IN THE COURT OF SH. JITEN MEHRA:
DISTRICT JUDGE 10:TIS HAZARI COURTS: DELHI.

CS DJ NO. 610058/2016
CNR NO. DLCT01–000004-1991

In the matter of:

1. SH. ROOP CHAND JAYANT

S/o Late Sh. Ram Chander
(Since deceased, Through Legal Representatives)

a. Smt. Kela Devi (Wife)

b. Ms. Rinku (Daughter)

Both R/o A-1/413, Nand Nagri,
Mandoli Saboli, Delhi-110093

c. Shri Rakesh Kumar (son)
R/o 231 A, Humayun Pur,
Safdarjung Enclave, Delhi-110029.

…..Plaintiff

Versus

1. SH. RAM CHANDER

S/o Late Sh. Shri Shiv Lal,
(since deceased, through legal representatives)

1 a. Mrs. Narayan Devi (daughter)

W/o Shri Dina Nath,

R/o 111/4, Judges Compound, Agra, U.P.

1 b. Mr. Parmeshwari Devi,
W/o Mr. Gopal Singh,
R/o 56-C, Phase II, Masjid Moth, New Delhi

1 c. Mrs. Raj,
W/o Shri Sajan Kumar (Dr.),
Medical Officer, Muskara, Hamidpur, U.P.

1 d. Mrs. Kamla
W/o Shri R.K. Gupta,
R/o House no. E-1170,
Netaji Nagar, New Delhi.

1 e. Miss Sunita (daughter)
55, Humayunpur, New Delhi

1 f. Vinod Kumar,
R/o B-7/68-1,
Safdarjung Enclave, New Delhi.

1 g. Mohan Kumar (minor)
Through his guardian
Smt. Mallo Devi (defendant no.3)
R/o B-7/68-1, Safdarjung Enclave,
New Delhi.

1-h. Om Vati,
R/o R-68-A/1,
Safdarjung Enclave,
New Delhi.

2. SMT. CHAMELI DEVI

(since deceased, suit abated vide order dated 13.05.2008)

W/o Late Shri Ram Chander.

R/o 55, Humayunpur,

New Delhi.

3. SMT. MALLO DEVI

W/o Shri Nanak Chand,

R/o B-7/68-1, Safdarjung Enclave,

New Delhi.

…..Defendants

Date of institution: 25.07.1991
Date on which reserved for judgment: 29.04.2025
Date of decision : 19.07.2025

SUIT FOR PARTITION

JUDGMENT:

1. The present suit was originally instituted before the Hon'ble High Court of Delhi on 25.07.1991. However, owing to the enlargement of the pecuniary jurisdiction of the District Courts in Delhi, as per section 5 (2) of the Delhi High Court Act, 1966 as amended by the Delhi High Court (Amendment) Act, 2003 and in terms of office order No.37/DHC/ORGL. dated 22.08.2003, it was transferred to the District Courts (Central District) for further trial.

Plaintiff's version as per the plaint

2. The plaintiff Sh. Roop Chand Jayant, who expired during the pendency of the suit on 05.10.2021, had filed the present suit for partition against the defendants no.1-3.

3. The defendant no.1, Sh. Ram Chander, who expired on 13.01.1993 after filing his written statement in the suit, was the father of the plaintiff.

4. The defendant no.2, Smt. Chameli Devi, who also expired during the pendency of the suit on 07.01.2008, was the mother of the plaintiff and wife of the defendant no.1. The suit against her was abated vide order dated 13.05.2008.

5. The defendant no.3, Smt. Mallo Devi, is stated to have been the paramour of the defendant no.1.

6. The plaintiff's grandfather Late Sh. Shiv Lal/Dayal

(hereinafter refer to as Shiv Lal) is stated to have expired in the year 1956 (exact date/month of death not mentioned in the plaint), leaving behind his widow Smt. Hukmo Devi and four sons and one daughter, namely Sh. Ram Chander/defendant no.1, Sh. Hari Chand, Sh. Daulat Ram, Sh. Chandu Lal and Smt. Kalawati.

7. Late Sh. Shiv Lal is stated to have 'left behind' large number of jewellery and other movable properties (details not mentioned in the plaint) and also several house/properties and lands in the Village Humayunpur and Arjun Nagar, New Delhi namely:

[redacted]

8. The plaintiff claims that the sons of Late Sh. Shiv Lal

partitioned the aforementioned properties in the year 1958 by way of mutual family settlement, as per which the [redacted] New Delhi came to the share of the defendant no.1 and his family (Ram Chander's branch) as 'ancestral properties', in which the plaintiff had one half share (1/2 share) in the 'entire Joint Hindu Family Properties being the co-parcener'.

9. [redacted] came to the share of Sh. Hari Chand and his family (Hari Chand's branch). The [redacted] came to the share of Sh. Daulat Ram and his family (Daulat Ram's branch). [redacted] New Delhi came to the share of Sh. Chandu Lal and his family (Chandu Lal's branch).

10. The plaintiff states that the defendants no.1 and 2 were carrying on the business of selling building materials from a part of the land at the property no. [redacted] where the defendant no.3 was working as a *Beldar* (labourer). In the year 1969-1970, the defendant no.1 is stated to have

established romantic and sexual relations with the defendant no.3, outside of his marriage with the defendant no.2. At this time, the defendant no.3 is also stated to have been already married to one Sh. Nanak Chand, out of which marriage she also had one son and a daughter. The defendant no.1 is stated to have started spending time in the company of the defendant no.3 in a room adjacent to the shop, at property no. [redacted] New Delhi and neglecting his family.

11. In the early party of the year 1978, the defendant no.1 suffered from paralytic attack and was hospitalized and the defendant no.2 and the plaintiff took him to [redacted] and took care of him. The defendant no.1 is stated to have lived with them up-til November, 1989 when he was again taken back by the defendant no.3.

12. In the year 1975-1976, during the imposition of Emergency, the construction on [redacted] was demolished and the same was taken over by the Delhi Development Authority (DDA). Against the said plot,

initially one Janta Flat at Kalkaji was allotted in the name of the defendant no.1. However, since he was suffering from paralysis and was unable to climb up the stairs and the said flat was also too small in comparison to the land acquired by the DDA, it agreed to allot a bigger flat on proper equitable basis vide Order No. F.13 (15) / 77/ CRC/ DIA dated 13.10.1977 and accordingly

[redacted]

dated 29.11.1977.

13. As per the plaintiff, the total cost of the aforementioned SDA flat was Rs. 60,300/-, and was allotted on installment basis. Initially a sum of Rs.7,000/- towards cost of land and Rs.1,110.75/- as installment money was to be deposited in DDA.

14. The defendant no.1 sold the jewellery of the defendant no.2 and also used income from the joint Hindu family business to make the payment of a sum of approximately Rs.10,000/- to the DDA.

15. After the DDA allotted the aforementioned SDA Flat, the defendant no.3 was illegally put in possession of the same by the defendant no.1, even though the said flat was allotted in lieu of acquisition of ancestral land/property of the plaintiff and the defendant no.1. Further, the cost of land and installments were also paid out of the sale proceeds of the jewellery of the defendant no.2 and from the income of joint hindu family business.

16. It is stated that the defendant no.3 filed a false application before the DDA, alleging herself to be the wife of the defendant no.1 and both have fraudulently got the said flat 'transferred allotted in the name of the defendant no.3, which fact has recently come into the knowledge of the plaintiff.

17. As per the plaintiff, the defendant no.3 is the wife of Sh. Nanak Chand, who was alive at the time of filing of the suit and residing at Village Kalera Khimanti, PS Murad Nagar, Ghaziabad Uttar Pradesh (UP), and their marriage was never dissolved. Further, the marriage between the defendant no.1 and 2 also

subsists.

18. The plaintiff alleges that he was expending his earnings and savings in the upkeep of his mother/defendant no.2 and sisters along with his own wife and children. Further, the plaintiff and the defendant no.2 had also borne the entire marriage expenses of three daughters of the defendants no.1 and 2, while two daughters were unmarried.

19. Accordingly, the plaintiff and the defendant no.2 demanded partition of the undivided joint hindu family properties namely [redacted] New Delhi from the defendant no.1, who avoided the same.

20. The plaintiff claims that he is the owner of one half share in the 'undivided HUF properties' and the defendant no.2, being the lawfully wedded wife of the defendant no.1, has first charge for her maintenance and for meeting the expenses of her daughter on the undivided HUF properties of the plaintiff.

21. In the first week of January, 1990 the plaintiff learnt that the defendant no.1 was threatening to dispose off the property [redacted] and he accordingly filed a suit for permanent injunction in the Court of Smt. Bimla Makin, the then Ld. SJIC, Delhi which was pending adjudication at the time of institution of the present suit.

22. The plaintiff sought a decree of partition may kindly be passed by partitioning the properties: [redacted] New Delhi between the plaintiff and the defendants no.1 and 2 as per metes and bounds.

Written statement of the defendant no.1

23. The defendant no.1 Sh. Ram Chander filed his written statement in which he raised the preliminary objections that the present suit was not maintainable as the property bearing [redacted] was the 'self acquired property of the defendant no.1 by way of adverse possession' and

he was 'in possession of the suit property since 1963 in his own right'. He further asserted that the defendant no.3 was the exclusive owner of the property no. [redacted] in her own right.

24. He further raised the preliminary objection that the plaintiff had concealed the fact with respect to pendency of the suit filed in the Court of the Sub-Judge, Delhi on the same cause of action, where the relief of injunction was refused to the plaintiff and hence the present suit was barred by res judicata. The plaintiff had also concealed the fact that another property [redacted] was in his possession, which was the self acquired property of the defendant no.1.

25. It was further submitted that the present suit was bad on account of non-joinder of necessary parties as the other legal heirs of Late Sh. Shiv Lal had not been made parties.

26. Further, it was objected that the plaintiff had no right to

seek partition of the properties within the lifetime of the father under Hindu Law.

27. In the reply on merits, the defendant no.1 admitted that the plaintiff was his son and also the grandson of Late Sh. Shiv Lal. He also admitted that late Sh. Shiv Lal expired in 1956 leaving behind his widow, four sons and one daughter.

28. However, the defendant no.1 denied that Late Sh. Shiv Lal left behind the properties as stated in para no.3 of the plaint. He submitted that [redacted] were his self-acquired properties by way of adverse possession. He denied that late Sh. Shiv Lal left behind jewellery and other movable properties. He also denied that the sons of late Sh. Shiv Lal partitioned the properties in the year 1958 by way of mutual family settlement. He stated that [redacted] were not ancestral properties and were his self-acquired properties by way of adverse possession. He denied that the defendant no.2 was ever in possession of the properties

[redacted] He stated that with respect to the other properties, his brothers were already in possession of the same. He stated that he had given the property [redacted] to the plaintiff out of his own free will. He stated that the plaintiff was also in possession of [redacted] which belonged to him, being his self acquired property. He asserted that he reserved the right to take back the possession of [redacted] He further denied that the plaintiff had any right to a share in [redacted] Arjun Nagar, New Delhi as it was his self acquired property and was not joint family property. The defendant no.1 admitted that the [redacted] was an 'ancestral property' in which he along with the plaintiff had a share.

29. He further submitted that the plaintiff and his mother/defendant no.2 had ceased to have any relationship with him for the last almost 30 years. The defendant no.2 had in-fact deserted him and married one Sh. Pat Ram, s/o Himat Ram, r/o

Lado Sarai, New Delhi and was living with him along with the plaintiff. Further, a female child named Sunita [defendant no.1(e)] was also born out of the said wedlock about 27 years ago.

30. In reply to para no.5 of the plaint, the defendant no.1 did not deny that he was selling building materials from property [redacted] Arjun Nagar, New Delhi, however stated that the defendant no.2 never participated in the same. He reiterated that the defendant no.2 had deserted him 30 years ago and since then he had been living separately from her. He stated that he had acquired the property [redacted] by way of adverse possession in the year 1963. He stated that the defendant no.3 was his wife, but did not provide any date of marriage. He stated that the present litigation had been instituted by the plaintiff out of greed, inspite of the fact that he had given [redacted] New Delhi to the plaintiff and the plaintiff was also in possession of house no. [redacted] which was the self acquired property of the defendant no.1. He further submitted that he had given

money for two busses, which were being plied by the plaintiff in the name of his wife and the defendant no.2. He stated that the plaintiff, being a government servant, was therefore in violation of the statutory service rules by actively engaging in the said business. Further, the plaintiff had also filed false criminal complaints against the answering defendant no.1 in collusion with the officials of PS Sarojini Nagar, New Delhi implicating him in a theft case, due to which he was arrested as well despite being paralytic. He further denied that the defendant no.2 was his wife. He also denied that he was resident at the address given by the plaintiff in the array of parties.

[redacted]In reply to para no.6 of the plaint pertaining to allotment of the SDA property in lieu [redacted] the defendant no.1 denied the same stating that he had file a suit for permanent injunction against the DDA before the Sub-Judge, Delhi, when the DDA threatened to demolish the premises, and the Court was pleased to permanently restrain the DDA from demolishing the structure vide judgment dated 11.08.1981 in Suit no. 458/1978. He denied that property no. [redacted]

[redacted] was allotted in lieu of the demolition of the property no. [redacted]. He submitted that the defendant no.3 was the owner of the said property.

32. The defendant no.1 denied that he sold the jewellery of the defendant no.2 and made a payment of approximately Rs.10,000/- to the DDA as against the SDA property.

33. In reply to para no.8 of the plaint, the defendant no.1 stated that the allegations of having him having developed illicit relations with the defendant no.3 were malicious and malafide. He stated that the defendant no.3 was his wife, who had looked after him and taken care of him. He denied that the defendant no.3 was ever married to Sh. Nanak Chand. He further stated that the defendant no.2 *"was once upon a time the wife of the answering defendant*".

34. The defendant no.1 denied that after 1978 he ever lived in [redacted] or that he was taken care of by the defendant no.2. He submitted that '*The plaintiff and the*

defendant no.2 ceased to have any relations with the answering defendant for the last more than 30 years and have been living separately since then'. He again reiterated that the SDA flat was not allotted in lieu of any acquisition of [redacted] He further denied that any jewellery of the defendant no.2 was sold by him for the purpose of acquisition of the flat at SDA, New Delhi or that funds of the joint Hindu family business were utilized. He submitted that he had been running the business of building materials from his property [redacted] He denied that any fraud had been played by him or the defendant no.3 on the DDA or that the defendant no.3 got the said flat at SDA, New Delhi registered in her name illegally. He again denied that the defendant no.3 could not be his wife and stated that "*After desertion of the defendant no.2 about 30 years ago and her marrying Pat Ram, defendant no.1 rightly contracted the customary marriage with the defendant no.3. It is denied that the defendant no.3 was ever married to alleged Nanak Chand. … It is denied that the alleged marriage between the answering defendant and defendant no.2 subsists. The answering defendant*

ceased to have any right with the defendant No.2 when she remarried."

35. In reply to para no.10 of the plaint, the defendant no.1 denied that the plaintiff spent his earnings and savings to upkeep his mother and sisters in addition to his own wife and children or that the plaintiff bore the marriage expenses of his sisters. He stated that despite the defendant no.2 having deserted him and remarried, he has provided for the plaintiff and the defendant no.2 by giving them [redacted] in which the defendant no.1 had a share, and allowed the plaintiff to occupy house [redacted] as well as financing two buses from which the plaintiff and the defendant no.2 derived their source of income. He stated that the plaintiff and the defendant no.2 also owned a petrol pump in Haryana.

