



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

%

*Reserved on: 10th January, 2024*

*Pronounced on: 30<sup>th</sup> May, 2024*

+

**CS(OS) 807/2009**

**LATE AMAR SINGH THROUGH LRS**

R/o House No. 245A, (New No. 311), Ground Floor,  
Prakash Mohalla, Garhi, East of Kailash,  
New Delhi-110065

1(i) **PARAMJEET KAUR**

W/o Late Amar Singh,  
R/o House No. 245A, (New No. 311), Ground Floor,  
Prakash Mohalla, Garhi, East of Kailash,  
New Delhi-110065

1(ii) **FIGHTER SINGH**

S/o Late Amar Singh,  
R/o House No. 245A, (New No. 311), Ground Floor,  
Prakash Mohalla, Garhi, East of Kailash,  
New Delhi-110065

1(iii) **HARJEET KAUR**

D/o Late Amar Singh,  
R/o House No. 245A, (New No. 311), Ground Floor,  
Prakash Mohalla, Garhi, East of Kailash,  
New Delhi-110065

..... Plaintiff

Through: Ms. Amita Gupta, Mr. Aayush Gupta  
& Ms. Bhawna Bhati, Advocates.

versus

1. **GURDIAL SINGH**

S/o Late Sardar Bawa Singh,  
R/o D-44, East of Kailash,



New Delhi-110065

..... Defendant No. 1

2. **BACHHITTER SINGH**

S/o Late Sardar Bawa Singh,  
R/o House No. 245A, (New No. 311), First and Second Floor,  
Prakash Mohalla, Garhi, East of Kailash,  
New Delhi-110065

..... Defendant No. 2

Through: Mr. Shoit Chaudhary, Advocate for  
D-1 with D-1 in person.  
Mr. Manoj Kumar Sahu, Advocate for  
D-2.

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. *Suit for Partition* has been filed by the plaintiff in respect of the Industrial Plot and Building bearing No. 19/6, Block D, measuring 483.89 sq. meters situated in Okhla Industrial Area, Phase-II, New Delhi (*hereinafter referred to as the "suit property"*).

2. It is submitted that the defendant Nos. 1 and 2 and the deceased plaintiff are the sons of Late Shri Sardar Bawa Singh, who were carrying on a business of repairing of electric motors and compressors under the name and style of partnership Firm M/s Compressors India from 02.01.1981 at 245-A, Prakash Mohalla, Garhi, Lajpat Nagar, New Delhi. They had entered into a Partnership Deed dated 06.10.1981, wherein it was agreed that the profits and losses of the business would be shared equally by all three partners. Bank account in the name of Firm, was to be operated jointly and severally was. None of the partners were entitled to benefit from the



goodwill at the time of the retirement from the partnership business.

3. The Delhi Development Authority (*hereinafter referred to as "DDA"*) held auction of the suit property on 29.09.1987, in which the partnership Firm was the successful bidder for Rs. 4,78,000/- and the sale was confirmed by the Vice-Chairman, DDA in favour of the Firm which was directed to pay Rs. 3,58,511/- by 04.12.1987. The suit property is bound by Plot No. D-19/5 on the left side and by Plot No. D-20/1 on the right side. There is a 20 feet wide back land and 45 feet wide road in the front.

4. Some delays and defaults occurred in payment of the consideration amount, leading to the cancellation of the allotment. Eventually, the Firm was able to pay the balance consideration and eventually the Lease Deed was executed and the possession of the suit property was handed over to the partnership Firm on 22.02.1983. The Perpetual Lease Deed dated 04.03.1983 executed in favour of the partnership Firm, granted lease hold rights in perpetuity from 22.02.1983.

5. It is asserted that the partners continued to do the business till 1992, after which *interse* differences arose leading to discontinuation of the business. The suit property, however, continued to be in joint possession of all the three partners. The plaintiff has claimed that one of the defendants tried to alienate the suit property. Therefore, plaintiff sent Legal Notice dated 26.02.2009 to both the partners to dissolve the partnership Firm and partition of the suit property but the defendants refused to accept the Notice.

