Singh, who died on 21.10.1990. It is his submission that the appellant/plaintiff has himself admitted that there is a wall existing between

¹ AIR 2005 Delhi 190



property no.61 and 62 and the said wall was constructed by respondent no.2/defendant no.2 during his lifetime. Learned counsel, therefore, submits that the Court below has thoroughly examined the material available on record and has rightly evaluated the evidence which does not require any reconsideration. He, then, placed reliance on a decision passed by this Court in the case of *Vineet Sharma v. Rakesh Sharma and Ors.*², the decision of the Rajasthan High Court in the case of *Shubh Narayan Mathur v. Kailash Narayan Udawat and Others*³ and another decision of this Court in the case of *Suraj Bhan Arya v. Pooran Chand Arya*⁴.

ISSUE FOR CONSIDERATION

22. I have considered the submissions made by learned counsels for the parties and perused the record.

23. In light of the controversy set up by the parties, the issue that arises for consideration before this Court is whether, under the facts of the present case, an oral partition can be considered to have been validly executed?

ANALYSIS

24. It is an admitted position that the original owner of the suit properties was late Chaudhary Harphool Singh. The case of the respondents/defendants is that the family members entered into a family settlement during the lifetime of Chaudhary Harphool Singh, whereby, the daughters of late Chaudhary Harphool Singh had relinquished their rights in the suit

² 2013 (139) DRJ 244

³ 2015 Legal Eagle (Raj) 937

⁴ 2023 SCC OnLine DEL 36



properties in favour of their brothers. Thereupon, the partition of the suit properties was effected between the brothers by their father himself.

25. However, the appellant/plaintiff asserts that the family settlement that was entered into by the family members was confined to the relinquishment of shares by the sisters and hence, no partition of the suit properties had taken place. He averred that the suit properties were inherited by the brothers in equal shares after the demise of their father in 1984. Since the oral nature of the family settlement is uncontroverted and in absence of any written instrument documenting the intention of the parties, the subsequent comportment of the parties becomes material to determine whether a partition of suit properties existed in consonance with the family settlement.

26. A brief discussion about oral partition is warranted to determine whether a partition of the suit properties already existed.

27. In a Hindu Joint family, partition marks the conclusion of the joint family status, leading to the formation of new joint or nuclear families. For a partition to occur, there must be at least two coparceners in the family, as it is their state of jointness that is dissolved by the partition, meaning thereby, that partition is unattainable unless a coparcenary exists within the family.

28. Coparcenary is a fundamental aspect of Hindu joint family property, where each coparcener has an inherent title to the joint property, and collectively, all coparceners own the entire property. Partition transforms this joint ownership into independent ownership of the individual coparceners. Therefore, partition is also defined as the crystallization of the fluctuating interests in coparcenary property into specific shares in the joint family estate.



29. Partition can be effected in two ways, specifically, (i) *De Jure Partition*, when the collective interest is fragmented and transformed into fixed shares, eliminating the applicability of the doctrine of survivorship. In other words, it signifies the formal division and severance of the joint status. (ii) *De facto Partition*, when even after the severance of joint status, the unity of possession is maintained. While the shares may be fixed, no coparcener can claim any property that is exclusively theirs. The exact allocation of property to each coparcener remains unclear. However, when this unity of possession is disrupted through an actual physical division of the property, leading to exclusive possession by individual coparceners, it is termed as partition by metes and bounds.

30. Attaining a partition means effecting the severance of joint status of a coparcener in a Hindu joint family. The two key elements of partition are:-

(a) *Physical Division of Property*: This involves the actual, tangible division of property by metes and bounds, resulting in each coparcener receiving a specific, demarcated portion of the property.

(b) *Severance of Joint Family Status*: This is the legal and formal dissolution of the joint status of the family property, transforming the coparceners' shared interests into distinct and separate ownerships.

31. For a partition to be a valid partition, three essentials are required to be met, *firstly*, the formation of an intention to separate from the joint family, *secondly*, a clear, unequivocal, and unilateral declaration of the intention to separate and *lastly*, the intention must be communicated to the *Karta* or to the other coparceners in his absence.