36. In reply to para no.11 of the plaint, the defendant no.1 denied that he lived with the plaintiff and the defendant no.2 until middle of November, 1989 and was then taken back by the defendant no.3 under her influence. He submitted that he had not

lived with the defendant no.2 for the last more than 30 years.

37. In reply to para no.12 of the plaint, the defendant no.1 further denied that the plaintiff and the defendant no.2 were entitled to seek partition of the [redacted] New Delhi. He reiterated that the [redacted] was his self acquired property by way of adverse possession and that the [redacted] was the property of the defendant no.3. He further stated that the [redacted] was ancestral property in which the defendant no.1 had an equal share and right.

38. In reply to para no.13 of the plaint, the defendant no.1 denied that the plaintiff was entitled to half undivided share in the properties. He denied that the plaintiff had any right in the properties, other than [redacted] during his own lifetime. He also denied that the defendant no.2 had any charge on account of her maintenance or those of the expenses of her daughter. He reiterated that he had provided for

her sufficiently and that she had deserted him.

39. In reply to para no.14 of the plaint, the defendant no.1 admitted that a suit for injunction had been filed before the Court of Ms. Bimla Makin, the then Ld. Sub-Judge, Delhi but stated that the plaintiff had concealed the fact that injunction had been refused as sought by the plaintiff. Further, the plaintiff had also instituted an appeal against the said order, which was pending before the Court of the Senior Sub-Judge, Delhi.

40. In reply to para no.15 of the plaint, the defendant no.1 denied that the property of [redacted] New Delhi were liable to be partitioned by way of metes and bounds. He stated that "*However the answering defendant has a right and share in the property* [redacted] *and reserves his right to take appropriate steps in respect of the said property and property* [redacted] *which is self acquired property of answering defendant".*

41. In reply to para no.16 of the plaint, the defendant no.1 reiterated that the defendant no.3 was the rightful owner of the [redacted] in her own right. He stated that no marriage ever took place between the defendant no.3 and Sh. Nanak Chand. He further stated that no marriage subsisted between himself and the defendant no.2, who had deserted him 30 years ago and had married one Pat Ram and was living with him along with the plaintiff and other children.

42. The defendant no.1 denied that any cause of action as stated by the plaintiff had arisen in his favour to file the present suit and stated that the plaintiff and the defendant no.2 were not entitled to seek any partition. The defendant no.1 did not deny the territorial jurisdiction of the Court to entertain the present suit, however objected to the valuation and court fees paid. He prayed for the suit to be dismissed, while admitting that '*Only property no.* [redacted] *can be partitioned being the ancestral property & no other property'.*

RELEVANT PROCEEDINGS IN THE SUIT

43. As already mentioned, the defendant no.1 Sh. Ram Chander expired during the pendency of the present suit on 13.1.1993 after filing his written statement. The plaintiff filed an application under Order 22 rule 4 CPC seeking impleadment of the legal representatives (LRs) of Sh. Ram Chander. The defendant no.3 Smt. Mallo Devi also moved an application under Order 1 rule 10 CPC seeking the impleadment of her three children, alleged to have been born out of wedlock with Sh. Ram Chander as well. Vide order dated 22.04.1994, the LRs sought to be impleaded by the plaintiff, i.e the children of the defendant no.1 out of his marriage with the defendant no.2, were impleaded as defendants no. 1(a) – 1(e). Further, the LRs sought to be impleaded by the defendant no.3 Smt. Mallo Devi, i.e. the children born out of her alleged marriage with the defendant no.1, were also impleaded as defendant no. 1(f) – 1(h). It was further ordered that "*The question as to whether these children will have any right to the property left behind by the deceased who already had a spouse living at the time of the alleged second marriage is a matter to be decided on merits.*"

44. Vide order dated 23.05.1995, the plaintiff was permitted to amend his plaint by adding paragraph no.15A, explaining the circumstances of the impleadment of the LRs of the defendant no.1.

AMENDED PLAINT OF THE PLAINTIFF

45. In the amended plaint, only paragraph no.15A was added, in which the impleadment of the LRs of the defendant no.1 were explained. Further, the plaintiff sought partition of the properties between the plaintiff, defendants no.1(a)-(e) and the defendant no.2 by way of metes and bounds.

WRITTEN STATEMENT OF THE DEFENDANTS NO. 1(A) – 1 (E) AND THE DEFENDANT NO.2:

46. As already mentioned earlier, vide order dated 22.04.1994 the children of the defendant no.2 born out of her marriage with the defendant no.1 were impleaded as defendants no. 1(a) – (e), namely Mrs. Narayani Devi, Mrs. Parmeshwari Devi, Mrs. Raj, Mrs. Kamla and Mrs. Sunita.

47. In the combined written statement filed by the defendants

no.1 (a) – (e) and the defendant no.2, they admitted the contents of the plaint.

48. In reply to para no.5 of the plaint, they added that Sh. Nanak Chand was working as a *beldar* in the business of building materials, which was being run by the defendant no.1 with the assistance of the defendant no.2. Sh. Nanak Chand and the defendant no.3/Mallo Devi got married in the year 1963, about four years after the marriage of the defendant no.1 (a) Mrs. Narayani Devi, who is the eldest daughter of the defendant no.1. Smt. Mallo Devi gave birth to a male child i.e. Sh. Vinod Kumar [defendant no.1(f)] out of her wedlock with Sh. Nanak Chand. After the birth of Sh. Vinod Kumar, intimacy is stated to have been developed between the defendant no.3 and the defendant no.1, which resulted into illicit relations. After some time, Sh. Nanak Chand was forcibly turned out from the shop by the defendant no.1, however the defendant no.3 used to come and stay with the defendant no.1. The defendant no.3 also filed a petition under the Guardianship Act for obtaining the guardianship of her aforementioned son Sh. Vinod Kumar against

her husband Sh. Nanak Chand @ Nanva on 15.03.1968 in the Court of the District Judge, Delhi. However, the said matter was compromised and the defendant no.3 got the custody of her son Sh. Vinod Kumar [defendant no. 1(f)]. The said guardianship petition was dismissed as satisfied on 01.04.1968. After some time, the said Sh. Nanak Chand again started living with the defendant no.3 and a daughter and son were born out of the said union namely Smt. Omvati [defendant no.1(h)] and Master Mohan Kumar [defendant no.1(g)]. Later, the defendant no.3 was again taken by the defendant no.1 as his paramour, despite strong resistance by the plaintiff and the answering defendants and also started neglecting them. However, in the year 1978 when the defendant no.1 suffered a paralytic attack and was hospitalized, the defendants no. 1(a) – (e) along with the plaintiff and the defendant no.2 took care of him.

49. The answering defendants also supported the plaintiff's claim that the property of [redacted], New Delhi was allotted to the defendant no.1 in lieu of the demolition of [redacted], which had been

fraudulently allotted in the name of the defendant no.3, showing her to be the wife of the defendant no.1. The answering defendants also denied that the defendant no.2 ever contracted any other marriage with any person apart from the defendant no.1 or had ever deserted him.

50. The answering defendants no. 1(a) – (e) thus also sought for partition of the properties and claimed their share in the same along with the plaintiff and the defendant no.2.

WRITTEN STATEMENT OF THE DEFENDANT NO.3, SMT. MALLO DEVI

51. The defendant no.3, Smt. Mallo Devi raised the preliminary objection that the suit of the plaintiff was not maintainable as he had concealed material facts and approached with unclean hands, without any locus standi.

52. In the reply on merits, the defendant no.3 did not deny that the plaintiff was the grandson of late Sh. Shiv Lal, who expired in 1956 and the son of Sh. Ram Chander/defendant no.1. She

also did not deny that Late Sh. Shiv Lal expired in 1956, leaving behind the persons as mentioned in para no.2 of the plaint.

53. In reply to para no.3 of the plaint, the defendant no.3 denied only to the extent that [redacted] were left behind by Late Sh. Shiv Lal. She denied that the same were ancestral properties and stated that the same were self-acquired properties of the defendant no.1 by way of adverse possession. However, she denied that he left behind any jewellery.

54. In reply to para no.4 of the plaint, she denied that [redacted] were partitioned in the year 1958 by way of mutual family settlement by the sons of Late Sh. Shiv Lal or that the said properties were ancestral properties.

[redacted]In reply to para no.5 of the plaint, she denied that the defendant no.2 carried on any business of building materials from a part of the land at [redacted]

[redacted] She asserted herself to be the legally wedded wife of the defendant no.1, but did not provide any date or year of marriage in the entire written statement. She stated that the defendant no.2 had deserted the defendant no.1 about 30 years ago and married on Sh. Pat Ram, s/o Himmat Ram, r/o Laddo Sarai New Delhi and had started living with him along-with children and ceased to have any relations with the defendant no.1. She stated that defendant no.2 was no longer the wife of the defendant no.1, after having married Par Ram.

56. In reply to para no.6 of the plaint, the defendant no.3 denied that the [redacted] was allotted in lieu of [redacted] and stated that the same was her self-acquired property.

57. In reply to para no.7 of the plaint, the defendant no.3 denied that the defendant no.1 ever sold the jewellery of the defendant no.2 towards the acquisition of the SDA flat and further stated that the defendant no.2 had herself taken away all her jewellery at the time of deserting the defendant no.1. She

reiterated herself to be the owner of the SDA flat, being her self acquired property.

58. In reply to para no.8 of the plaint, the defendant no.3 denied that she had developed illicit relations with the defendant no.1 and stated that she was his wife. She stated that she had three children from the wedlock with the defendant no.1.

59. In reply to para no.9 of the plaint, the defendant no.3 denied that the defendant no.1 ever stayed with the plaintiff and the defendant no.2 after his paralytic attack in 1978. She denied that that the SDA flat was allotted in lieu of any alleged ancestral property or by sale of any jewelery of the defendant no.2. She stated that she was the owner of the SDA flat, which she had purchased from the DDA on hire-purchase basis. She denied that she ever married Nanak Chand.

60. In reply to para no.10 of the plaint, the defendant no.3 stated that the plaintiff and his mother/defendant no.2 were fully provided for by Late Sh. Ram Chander and the plaintiff also gave

the house at Humayunpur, New Delhi and also financed two busses, out of the earnings from which the plaintiff and the defendant no.2 also acquired a Petrol Pump at Haryana.

61. In reply to para no.9 of the plaint, the defendant no.3 denied that the defendant no.1 lived with the plaintiff and the defendant no.2 after his paralytic attack in 1978.

62. The defendant no.3 denied that the plaintiff and the defendant no.2 were entitled to seek any partition of the properties mentioned. She denied that the defendant no.2 was the legally wedded wife of the defendant no.1 or that she had any charge of maintenance for herself and her daughter.

63. The defendant no.3 did not deny the fact of filing of the suit by the plaintiff before the Court of Ms. Bimla Makin, Sub-Judge, Delhi.

64. The defendant no.3 denied that the properties [redacted] were liable to be partitioned

and stated nothing explicitly with respect to the [redacted]

Written statement of the defendants no. 1(f) – 1 (h)

65. As already mentioned earlier, vide order dated 22.04.1994 the children of the defendant no.3 were also impleaded as the legal representatives of the defendants no. 1 as defendants no. 1(f) – (h), namely Sh. Vinod Kumar, Master Mohan Kumar and Ms. Omwati.

66. The answering defendants no. 1(f) – (h) also raised the preliminary objections that the present suit was not maintainable as the property bearing no. [redacted] was the self-acquired property of the defendant no.1 by way of adverse possession and the answering defendants had been in possession of the same since 1963. Further, the defendant no.3 was the exclusive owner of the property no. [redacted] It was further stated that the plaintiff had concealed [redacted] which was the self acquired property of the defendant no.1, which was in the

possession of the plaintiff. Further, the plaintiff had also concealed the fact of the pendency of a suit on the same cause of action pending before the Court of the Sub-Judge, Delhi, where the relief of injunction was refused to him. The suit was also stated to be bad for non-joinder of the other legal heirs of Late Sh. Shiv Lal. Further, the plaintiff had no right to file a suit for partition within the lifetime of the defendant no.1.

67. In the reply on merits, the defendants no. 1(f) – (h), they raised the similar contentions as raised by the defendant nos. 1 and 3 in their written statement.

Replication by the Plaintiff

68. In the replication by the plaintiff to the written statement of the defendant no.1, the plaintiff denied the averments of the same and reiterated the facts in the plaint as true and correct. He added that property no. [redacted] was ancestral property in which the fore-fathers of the plaintiff had been in possession and relied on the statement dated 07.04.1980 of the defendant no.1, recorded in the Suit no. 458/1978, filed by

the defendant no.1 against the DDA in which the defendant admitted that he had been residing in [redacted] since childhood and hence, the same was ancestral property. The plaintiff also added he was in possession of one room of the property no. [redacted]261 through his driver, for which the court of the Ld. Sub-Judge had granted injunction in his favour vide order dated 17.12.1990. He denied concealing the [redacted] and stated that the defendant no.2 had constructed the same in 1982 from her own funds. He further stated that the properties [redacted] apart from the other properties stated in the plaint were given to Sh. Shiv Lal by the *Zamindars* (landlords) of the village about 80 years back and hence were ancestral properties. It was also denied that the defendant no.2 ever married any Pat Ram or that she deserted the defendant no.1.

69. The plaintiff denied that the defendant no.1 had purchased busses for him and deposed that the defendant no.2 and his wife had purchased the same from their own savings along with bank

loan.

70. In the replication to the written statement of the defendants no.1 (f)-(h), the contents of the written statement were denied as being incorrect and the facts as stated in the plaint were reiterated to be true and correct.

ISSUES FRAMED

71. Vide order dated 01.12.1999, the following issues were framed for consideration in the present suit:

1. Whether the properties bearing Nos. [redacted] New Delhi are the self acquired properties of deceased defendant no.1, Shri Ram Chander? If so, its effect?

2. Whether defendant no.3 is the widow of late Shri Ram Chander, defendant no.1?

3 a. Whether defendant no.2 ceased to be the wife of defendant no.1 during the life time of defendant No.1? If so, its effect?

3 b. Whether defendant no.2 ever married a person known as Shri Pat Ram as alleged in para 5 of the Written Statement (Reply on Merits) filed by defendant no.3?

4. Whether the plaintiff and defendants Nos. 1(a) to 1(e) are the legal heirs of deceased defendant No.1 and defendant No.2?

5. Whether the property bearing No. [redacted] is the self acquired property of defendant No. 3?

6. Whether the properties in suit are ancestral Joint Hindu Family properties and the plaintiff is co-parcenor therein? If so, its effect?

7. Whether defendants Nos. 1(f) to 1(h) are the sons of deceased defendant No.1 & defendant No. 3?

8. Whether the plaintiff is entitled to partition of the properties in suit?

9. Whether defendant No.1 became the owner of suit properties by adverse possession?

10. Relief, if any

Evidence adduced by the Plaintiff

72. The plaintiff Sh. Roop Chand Jayant examined himself as PW-1 and tendered his evidence by way of affidavit on 13.07.2006 (perusal of the judicial file reveals that inadvertently no exhibit number was ascribed to the evidence by way of affidavit of PW-1 at the time of its tendering. Hence, for the sake of convenience it shall be referred to as Ex. PW-1/A in the

present judgment).