6. The plaintiff has thus filed the present Suit seeking the partition of the suit property by metes and bounds.

7. **The defendant No. 1 in his Written Statement** has asserted that the present Suit has been filed by the plaintiff in collusion with the defendant



No. 2 with whom he is in the litigation in regard to his residential house and the present Suit has been filed only to create a pressure on the defendant No. 1 to leave his rights in the residential House No. 245-A (Old), 311 (New), 2<sup>nd</sup> Floor, Garhi, Prakash Mohalla, Lajpat Nagar, New Delhi.

8. It is submitted that the plaint does not disclose any cause of action and the present Suit is also bad for non-joinder and misjoinder of necessary parties.

9. It is further submitted that the partnership Firm already stands dissolved in the year 1992 and thereafter, no partnership business has ever been carried out. However, the entire machinery continues to lie in the suit property. In the year 1995, the plaintiff and defendants arrived at an Oral Partition of the suit property and in view thereof, plaintiff and the defendants took steps for partition of the suit property. Simultaneously, defendant No. 1 put the proposal for taking the front portion of the suit property in lieu of which he had agreed to waive his rights in the machinery of the Partnership business as well as to recover the dues from the mortgage. His proposal was accepted by defendant No. 2 and the plaintiff. Therefore, the suit property stood partitioned and since then defendant No. 1 is in peaceful and exclusive possession of the front portion of the suit property which is equivalent to portions that have fallen into the share of the parties. The defendant No. 1 has got his electricity and water connection installed in his individual name, in his portion and has been paying the charges. The House tax is also being paid by him exclusively.

10. The defendant No. 1 has further asserted that since the closure of partnership business and separation of their respective portions, he has let out the suit property to the tenants and the defendant No. 1 is getting the



rental income from them.

11. It is further asserted that the plaintiff is guilty of suppression of material facts and is not entitled to any relief. Moreover, the proper court fee has also not been affixed on the Plaint.

12. All the other averments made in the Plaint, are denied.

13. **The defendant No. 2 in his Written Statement** has admitted that the suit property was jointly owned by the partnership Firm, has no objection to the division of the suit property equally amongst them.

14. It is, however, asserted that the defendant No. 1 was liable to pay Rs. 5,00,000/- to the defendant No. 2 which he had taken from him way back in 1993 for his personal use, which he has failed to return. The defendant No. 1 is also liable to pay the electricity bill amounting to Rs. 6,000/- per month used by him in the suit property from 1996 to 2002 which was being used as common electricity by the partnership Firm.

15. Moreover, the defendant No. 1 has purchased the House No. D-44, East of Kailash, New Delhi for about Rs. 1.2 crores from the funds of the partnership Firm on the assurance that he shall return this amount to the Firm but he has failed to repay the said amount.

16. **On merits**, it is explained that the partnership business was continued till 1996 and not 1992 as asserted by the plaintiff. The defendant No. 1 had started creating hindrances in the functioning of the partnership Firm and took out the money from the account of the Firm on various occasions on an assurance of repayment, but he never repaid the amounts. The defendant No. 1 sometime in the year 1996 proposed to pay Rs.50,00,000/- each to the plaintiff and the defendant No. 2 to take front portion of the suit property since it had good market value. The plaintiff and the defendant No. 2 had



agreed to the proposal but defendant No. 1 failed to make payments as assured by him, but has continued to be in illegal possession of the front portion.

17. It is submitted that the defendant No. 2 even tried making complaints against the defendant No. 1 in the local Police Station but to no avail.

18. It is also asserted that the defendant No. 1 has continued to use the electricity connection of the partnership firm since 1996 till 2002 and has failed to payment his share of the electricity that was used by him. The defendant No. 1 has denied to pay the electricity bills. The share of the defendant No. 1 towards the electricity charges is about Rs. 6,000/- per month which he is liable to pay to the plaintiff and the answering defendant No. 2.

19. It is denied that the plaintiff had issued a Notice dated 26.02.2009 to both the defendants for dissolution of the partnership Firm or that they had refused to accept the notice. However, it is submitted that the defendant No. 2 has no objection to the division of the suit property into 1/3<sup>rd</sup> share each.