32. The act of partition in a Hindu joint family can be materialized through various modes. A father can initiate the partition during his lifetime,



or individual coparceners may do so through a unilateral declaration. Partition can also occur by mutual agreement among family members, indicated by their conduct, or through legal suits. Additionally, serving a notice to other coparceners can express the intention of partition. Engaging an arbitrator, converting the nature of the joint property, or through the terms of a Will are also valid methods of partition. Each of these methods facilitates the division of property and the transformation of joint ownership into individual shares.

33. In the context of the specifics of the present case, it is crucial to understand the manner in which a father can initiate a partition during his lifetime under Hindu law. The law grants the father exceptional power, enabling him to carry out a partition unilaterally if the coparcenary consists solely of the father and his children. He has the authority to separate his children from himself and from each other without requiring their consent. This power, recognized under Hindu law, is part of the '*patria potestas*' (paternal power).

34. The Supreme Court in the Case of ***H Vasanthi v. A. Santha (D)*** observed that a partition can be effected under a settlement or an oral understanding. There is no prohibition to effect a partition otherwise than through an instrument in writing by duly complying with the requirement of law. Reference can be made to the case of ***Chander Mohan Sharma v. Jagdish Prasad Sharma***⁵, wherein it is recorded that the question of oral partition arises only between persons having a pre-existing right / share in the property.

⁵ 2016 SCC OnLine Del 984



35. The Supreme Court, however, in the case of *Vineeta Sharma*, has held that oral partition is not accepted as a defence unless supported by strong evidence such as separate possession of family members, different appropriation of income, entries in revenue records or other public documents confirming the partition. These are few of the indicators of intent and the element of intention to separate lies at the core of an oral partition.

36. Elucidating upon the concept of family arrangement/settlement, it is apparent that the members of a Joint Hindu family may, to maintain peace or bring about harmony in the family, enter into a family arrangement. The prime factor is that it should be in the interest of the family. A family arrangement must be entered into by all parties thereto. The enjoyment of properties by different members of the joint family, who have been put in possession pursuant to a family arrangement, operates as an estoppel against such members and cannot be jeopardized by a member resiling from the arrangement, more particularly when the arrangement had been entered into a considerable time ago. The Supreme Court in the case of *Ponnammal v. R. Srinivasarngan*⁶ has held that the validity of the compromise or family arrangement of the disputed rights depends on the facts existing at the time, and will not be affected by subsequent judicial determinations, showing the rights of the parties to be different from what was supposed, or that one party had nothing to give up.

RE- APPRECIATION OF EVIDENCE

37. This Court in the case of *Seema Bansal v. Durga Dass Bansal and Anr*⁷ expounded the scope of Section 96 of the Code of Civil Procedure,

⁶ AIR 1956 SC 162

⁷ 2024 SCC OnLine Del 5440



1908 by shedding light on the decision of *Malluru Mallappa v. Kuruvathappa*⁸. Noting that the term ‘appeal’ has not been explicitly defined in the Code of Civil Procedure (CPC), reference is made to the definition provided in Black's Law Dictionary (7th Edn.), wherein it is defined as “*a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority.*” Emphasizing the intent behind a first appeal, it is apparent that an appeal encompasses the right to a rehearing both on points of law and fact. It is thus a well-established legal principle that an appeal is a continuation of the original Court proceedings. Consequently, the first Appellate Court is obligated to address all the issues presented, providing a reasoned decision. The Court of first appeal must issue findings only after thoroughly considering all questions of law and fact, as well as the oral and documentary evidence presented by the parties. The judgment of the first Appellate Court must reflect a conscious application of mind and provide reasoned findings on all issues and contentions.

38. Therefore, in light of the above-laid settled legal position with respect to the re-appreciation of evidence, it would be germane to scrutinize the evidence placed on record by the parties.

39. The appellant/plaintiff examined himself as PW1 and relied on various documents placed on record by him before the Trial Court. On the other hand, defendants nos. 2 (i) to (viii) presented Smt. Nathia Devi (defendant no. 2 (i)) as D4W1. They also called upon several witnesses: cousin of deceased defendant no.2, Sh. Surender Singh (D4W2); their

⁸ (2020) 4 SCC 313



neighbour, Sh. Surender Singh (D4W3); Sh. Rameshwar Das Dahiya, husband of defendant no. 2 (v) Smt. Usha (DW-4); and Sh. Yashpal Dabas, husband of defendant no. 2 (vi) Smt. Asha Rani (DW-5).

