



\$~5

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

*Date of decision: 6<sup>th</sup> May, 2024*

+ **CS(OS) 382/2022 and I.A. 9846-48/2022, 16256/2023, 16257/2023, 17732/2023**

**CHARANJEET KAUR** ..... Plaintiff  
Through: Mr. Vivek Sood, Sr. Adv. with Ms. Smriti Varma, Mr. Abhishek Varma, Mr. Raunak Gupta, Ms. Palak Bishnoi, Advs. (M: 9654825944)

versus

**RAVINDER PAL SINGH & ANR.** ..... Defendants  
Through: Mr. Sumant De, Mr. Divakar Kumar, Mr. Rohit Khurana & Mr. Alsamad Qureshi, Advs.(M:9911100685)

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J.(Oral)**

1. This hearing has been done through hybrid mode.

**I.A.9847/2022 (u/O II Rule 2 CPC)**

2. This is an application filed by the Plaintiff - Charanjeet Kaur seeking leave to file a separate suit in respect of the share of the partnership firm M/s. Harjeet Brothers. The present suit relates to three siblings and for partition of the assets of the father. The said leave sought under Order II Rule 2 CPC is granted. All the objections are left open. Application is disposed of.

**I.A.9846/2022 (for stay)**

3. This is an application filed by the Plaintiff seeking restraint against the Defendants with respect to the properties bearing no. 46/43, West



Avenue, Punjabi Bagh West, New Delhi- 110026 and property bearing no. A- 768, 2nd Floor, Sushant Lok- Phase- 1, Gurgaon, Haryana- 122009 till the disposal of the suit as also other *inter alia* remedies.

4. In this application, vide order dated 28th June, 2022, a *status quo* order has been granted in the following terms.

*“3. The parties are directed to maintain status quo in respect of residential property bearing no. 46/43, West Avenue, Punjabi Bagh West, New Delhi-110026 till the next date of hearing.”*

5. The said order shall continue during the pendency of the suit. The application is disposed of.

**I.A.16257/2023 (u/O XI Rule 14 CPC)**

6. This is an application under Order XI Rule 14 CPC filed by the Defendant No.1 seeking disclosure of a testamentary document or a Will executed by the late father Sh. Malkiat Singh. The case of the Defendant No.1 is that such a document exists and the same is in the possession of the Plaintiff. The existence of such document and possession thereof, has been denied by the Plaintiff in her reply to this application. In addition, the statement of the Plaintiff has also been recorded today, which reads as under:

**“Statement of Mrs. Charanjeet Kaur W/o Shri Anmol Singh, aged around 54, R/o - C-32, Pamposh Enclave, Greater Kailash-I, New Delhi**

***On SA***

*I am a qualified B.Ed teacher in Tagore International School, teaching class 3 students. I teach EVS, Maths and English. I have been a teacher for almost 14 years since 2010. I got married to Mr.*



*Anmol Singh in 2001. I have been living in C-32, Pamposh Enclave, Greater Kailash-I, New Delhi.*

*My father late Shri Malkiat Singh was living in his Punjabi Bagh house being 46/43, West Avenue Punjabi Bagh, New Delhi. He used to live with my brother, my bhabhi and two grandchildren. My mother expired in the year 2014 and prior to that she used to live with him. My father passed away on 6th January, 2020 at the age of 74 due to a heart attack. Otherwise, he was in good health till his demise. My father was in the construction business and my brother is also in the same business. I was on very good terms with my father and even my brother.*

*My father used to visit my house many times. I am not aware of any Will or any other testamentary instrument, which my father had executed. I have never even seen any such document and nor do I have possession of the same. I am not aware of any Will that he has written. My brother has walked out on me after my father's demise. I have heard from other family members that he is continuing my father's business. I am no longer in touch with my brother and his family."*

7. As per the above statement, the Plaintiff has denied the existence of any such document and also the alleged possession of the same has been denied. In view thereof, the disclosure being sought does not deserve to be granted as, in fact, there is no basis to the averment in the application that there is a Will or testamentary document of his father with the Plaintiff.

8. Under such circumstances, the application is dismissed.

**I.A.16256/2023 (u/O VII Rule 11 CPC)**

9. This is an application under Order VII Rule 11 CPC filed by the Defendant No.1 seeking rejection of the plaint on the ground that the court fee has not been paid. According to Id. Counsel for the Defendant No.1, the



Plaintiff is not in possession of the suit property in Punjabi Bagh. He, therefore, submits that the court fee would have to be deposited as per the market value.