73. The plaintiff reiterated his contentions with respect to his grandfather Late Sh. Shiv Lal having expired in the year 1956 and leaving behind the properties as mentioned in the plaint along with movable properties and large number of jewellery. However, the details of the movable properties and jewellery were not mentioned by him. He reiterated that the sons of Late Sh. Shiv Lal partitioned the properties in the year 1958 by way of mutual family settlement and [redacted] New Delhi and property [redacted] New Delhi came to the share of Late Sh. Ram Chander/defendant no.1. He deposed that defendant no.2/Chameli Devi was the wife of the defendant no.1 and both were carrying on the business of selling building materials from part of the land at [redacted] He further deposed that the defendant no.1 developed illicit relations with the defendant no.3, despite his marriage with the defendant no.2 being in subsistence.

74. In para no.5 of Ex. PW-1/A, the plaintiff deposed that the

defendant no.1 filed a suit for injunction against the DDA bearing Suit no.458 of 1978, pertaining to property [redacted] which was decreed in favour of the Late Sh. Ram Chander and against the DDA. In the said suit, the defendant no.1 was examined as a witness/PW-1 on 07.04.1980, who deposed that he had been living in the said house since his childhood. A certified copy of the statement of the defendant no.1 was relied upon as **Ex. PW-1/1**. The copy of the judgment dated 11.08.1986 passed in the said suit was relied upon as **Ex. PW-1/2,** in which it was observed that the said land was owned by the ancestors of the defendant no.1. He deposed that property [redacted] was also ancestral property, which was utilized for keeping cows. The plaintiff further deposed that the aforementioned plot was always in the joint possession of the plaintiff and the defendant no.1, being its co-owners, and hence the plaintiff never became its owner by way of adverse possession.

75. The plaintiff further deposed that he filed a suit for injunction bearing no. 13/1990 against the defendant no.3 and

others in which a local commissioner Ms. Neena Bansal was appointed who submitted her report dated 10.02.1990, which was relied upon as **Ex. PW-1/3,** which bore the signatures of the plaintiff, defendant no.1 and other persons including the advocates of the parties.

76. The plaintiff reiterated that in the year 1975-1976 during the period of emergency, the construction on plot No. [redacted] was demolished and the said plot was taken over by the DDA. The said plot was also stated to be an ancestral property. Further, vide Order No. F-13 (15)/77/CRC/DIA dated 13.10.1977 and Order No. 7(a)/77/HB (M) – I dated 29.11.1977, the DDA allotted an MIG Flat bearing [redacted] in the name of the defendant no.1. He further deposed that the defendant no.1 sold the jewellery of the defendant no.2 to make a payment of Rs. 10,000/- approximately to the DDA for acquiring the said flat from DDA. Further the entire cost of land and installment was paid out of the sale proceeds of the jewellery of the defendant no.2 and from income of the joint hindu family business.

77. He further deposed that the defendant no.1 got the above said flat illegally transferred in the name of the defendant no.3 by playing fraud upon the DDA by showing her as his wife, when his marriage to the defendant no.2 was still subsisting and further the defendant no.3 was still married to Sh. Nanak Chand.

78. He also reiterated that the defendant no.3 filed a petition for guardianship of her minor son Sh. Vinod Kumar in the Court of the District Judge, Delhi and relied upon entry no.31 dated 18.03.1968 as **Ex. PW-1/4**. He further deposed that the defendants no. 1(f) – (h) had no right or title in the suit properties.

79. The plaintiff/PW-1 was cross-examined by the ld. Counsel for the defendant no.1(f) – (h) and the defendant no.3 on 13.07.2006, during which he stated that he was aged about 63 years old and had served in the MCD from 1966 to 1993. He stated that the defendant no.1 used to subscribe to a Hindi language newspaper, however he did not know whether he was

educated or not. He denied the suggestion that the defendant no.1 was totally illiterate and could not write, except for appending his signatures. He stated that his grandfather Sh. Shiv Lal expired in 1956 and the properties were divided in the year 1958. He denied the suggestion that the defendant no.1 only [redacted] in the said partition and volunteered to state that the defendant no.1 also got property no. [redacted] as well. He also denied the suggestion that properties no. no. [redacted] belonged to the DDA and that property no. [redacted] still belonged to the DDA. He deposed that he did not know whether DDA was recovering damages in respect of [redacted] He stated that he did not know whether the [redacted] Arjun Nagar, New Delhi had been mutated in the name of defendant no.3. He deposed that it was a matter of record that the defendant no.3 paid damages to DDA as per Mark A (collectively consisting of 30 pages). He deposed that the said land had already been held as belonging to his father/defendant no.1 by the Court of Sh. P.D. Jarwal, the then Sub-Judge in the case filed by his father/defendant no.1. He denied the suggestion

that the suit was decided simply on the possession of the defendant no.1 and no issue of ownership was decided. He admitted that the said suit was one for permanent injunction. He also admitted that he had also filed a suit for permanent injunction against his father/defendant no.1 and the defendant no.3, which was dismissed on 17.02.1990. He deposed that he did not remember whether he had filed an appeal against the said decision or not before the Court of the Sr. Sub-Judge. He volunteered to state that the case filed by him was dismissed on the ground that a suit for injunction was not maintainable and he was required to file a suit for partition. He also admitted that the partition suit was filed prior to the dismissal of his suit for permanent injunction. He deposed that the defendant no.1 suffered a paralytic attack after the imposition of emergency, in the year 1978. He also admitted that the flat no. [redacted] New Delhi was allotted in the year 1977, however volunteered to state that it was not allotted in the name of the defendant no.3. He deposed that the [redacted] which was in the name of his father, was demolished along with number of other properties during emergency. After the

emergency, the residents met the Vice Chairman, DDA and he allotted number of plots and flats to those persons, whose properties were demolished. He stated that his father/defendant no.1 was allotted one flat in Kalkaji on the second floor, however as he was paralytic, he made a representation to the DDA for allotment of a flat near to his residence, as well as a bigger house. Accordingly the said flat at SDA, New Delhi was allotted to him in the year 1977/1978, however the defendant no.3 played a fraud and got the allotment done in her own name. He stated that he could not comment on the documents Mark B and Mark C as the same had been procured through fraud. He denied the suggestion that the allegations regarding fraud were incorrect. He deposed that he did not know whether all the installment of damages in respect of the SDA property were paid by the defendant no.3 and volunteered to state that they were paid for by the defendant no.1. He also denied the suggestion that the defendant no.3 was doing business of building materials in the [redacted]. He also denied the suggestion that the SDA flat in question was allotted to the defendant no.3 on the basis of her possession of the

property no. [redacted] He deposed that he did not know that the mutation of property no [redacted] was in the name of the defendant no.3. He denied the suggestion that his father/defendant no.1 wrongfully possessed the property no. [redacted] and he continued to be in its possession till his death along with the defendant no.3. He further deposed that he did not know whether his father had executed a registered will dated 04.06.1990 in favour of the defendant no.3. He denied the suggestion that his mother/defendant no.2 had left the defendant no.1 and married one Ram Path, s/o Himmat Ram, r/o Lado Sarai in the year 1962-63.

80. He denied the suggestion that the defendant no.1 had no concern with the defendant no.2 after she deserted him. He denied the suggestion that he did not look after his father in 1978, after his paralytic attack till 1989. He denied the suggestion that he used to beat his father and got him arrested. He stated that he did not own any bus and denied the suggestion that while being employed with the MCD he purchased two busses in the name of

his mother. He also denied the suggestion that he also owned a petrol pump located at Daru Heda and one MIG Flat at Dilshad Garden. He admitted the property no. [redacted] was in the name of his mother/defendant no.2. He deposed that he did not know whether this property was the self acquired property of the defendant no.1 and he gave the same to the defendant no.3 to construct on. He also denied the suggestion that the defendant no.1 married the defendant no.3 in the year 1965 out which marriage three children were born. He deposed that since no marriage took place between the defendant no.1 and 3, no complaint to any authority was filed. He also denied the suggestion that the defendant no.3 was not married to Nanak Chand. He also denied the suggestion that no jewellery was sold to make any payment to DDA. He denied the suggestion that the first demand/installment was of Rs. 1100/- only and volunteered to state that his father collected Rs. 10,000/- and paid the same to the DDA. He denied the suggestion that the defendant no.3 paid all the demands/installments raised by the DDA. He stated that he was not in possession of any proof that jewellery of the defendant no.2 was sold to collect the amount of Rs. 10,000/-. He

also denied the suggestion that he had illegally retained the [redacted] and volunteered to state that it was in the name of his mother. He denied the suggestion that no HUF was in existence at the relevant time. He admitted that he filed the present suit for partition, while his father/defendant no.1 was still alive and denied the suggestion that he had no right to file the same. He also denied the suggestion that he had filed a false suit only when the defendant no.1 asked him to return flat no. [redacted] He denied the suggestion that [redacted] New Delhi was always in the possession of the defendants no.1 and 3. He also denied the suggestion that the defendant no.1 was in adverse possession of property no. [redacted] Thereafter, the plaintiff/PW-1 was discharged.

81. The plaintiff next examined PW-2, Sh. S. N. Vats, Assistant Director, LAB(H), INA, Vikas Sadan, DDA, New Delhi as a summoned witness on 05.04.2011, who deposed that he had brought the summoned record, i.e. the disposal register with respect to the property in question. He stated that at Sl No.5,

on page no. 145 of the said register, the name of Smt. Mallo Devi, wife of Sh. Ram Charan had been mentioned. The copy of the said document was taken on record Ex. PW-2/1 (OSR). He stated that he did not bring the summoned file no. 7(9) 77/HB (M) as the same was not traceable.

Evidence adduced by the Defendants

Evidence led by the defendant no.3

82. It is pertinent to mention that the defendant no.3 was first examined as DW-1 and she tendered her evidence by way of affidavit, **Ex. DW-1/A** on 07.05.2015. However, none of the documents relied upon in the said affidavit were tendered in evidence, as the defendant took no steps to summon the said documents.

83. The defendant no.3 stated in Ex. DW-1/A that she was married to the defendant no.1 in 1965, out of which wedlock two sons and one daughter were born. She stated that she lived with and took care of the defendant no.1 till his death, along with her three children. She stated that the plaintiff had filed the present

suit for partition of the properties bearing No. [redacted] She stated that the property bearing no. [redacted] was the self-acquired property of the defendant no.1 by way of adverse possession and the SDA property was her own self acquired property, which she had purchased from the SDA and paid all the installments. She deposed that the plaintiff was the son of the defendant no.1 from his first wife/defendant no.2, who had deserted him in 1963 and married another man. After some time, the defendant no.2 also deserted her second husband and asked for 'protection' from the defendant no.1, who gave 'protection' to the defendant no.2 and her children on humanitarian grounds. She deposed that the plaintiff had no relations with his father and always abused him and also got him arrested when he was suffering from paralysis and harassed him for money during his lifetime and also violently attacked him. She deposed that her husband, defendant no.1 had made a will dated 08.06.1990 and made arrangement for the devolution of his property. As per the said will, [redacted] is to be equally divided amongst Smt. Chameli Devi, Roop

Chand, Rupo, Parmeshwari, Raj, Kamla and Sunita and the plot [redacted] would go to the defendant no.3. She further stated that as per the said will, she was the absolute owner of [redacted] Which was under the illegal occupation of the plaintiff.

84. On 07.05.2015, none appeared on behalf of the plaintiff to cross-examine the defendant no.3. Accordingly, the right of the plaintiff to cross-examine her was closed and she was discharged un-examined. Further the right of all the defendants to lead further evidence was also closed and the matter was listed for final arguments.

85. This led to the defendant no.3 impugning the order dated 07.05.2015 before the Hon'ble High Court of Delhi in CM(M) No.748/2015. Vide order dated 02.09.2015, the defendant no.3 was granted an opportunity to lead further evidence.

86. On 27.04.2019, the defendant no.3 again tendered her

evidence by way of affidavit as Ex. D3/W3/A. She relied on the following documents in support of her case:

(a) Receipt issued by DDA dated 21.11.2003 as **Ex. D3/W3/1 (OSR)**.

(b) Receipt issued by DDA dated 23.09.2003 as Mark A.

(c) Receipt issued by DDA dated 09.01.2004 as **Ex. D3/W3/2 (OSR)**.

(d) Receipt issued by DDA dated 07.07.2003 as **Ex. D3/W3/3 (OSR)**.

(e) Receipt issued by DDA dated 09.07.2004 **as Ex. D3/W3/4(OSR).**

(f) Receipt issued by DDA dated 30.11.2004 a**s Ex. D3/W3/5 (OSR).**

(g) Receipt issued by DDA dated 17.09.2004 as **Ex. DW/W3/6 (OSR).**

(h) Receipt issued by DDA dated 18.05.2004 as **Ex. DW/W3/7 (OSR).**

(i) Receipt issued by DDA dated 18.10.2005 as **Ex. DW/W3/8 (OSR).**

(j) Receipt issued by DDA dated 09.08.2005 as **Ex. DW/W3/9 (OSR).**

(k) Receipt issued by DDA dated 17.05.2005 as **Ex. DW/W3/10 (OSR).**

(l) Receipt issued by DDA dated 13.05.2005 as **Ex. DW/W3/11 (OSR).**

(m) Letter of 29.11.1977 as **Ex. DW/W3/12 (OSR).**

(n) Letter of 09.01.1978 as **Ex. DW/W3/13 (OSR).**

(o) Allotment letter dated 03.10.1977 as **Ex. DW/W3/13A (OSR).**

(p) Possession letter dated 15.01.1978 as **Ex. DW/W3/14 (OSR).**

(q) Original will of Sh. Ram Chander dated 08.06.1990 as **Ex. DW/W3/15.**

(r) Property tax receipt dated 17.06.1994 issued by MCD as **Ex. DW/W3/16.**

(s) Bill dated 20.07.1994 issued by MCD as **Ex. DW/W3/17.**

(t) Notice dated 28.03.1995 as **Ex. DW/W3/18.**

(u) Receipt dated 29.11.19777 as Mark B.

(v) Receipt dated 10.11.1993 and 10.01.1998 as **Ex. DW/W3/19 (OSR)** and **Ex. DW/W3/20 (OSR).**

87. The defendant No. 3 was cross-examined by the learned counsel for the Plaintiff on 24.05.2019, during which she deposed that he was an illiterate lady and could not read the English-language. The defendant No. 3 was shown her evidence by way of affidavit however he could not identify the same or its contents. She deposed that she was born in the year 1950, however could not tell the exact date and time and at present she was 70 years old. She stated that she did not know Nanak Chand alias Nanva son of Jas Ram and was not married to him. She admitted that there was litigation between herself and Nanak Chand alias Nanva at Tis Hazari court. She denied the suggestion that the said case was with respect to guardianship of her son and was titled as 'Mallo Devi vs Nanva' under sections 7, 10, 15 of the Guardianship Act, which was dismissed as satisfied on 01.04.1968. She stated that she was never married to Nanak Chand @ Nanva and was married to the defendant no.1 Ram Chander. She deposed that in the year 1967 – 1968 she was

residing at [redacted]. She denied the suggestion that at that time she was residing at [redacted] She denied the suggestion that she lived for some time at village Punanagli, PS Alipur, Delhi after her marriage with Nanak Chand. She deposed that her marriage with the defendant no.1 was solemnized at Green Park at the house of her brother Dharm Singh in the year 1965. She deposed that she could not tell the date and month of her marriage, and denied the suggestion that no such marriage with the defendant no. 1. She deposed that she had worked as a *beldar* in the shop of the defendant no.1 and volunteered to state that she had worked as *beldar* in the shop after marriage and again said that the said shop was run by her. She stated that her elder son was born in the year 1966 at home. The further cross-examination of the defendant no.3 was then deferred on account of paucity of time.