20. **The plaintiff in his Replication to the Written Statement of defendant No. 1** has asserted that the plaintiff has no litigation with respect to the residential House No. 311 (New), 2<sup>nd</sup> Floor, Garhi, Prakash Mohalla, Lajpat Nagar, New Delhi either with defendant No. 1 or defendant No. 2.

21. It is denied that the partnership Firm was dissolved in the year 1992 or that the parties had arrived at an oral partition. It is further denied that in lieu of waiving of defendant No. 1's right to the machinery belonging to the partnership Firm, defendant No. 1 had taken the front portion of the suit property pursuant to any oral partition. All the other averments made in the Written Statement are denied.



22. **The plaintiff in his Replication to the Written Statement of defendant No. 2** has asserted that the plaintiff and the defendants were in possession of the suit property, but the separate possession had been taken for the purpose of convenience of carrying on the business. It is denied that the oral partition ever took place between the parties and the prayer for partition of the suit property by metes and bounds is reaffirmed.

23. **The issues** on the pleadings were framed on 13.08.2013 which read as under: -

- “1. Whether the Plaintiff has filed the present suit in collusion with the Defendant No. 2? OPD-1*
- 2. Whether the suit of the Plaintiff is without cause of action? OPD-1*
- 3. Whether the suit of the Plaintiff is time barred in the light of his own admission that the partnership business was closed down in the year 1992? OPD-1*
- 4. Whether the site plan filed by the Plaintiff is incorrect? OPD-1*
- 5. Whether the Plaintiff is guilty of suppression of material fact of Oral Partition of the suit property in the year 1995-by all the three partners of M/s Compressor (India)? OPD-1*
- 6. Whether the suit of the Plaintiff has not been properly valued for the purposes of court fee and jurisdiction? OPD-1*
- 7. Whether the Plaintiff is entitled for the relief of partition, as prayed for? OPP*
- 8. Relief.”*

24. The plaintiff in support of his case examined himself as **PW1** who has deposed in support of his assertions vide his affidavit Ex. PW1/X.

25. **PW2/Narinder Singh**, nephew of PW1/Amar Singh, has corroborated the testimony of PW1/Amar Singh, the plaintiff.



26. **The defendant No. 1/Gurdial Singh has appeared as D1W1** in support of his case.

27. D1W1/Gurdial Singh also examined **D1W2/Brij Mohan**, Senior Supervisor with BSES, Rajdhani Power Ltd. who had produced the record pertaining to Electricity Connection No. 2530055086 and CA No. 101840586 which is Ex.D1W2/1.

28. **D1W3/Balbir Singh** was a tenant in the suit property who has deposed that defendant No. 1 was the landlord who had rented him out the suit property to him.

29. **D1W4/Tejender Pal Singh Bawa** was known to the parties to the present suit from the past four decades as they were having similar business. He deposed that he had visited the property when the same was physically partitioned by a cement wall. He testified in support of the defendant No.1 that an Oral Partition had taken place between the parties, pursuant to which the defendant No.1 took possession of the front portion of the suit property.

30. **The plaintiff in the Written Submissions have reiterated the assertions as made in the Plaint and the Replication.** The prayer for partition of the suit property by metes and bounds is reaffirmed and reliance is placed on the case of Shreedhar Govind Kamerkar vs Yesahwant Govind Kamerkar and Anr. 2006 (14) SCALE .

31. **The defendant No.1 in the Written Submissions** have also reiterated their assertion that the suit property was already partitioned between the parties.

32. Reliance was place on the case of Rajinder Pershad (Dead) by L.rs. Vs. Darshana Devi AIR 2001 SC 3207 and Jasdeep Singh Kalsi v. The State and Ors., 256 (2019) DLT 443, to assert that in the absence of cross-





examination of the Defendant No. 1 on the statements given by him in his Affidavit by way of Evidence, the case of the Defendant No. 1 must be accepted.