10. Statement recorded today would show that the Plaintiff had been in good terms with her father during his lifetime. She must obviously be visiting her father till his death in the year 2020. The question as to whether any of her belongings are remaining there or whether she is in possession or not, would have to be adjudicated. In any event, the Plaintiff undertakes that the Plaintiff is willing to pay the court fee, if the Court directs the same at a later stage.

11. Recording the said undertaking, the application is disposed of.

**I.A.17732/2023 (u/O XII Rule 6 CPC)**

12. This is an application filed by the Plaintiff under Order XII Rule 6 CPC seeking a decree on admission. Submission of Mr. Sood, Id. Senior Counsel appearing for the Plaintiff is that the Defendant No.1, who is the brother, relies upon a relinquishment deed executed by Defendant No.2 *i.e.*, the other sister in order to claim 2/3rd share in the property. According to him, the fact that the relinquishment deed exists and does not record the existence of any other Will or testamentary document, is proved and admitted in terms of the relinquishment deed. The relinquishment deed lists the Plaintiff as one of the legal heirs of her father. Since the Defendant No.2 has, unequivocally, relinquished her share in the assets of her father in favour of Defendant No.1, according to Mr. Sood, the admitted position is that there is no other Will or testamentary document. Thus, he prays that a preliminary decree under Order XII Rule 6 CPC is liable to be passed.

13. On the other hand, Id. Counsel for the Defendant No.1, the brother



submits that the stand in the written statement that there exists a Will or testamentary document, has to be taken at its face value. The same would be proved by Defendant No.1 at trial. An application under Order XI Rule 14 CPC has been filed to which the Plaintiff ought to disclose the Will or the testamentary document.

14. The Court has considered the matter. Three parties *i.e.*, Plaintiff and the Defendant Nos.1 & 2 are the children of Late Shri Malkiat Singh. Late Shri Malkiat Singh wife, predeceased in the year 2014. Thus, at the time of his demise, Mr. Malkiat Singh had two daughters and one son. The Plaintiff is one of the daughters, Defendant No.1 is the son and Defendant No.2 is the other daughter. In the written statement, the only allegation made is that there is some testamentary document that exists. The said plea in the written statement is set out below:

*“5. The Answering Defendant No.1 reserve his rights to add, modify or otherwise elaborate his reply, averments, contentions, submissions and to place on record further documents as may be required, or as and when directed by this Hon'ble Court or as when he has access to such documents which will clearly establishes the rights and entitlements of the answering Defendant No.1. In fact, it is well within the knowledge of the Plaintiff that some testamentary documents exist and the answering Defendant No.1 has reasonable apprehension that such a documents, may be in the custody of the Plaintiff and only after knowing the facts as to the clear facts of inheritance, the Plaintiff has preferred to institute the suit thereby depriving the rightful claims of the answering Defendant No. 1. In fact it is the bounden duty under law to produce such documents so that air is cleared and the rights are justifiably deciphered and distributed. However, since it is apparent that she may*



*not be having all the rights hence, in order to make illegal gains by suppressing such document the Plaintiff has instituted the present suit. In view of the above, the present suit is liable to be rejected with cost.”*

15. In response to this, the existence and possession of any such document is denied by the Plaintiff. Statement of the Plaintiff has also been recorded today, which is extracted above. The bald plea that there could be some testamentary document is not sufficient to oppose the decree under Order XII Rule 6 CPC. A perusal of the relinquishment deed executed between Defendant no.1 and 2, would show that the clear recital in the relinquishment deed to the following effect:

*“AND WHEREAS the said recorded owner SH. MALKIYAT SINGH S/O LATE AMAR SINGH had died on 06/01/2020, at Delhi and his wife namely SMT. SURINDER KAUR who had also died on 21/08/2014, and leaving behind/survived by the following legal heirs:*

<i>S. NO.</i>	<i>NAME</i>	<i>AGE</i>	<i>RELATION WITH DECEASED</i>
<i>1.</i>	<i>CHARANJIT KAUR</i>	<i>50 YRS</i>	<i>DAUGHTER</i>
<i>2.</i>	<i>RAVINDER PAL SINGH</i>	<i>46 YRS</i>	<i>SON</i>
<i>3.</i>	<i>HARMEET KAUR SEHGAL</i>	<i>43 YRS</i>	<i>DAUGHTER</i>

*AND WHEREAS the Parties to this Deed i.e. Releasor and the Release are real brother and sister.*

*1. That by virtue of this Relinquishment Deed, the Releasor has released and relinquished all her rights, titles and interest in the aforesaid property and the*



*Releasor hereby declares that the Releasee is now exclusive owner of the said property.*

*2. That the Releasor hereby declare that the Releasee is entitled to have his name incorporated/mutated as the owner of the said property in the relevant record and the Releasor assures that the property is released in favour of Releasee forever and she will co-operate to all such acts necessary for the transfers as may be reasonably required to acquire unfettered title of the said property.”*