88. The defendant no.3 was then re-called for her further cross-examination on 05.07.2017, during which she stated that she did not remember what was her age at the time of her marriage with the defendant no.1. She stated that before her

marriage, she was residing at Deer Park, Green Park, New Delhi. In contradiction to her earlier statement, she stated that her marriage was solemnized in the year 1964. She stated that she did not know the age of the defendant no.1 at the time of her marriage. She admitted that at the time of her marriage with the defendant no.1, he had his family, but did not know the name of the family members, and again stated that he had four brothers and three were younger to him. She stated that the father of the defendant no.1 was also resident of Humayunpur, but had passed away long back. She deposed that the property at Humayunpur was partitioned between all the four brothers, who were occupying their respective shares. She deposed that the defendant no.1 was a *pahalwan* (wrestler) and did no other work. She denied the suggestion that the defendant no.2 used to sell stone and sand (*rodi* and *badarpur)* and volunteered to state that she used to sell the same. She denied the suggestion that the defendant no.1 was having ancestral [redacted] She deposed that the defendant no.2/Chameli Devi was the wife of Ram Chander, however she came to know about the same later on. She volunteered to state

that the defendant no.2/Chameli Devi had again married with one Pyare Lal, after divorcing the defendant no.1, and a daughter Sunita was also born out of her wedlock with him. She admitted that she did not have any document regarding the aforesaid divorce of the defendant no.2/Chameli Devi and the defendant no.1/Ram Chander and volunteered to state that she came to know about the same from the defendant no.1 after her marriage to him. She also admitted that she had not filed any document regarding the alleged divorce or paternity of Sunita. She denied the suggestion that the defendant no.2 had remained married to the defendant no.1 through her lifetime and had never deserted him. She also denied the suggestion that she was lying with respect to the marriage of Chameli Devi with Pyare Lal. She deposed that her marriage with the defendant no.1 took place in the presence of her brother, 'brother of Ram Chander' and other family members of the defendant no.1/Ram Chander. She then deposed that she had correctly mentioned the year of her marriage with the defendant no.1/Ram Chander as 1965 in the evidence by way of affidavit and had incorrectly mentioned the same as 1964 in confusion during her cross-examination. She

stated that she had three children namely Mr. Vinod Kumar, Mr. Mohan Kumar and Ms. Omwati. The date of birth of Mr. Vinod Kumar was stated to be 27.03.1966, that of Omwati as 05.02.1970 and Mr. Mohan Kumar as 1979. The defendant no.3 stated that she did not know any property dealer by the name of R. K. Arora and also did not member whether any complaint was registered in PS Sarojini Nagar with respect to forgery, cheating etc. in respect of selling a plot in Krishna Nagar, Delhi. She stated that she did not remember whether she was released on bail from the Court of Ms. Anu Malhotra, Ld. MM, Delhi. The said question was objected to by the counsel for the defendant no.3 on the ground of relevancy, which was to be decided at the final stage. The defendant no.3 was the read over a newspaper cutting of Navbharat Times newspaper dated 08.01.1993, Hindi edition (**Ex. DW3/PX**) wherein the news regarding her involvement in a case of cheating in respect of a plot in Krishna Nagar was mentioned. She was then asked if she was involved in the said case and was released on bail, which fact she was hiding, to which she only replied that the plot 'pertained' to her. Thereafter, the further cross-examination was deferred.

89. The defendant no.3 was recalled for her further cross-examination on 21.09.2019, in which she deposed that she was never married to Nanak Chand @ Nanua or resided with him at the house of one Bhule and Gokal. She denied ever having residing at 306-307, Humayunpur, Delhi or at any other place in Humayunpur. She admitted that she had not filed any document to prove that she was running the business of *rodi* and *badarpur*. She denied the suggestion that land i.e. [redacted] which was demolished by DDA was the ancestral property of defendant no.1/ Ram Chander. She deposed that the land bearing no. [redacted] was won by him in wrestling and had not been purchased by the defendant no.1. She stated that she could not remember who had told her about the said fact of winning the land in wrestling. She stated that she had applied for the DDA Flat in the year 1976 and whether her counsel had filed the application form or receipt thereof in relation to the SDA property. When asked to identify the application form/receipt from the Court file, she expressed her inability to do so, claiming to be illiterate. She denied the suggestion that she had never applied to DDA for allotment of

the SDA flat and denied the suggestion that the receipts and other documents with respect to the flat had been procured fraudulently and malafidely to grab the SDA flat on the basis of forged, false and concocted documents. She denied the suggestion that DDA had given the aforesaid flat in lieu of the [redacted] which was demolished by the DDA in the year 1975-1976, during emergency. She deposed that she was paying the house tax of property no. [redacted] since the execution of the will in her favour. She stated that she did not know who was paying the house tax of the property no. [redacted] as there was no such property in existence since the same had already been demolished by the DDA. She denied the suggestion that no such will had been executed in her favour in respect to property no. [redacted] She denied the suggestion that in collusion with MCD officials, she had managed to mutate the property in her name. She denied the suggestion that on 29.11.1977, the SDA flat was given/allotted in lieu of the house demolished by the DDA under clearance program on 26.09.1975. She deposed that the defendant no.1 suffered a paralytic attack in the year 1975 – 1976 and she took

care of him till his death. She denied the suggestion that the plaintiff had got the defendant no.1 admitted to Hindu Rao Hospital and looked after him till his death. The further cross-examination of the defendant no.3 was deferred on account of paucity of time.

90. She was recalled for her further cross-examination on 20.01.2020 she denied the suggestion that the will dated 08.06.1990 of the defendant no.1 was prepared fraudulently as he was not mentally fit at the relevant time. She denied the suggestion that she had prepared the alleged receipts of payment, allotment letter, possession letter (Ex. D3W31 to Ex. D3W310) of the SDA flat in collusion with the officials of the DDA and MCD to grab the properties. She also denied the suggestion that she was neither an allottee nor an owner of the aforesaid SDA flat, as the same had been allotted in lieu of compensation qua the demolition of the property [redacted] which was demolished by the government on 26.09.1975.She also denied the suggestion that property no. [redacted] was ancestral property and the defendant no.1 had no

right to execute a will in its regards. She deposed that she never [redacted] and did not know the owner of the property. She denied the suggestion that she had been residing at the said property with her husband Nanak Chand @ Nanva. She denied the suggestion that property [redacted] was owned and possessed by the defendant no.2 and the defendant no.1 had no right in the same.

91. The defendant no.3 further stated that Narayan Devi, Parmeshwari Devi, Raj Devi and Kamla were the daughters of the defendant no.1, except Sunita. She deposed that Vinod was her son. She denied the suggestion that on 15.03.1968, she had filed a guardianship petition against her husband Nanak Chand @ Nanva before the District Judge, Delhi and volunteered to state that she did not know anyone by the name of Nanva and denied the suggestion that she was denying the fact of having filed the guardianship petition. She also denied the suggestion that after the compromise, she obtained the custody of her son Vinod from Nanak Chand before the Court and the petition was

dismissed as withdrawn. She also denied the suggestion that after 1968, she again started living with her husband Nanak Chand Nanva, from which union her son Mohan Kumar and daughter Omvati were born. She volunteered to state that all her three children were born from the defendant no.1. She also denied the suggestion that due to her illicit relation with the defendant no.1, her husband Nank Chand @ Nanva kicked her out of the matrimonial home. Thereafter, the further cross-examination of the defendant no.3 was deferred for cross-examination by the counsel for the defendants no. 1(a) - (e).

92. On 10.09.2021, the defendant no.3 was cross-examined by the ld. counsel for the defendants no. 1(a) – (e), during which she stated that Shiv Lal's father's name was Mansukh. Further that Shiv Lal was having only one property [redacted] which was divided by all the legal heirs by occupying one room each. She denied the suggestion that Shiv Lal was also owner of [redacted] Delhi and [redacted] She deposed that Shiv Lal

had four sons and one daughter namely Ram Chander, Hari Chand, Daulat Ram, Chunni Lal and daughter Kalawati. She denied the suggestion that only the plaintiff and the defendant no.1(a) – (e) had the right to partition and get the share of the [redacted] and volunteered to state that she had purchased the property at SDA. Thereafter the cross-examination of the defendant no.3 was concluded and the evidence on her behalf was also closed vide statement of the ld. Counsel recorded on 10.09.2021

93. The defendant no.3 then examined Sh. Jagbir Singh, Record Keeper, South Zone, Property Tax Department, SDMC, R.K. Puram, New Delhi, as a summoned witness D3W1 on 08.12.2016. He deposed that he had brought the summoned record, i.e. record of property bearing [redacted] as per page no. 29 of which, the recorded owner of the property was Sh. Ram Chander/defendant no.1. He further deposed that he had placed on record page no.30, whereby the said property was mutated in the name of Smt. Mallo Devi vide

letter No. Tax/SZ/94/9018 dated 29.12.1994. He placed on record photocopies of the said pages as **Ex. D3W1/1** and **Ex. D3W1/2**. Thereafter, he was cross-examined by the ld. counsel for the plaintiff, during which he deposed that there was nothing on record to show as to who was the owner of the [redacted] New Delhi prior to the defendant no.1. He deposed that the defendant no.1 was the owner of the properties bearing [redacted]. He stated that the name of the defendant no.1 came into their records for the first time in 1966. He stated that he could not state in whose name the said property stood prior to the defendant no.1. Further, as per the record, no notice was sent to any other person at the time of the mutation in the name of Smt. Mallo Devi after the death of the defendant no.1. He admitted that mutation of a property is done subject to any objections. He deposed that as per the records, there was no order received from the Hon'ble High Court of Delhi regarding status quo, prior to the mutation in the name of Smt. Mallo Devi. He denied the suggestion that the said order was received and was deliberately not placed on the record. He denied the suggestion that he had not brought the previous

record pertaining to this property. The witness was then directed to produce the previous record pertaining to the property on the next date of hearing and his further cross-examination was deferred.

94. The witness Sh. Jagbir Singh, D3W1 was recalled for his further cross-examination on 11.08.2017 during which he deposed that he had brought the summoned record pertaining to the property no. [redacted] The Form A dated 24.01.1971 regarding the property tax in respect of the property in the name of the defendant no.1 was produced as **Ex. DW3/W1/3 (OSR)**. He stated that the details of the accommodation/construction had been mentioned on the back side at point A. He deposed that he had also brought the Tax Upgrade Notice dated 24.01.1971 regarding the property tax as **Ex. DW3/W1/4 (OSR)** and application dated 18.03.1971 regarding the assessment of the property in the name of the defendant no.1 as **Ex. DW3/W1/5 (OSR)**. The Form-A dated 01.11.1966 regarding the property tax in respect of the said property in the name of the defendant no.1 was produced as **Ex.**

DW3/W1/6 (OSR). He deposed that on the back side of the form the details of the accommodation/construction had been mentioned at point B. The Tax Upgrade Notice dated 24.03.1967 regarding the property in the name of the defendant no.1 was produced as **Ex. DW3/W1/7 (OSR).** The Notice u/s 124 (v) DMC Act, 1957 dated 18.02.1978 in respect of the property was produced as **Ex. DW3/W1/8 (OSR).** The ex-parte decision dated 24.01.1971 in respect of the said property was produced as **Ex. DW3/W1/9 (OSR).** The notice of increase/decrease of property tax dated 26.04.1978 was produced as **Ex. DW3/W1/10 (OSR).** The copy of the order dated 27.07.1991 passed by the Hon'ble High Court of Delhi in suit no. 2452/1991 was produced as **Ex. DW3/W1/11 (OSR).** The application dated 26.03.1996 moved by the plaintiff/Roop Chand along-with the copy of the plaint and order dated 27.07.1991, received by the MCD vide diary no. 10603 dated 27.03.1996 for cancellation of the mutation in the name of the defendant no.3 in respect of property no. [redacted] was produced as **Ex. DW3/W1/12 (OSR).** The witness again reiterated that he did not have the old record which could show in whose name the property was

recorded prior to the defendant no.1. He further stated that with respect to the application dated 26.03.1996 filed by the plaintiff, a notice had been issued by the then AA & C, South Zone, Green Park, New Delhi to Smt. Mallo Devi to produce the documents, however he could not state as to what order had been passed, as no such order was available in the file. He further deposed that he could not say how the mutation of the property bearing No. [redacted] had been done in the name of Smt. Mallo Devi. He denied the suggestion that some officials of the MCD had colluded with the defendant no.3 for the said mutation and further no action had been taken on the complaint dated 26.03.1996 on the basis of the said collusion. He denied the suggestion that he had intentionally not brought the old record the property.

95. The defendant no.3 next examined Sh. Naveen Gandas, Record keeper, Department of Delhi Archives, New Delhi as summoned witness D3W2 on 08.12.2016. He deposed that he had brought the summoned record, i.e. Will of the defendant no.1, which was registered with the SR-111, Asaf Ali Road, New

Delhi as **Ex. DW3/W2/1.** During his cross-examination by the ld. Counsel for the plaintiff, he deposed that he had not brought the Index Register pertaining to 08.06.1990 and if available would produce the same. He stated that he did not have any personal knowledge regarding the registration of the will. He deposed that he could not say whether the record pertaining to **Ex. DW3/W2/1** had been tampered with and the will had been registered ante-dated, as the record had been received by him only in the year 2016. He deposed that he could not say anything about the cuttings shown on pages no.1 and 2 at points A and B, as he was only the custodian of the record. Thereafter the further cross-examination of the witness was deferred for production of the index register.

96. On 20.01.2017, the witness D3W2 was re-called and he deposed that the index register with respect to the will dated 08.06.1990 of the defendant no.1 was not available. He was then discharged.

97. The defendant no.3 examined D3W3 Sh. Braham Prakash,

Assistant, LAB (Housing) DDA, New Delhi as a summoned witness on 08.12.2016, who produced the summoned record of [redacted] New Delhi. He deposed that the original file was not traceable and he had brought the legal file maintained by the Department. He stated that as per the said file at page no.145, which was a photocopy of the draw of lots held on 06.10.1977 on "cash down", the name of Smt. Mallo Devi, wife of Sh. Ram Chander was shown at Sl. No. 5. The photocopy of the same was taken on record as **Ex. D3W3-1 (OSR)**. At page no.42, the document pertaining to the amount recovered towards each flat was shown, wherein the name of Mallo Devi appeared against the said flat and the amount recovered from her was Rs.1,110.95/- on 10.12.1977, which was taken on record as **Ex. D3W3-2 (OSR)**. Ld. Counsel for the plaintiff raised an objection that the records produced by the witness were photocopies themselves and there was also extra writing on Ex. D3W3-1**.** The further examination in chief of the witness was deferred to produce the original records and file, if available.

98. The witness, D3W3 Sh. Braham Prakash, was then re-

called for his further examination in chief on 20.01.2017, during which he produced the electricity bill generated by BSES for the month of December, 2008 for the SDA flat in the name of Mallo Devi as **Ex. D3W3-3 (OSR).** The installment record of the payment by Mallo Devi towards the purchase of the SDA flat was taken on record as **Ex. D3W3-4 (Colly) (OSR).** The office note of the dealing assistant dated 31.03.2009, which recorded that the SDA flat was allotted to Smt. Mallo Devi and the same had been converted into free-hold about 10 years back was taken on record as **Ex. D3W3-5 (Colly) (OSR).**

99. During his cross-examination by the ld. Counsel for the plaintiff he deposed that the original file of the property in question had been misplaced.