**Submissions heard and the record as well as evidence perused.**

33. **Issue-wise findings are as under: -**

**Issue No. 1: -**

*“Whether the Plaintiff has filed the present suit in collusion with the Defendant No. 2? OPD-1”*

34. Admittedly, the plaintiff and the defendants who are his brothers, had formed the partnership Firm, M/s Compressors India and together purchased the suit property in the name of partnership Firm. Eventually, they developed differences and the plaintiff has filed the present Suit for Partition which is being contested by the defendant No. 1, though defendant No. 2 is supporting the plaintiff.

35. Essentially, it is the defendant No. 1 who claims that the suit property stands partitioned and his portion has already been separated in the year 1995. To the contrary, plaintiff and the defendant No. 2 who are admittedly in the joint possession of the remaining rear portion of the suit property, are aggrieved by the exclusive possession of the front portion that has been assumed by the defendant No. 1. Merely because the grievance of the defendant No. 2 is the same as that of the plaintiff and consequently, he is supporting the plaintiff, it cannot be said that it is a collusive Suit between the plaintiff and the defendant No. 2.

36. The issue is decided against the defendant No. 1 accordingly.

**Issue No. 2: -**

*“Whether the suit of the Plaintiff is without cause of action? OPD-1”*



37. The plaintiff has sought the partition of the suit property on the premise that it was jointly owned by the plaintiff and the defendants as partners of the partnership firm and that after partnership had ceased to the business, the plaintiff has become entitled to 1/3<sup>rd</sup> share in the suit property.

38. There is no denial that the suit property was purchased in the name of the Firm in which each has equal 1/3<sup>rd</sup> share. It is the defence of defendant No. 1 in its Written Statement that an Oral Partition had taken place in the year 1995, but it is a matter of evidence.

39. In Kalwa Devadattam vs. Union of India AIR 1994 SC 880, while endorsing that an oral partition was permissible, the Hon'ble Apex Court observed that the burden of proof remained on the person who asserted such partition. The separate occupation of portions, division of the income of the joint property, defining of shares of the joint property in the revenue or land registration records, mutual transactions could be the factors which may become significant to prove an oral agreement as observed in Bhagwani Kunwar vs. Mohan Singh AIR 1925 PC 132 and Digambar Adhar Patil vs. Devram Girdhar Patil AIR 1995 SC 1728.

40. Thus, the plea of Oral Partition needs to be proved and it must be shown that the same was acted upon. It cannot be said that the present Suit is without any cause of action.

41. The issue is decided against the defendant No. 1 according.

**Issue No. 3: -**

*“Whether the suit of the Plaintiff is time barred in the light of his own admission that the partnership business was closed down in the year 1992? OPD-1”*

42. The defendant No. 1 has taken a plea that the Suit is barred by time as



the partnership Firm closed in the year 1992 and thereafter an Oral Partition of the suit property took place in 1995.

43. Though the partnership business may have closed in the year 1992, but the suit property continues in the name of the partnership firm, thereby entitling the plaintiff to seek partition. The right to seek partition is a continuing cause of action and it cannot be said that merely because the partnership firm had ceased in the year 1992, the present Suit for Partition filed in the year 2009 is barred by time.

44. The issue is decided against the defendant No. 1 accordingly.

**Issue No. 4:** -

*“Whether the site plan filed by the Plaintiff is incorrect? OPD-1”*

45. The defendant No. 1 has taken a plea that the site plan Ex. PW1/2 filed by the plaintiff is incorrect but he has not filed any corresponding site plan of the suit property and also he is not able to point out as to how the site plan relied upon by the plaintiff, is incorrect.

46. The issue is decided against the defendant No. 1 accordingly.

**Issue No. 6:** -

*“Whether the suit of the Plaintiff has not been properly valued for the purposes of court fee and jurisdiction? OPD-1”*

47. In the present case, the plaintiff has sought a relief of partition, with respect to the suit property and claimed his 1/3rd share therein. He has valued the suit at Rs.2,32,73,150/- for the purpose of jurisdiction and has paid a Fixed Court fee.

48. It is asserted by the defendant No.1 that after the Oral partition of the suit property in 1995, the plaintiff has no right, title or interest with the front portion of the Suit property which is now the defendant's share. Thus, the



plaintiff was bound to pay ad valorem court fee for the portion in possession of himself and defendant No.2.