40. Since the dispute relates to different properties, property wise discernment of rights would be suitable. This Court shall first deal with the following property:

(i) **Property No. 61 & 62, comprised in Khasra No. 11 situated in the extended Lal Dora of Village Madangir. New Delhi.**

41. It is contended that the separate and exclusive possession of the abovementioned property no. 62 came to the appellant/plaintiff and that property no. 61 came into the possession of the respondent/defendant no.2.

42. The appellant/plaintiff in his examination indubitably admitted that he had been living in property no. 62 since 1976-77 and their father had obtained separate electricity connections in the name of the appellant/plaintiff for property no. 62 and in the name of respondent/defendant no. 2 for property no. 61. The testimony of the appellant/plaintiff himself demolished his credibility for asserting an absence of exclusive possession of respective properties by the parties and in turn, establishes the case of the respondent/defendant no. 2 that the partition did take place during the lifetime of their father, Chaudhary Harphool Singh. The conduct of the parties surfaced by the testimony of the appellant/plaintiff itself points towards a clear severance between the parties and subsequent acts by both the parties in conformity with the severance.

43. Further, the testimony of the appellant/plaintiff itself depicts that the wall demarcating the shares of the properties, constructed by their father, remains intact and is still considered a separating wall between the two



properties. In addition, he also brings to the attention of the Court the fact that in all his correspondences, the addresses of both parties pertain to their respective property numbers. Moreover, it is also reflected that the respondent/defendant no. 2 had been paying the property tax in respect of property no. 61 to the Municipal Corporation of Delhi.

44. Therefore, the severance of the joint status of the abovementioned properties can be deduced from three factors. *Firstly*, the admission of the exclusive possession of the respective properties independently by the parties, *secondly*, the procurement of separate electricity connections by the father of the parties in their respective names, and *thirdly*, the subsequent conduct of the parties themselves i.e. carrying out of constructions from time to time at their possessed properties, payment of property taxes, continuation of the separating wall, etc.

45. With regard to the contention of unequal partition among the brothers resulting in property measuring 360 sq. yds devolving upon the appellant/plaintiff and 430 sq. yds devolving upon the respondent/defendant no. 2, it is apparent that no claims of such unequal distribution were made by the appellant/plaintiff during the lifetime of his father who brought out the partition. Consequently, the conduct of the appellant/plaintiff evidently reinforced his acceptance of the partition of the abovementioned properties in terms of the family settlement entered and followed by both the parties since 1984. Moreover, it could have been likely that the properties, irrespective of their areas, carried different benefits with themselves such as, location, access etc., as urged by the appellant/plaintiff and mere difference in the area cannot be made the sole basis to reopen a settled arrangement.



(ii) **Property No. 34 situated within village abadi of Village Madangir, New Delhi.**

46. With respect to property no. 34, it has been argued by the appellant/plaintiff that the property was jointly inherited by him and the respondent/defendant no.2 and they used to collect and divide the rent from the tenants therein, in equal shares. The appellant/plaintiff, however, failed to provide any specific details of the tenants mentioned in his plaint. Furthermore, he conceded during his testimony that he lacked any documentary evidence to corroborate the existence of the tenancy of the aforementioned premises, as well as to substantiate his claim of rent-sharing with respondent/defendant no.2.

47. On the other hand, the claim made by respondent/defendant no.2 that pursuant to the family settlement with respect to the said property, the first floor and the roof had come in the share of the appellant/plaintiff, was substantiated by placing on record an eviction petition (EX. PW-1/R1) which the appellant/plaintiff had filed u/s 14(1)(a) of the Delhi Rent Control Act, 1958 alleging default in payment by the tenant. Therefore, the institution of an eviction petition by the appellant/plaintiff in 1998 showcasing himself to be the landlord of the limited portion further corroborated the case of the respondent/defendant no.2 about the devolvement of the particular share of property upon the appellant/plaintiff as a result of the family settlement, and collection of rent by the parties independently from the tenants occupying their respective shares/portions.