Arguments of the parties

100. Ld. Counsel for the plaintiff Sh. Bhupesh Saini has argued that the plaintiff (since deceased) has duly proved his case for partition, whereas the pleadings and evidence of the contesting defendants was contradictory.

101. He has argued that [redacted] is admitted by the defendant no.1 to be ancestral property in his written statement and hence, no evidence with respect to the same was required to be led by the parties.

102. As regards the property no. [redacted] he has argued that the defendant no.1, 1(f)-(h) and the defendant no.3 have contended the property to be the self-acquired property of the defendant no.1 by way of adverse possession, however, during the cross-examination of the plaintiff by the ld. Counsel for the defendants no.3 and defendants no. 1(f) – (h) a suggestion was put to the witness that the [redacted] He also relied on the statement of the defendant no.1 in the civil suit no. 458/1978 titled as 'Ram Chander vs DDA' decided by the Court of Sh. P. D. Jarwal, Sub-Judge, Delhi to argue that it was admitted by the defendant no.1 that the property was an ancestral property. Further, the defendant no.3 in her cross-examination has stated a completely contrary fact that the [redacted] was won by the defendant no.1 in wrestling. Whereas in the cross-

examination of the plaintiff, the counsel for the defendants no.3, defendants no/ 1(f) – (h) have put to the plaintiff that the property [redacted] were DDA land and the property no. 261-B still belonged to the DDA.

103. With respect to [redacted] New Delhi, he has argued that although the defendants no.1 and 3 denied that the property was allotted by the DDA in lieu of demolition of the [redacted] the DDA on a number of occasions clarified its stance that the SDA property was allotted to the defendant no.3 as evictee of Arjun Nagar. Further, Sh. Jagbir Singh, Record Keeper, SDMC has deposed in his cross-examination dated 11.08.2017 that he had brought the application dated 26.03.1996 moved by the plaintiff for cancellation of the mutation in the name of the defendant no.3, in which notice was issued, however he could not say what order had been passed as the same was not on the file. He also stated that he could not say as to how the mutation of the property no. [redacted] Delhi had been done in the name of Mallo Devi. He also stated that the DDA filed an application dated 24.09.2009 wherein it

was specifically stated that as per the records available in the Housing Department, Smt. Mallo Devi, W/o Ram Chander was allotted alternative [redacted] New Delhi against the demolished property in Arjun Nagar.

104. Sh. Bhupesh Saini further argued that the plaintiff took the required steps for calling the witnesses from DDA, however despite repeated opportunities, the witnesses did not bring the relevant records. He referred to various orders of the Court in this regards.

105. Ld. Counsel for the plaintiff further argued that the defendant no.3 during her cross-examination dated 21.09.2019 stated that she had applied to the DDA for the SDA flat in the year 1976, however no such application form or receipt was placed on record by her. Further, during her cross-examination dated 10.09.2021, the defendant no.3 contradicted her own stand by denying the suggestion that the property bearing no. [redacted] Delhi belonged to Shiv Lal. She further

stated that Shiv Lal only had one property bearing no. 55, Humayunpur, Delhi which had been partitioned between the parties.

106. Ld. Counsel for the plaintiff also submitted that the defendant no.3 had failed to prove that she was the legally wedded wife of the defendant no.1. It was the admitted case of the defendants no.1 and 3 that the defendant no.1 married the defendant no.2 and no decree of divorce had been passed dissolving their marriage and in such case, the marriage still subsisted. Further, no proof of marriage had been led by the defendants no.1 and 3 of their marriage. The defendant no.3 also failed to prove that the defendants no. 1(f) – (h) were the children of the defendant no.1.

107. He therefore submitted that the plaintiff had duly proved his case and was entitled for partition as sought in the plaint.

108. Sh. Anil Chauhan, ld. Counsel for the defendants no. 1(f) – (h) and the defendant no.3 has argued that a son cannot file a suit

for partition during the lifetime of his father and that the plaintiff has failed to prove that the suit properties were ancestral in nature or joint hindu family property. He has argued that only the property bearing no. [redacted] was liable to be partitioned between the plaintiff and the defendant no.1 and further that the plaintiff also failed to prove that the SDA property was allotted in lieu of any ancestral property

109. Hence, it was argued, the plaintiff had miserably failed to prove that he was entitled to partition of any of the properties sought by him and even otherwise, the properties have not been properly described in the plaint as per Order .

110. Ld. Counsel for the defendant relied on the following judgments in support of his case:

111. ***Mahanth Ram Das vs Ganga Das***, AIR 1961 SC 882; ***M/s Heavy Light Industrial Corporation vs The State of Maharashtra***, 1999 SCC OnLine Bom 100; ***Uttam vs Saubagh Singh and Or***s, (2016) 4 SCC 68; ***A. N. Kaul vs Neerja Kaul***, (2018) 3 RCR

(Civil) 501; ***Pratap vs Shiv Shanker***, 2009 (113) DRJ 811; ***Bharat Bhushan Maggon vs Joginder Lal and Ors***, 2012 IX AD (Delhi) 241; ***Sushant vs Sunder Shyam Singh***, 2014 DLT 418; ***Amit Johri vs Deepak Johri***, 2013 IV AD (Delhi) 838; ***Saroj Salkan vs Huma Singh***, MANU/DE/1074/2016; ***Surender Kumar vs Dhani Ram***, 2016 (154) DRJ 616; ***Chutahru Bhagat vs Hialal Sah and Ors***, AIR (37) Patna 306.

Issue-wise finding and reasons

Issue no.6

112. I shall first decide issue no.6, which is reproduced below for the sake of convenience:

> ***6. Whether the properties in suit are ancestral Joint Hindu Family properties and the plaintiff is co-parcenor therein? If so, its effect?***

113. The issue in the present matter was framed vide order dated 01.12.1999 in which the onus of proof of the issues framed was not indicated. There is no dispute that it is the plaintiff and the defendants no.1(a)-(e) who have asserted the said fact and hence, the onus of proving the issue no.6 also falls on their shoulders.

114. The plaintiff has stated that his grandfather Late Sh. Shiv Lal expired in the year 1956. However, the plaintiff has neither pleaded nor proved his exact date of demise, i.e. whether Sh. Shiv Lal expired before or after 16.07.1956, which is the date when the Hindu Succession Act, 1956 came into force.

115. Further, the plaintiff has stated in para no.3 of the plaint that Sh. Shiv Lal expired 'leaving behind' several movable properties and jewelleries and immovable properties. The plaintiff has not given any details of the alleged movable properties and jewelleries in the entire plaint. The plaintiff also has not sought any partition of the alleged movable properties and jewelleries. Even in the evidence led by the plaintiff, no details of any movable property or jewellery has been provided. Hence, the plaintiff has failed to prove that any such movable properties, including jewellery were in existence.

116. The plaintiff has averred in para no. 3 of the plaint that Sh.Shiv Lal "*left behind several house/properties and lands in village Humayunpur, New Delhi and Arjun Nagar, New Delhi*

bearing [redacted], *New Delhi*".

117. Further in para no.4 of the plaint, the plaintiff states that the sons of Sh. Shiv Lal partitioned the aforementioned properties by way of mutual family settlement in the year 1958, as per which [redacted] New Delhi "*came to the share of Shri Ram Chander and his family.* The plaintiff further states that "*Thus in the above manner properties* [redacted] *came in the hands of defendant no.1 and 2 and the plaintiff as ancestral properties. The plaintiff being a member of Hindu Undivided Family (of Mitakshara School of Hindu Law) has become entitled to inherit one-half (½) share in the entire ancestral Joint Hindu Family properties being the co-parcener*".

118. In paras no. 12, 13 and 17 of the plaint, the properties have been described as "*undivided Joint Hindu Family properties*" and

"*undivided HUF properties*".

119. In the replication filed by the plaintiff to the written statement of the defendant no.1, in reply to para no.4 of the written statement, the plaintiff has stated that "*It is asserted that properties* [redacted] *are the ancestral properties apart from other properties owned and occupied by late Shiv Lal during his lifetime. The same was given to late Sh. Shiv Lal by the Jamindars of the Village about 80 years back."* However, at other places in the replication such as para no.1 the plaintiff has stated "*The* [redacted] *is not the self acquired property of deft. No.1. it is wrong that deft. No.1 became owner of the said property by way of adverse possession. The said property is an ancestral property in which the forefathers of the plaintiff had been in possession".*

120. In the evidence by way of affidavit of the plaintiff/PW-1, Ex. PW-1/A tendered in evidence on 13.07.2006, it is stated in para no.1 that the properties in question were 'left behind' by

Late Sh. Shiv Lal in the year 1956. The plaintiff did not state anything with respect to the nature of the properties in the hands of Sh. Shiv Lal, except to state in para no.5 of Ex. PW-1/A that in a suit for injunction bearing suit No. 458/1978 filed by Sh. Ram Chander/defendant no.1 against DDA with respect to [redacted] the defendant no.1 was examined as a witness on 07.04.1980 in which he deposed that he had been living in the said property since childhood. The plaintiff relied on the statement of defendant no.1 dated 07.04.1980 recorded in the suit No. 458/1978 as Ex. PW-1/1 and the judgment dated 11.08.1986 as Ex. PW-1/2. The plaintiff asserted that "*The said land was owned by the ancestors of the Plaintiff and so the Defendant no.1 was living since his childhood and was being cultivated by fore fathers of the Plaintiff".*

121. The plaintiff's stance with respect to the nature of the suit properties in the hands of Late Sh. Shiv Lal is shifting, vague and opaque. At one place, the plaintiff is setting up a case that the suit properties were ancestral properties in the hands of Late Sh. Shiv Lal and also 'joint family properties' and 'ancestral joint family

properties', whereas in the replication to the written statement of the defendant no.1, the plaintiff states that the suit properties were given to the Sh. Lal by the landlords of the village about 80 years back.

122. As per Order VI rule 4 CPC, a plaintiff seeking partition of any property is required to plead his case with clarity and exactness as to the nature of the suit properties and how the plaintiff is claiming partition thereof. However, the plaintiff has taken shifting stands with respect to the same and has proved none in the suit.

123. I will first examine the claim of the plaintiff for partition on the ground that the suit properties in question were ancestral joint family properties in the hands of Late Sh. Shiv Lal and the plaintiff being a coparcenary at that time, was entitled to a share therein.

124. At this stage it would be appropriate to discuss the terms of (i) 'joint property', (ii) 'joint family property' and (iii) 'joint

ancestral property'. They may sound similar, however in law there is a vast difference between all three.

125. The Hon'ble High Court in the decision of ***Amit Johri vs Deepak Johri and Ors,*** 2014 SCC OnLine Del 822, has explained the difference between 'joint property', 'joint family property' and 'joint ancestral property' and the meaning of 'coparcenary property'.

> "*13. It may be true that property under Hindu Law can be classified under two heads : - (i) coparcenary property; and (ii) separate property. Coparcenary property is again divisible into (i) ancestral property and (ii) joint family property which is not ancestral. This latter kind of property consists of property acquired with the aid of ancestral property and property acquired by the individual coparcener without such aid but treated by them as property of the whole family.*
>
> *14. It may also be true that the three notions : (i) joint property, (ii) joint family property, and (iii) joint ancestral family property are not the same. In all the three things there is no doubt a common subject, property, but this is qualified in three different ways. The joint property of the English law is property held by two or more person jointly, it characteristic is survivor-ship. Analogies drawn from it to joint family property are false or likely to be false for various reasons. The essential qualification of the second class mentioned above is not joints merely, but a good deal more. Two complete strangers may be joint tenants according to English law; but in no conceivable circumstances except by adoption could they constitute a joint Hindu family, or in that capacity, hold property. In the third case, property is qualified in a two-fold manner, that it must be a joint family property and it must also be ancestral. It is obvious that there must have been a nucleus of joint family property before an ancestral joint family property can come into existence, because the*

word ancestral connotes descent and hence preexistence. But because it is true that there can be no joint ancestral family property without pre-existing nucleus of joint family property, it is not correct to say that these cannot be joint family property without a preexisting nucleus, for, that would be identifying joint family property with ancestral joint family property. Where there is ancestral joint family property, every members of the family acquires in it a right by birth which cannot be defeated by individual alienation or disposition of any kind except under certain peculiar circumstances. This is equally true of joint family property. Where a sufficient nucleus in the possession of the members joint family has come to them from a paternal ancestor, the presumption is that the whole property is ancestral and any members alleging that it is not, will have to prove his self-acquisition. Where property is admitted or proved to have been joint family property, it is subject to exactly the same legal incidents as the ancestral joint family property, but differed radically in original and essential characteristics from the joint family is the tie of sapindaship without which it is impossible to have a joint Hindu family, which such a relationship is unnecessary in the case of a joint tenancy in English laws.

15. It may further be true that coparcenary property means and includes : (1) ancestral property, (2) acquisitions made by the coparceners with the help of ancestral property, (3) joint acquisition of the coparceners even without such help provided there was no proof of intention on their part that the property should not be treated as joint family property, and (4) separate property of the coparceners thrown into the common stock.

16. But, there has to be a properly constituted pleading before principles of law can be attracted. It is trite that depending upon a fact stated a principle of law would be attracted. Issues of law and fact have to be settled with reference to the pleadings of the parties.

17. In the decision reported as AIR 1998 SC 628 Heeralal v. Kalyan Mal it was held that with respect to the character and ownership of a property an admission made in the pleading conferred a valuable right on the opposite party and that said admission could not be permitted to be withdrawn. The logical extension of the same principle would be that a case pleaded by the party would require to be established as pleaded and not with respect to something else."

126. In the recent decision of ***Angadi Chandranna vs Shankar and Ors***, 2025 SCC Online SC 877, the Hon'ble Apex Court has clarified the concepts of 'joint family', 'ancestral property' and coparcenary property'. It has been held as follows:

13. *Further, it is a settled principle of law that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, then there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. That apart, while considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. This Court in R. Deivanai Ammal (Died) v. G. Meenakshi Ammal12, dealt with the concept of Hindu Law, ancestral property and the nucleus existing therein. The relevant paragraphs are extracted below for ready reference:*

> *"13. First let us consider the nature of the suit properties, namely, self-acquired properties of late Ganapathy Moopanar or ancestral properties and whether any nucleus was available to purchase the properties. Under the Hindu Law it is only when a person alleging that the property is ancestral property proves that there was a nucleus by means of which other property may have been acquired, that the burden is shifted on the party alleging self-acquisitions to prove that the property was acquired without any aid from the family estate. In other words the mere existence of a nucleus however small or insignificant is not enough. It should be shown to be of such a character as could reasonably be expected to lead to the acquisition of the property alleged to be part of the joint family property. Where the doctrine of blending is invoked against a person having income at his disposal and acquiring property, the reasonable presumption to make is that he had the income at his absolute disposal unless there is evidence to the contrary. If a coparcener desires to establish that a property in the name of a female member of the family or in the name of the manager himself has to be accepted and*

treated as property acquired from the joint family nucleus, it is absolutely essential that such a coparcener should not only barely plead the same, but also establish the existence of such a joint family fund or nucleus. Even if the joint family nucleus is so established, the prescription that the accretions made by the manager or the purchases made by him should be deemed to be from and out of such a nucleus does not arise, if there is no proof that such nucleus of the joint family is not an income-yielding apparatus. The proof required is very strict and the burden is on the person who sets up a case that the property in the name of a female member of the family or in the name of the manager or any other coparcener is to be treated as joint family property. There should be proof of the availability of such surplus income or joint family nucleus on the date of such acquisitions or purchases. The same is the principle even in the cases where moneys were advanced on mortgages over immoveable properties. The onus is not on the acquirer to prove that the property standing in his name was purchased from joint family funds. That may be so, in the case of a manager of a joint family, but not so in the case of all coparceners. For a greater reason it is not so in the case of female members.