49. The question which arises for the determination of this court is whether the plaintiff had to pay Fixed Court Fee or Ad Valorem Court Fee

50. It is not denied by the defendant No.1 that the suit property was jointly owned by the plaintiff and the defendants. It is also not disputed that the plaintiff and the defendant No. 2/Bachhitter Singh are in possession of the rear portion, while the defendant No. 1 Gurdial Singh is in occupation of the front portion, being the joint owners.

51. It was held by this court in Prakash Wati vs Dayawanti, (1990) 42 DLT 421, that it is a settled principle of law that in the case of co-owners, the possession of one is in law, the possession of all unless ouster or exclusion is proved. Referring to the decision of the Apex Court in Neelavathi & Others V. N.Natarajan & Others, AIR 1980 SC 691, it was held that when the plaintiff asserts shared possession of the property for which partition is requested, whether actual or constructive, the plaintiff is only required to pay a fixed court charge in accordance with Article 17(vi) Schedule II of the Court Fees Act, 1870.

52. Thus, ad valorem court fee under Section 7(iv) (b) of the Court Fees Act, 1870 can be applied only when the plaintiff has been ousted from its enjoyment of the suit property and seeks restoration of the joint possession by way of a suit as was held in Asa Ram Vs. Jagan Nath and others, AIR 1934 Lahore 563.

53. From the aforesaid judgements, it is clear that a party claiming partition of the property is liable to pay ad valorem court fee only in those circumstances where the plaintiff has been ousted from its enjoyment of the



suit property. To constitute ouster, there must be evidence an open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other.

54. As the possession of all the three parties to the suit property is joint and several, the fixed court fee has been correctly paid by the plaintiff.

55. The issue is decided against the defendant No. 1 accordingly.

**Issue Nos. 5 and 7: -**

*“Whether the Plaintiff is guilty of suppression of material fact of Oral Partition of the suit property in the year 1995-by all the three partners of M/s Compressor (India)? OPD-1”*

*“Whether the Plaintiff is entitled for the relief of partition, as prayed for? OPP”*

56. It is an admitted case that the plaintiff and along with defendant No. 1/Gurdial Singh and defendant No. 2/Bachhitter Singh, his brothers, had executed a Partnership Deed dated 06.10.1981, Ex.PW1/1 in the name of M/s Compressors India and had been conducting their business from the suit property. The partnership Firm was duly registered, about which there is no challenge *inter se* the parties.

57. It is also not under challenge that the parties ceased to do the partnership business since 1992 because of the differences which emerged between the partners. There are multiple civil and criminal litigations which ensued between the parties and are being vigorously followed. Eventually, the present Suit for Partition has been filed by the plaintiff in respect of the suit property. The suit property being in the joint name of plaintiff and the defendants is not in dispute.

58. The only defence set up by the defendant No. 1/Gurdial Singh, to the plea of partition is that *an Oral Partition* took place in the year 1995, since



when he is in possession of the front portion of the suit property, as has also been demarcated in the site plan, Ex. PW1/2.

59. The defendant No. 1/Gurdial Singh in his testimony in affidavit of evidence i.e. Ex. DIW1/A has asserted that this Oral partition took place in the presence of their sister, Smt. Mahender Kaur who also endorsed this partition by commenting that it is in their interest in order to avoid any future fights. However, even though according to defendant No. 1/Gurdial Singh, Smt. Mahender Kaur was the witness to this Oral partition, but she has not been examined by defendant No. 1/Gurdial Singh.

60. The plaintiff has tried to support his claim of oral Partition, is that pursuant to the Oral Partition, a wall was raised demarcating his front portion from the rear portion, which was jointly given to the two brothers i.e., the plaintiff and the defendant No. 2/Bachhitter Singh. It is asserted that the plaintiff and the defendant No. 2 had made the chalk markings themselves on which the wall was subsequently raised.