(iii) **Property No. 38 situated within village abadi of village Madangir, New Delhi.**



48. With respect to the property no. 38 also, the existence of an oral partition has been contended by respondent/defendant no.2 wherein, the ground floor came to the share of the plaintiff/appellant and first floor came to the share of the respondent/defendant no.2. However, the property was retained by the father, Chaudhary Harphool Singh during his lifetime and agreement to enforce the partition after his demise was entered into by the brothers. The case of the appellant/plaintiff is that the property remained joint and was not partitioned.

49. The scrutiny of the eviction petition on record (Ex. PW-1/7) shows that it was jointly instituted by appellant/plaintiff and respondent/defendant no.2 to evict one Babu Lal, tenant, who had been inducted by their father, Chaudhary Harphool Singh during his life time. The fact that the eviction petition was jointly instituted by the brothers cannot be the sole determinative factor to disbelieve the existence of an oral partition.

50. It is of significance here to reflect upon the legal standard of proof contemplated in civil proceedings, ordinarily referred to as the test of *Preponderance of Probabilities*. Meaning thereby, the burden stands discharged once the evidence on record could be considered as sufficient to persuade the Court to believe in the existence of a fact or to believe that the existence of a fact is more probable than its non-existence. The test essentially involves a comparative analysis of competing probabilities and the ultimate test in a case involving appreciation of evidence is the satisfaction of the Court. The words “*believes it to exist*”, as used in Section 3 of the Indian Evidence Act, of 1872, are of unique usage and duly reflect that for a fact to be proved, the Court must believe it to exist or must consider its existence so probable that a prudent person would act on the



supposition that it exists. The former reflects the *belief* of the Court in favour of the existence of a fact and the latter reflects a higher probability of the existence of a fact from the lens of a prudent man. This Court has elucidated upon the said principle in the case of ***Smt. Amrit Pal Kaur and Ors. v. Shri Harcharan Singh Josh***⁹ in the following terms:-

“49. Having concluded the first issue in the aforesaid terms, the court now proceeds to determine the second issue which has fallen for consideration. Learned Senior Counsel appearing for the defendant points out various inconsistencies and alleged shifting of stands regarding the living arrangement of the parties at different occasions, as has been recorded in preceding paragraphs. The court, however, takes note of the decision relied upon by the learned counsel appearing for the plaintiff in Maya Gopinathan case¹⁶ and finds force in his submissions that the normal rule that governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. The court, in Maya Gopinathan case¹⁶, while placing reliance on the decision in N.G. Dastane case¹⁷ has held that under Section 3 of the 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 the prudent man ought to act, under the circumstances of a particular case, upon the supposition that it exists.”

51. Therefore, based on the principle of preponderance of probabilities and applying the same to the factual matrix of the case, it is perceptible that the preponderance of probabilities lies in favour of the case presented by the respondent/defendant no. 2. The case put up by the respondent/defendant no. 2 finds corroboration in the testimonies of the other witnesses as well as from the respective conduct of the parties during the relevant period of time, as made out from the admitted facts. Contrarily, the version put forth by the appellant/plaintiff remains speculative and unsupported by the surrounding evidence. It is, thus, proved that an oral partition based on a mutually agreed family settlement did take place in 1984 during the lifetime of late

⁹ 2024 SCC OnLine Del 7161



Chaudhary Harphool Singh and the parties have been acting in furtherance thereof.

52. The settled position of law regarding the oral partition and family arrangement in terms of property allocation of a joint property has been lucidly demonstrated in the foregoing paragraphs. Administering the same to the facts of the instant case would indicate that the suit properties came in the respective shares of the parties by way of a family settlement executed by the father, late Chaudhary Harphool Singh. Further, the subsequent conduct of the two brothers concerning the possession and maintenance of the properties would also make it impregnable that they held the already existing portions of the suit properties in a manner consistent with the devolution of properties that took place consequent to the family arrangement. The Trial Court committed no manifest error in the appreciation of evidence and the view taken by the Trial Court is sustainable in the facts and circumstances of the case. This Court finds no perversity or illegality in the same so as to warrant its reversal or alteration in the present appeal.

53. In view of the aforesaid, the Court does not find any substance in the instant appeal and consequently, the same stands dismissed along with pending applications, if any. No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JANUARY 24, 2025
MJ/DP