14. The doctrine of blending of self-acquired property with joint family has to be carefully applied with reference to the facts of each case. No doubt it is settled that when members of a joint family by their joint labour or in their joint business acquired property, that property, in the absence of a clear indication of a contrary intention, would be owned by them as joint family property and their male issues would necessarily acquire a right by birth in such property. But the essential sine qua non is the absence of a contrary intention. If there is satisfactory evidence of an intention on the part of the acquirer such property to treat it as his own, but not as joint family property, the presumption which ordinarily arises, according to the personal law of Hindus that such property would be regarded as joint family property, will not arise.

15. It is a well-established principle of law that where a party claims that any particular item of property is joint family property, the burden of proving that it is so rests on the party asserting it. Where it is established or admitted that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the presumption arises that it was joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family. But no such presumption would arise

if the nucleus is such that with its help the property claimed to be joint could not have been acquired. In order to give rise to the presumption, the nucleus should be such that with its help the property claimed to be joint could have been acquired. A family house in the occupation of the members and yielding no income could not be nucleus out of which acquisitions could be made even though it might be of considerable value.

16. In a Hindu joint family, if one member sues for partition on the foot that the properties claimed by him are joint family properties then three circumstances ordinarily arise. The first is an admitted case when there is no dispute about the existence of the joint family properties at all. The second is a case where certain properties are admitted to the joint family properties and the other properties in which a share is claimed are alleged to be the accretions or acquisitions from the income available from joint family properties or in the alternative have been acquired by a sale or conversion of such available properties. The third head is that the properties standing in the names of female members of the family are benami and that such a state of affairs has been deliberately created by the manager or the head of the family and that really the properties or the amounts standing in the names of female members are properties of the joint family. While considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. The extent of the property, the income from the property, the normal liability with which such income would be charged and the net available surplus of such joint family property do all enter into computation for the purpose of assessing the content of the reservoir of such a nucleus from which alone it could, with reasonable certainty, be said that the other joint family properties have been purchased unless a strong link or nexus is established between the available surplus income and the alleged joint family properties. The person who comes to Court with such bare allegations without any substantial proof to back it up should fail.

17. It is also a well-established doctrine of Hindu Law that property which was originally self-acquired may become joint property if it has been voluntarily thrown by the coparcener into the joint stock with the intention of abandoning all separate claims upto it. But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener

to waive his separate rights and such an intention will not be inferred from acts which may have been done from kindness or affection. The important point to keep in mind is that the separate property of a Hindu coparcener ceases to be his separate property and acquires the characteristics of his joint family or ancestral property, not by mere act of physical mixing with his joint family or ancestral property, but by his own volition and intention by his waiving or surrendering his special right in it as separate property. Such intention can be discovered only from his words or from his acts and conduct."

14. *It is also to be noted that in Hindu law, for a property to be considered as an ancestral property, it has to be inherited from any of the paternal ancestors up to three generations. In this regard, it would be appropriate to refer to the judgment of this Court in Govindbhai Chhotabhai Patel v. Patel Ramanbhai Mathurbhai13, wherein it has been held as under:*

"18. The learned counsel for the appellants has referred to Shyam Narayan Prasad [Shyam Narayan Prasad v. Krishna Prasad, (2018) 7 SCC 646 : (2018) 3 SCC (Civ) 702]. That is a case in which the property in question was held to be ancestral property by the trial court. The plaintiffs therein being sons and grandson of one of the sons of Gopal Prasad, the last male holder was found to have equal share in the property. The question examined was whether the property allotted to one of the sons of Gopal Prasad in partition retains the character of coparcenary property. It was the said finding which was affirmed by this Court. This Court held as under : (SCC p. 651, para 12)

> *"12. It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship."*

... ...

20. In view of the undisputed fact, that Ashabhai Patel purchased the property, therefore, he was competent to execute the will in favour of any person. Since the beneficiary of the will was his son and in the

absence of any intention in the will, beneficiary would acquire the property as self-acquired property in terms of C.N. Arunachala Mudaliar case [C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar, (1953) 2 SCC 362 : 1954 SCR 243 : AIR 1953 SC 495]. The burden of proof that the property was ancestral was on the plaintiffs alone. It was for them to prove that the will of Ashabhai intended to convey the property for the benefit of the family so as to be treated as ancestral property. In the absence of any such averment or proof, the property in the hands of donor has to be treated as self-acquired property. Once the property in the hands of donor is held to be self-acquired property, he was competent to deal with his property in such a manner he considers as proper including by executing a gift deed in favour of a stranger to the family."

15. *With regard to coparcenary property, the principle laid down by this Court in Rohit Chauhan v. Surinder Singh14 would be relevant as follows:*

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

12. The view which we have taken finds support from a judgment of this Court in M. Yogendra v. Leelamma N. [(2009) 15 SCC 184 : (2009) 5 SCC (Civ) 602] in which it has been held as follows : (SCC p. 192, para 29)

"29. It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only

when a son is born to him. It is one thing to say that the property remains a coparcenary property but it is another thing to say that it revives. The distinction between the two is absolutely clear and unambiguous. In the case of former any sale or alienation which has been done by the sole survivor coparcener shall be valid whereas in the case of a coparcener any alienation made by the karta would be valid."

... ...

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

127. It is settled law that the burden to plead and prove the foundational facts as to whether a property is ancestral, joint family property etc. is on the plaintiff.

128. In the present case, the plaintiff has not placed the title documents of any of the properties on record. No documentary evidence has been led to prove that the ownership of the properties in question, i.e. [redacted] Delhi was with Shiv Lal or any of the plaintiff's ancestors.

129. Further, the plaintiff has not proved that Shiv Lal acquired the property from his father, grandfather or great-grandfather so as to constitute as ancestral property in his hands in which the plaintiff and the defendant no.1 would acquire a share as coparcenary. The plaintiff has also not pleaded or proved that an HUF existed and Shiv Lal acquired the property from the joint family funds or any nucleus. The plaintiff has also not pleaded or proved that any ancestral property was utilized by Shiv Lal to acquire the said properties. The plaintiff has also not pleaded or proved that Sh. Shiv Lal acquired the property himself and expired prior to 17.06.1956, whereby his properties would have devolved by way of mitakshara hindu law.

130. However, as mentioned above the plaintiff has filed a single documentary evidence to even show the ownership of any of the properties allegedly left behind by Sh. Shiv Lal Gupta as ancestral properties.

131. The only evidence led by the plaintiff is the statement of the defendant no.1 dated 07.04.1980 in Suit No.458/1978 as Ex.PW-1/1 and the judgment dated 11.08.1981as Ex. PW-1/2 to show that the suit properties were ancestral in nature.

132. However, the said evidence does not prove the fact that the suit properties were ancestral properties. Firstly, the said suit is a suit for injunction filed by the defendant no.1 against the DDA, only with respect to [redacted] and not the other properties. A bare perusal of the statement Ex. PW-1/1 of the defendant no.1, nowhere supports the claim of the plaintiff that the said property was ancestral in nature. The defendant no.1 only states that he was living in the property since childhood and in the past it was land of *zamindars,* which was

cultivated by his family. Further, he was paying the house tax and apart from the house tax receipt, he had no proof of ownership of the same. The statement of defendant no.1, Ex. PW-1/1 is reproduced below:

"In the Court of Sh. P. D. Jarwal: S. J. Delhi
Ram Chander vs, D.D.A
Suit No. 458/79
7.4.80
PW 1 on S.A.
Statement of Shri Ram Chander s/o Shiv Lal aged 55 years, occupation building material, r/o 261B Arjun Nagar,

I am the owner of house No.261-B, Arjun Nagar, New Delhi which is in the area of 500 Yds. Consisting of three rooms. I am living in the said house since my childhood. In the past it was a land of the Zamindar which we used to cultivate being schedule caste. I was paying tax of this land and still paying the tax of the same. The house bill of the same is Ex. PW1/1. The another copy of the house-tax bill is Ex. PW1/2. DDA has no right on this land. DDA official came to demolish the said house about 2 years back. I requested them not to demolish and they went away. They have given me a notice. I received a demolition notice from DDA of this house.
XXXXX, by the defendant counsel

I do not know the Khasra No. of the land in dispute. There is only one Khasra No. of the land. I have no zamabandi of the Khasra. I have no proof except the house tax bill of the land. We are paying house-tax for the year 1965 also. Before 1965 it was katcha zopri. After the pucca construction of the house of the corporation was charging house tax from me. I have not obtained any map of the house. It is an unauthorized construction and the other house of the village are also unauthorized. I am having the receipt of the house tax from 1965 on-wards. The DDA gave notice and I filed the present suit against DDA. I do not know ehther the land in issue has been acquired by the Government. I do now know whether it falls in Khasra No. 88 Min, 89 Min, and 306 Min.
Re-examination Nil
RO&AC

SD/-
SJIC/Delhi
7/4/80"
(Sic.)

133. A bare reading of the statement of the defendant no.1, Ex. PW-1/1 reveals that it does not support the contention of the plaintiff . The defendant no.1 does not claim in the said statement that the said land was ancestral property. The defendant no.1 rather admits that the land in question belonged to the landlords/*zamindars*, which was only cultivated upon by them. Further, the defendant no.1 admitted that he had no documents of ownership of [redacted]

134. Even the judgment dated 11.08.1981, Ex. PW-1/2 passed in the said suit does not hold the [redacted] as ancestral property, and instead records that the plaintiff is in possession of the same since his childhood and was himself not having any proof of ownership, except receipts evidencing payment of house tax since 1965 on-wards.

135. The Hon'ble High Court of Delhi has held in ***Sunny (Minor) v. Sh. Raj Singh***, CS(OS) No. 431/2006 decided on

17.11.2015 as follows*:*

(i) If a person dies after passing of the Hindu Succession Act, 1956 and there is no HUF existing at the time of the death of such a person, inheritance of an immovable property of such a person by his successors-in-interest is no doubt inheritance of an 'ancestral' property but the inheritance is as a self-acquired property in the hands of the successor and not as an HUF property although the successor(s) indeed inherits 'ancestral' property i.e a property belonging to his paternal ancestor.

(ii) The only way in which a Hindu Undivided Family/joint Hindu family can come into existence after 1956 (and when a joint Hindu family did not exist prior to 1956) is if an individual's property is thrown into a common hotchpotch. Also, once a property is thrown into a common hotchpotch, it is necessary that the exact details of the specific date/month/year etc. of creation of an HUF for the first time by throwing a property into a common hotchpotch have to be clearly pleaded and mentioned and which requirement is a legal requirement because of Order VI Rule 4 CPC which provides that all necessary factual details of the cause of action must be clearly stated. Thus, if an HUF property exists because of its such creation by throwing of self-acquired property by a person in the common hotchpotch, consequently there is entitlement in coparceners etc. to a share in such HUF property.

(iii) An HUF can also exist if paternal ancestral properties are inherited prior to 1956, and such status of parties qua the properties has continued after 1956 with respect to properties. inherited prior to 1956 from paternal ancestors. Once that status and position continues even after 1956; of the HUF and of its properties existing; a coparcener etc. will have a right to seek partition of the properties.

(iv) Even before 1956, an HUF can come into existence even without inheritance of ancestral property from paternal ancestors, as HUF could have been created prior to 1956 by throwing of individual property into a common hotchpotch. If such an HUF continues even after 1956, then in such a case a coparcener etc. of an HUF was entitled to partition of the HUF property.

9. I would like to further note that it is not enough to aver a mantra, so to say, in the plaint simply that a joint Hindu family or HUF exists. Detailed facts as required by Order VI Rule 4 CPC as to when and how the HUF properties have become HUF properties must be clearly and categorically averred. Such averments have to be made by factual references qua each property claimed to be an HUF property as to how the same is an HUF

property, and, in law generally bringing in any and every property as HUF property is incorrect as there is known tendency of litigants to include unnecessarily many properties as HUF properties, and which is done for less than honest motives. Whereas prior to passing of the Hindu Succession Act, 1956 there was a presumption as to the existence of an HUF and its properties, but after passing of the Hindu Succession Act, 1956 in view of the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhishter (supra) there is no such presumption that inheritance of ancestral property creates an HUF, and therefore, in such a post 1956 scenario a mere ipse dixit statement in the plaint that an HUF and its properties exist is not a sufficient compliance of the legal requirement of creation or existence of HUF properties inasmuch as it is necessary for existence of an HUF and its properties that it must be specifically stated that as to whether the HUF came into existence before 1956 or after 1956 and if so how and in what manner giving all requisite factual details. It is only in such circumstances where specific facts are mentioned to clearly plead a cause of action of existence of an HUF and its properties, can a suit then be filed and maintained by a person claiming to be a coparcener for partition of the HUF properties.

11. I may note that the requirement of pleading in a clear cut manner as to how the HUF and its properties exist i.e whether because of pre 1956 position or because of the post 1956 position on account of throwing of properties into a common hotchpotch, needs to be now mentioned especially after passing of the Benami Transaction (Prohibition) Act, 1988 (hereinafter referred to as 'the Benami Act') and which Act states that property in the name of an individual has to be taken as owned by that individual and no claim to such property is maintainable as per Section 4(1) of the Benami Act on the ground that monies have come from the person who claims right in the property though title deeds of the property are not in the name of such person. An exception is created with respect to provision of Section 4 of the Benami Act by its sub-Section (3) which allows existence of the concept of HUF. Once existence of the concept of HUF is an exception to the main provision contained in sub-Sections (1) and (2) of Section 4 of the Benami Act, then, to take the case outside sub-Sections (1) and (2) of Section 4 of the Benami Act it has to be specifically pleaded as to how and in what manner an HUF and each specific property claimed as being an HUF property has come into existence as an HUF property. If such specific facts are not pleaded, this Court in fact would be negating the mandate of the language contained in sub-Sections (1) and (2) of Section 4 of the Benami Act.

12. This Court is flooded with litigations where only self-serving averments are made in the plaint of existence of HUF and a person being a coparcener without in any manner pleading therein the requisite legally required factual details as to how HUF came into existence. It is a sine qua non that pleadings must contain all the requisite factual ingredients of a cause of action, and once the ratios of the judgments of the Supreme Court in the cases of Chander Sen (supra) and Yudhishter (supra) come in, the pre 1956 position and the post 1956 position has to be made clear, and also as to how HUF and its properties came into existence whether before 1956 or after 1956. It is no longer enough to simply state in the plaint after passing of the Hindu Succession Act 1956, that there is a joint Hindu family or an HUF and a person is a coparcener in such an HUF/joint Hindu family for such person to claim rights in the properties as a coparcener unless the entire factual details of the cause of action of an HUF and each property as an HUF is pleaded.