61. It is not in dispute that a huge wall was raised by the defendant No. 1/Gurdial Singh. The plaintiff in his testimony however, has deposed that this wall was constructed by defendant No. 1 about which they came to know subsequently. Pertinently, he stated that the '*defendant No.1 raised the partition wall separating front portion from back portion in the midnight of Saturday and Sunday without any measurement and Monday morning I noticed the same.*' He has further stated in his cross-examination that '*the wall was constructed silently*'.

62. The defendant No. 1/Gurdial Singh in support of his claim of an Oral partition, has also examined DIW4/Tejender Pal Singh Bawa, who is in the similar business. According to his testimony, when he had visited the suit



property in 1995, he had seen a cemented wall. He had enquired from the plaintiff who had informed him that a partition has taken place amongst the parties.

63. D1W4/Tejender Pal Singh Bawa in his cross-examination, however, admitted that he has visited the house of defendant No. 1/Gurdial Singh once or twice and that he has not gone to the suit property from July, 1995. He further denied that the suit property was not partitioned but when a question was put to him if he is aware of the oral partition, he responded by saying that *'since earlier three brothers were working together and subsequently, he saw a partition wall, he came to know on his own that the partition has taken place'*. The testimony of D1W4/Tejender Pal Singh Bawa shows that he has no knowledge about the Oral partition, but he had come to depose only on the instance of defendant No. 1/Gurdial Singh.

64. The defendant No. 1/Gurdial Singh also examined *D1W3/Balbir Singh, a tenant in his part of the suit property*, who had asserted that when he came in the suit property as a tenant for one year from 1995 to 1996. He had taken a one room on rent on ground floor of the suit property and that he did not seek the documents of ownership of the suit property.

65. D1W3/Balbir Singh though had produced the Rent Deed marked D1W3/B, but did not produce the original Rent Deed despite being specifically asked. Such photocopy of the Rent Deed cannot be of any consequence. This witness may have come into the suit property as a tenant of defendant No. 1/Gurdial Singh but his testimony does not further the claim of defendant No. 1/Gurdial Singh that an Oral Partition had taken place in the year 1995.

66. Even though admittedly a wall got constructed, but there is no cogent



evidence which supports the assertion that it was raised pursuant to any agreement between the parties for division of the suit property by metes and bounds. The defendant No. 1 may have assumed the exclusive possession of a portion of the property by raising of a Wall for peaceful enjoyment, but this fact simplicitor cannot lead to any inference of Oral Partition, especially in the light of other factors as discussed below.

67. Another highlighted by the defendant No.1 is that he had taken a separate *electricity connection* in his individual name for the front portion, which is not denied. However, it is not in dispute and is also admitted by him in his cross-examination that there was one common electricity connection in the name of the partnership Firm, supplying the electricity to the suit property which however, was disconnected on account of non-payment of electricity charges. The plaintiff has explained in his cross-examination that Rs. 6,000/- per month was required to be paid by each of the three brothers even when they were not using the electricity, as per rules of electricity Department. However, since there was a gate installed, they were not able to enter the premises and carry out the business. As they were not carrying out the business and not paying the electricity charges, the electricity connection in the name of the partnership Firm, was disconnected.

68. The property could not be effectively used without the electricity, and the Electricity Department was not agreeable to give the electricity connection in the sole name of the defendant No. 1/Gurdial Singh unless there was some kind of partition.

69. It is also admitted by defendant No. 1/Gurdial Singh in his cross-examination, that he got the electricity meter in his name only after erection





of the wall to establish his exclusive possession of the front portion.

70. That the wall was raised for obtaining the electricity connection in the individual name, is also corroborated by D1W2/Brij Mohan, Senior Supervisor with BSES, Rajdhani Power Ltd. who deposed that a new electricity connection in the name of defendant No. 1 had been installed in the suit property and produced the requisite documents submitted by defendant no.1 which are collectively Ex.D1W2/1 (44 Pages).

71. In the said documents, there is a Site Plan dated 17.05.2005 which had been prepared by the Official who had visited the suit property, wherein it was noted that there was no connection existing at the site and the connection was demanded **approximately for 1/3<sup>rd</sup> share** of the total area and an affidavit had been given by defendant no.1 for use and supply of electricity to 1/3<sup>rd</sup> share of the suit property, and the rates be calculated accordingly. The affidavit submitted by defendant No. 1/Gurdial Singh also stated that he would be using the electricity on the front side which is 1/3<sup>rd</sup> portion of the suit property.