(Emphasis supplied)

136. With respect to the alleged admission of the defendant no.1 that the [redacted] was an ancestral property. It is settled law that an admission must be clear and unequivocal and a fact admitted need not be proved by the opposite party, however as per section 53 of the Bhartiya Sakshya Adhiniyam, 2023 (section 58 of the erstwhile Indian Evidence Act, 1872) the Court may in its discretion still call upon the opposite party to prove the said fact. Order 8 rule 5 CPC is also to the same effect.

137. In the present case, no documentary proof with respect to ownership of the [redacted] has

been placed on record by the plaintiff. Further, the admission of the defendant no.1 cannot be said to be clear and unequivocal as the plaintiff himself has not clearly pleaded as to how the properties in question are ancestral properties or joint family properties or ancestral joint family properties. The defendant no.1 has not elaborated on what basis he is admitting that the plaintiff had a share in the same. Hence, in my considered opinion I find the said admission of the defendant no.1 to be unclear and unequivocal, leaving the plaintiff to still prove the fact that [redacted] was liable to be partitioned.

138. The Hon'ble Apex Court has held in the decision of ***Razia Begum v. Sahebzadi Anwar Begum***, 1958 SCC OnLine SC 77 : 1959 SCR 1111 : AIR 1958 SC 886:

> *10. It is also clear on the words of the statute, quoted above, that the grant of a declaration such as is contemplated by Section 42, is entirely in the discretion of the court. At this stage, it is convenient to deal with the other contention raised on behalf of the appellant, namely, that in view of the unequivocal admission of the plaintiff's claim by the Prince, in his written statement, and repeated as aforesaid in his counter to the application for intervention by the Respondents 1 and 2, no serious controversy now survives. It is suggested that the declarations sought in this case, would be granted as a matter of course. In this connection, our attention was called to*

the provisions of Rule 6 of Order 12 of the Code of Civil Procedure, which lays down that, upon such admissions as have been made by the Prince in this case, the court would give judgment for the plaintiff. These provisions have got to be read along with Rule 5 of Order 8 of the Code, with particular reference to the proviso which is in these terms:—

"Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission."

The proviso quoted above, is identical with the proviso to Section 58 of the Evidence Act, which lays down that facts admitted need not be proved. Reading all these provisions together, it is manifest that the court is not bound to grant the declarations prayed for, even though the facts alleged in the plaint, may have been admitted. In this connection, the following passage in Anderson's Actions for Declaratory Judgments, Vol. 1, p. 340, under Article 177, is relevant:

"A claim of legal or equitable rights and denial thereof on behalf of an adverse interest or party constitutes a ripe cause for a proceeding, seeking declaratory relief. A declaration of rights is not proper where the defendant seeks to uphold the plaintiffs in such an action. The required element of adverse parties is absent."

"In other words the controversy must be between the plaintiff and the respondent who asserts an interest adverse to the plaintiff. In the absence of such a situation there is no justiciable controversy and the case must be characterized as one asking for an advisory opinion, and as being academic rather than justiciable i.e. there must be an actual controversy of justiciable character between parties having adverse interest."

Hence, if the court, in all the circumstances of a particular case, takes the view that it would insist upon the burden of the issue being fully discharged, and if the court, in pursuance of the terms of Section 42 of the Specific Relief Act, decides, in a given case, to insist upon clear proof of even admitted facts, the court could not be said to have exceeded its judicial powers.

139. Hence, the plaintiff has failed to discharge the onus cast on him to prove that the suit properties were ancestral joint family properties. **Accordingly, the issue no. 6 is decided against the plaintiff.**

Issues no.1 and 9

140. I shall next decide the issues no.1, and 9 together, being connected issues, which are reproduced below for the sake of convenience:

> ***1. Whether the properties bearing [redacted] New Delhi are the self acquired properties of deceased defendant no.1, Shri Ram Chander? If so, its effect?***
>
> ***9. Whether defendant No.1 became the owner of suit properties by adverse possession?***

141. The above issues have been framed in the suit vide order dated 91.12.1999. However, after going through the pleadings of the parties, the issue no.1 framed in the suit required to be amended for the reasons stated below.

142. The plaintiff in paras no.3 and 4 of the suit has stated that

his grandfather, Late Sh. Shiv Lal left behind several house/properties and lands in the village Humayunpur, New Delhi and Arjun Nagar, New Delhi namely [redacted] Arjun Nagar, New Delhi. Further, in the year 1958 the sons of Sh. Shiv Lal partitioned the aforementioned properties by way of mutual family settlement, in which (a[redacted] New Delhi came to the share of Ram Chander/ defendant no.1 and his family.

143. The defendant no.1, in his written statement has cryptically denied the above assertion by the plaintiff. The defendant no.1 has stated that in reply to para no.3 and 4 of the plaint that the properties no. [redacted] New Delhi were the self acquired properties of the plaintiff and denied that they were ancestral properties. He did not state anything specifically with respect to the ownership of the [redacted] Humayunpur, New Delhi and stated that he gave the property to the plaintiff of his own free will. The defendant no.1 also asserted

that the plaintiff was in possession of a [redacted] New Delhi which was the self acquired property of the defendant.1. He further stated that the other properties of Sh. Shiv Lal were in possession of his brothers. In paras no 15 and 19 of the written statement, the defendant no.1 stated that the plaintiff along with him had a right only in [redacted] The defendants no.1(f) - (h), defendant no.3 also made similar claims in their written statements.

144. Hence, the defendant no.1 made the claim that he was the owner of only properties no. [redacted] by way of adverse possession. Accordingly, the issue no.1 is hereby amended as follows:

> ***1. Whether the properties bearing [redacted] are the self acquired properties of deceased defendant no.1, Shri Ram Chander? If so, its effect? OPD1, D1(f) – (h) and D3.***

145. At the outset I must point out that although the defendants no.1, 1(f)-(h) and the defendant no.3 though have raised a defense that the defendant no.1 was the owner of properties

[redacted] New Delhi as well as property [redacted] New Delhi by way of adverse possession. No details as to who was the actual owner of the property, or the manner and date from which, the defendant no.1 perfected his title by way of adverse possession have been pleaded in the written statement.

146. Order VI rule 4 CPC requires a party to provide all necessary particulars with dates and items in the pleadings itself when pleading a particular fact. The Hon'ble Apex Court has held in ***V Rajeshwari vs T.C. Saravanabava***, (2004) 1 SCC 551 that a plea of adverse possession must be pleaded with proper particulars such as when the possession became adverse and who was the real owner of the property.

147. The Hon'ble Apex Court in the decision of ***M Siddiq (D) through LRs v. Mahant Suresh Das & Ors,*** (2020) 1 SCC 1 reiterated this principle as under -

> *"748. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous - possession which meets the requirement of being 'nec vi nec claim and nec precario'. To substantiate a plea of adverse possession, the*

> *character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence."*

148. Hence a person claiming adverse possession must plead and then prove through clear and cogent evidence the claim of adverse possession with all its relevant requirements and the burden of proof of proving adverse possession always rests on the person claiming the same.

149. However, in the present case, the defendant no.1 expired after filing his written statement and hence could not step into the witness box to prove his plea of adverse possession. The defendant no.3 examined herself as a witness and orally reiterated that the defendant no.1 was the owner of the suit properties by way of adverse possession, without providing any details.

150. Further, the defendant no.3 during her cross-examination dated 05.07.2019 took a complete divergent turn from her stand in the pleadings and stated that "*Ram Chander was pahalwan and*

used to wrestle and did not other work". During her cross-examination dated 21.09.2019 she deposed that "*The land* [redacted] *Delhi was not purchase by Late Sh. Ram Chander (Vol. it was acquired by him in Wrestling). I do not know who told me about the fact that the aforesaid land at Arjun Nagar was given to Late Ram Chander in wrestling".*

151. Hence, the defendant no.1, defendant no.1(f)-(h) and the defendant no.3 have failed to prove the that the defendant no.1 was the owner of the properties no. [redacted] New Delhi by way of adverse possession. **Hence, the issues no. 1 and 9 are decided against the defendant no.1, defendant no.1(f)-(h) and the defendant no.3.**

Issues no.2 and 3a.

152. I shall decide issues no.2 and 3a together, being connected issues, which are reproduced below for the sake of convenience:

> ***2. Whether defendant no.3 is the widow of late Shri Ram Chander, defendant no.1?***
> ***3a. Whether defendant no.2 ceased to be the wife of defendant no.1 during the life time of defendant No.1? If so, its effect?***

153. The aforesaid issues were framed vide order dated 01.12.1999, which did not indicate, on which party the onus of proof of the issues was placed. However, a perusal of the pleadings of the parties reveals that the factum of marriage between the defendants no.1 and 3 has been asserted by the defendant no.1 (since deceased) and the defendants no. 1 (f) – (h) and the defendant no.3 in the pleadings. Further, they have also asserted that the defendant no.2 ceased to be the wife of the defendant no.1 as she had deserted him. Hence, the onus of the said issue also falls on the said parties.

154. The plaintiff as well as the defendants no.2 and 1(a) – (e) have asserted that the defendant no.1/ Ram Chander was married to the defendant no.2/Smt. Chameli Devi, out of which wedlock the plaintiff and the defendants no. 1(a) – (e) were born. The said marriage between the defendant no.1 and 2 was never dissolved. However, in the year 1969-1970, the defendant no.1 developed illegitimate relations with the defendant no.2, who was already having a son and a daughter and was married to one Nanak Chand, r/o Village Kalera Khimanti, P.S. Murad Nagar, District

Ghaziabad, UP, which marriage was also never dissolved. In the written statement filed by the defendant no.1, he did not deny that he was married with the defendant no.2 and admitted that he was the father of the plaintiff and the defendants no.1(a) – (d), except defendant no.1(e) Sunita. However, he stated that the defendant no.2 had deserted him 30 years ago (suit was filed in the year 1991, hence around the year1961) and married one Pat Ram, s/o Himmat Ram, r/o Lado Sarai, New Delhi and had started residing with him along with the plaintiff and a female child, i.e. the defendant no.1 (e) Sunita was also born to her out of the said wedlock with Pat Ram. On that account, he denied that the he was still married to the defendant no.2 and asserted that the defendant no.3 was his wife as he had contracted a 'customary marriage' with her and denied that she was ever married to one Nanak Ram. The defendants no. 1 (f) – (h) as well as the defendant no.3 raised the same contentions and added that the defendants no.1(a) – (e) were not the daughters of the defendant no.1 and the defendant no.2.

155. As mentioned above, the defendant no.1, defendants no. 1

(f) – (h) as well as the defendant no.3 admit that the defendant no.1 was married to the defendant no.2 first. There is no averment in the written statement of the above-mentioned defendants or even any evidence led, to suggest that the said marriage between the defendants no.1 and 2 was ever dissolved by a decree of dissolution passed by any competent Court of law. A valid Hindu marriage contracted under the provisions of the Hindu Marriage Act, 1955 (HMA) continues to subsist between the parties till such time that it is either declared as voidable under section 12 HMA, or dissolved under the grounds mentioned under section 13 HMA or dissolved by way of mutual consent under section 13-B (2) HMA. The persons so divorced, may only then marry again, subject to the provisions of section 15 HMA. Any alleged desertion by a spouse only confers a right on the deserted spouse to seek the appropriate relief of divorce under section 13 (i-b) of the HMA (which was introduced by way of amendment to the HMA, with effect from 27.05.1976. Prior to which desertion was only a ground for judicial separation under section 10 (1) (a) of the HMA as it stood before the amendment of 1976.). Desertion by one spouse of the other spouse, by itself,

no matter of what length, will not result in the marriage between the parties being dissolved, without an appropriate decree of dissolution of the marriage passed by a competent Court of law on a petition presented by one of the parties to the marriage under section 13 of the HMA. Hence, I find that the defendant no.1 was first married to the defendant no.2 and the said marriage was never dissolved by any competent Court of law and subsisted till their respective demise. Therefore, the alleged subsequent marriage contracted by the defendant no.1 with the defendant no.3 is void as per section 5(i) of the HMA as the defendant no.1 had a spouse living at the time of the said marriage, i.e. the defendant no.2.

156. Further, as held by the Hon'ble Apex Court in ***Yamunabai Anantrao Adhav vs. Anatrao Shivram Adhav***, AIR 1988 SC 644 a void marriage is a nullity ipso facto and although section 11 HMA permits a formal declaration to be made on a petition, it is not incumbent on the party to seek such a declaration from the Court.

157. Hence, in light of the above discussion, I find that the marriage between the defendant no.1 and 2 subsisted till their respective demise and the marriage between the defendant no.1 and 3 is void under section 5 (i) HMA. **Therefore, the defendant no.3 cannot be regarded as the widow of the defendant no.1 and the defendant no.2 continued to be the legally wedded wife of the defendant no.1 till his demise on 13.01.1993. Accordingly, the issues no. 2 and 3a are decided against the defendants no.1, defendants no.1 (f)-(h) and the defendants no.3.**

Issue no. 3b

158. I shall next decide issue no. 3b, which is reproduced below for the sake of convenience:

> ***3 b. Whether defendant no.2 ever married a person known as Shri Pat Ram as alleged in para 5 of the Written Statement (Reply on Merits) filed by defendant no.3?***

159. The onus of the above issue would also necessarily fall on the defendant no.1, defendants no.1(f) – h) and the defendant no.3, who have alleged the same in their respective written statements. In view of the finding and decision under issues no.2

and 3b, with respect to the marriage between the defendants no.1 and 2 subsisting till their respective deaths, the defendant no.2 could not have contracted a legally valid marriage with one Pat Ram under the HMA. Even otherwise, the defendants have failed to prove the factum of ceremony of marriage between the defendant no.2 and the said Pat Ram.

160. The defendants no.1, 1(f) – (h) and the defendant no.3 in their written statements did not mention any date, year or place of the alleged marriage between the defendant no.2 and the said Pat Ram. Further, no documentary proof of such marriage was also led in evidence by the above-mentioned defendants in the form of any marriage certificate, photograph, or any other document in which they were referred to as husband and wife. The defendant no.3 in her evidence by way of affidavit, Ex. DW-1/A even omitted to mention the name of the said Pat Ram and simply stated in para no.5 that the defendant no.2 had deserted the defendant no.1 and got married "to another man". The defendant no.3 in her cross-examination dated 05.07.2019, then completely contradicted herself and deposed that the

defendant no.2 was married to one 'Pyare Lal after divorcing the defendant no.1:

> "*Chameli Devi was the wife of Ram Chander, however, I came to know about it later on. (Vol.) Smt. Chameli Devi had again married to Pyare Lal after divorcing Ram Chander and she is having a daughter from Pyare Lal namely Ms. Sunita. I do no have any document regarding the aforesaid divorce of Smt. Chameli Devi and Sh. Ram Chander. (Vol.) I came to know about the divorce after my marriage with Ram Chander and it was disclosed by Ram Chander. I have not filed any document with regard to the alleged divorce or paternity of Ms. Sunita.*"

161. The defendant no.3 also admitted that she had no documentary proof of any decree of divorce dissolving the marriage of the defendants no.1 and 2. No proof of any ceremony of marriage/solemnization having taken place between the defendants no.1 and 3 has also been led by the defendant no.3.

162. The burden of proof to prove that a valid marriage exists is on the person who claims the said fact [***Rathnamma and Ors vs Sujathamma and Ors***, (2019) 19 SCC 714].

163. Therefore, I find that the defendants no.1, 1(f) – (h) and the defendant no.3 have failed to prove that the defendant no.2 ever married a person known as Sh. Pat Ram. Further, as per section 5(i) of the HMA, 1955 the defendant no.2 could not have contracted another valid marriage during the subsistence of her marriage with the defendant no.1. The defendant no.3 has also failed to prove any ceremony of marriage conducted between the defendant no.2 and the said Pat Ram. **Accordingly, the issue no. 3b is decided against the defendants no.1, 1(f) – (h) and the defendant no.3.**

Issue no.4

164. I shall next decide issue no.4, which is reproduced below for the sake of convenience:

> ***4. Whether the plaintiff and defendants Nos. 1(a) to 1(e) are the legal heirs of deceased defendant No.1 and defendant No.2?***

165. It has already been proved under issue no.3a and 3b, that the defendant no.2 was married to the defendant no.1 and the said

marriage subsisted between the parties till their death.

166. Further, as per section 116 of the Bhartiya Sakshya Adhiniyam, 2023 (BSA) (section 112 of the erstwhile Indian Evidence Act, 1872) the fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

167. Under section section 2(1)(b) of the BSA 'conclusive proof' means when one fact is declared by this Adhiniyam to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

168. The above presumption of legitimacy of a child born out of a valid marriage as per section 116 read with section 2(1)(b) of

the BSA is mandatory presumption which has to be raised in favour of any child who is born during the subsistence of a valid marriage and shall not even allow evidence to be given, unless it can be proved that the parties had no access during the period when the child could have been begotten.

169. The defendants no. 1(f)-(h) and the defendant no.3 have neither pleaded such non-access, nor proved the same. Hence, no evidence led by them can be even looked into for disproving the fact that the plaintiff and the defendants no.1(a)-(e) were the legitimate children of the defendant no.1.

170. The Hon'ble Apex Court has held in the decision of ***Ivan Rathinam vs Milan Joseph***, 2025 SCC Online SC 175, that the presumption of legitimacy under section 112 of the Indian Evidence Act can be rebutted by pleading non access. The relevant portion is quoted below:

> *D.1.1.4 Position in India*
> *25. The above analysis makes it clear that courts around the globe have recognized the theoretical difference in 'paternity' and 'legitimacy' to the extent that in the Venn diagram of paternity and legitimacy, legitimacy is not an independent circle, but is entombed within paternity. After adverting to the position of 'paternity' and*

'legitimacy' in various foreign jurisdictions, it is imperative to evaluate the position in India in light of the unique factual matrix of the instant appeal.

26. The advent of scientific testing has made it much easier to prove that a child is not a particular person's offspring. To this end, Indian courts have sanctioned the use of DNA testing, but sparingly.

27. Before delving into the analysis, it is pertinent to elucidate Section 112 of the Indian Evidence Act, 1872:

"112. Birth during marriage, conclusive proof of legitimacy. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

28. The language of the provision makes it abundantly clear that there exists a strong presumption that the husband is the father of the child borne by his wife during the subsistence of their marriage. This section provides that conclusive proof of legitimacy is equivalent to paternity.29 The object of this principle is to prevent any unwarranted enquiry into the parentage of a child. Since the presumption is in favour of legitimacy, the burden is cast upon the person who asserts 'illegitimacy' to prove it only through 'non-access.'

29. It is well-established that access and non-access under Section 112 do not require a party to prove beyond reasonable doubt that they had or did not have sexual intercourse at the time the child could have been begotten. 'Access' merely refers to the possibility of an opportunity for marital relations.30 To put it more simply, in such a scenario, while parties may be on non-speaking terms, engaging in extra-marital affairs, or residing in different houses in the same village, it does not necessarily preclude the possibility of the spouses having an opportunity to engage in marital relations.31 Non-access means the impossibility, not merely inability, of the spouses to have marital relations with each other.32 For a person to rebut the

> *presumption of legitimacy, they must first assert non-access which, in turn, must be substantiated by evidence."*
>
> (Emphasis supplied)

171. The Hon'ble Apex Court has held in ***Aparna Ajinkya Firodia v. Ajinkya Arun Firodia***, (2024) 7 SCC 773 : (2024) 3 SCC (Cri) 387 : 2023 SCC OnLine SC 161 that in order to uproot the presumption of legitimacy under section 116 of the Bhartiya Sakshya Adhiniyam, 2023 non-access must be pleaded and proved:

> *20. It is necessary in this context to note what is "conclusive proof" with reference to the proof of the legitimacy of the child, as stated in Section 112 of the Evidence Act. As to the meaning of "conclusive proof" reference may be made to Section 4 of the Evidence Act, which provides that when one fact is declared to be conclusive proof of another, proof of one fact, would automatically render the other fact as proved, unless contra evidence is led for the purpose of disproving the fact so proved. A conjoint reading of Section 112 of the Evidence Act, with the definition of "conclusive proof" under Section 4 thereof, makes it amply clear that a child proved to be born during a valid marriage should be deemed to be a legitimate child except where it is shown that the parties to the marriage had no access to each other at any time when the child could have been begotten or within 280 days after the dissolution of the marriage and the mother remains unmarried, that fact is the conclusive proof that the child is the legitimate son of the man. Operation of the conclusive presumption can be avoided by proving non-access at the relevant time.*
>
> *21. The latter part of Section 112 of the Evidence Act indicates that if a person is able to establish that the parties to the marriage had no access to each other at any time when the child could have been begotten, the legitimacy of such child can be denied. That is, it must be proved by strong and cogent evidence that access between them*

was impossible on account of serious illness or impotency or that there was no chance of sexual relationship between the parties during the period when the child must have been begotten. Thus, unless the absence of access is established, the presumption of legitimacy cannot be displaced.

22. Thus, where the husband and wife have cohabited together, and no impotency is proved, the child born from their wedlock is conclusively presumed to be legitimate, even if the wife is shown to have been, at the same time, guilty of infidelity. The fact that a woman is living in adultery would not by itself be sufficient to repel the conclusive presumption in favour of the legitimacy of a child. Therefore, shreds of evidence to the effect that the husband did not have intercourse with the wife at the period of conception, can only point to the illegitimacy of a child born in wedlock, but it would not uproot the presumption of legitimacy under Section 112 of the Evidence Act.

23. The presumption under Section 112 can be drawn only if the child is born during the continuance of a valid marriage and not otherwise. "Access" or "non-access" must be in the context of sexual intercourse, that is, in the sexual sense and therefore, in that narrow sense. Access may for instance, be impossible not only when the husband is away during the period when the child could have been begotten or owing to impotency or incompetency due to various reasons or the passage of time since the death of the husband. Thus, even though the husband may be cohabiting, there may be non-access between the husband and the wife. One of the instances of non-access despite cohabitation is the impotency of the husband. If the husband has had access, adultery on the wife's part will not justify a finding of illegitimacy.

24. Thus, "non-access" has to be proved as a fact in issue and the same could be established by direct and circumstantial evidence of an unambiguous character. Thus, there could be "non-access" between the husband and wife despite cohabitation. Conversely, even in the absence of actual cohabitation, there could be access."

172. Accordingly, the plaintiff and the defendants no.1(a)-(e)

are held to be the legal heirs of the deceased defendants no.1 and 2. **The issue no.4 is accordingly answered in the above terms.**

Issue no.7

173. I shall next decide issue no.7, which is reproduced below for the sake of convenience:

> ***7. Whether defendants Nos. 1(f) to 1(h) are the sons of deceased defendant No.1 & defendant No. 3?***

174. At the outset, I may point out that the issue no.7 requires to be corrected since the defendants no.1(f) –(h) are alleged to be the sons and daughter of the defendant no.1 and the defendant no.3. Hence, the issue no.7 is amended and corrected as below:

> ***7. Whether defendants Nos. 1(f) to 1(h) are the sons and daughter of deceased defendant No.1 & defendant No. 3? OP D1, D1(f)-(h), D3***

175. In this regards I may refer to section 16 (1) of the Hindu Marriage Act, 1955 which provides for legitimacy of the children born out of a void or voidable marriage. The provision is reproduced below:

> 16. Legitimacy of children of void and voidable marriages.—
> (1) Notwithstanding that a marriage marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.
> (2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.
> (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

176. I may point out that for the presumption under section 16 HMA, 1955 to operate, the defendants no.1. 1(f)-(h) and the defendant no.3 were required to prove that the defendant no.1 and the defendant no.3 solemnized their marriage, albeit void, as per the customary rites and ceremonies of either party. The defendants no.1. 1(f)-(h) and the defendant no.3 have not led any evidence to prove the same. In fact in the entire written statement of the defendant no.1 and the defendant no.3 no date of the

marriage has been stated by them. No documentary proof of any ceremony of marriage has also been led by the defendant no.3.

177. The defendant no.3 has stated in her evidence by way of affidavit Ex. DW-1/A that she married the defendant no.1 in 1965 and out of the wedlock two sons and one daughter were born. During her cross-examination dated 24.05.2019, the defendant no.3 stated that her marriage with the defendant no.1 was solemnized at Green Park at her brother's house in 1965, but she could not tell the date or month of the said marriage. In her cross-examination dated 05.07.2019, she stated that she could not remember what her age was at the time of her marriage with the defendant no.1 and contradicted her earlier statement and deposed that the marriage was solemnized in the year 1964. Thereafter she again asserted that she was married in the year 1965. She further deposed that the marriage was attended by her brother, brother of defendant no.1 and other family members. However, no was was examined as a witness to prove the said marriage ceremony.

178. the Hon'ble High Court of Bombay in ***Indubai Jaydeo Pawar and Another vs. Draupada @ Draupadi Jaydeo Pawar and Others,*** 2017 SCC OnLine Bom 2413 has held that the parties must have performed the customary ceremonies as per section 7 of the Hindu Marriage Act for the presumption under section 16 HMA, 1955 to operate.

179. Even otherwise, section 16 (3) HMA, 1955 limits the right of such children, of void and voidable marriages, in the property of only their parents or their parent's share in the joint family property and does not extend to any ancestral property.

180. The Hon'ble Apex Court has held in the decision of ***Revanasidappa and Anr vs Mallikarjun***, (2023) 10 SCC 1 that :

81.1. *In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether : (i) such a child is born before or after the commencement of the amending Act, 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;*
81.2. *In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child "begotten or conceived" before the decree has been*

made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;

81.3. *While conferring legitimacy in terms of sub-section (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in sub-section (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;*

81.4. *While construing the provisions of Section 3(j) of the HSA, 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA, 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA, 1956. In other words, a child who is legitimate under sub-section (1) or sub-section (2) of Section 16 of the HMA would, for the purposes of Section 3(j) of the HSA, 1956, fall within the ambit of the explanation "related by legitimate kinship" and cannot be regarded as an "illegitimate child" for the purposes of the proviso;*

81.5. *Section 6 of the HSA, 1956 continues to recognise the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6, equal rights have been granted to daughters, in the same manner as sons as indicated by sub-section (1) of Section 6;*

81.6. *Section 6 of the HSA, 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9-9-2005 by the amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception to devolution by survivorship was where the deceased*

had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of sub-section (3) of Section 6 as amended, on a Hindu dying after the commencement of the amending Act of 2005 his interest in the property of a joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a joint Hindu family governed by Mitakshara law has been made the norm;

81.7. *Section 8 of the HSA, 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu;*

81.8. *While providing for the devolution of the interest of a Hindu in the property of a joint Hindu family governed by Mitakshara law, dying after the commencement of the amending Act of 2005 by testamentary or intestate succession, Section 6(3) lays down a legal fiction, namely, that "the coparcenary property shall be deemed to have been divided as if a partition had taken place". According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition;*

81.9. *For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption*

of a state of affairs immediately prior to the death of the coparcener, namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA, 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and

81.10. *The provisions of the HSA, 1956 have to be harmonized with the mandate in Section 16(3) of the HMA, 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above.*

181. I find that the defendants no.1(f)-(h) and the defendant no.3 have failed to prove that the defendants no.1(f)-(h) are the sons and daughters of the deceased defendant no.1 and the defendant no.3. **Accordingly, the issue no 7 is decided against the defendants no.1(f)-(h).**

Issue no.5

182. I shall next decide issue no.5, which is reproduced below

for the sake of convenience:

5. Whether the property bearing [redacted] Safdarjung Development Area, is the self acquired property of defendant No. 3?

183. The onus of the said issue was on the defendant no.3, who has led in evidence Ex. D3/W3/13A (OSR), which is the allotment letter dated 3.10.1977 issued by the DDA in the name of the defendant no.3 as an evictee of Arjun Nagar. By the said letter dated 13.10.1977, the defendant no.3 was allotted a MIG flat in Safdarjung Residential Scheme noting her to be an evictee of Arjun Nagar. It notes that the specific flat would be allotted through draw of lots held on 06.10.1977.

184. The defendant no.3 has also led in evidence letter dated 09.1.1978, Ex. D3/W3/13 (OSR) issued by the DDA which notes that she had been allotted flat no. [redacted] New Delhi and possession of the same would be handed over to her on 26.12.1977.

185. Further, letter dated 29.11.1977, Ex. D3/W3/12 (OSR) issued by the DDA also records that the defendant no.3 was

being allotted the MIG flat in SDA in lieu of house demolished by the DDA in Arjun Nagar on 26.09.1975.

186. Hence, it is clear that the said allotment of the SDA flat to the defendant no.3 was in lieu of her possession of the earlier property at Arjun Nagar and not as owner of the said property. The plaintiff has himself admitted in para no.8 of the plaint that in the year 1969-1970 the defendant no.3 was kept at property no.261-A, Arjun Nagar, New Delhi.

187. The plaintiff on the other hand has failed to prove that the allotment of the SDA flat was made in the name of the defendant no.1 originally or that the defendant no.1 held the demolished [redacted] as ancestral property. The plaintiff has also failed to prove that any jewellery of the defendant no.2 or any income from joint hindu family was utilized to pay for the installments of the said SDA flat.

188. The defendant no.3 has also placed on record the following receipts of payment to the DDA in her name:

a) Receipt dated 21.11.2003 as Ex. D3/W3/1 (OSR).

b) Receipt dated 23.09.2003 as Mark A.

c) Receipts dated 09.1.2004, 07.07.2003, 09.07.2004, 30.11.2004, 17.09.2004, 18.05.2004, 18.10.2005, 09.08.2005, 17.05.2005 and 13.05.2005 as Ex. D3/W3/2 (OSR) to Ex. D3/W3/11 (OSR), which record that the payment for the said SDA flat have been made by the defendant no.1.

189. **Accordingly, the issue no. 5 is decided in favour of the defendant no.3 and property bearing [redacted] Safdarjung Development Area, is held to be the self acquired property of defendant No. 3.**

Issue no.8

190. Lastly, I shall decide issue no.8, which is reproduced below for the sake of convenience:

8. Whether the plaintiff is entitled to partition of the properties in suit?

191. In view of the issue no. 6 having been decided to the effect that the properties in question were not ancestral properties, **the**

issue no.8 is decided against the plaintiff.

Relief

192. In view of the foregoing reasons and conclusions, the suit of the plaintiff is dismissed with no order as to costs. Decree sheet be drawn up accordingly. File be consigned to the record room after due compliance. Judgment be uploaded forthwith.

JITEN MEHRA
Digitally signed by JITEN MEHRA
Date: 2025.07.19 17:54:26 +0530

Announced in the open court on 19.07.2025

(JITEN MEHRA)
DJ-10/Central/THC