72. Further, the defendant No. 1/Gurdial Singh when asked during his cross-examination if he had taken “*no objection*” from the plaintiff and the defendant No. 2/Bachhitter Singh who are the joint owners before applying for electricity connection, he responded that there was no need of a “*No Objection Certificate*”, since he was in exclusive possession in respect of the front portion since 1995.

73. Aggrieved by the installation of the electricity connection in the exclusive name of defendant No. 1/Gurdial Singh, the plaintiff challenged it by filing Writ Petition No. W.P.(C) 7213/2010 titled *Amar Singh vs. MCD and Ors.*, on an apprehension that he would not be able to get the electricity



or water connection as the connection has already been supplied in the name of defendant No. 1/Gurdial Singh. The Court held that his apprehension was misfounded as no application for separate electricity water connection had been filed by the plaintiff/petitioner and no relief, therefore, could be granted to him for a separate electricity or water connection. The right of defendant No. 1/Gurdial Singh to have electricity and water connections in his name was affirmed and the Writ Petition was dismissed as not maintainable.

74. It may be observed that these observations were in respect of the installation of electricity and water connection which had no bearing on determination of the question of Oral Partition.

75. It thus, emerges that to get an electricity connection, the consent of all the co-owners is required which was not possible because of the *interse* disputes; rather the connection in joint name, got disconnected on account of non-payment. The defendant no.1 could have got the electricity connection only if he could establish his exclusive possession. This led to the erection of the wall without there being any consensus about the partition by metes and bounds. Mere assumption of exclusive possession, though relevant cannot in itself be a proof of partition, especially when the factum of physical partition is seriously contested by the plaintiff.

76. It is evident for the purpose of securing an electricity connection in his individual name, the defendant No. 1 had raised the wall to claim his exclusive possession in the defined portion. The defendant No. 1/Gurdial Singh may have physically demarcated a portion and assumed its physical possession, but that in itself is no evidence of the Oral Partition of the suit property.



77. The only conclusion from this evidence that can be drawn is, in fact, no partition had taken place as has been claimed by the defendant No. 1/Gurdial Singh, but he had merely erected a wall to segregate his possession in order to be able to get the electricity connection and to be able to rent it to the tenants to the exclusion of defendant No.2/Bachhitter Singh as well as the plaintiff.

78. The defendant No. 1/Gurdial Singh has further asserted that pursuant to the aforesaid Oral settlement, the plaintiff and the defendant No.2/Bachhitter Singh were to get the rear portion of the suit property in question and also the entire machinery belonging to the partnership firm which was to be shifted to the rear portion. The parties also agreed that defendant no.1 would not claim any share in the machinery lying in the premises in order to offset the difference in price value of the front portion which was more than that of the rear portion.

79. It is admitted by the plaintiff as well as by the defendant No.2/Bachhitter Singh in their respective testimony that the machinery is still lying in the rear portion which is in their possession. Pertinently, while the defendant No. 1/Gurdial Singh in his cross-examination had asserted that the value of the machinery at the time of Oral Partition may have been around Rs. 16 to 18 lakhs, and upon being given a suggestion that the value of the machinery was not more than Rs. 3 to 4 lakhs, he said that the same was incorrect.

80. Had there been a partition as has been asserted by the defendant No. 1/Gurdial Singh, there was no reason for the plaintiff and the defendant No.2/Bachhitter Singh to not utilise or sell the machinery and realize the optimal value and to leave it depreciate over a period of time. Moreover, no



evidence has been led by the defendant no.1 about the difference in valuation of the two portions of the suit property and whether the value of machinery was sufficient to offset the price differential as claimed by him. Thus, it may be concluded that there was no partition of the property and the family disagreement led the defendant no.1 to assume exclusive possession of the front portion to the exclusion of the plaintiff and defendant no.2.

81. The next significant piece of evidence is that the plaintiff in his cross-examination had explained that *'so far as our entry to the front portion is concerned we cannot enter that portion but as and when defendant No.1 wishes, he enters the back portion of the suit property by opening the lock.'* Thus, it is evinced that while the front portion has been cordoned off by the defendant No. 1/Gurdial Singh by raising a high wall and having two access gates to his portion, but it has been asserted that the defendant No. 1 can still come to his portion through the rear gate and he does once in a while, thereby establishing the unity of legal title in the entire suit property.

82. The next piece of evidence on which reliance has been placed by the defendant No. 1/Gurdial Singh is the **Mutation of the front portion in his name** *vide* Order dated 24.12.2002, Ex. D1W1/2.

83. The defendant No. 1/Gurdial Singh in his cross-examination has clarified that when he had applied for mutation (sic) it was for an independent House tax assessment for his 1/3<sup>rd</sup> share in the suit property. The Official of MCD had visited the suit property and found him in possession of 1/3<sup>rd</sup> share in the front site of the suit property. Consequently, the suit property was mutated in his name to the extent of 1/3<sup>rd</sup> share.

84. The House Tax Assessment Order dated 24.12.2002, Ex. D1W1/2, specifically mentions that defendant No. 1/Gurdial Singh had requested to



separately work out and fix the rateable value in respect of the portion owned by him. The defendant No. 1/Gurdial Singh, the **co-owner** also requested during hearing that he intends to liquidate the taxes in respect of his portion separately due to family circumstances/disputes. The Final Order reads as under:

*“Shri Gurdayal Singh, co-owner also requested during hearing that he intends to liquidate the taxes in his r/o portion separately due to family circumstances/disputes. He is the owner of approx. 1/3<sup>rd</sup> portion of the property. To facilitate him to make payment of the taxes of his portion the R.V. is here by bifurcated as under with common passage for all the co-owners.*

*To sum up the following RVs are fixed:-*

- 1. RV Rs. 1,04,490/- w.e.f. 1-4-1986*
- 2. RV Rs. 1,00,030/- w.e.f. 1-12-1988*
- 3. RV Rs. 1,02,980/- w.e.f. 1-4-1994*

*Out of the above RV w.e.f. 1-4-1994 the RV in r/o the portion of Sh. Gurdayal Singh would remain Rs.64,650/-. This is to be bifurcated from the financial year 2002-2003. Latest site report of Sh. Rakesh Tihara dated 23-12-2002 confirms that physical partition exists at site by putting walls/partition & entire property lying vacant & locked.”*

85. The said House Tax Order Ex. D1W1/2 on which heavy reliance has been placed by defendant No. 1/Gurdial Singh, itself records the findings and submissions that defendant No. 1/Gurdial Singh was the co-owner who wanted his 1/3<sup>rd</sup> share approximately to be assessed separately to facilitate the payment of house tax. There cannot be evidence more clinching than this House Tax Order relied upon by the defendant No. 1/Gurdial Singh, to show that while the defendant No. 1/Gurdial Singh may have demarcated the front portion by raising a wall and taken exclusive possession, but it was not by



virtue of a partition, whether oral or otherwise. His possession of front portion of the suit property cannot lead to any conclusion that there was indeed an oral partition between the parties as claimed by the defendant No. 1/Gurdial Singh, whereby the suit property got divided by metes and bounds.

86. ***To conclude***, the comprehensive reading of the entire evidence as led by the parties leads to only one conclusion that there was no Oral Partition took place between the parties. ***Therefore, the suit property is liable to be partitioned and the plaintiff as well as the defendant Nos. 1 and 2 are entitled to their 1/3<sup>rd</sup> share each in the suit property in question.***

87. The issues are answered accordingly.

**Issue No. 8: -**

*“Relief”*

88. It is, therefore, held that the plaintiff and the defendants are entitled to 1/3<sup>rd</sup> share each in the suit property.

89. A Preliminary Decree is passed accordingly.

**CS(OS) 807/2009 & CCP(O) 45/2013, I.A. 14545/2023**

90. List for determination of mode of partition of the suit property by metes and bounds on 30.07.2024.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**MAY 30, 2024**

*S.Sharma*