16. A perusal of the above would show that both the Defendants do not, in any manner, rely upon the Will or the testamentary document for the execution of the relinquishment deed. In fact, the relinquishment deed itself acts as an admission to determine the share of the Plaintiff as being 1/3rd in the assets of the father. In ***Vinay Kumar Aggarwal v. Radha Rani Aggarwal, 2018:DHC:203***, the Court observed that under Order XII Rule 6, admission can be in any form and need not be only in the form of pleadings. The observations have been made in the following terms:

*“19. The legal position on Order XII Rule 6 is well settled. Trial is not compulsory in every suit. If from the documents and pleadings, it is clear that there is no need for a trial and that the case of a party stands admitted, the court can pronounce judgement, as held by a Division Bench of this Court in Seema Thakur v. Union of India (dated 29th February 2016 in RFA(OS) 97/2015), where it was stated that:*

*“16. The Court– a facial reading of the provision show– has discretion, depending upon the facts of a case whether or not to decree a suit under Order XII Rule 6 CPC. If the admissions render a trial unnecessary, a Court is entitled to pass a decree without requiring further trial.....”*



*This position was upheld by this Court in Baljit Kaur Kalra (supra).*

*20. Further it is also a settled position that the admission need not be in the pleadings of the same case but can be in any other form, including in unconnected proceedings. This is supported by the findings of the Supreme Court in Nagindas Ramdas (supra) wherein it was categorically held as under:*

*“27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves not conclusive. The can be shown to be wrong.”*

*21. There has also been a clear attempt to delay the proceedings before the Trial court. It is a settled position that Order XII Rule 6 can be invoked at any*





time, either on an application or suo moto by the Court. A Division Bench of this Court in *Parivar Seva Sansthan v. Dr. (Mrs.) Veena Kalra* AIR 2000 Del 349 has also upheld this position and held as under:

9. *Bare perusal of the above rule shows, that it confers very wide powers on the court, to pronounce judgment on admission at any stage of the proceedings. The admission may have been made either in pleadings, or otherwise. The admission may have been made orally or in writing. The court can act on such admission, either on an application of any party or on its own motion without determining the other questions. This provision is discretionary, which has to be exercised on well established principles. Admission must be clear and unequivocal; it must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other part; even a constructive admission firmly made can be made the basis. Any plea raised against the contents of the documents only for delaying trial being barred by the section 91 and 92 of Evidence Act or other statutory provisions, can be ignored. These principles are well settled by catena of decisions. Reference in this regard be made to the decisions in *Dudh Nath Pandey (dead by L.R's) Vs. Suresh Chandra Bhattasali (dead by L.R's)* AIR 1986 SC 1509; *Atma Ram Properties Pvt. Ltd. vs Air India* 65 (1997) DLT 533; *Surjit Sachdev Vs. Kazakhstan Investment Services Pvt. Ltd.* 1997 2 AD (Del) 518; *Abdul Hamid Vs. Charanjit Lal & Ors.* 1998 2 DLT 476 and *Lakshmikant Shreekant Vs. M N Dastur & Co.* 71 (1998) DLT 564.*

10. *The use of the expression "any stage" in the said rule itself shows that the legislature's intent is to give it widest possible meaning. Thus, merely because issues are framed cannot by itself deter*



*the court to pass the judgment on admission under order 12 rule 6, CPC.....”*

*22. In this case, the record does show that the Defendant has been continuously seeking adjournments and delaying final adjudication of the appeal. Thus, Order XII Rule 6 has been rightly invoked by the Trial court.”*

17. Subsequently, in ***Rajinder Pershad & Anr. v. Ram Niwas (Deceased) Thr Lrs & Ors., 2022:DHC:600***, the Plaintiffs in the plaint had mentioned about a family settlement and partition, the Court therefore observed that admission can be perused from either pleading, document or even otherwise. The relevant portion of the same has been extracted below:

*“16. A reading of Paragraph 2 of the earlier plaint, extracted hereinabove, **categorically mentions the oral family settlement and partition, which was pleaded by the Plaintiffs themselves. As per the provisions of Order XII Rule 6 CPC, the admission can be either in a pleading or in a document or `otherwise`. Thus, in the opinion of this Court, the statement made in the earlier plaint constitutes an admission under Order XII Rule 6 CPC.** Thus, the Plaintiffs would be bound by the said admission.”*

18. Therefore, in the absence of any basis or foundation to argue that there is a Will or testamentary instrument, such a plea cannot be made abstractly. The relinquishment deed is clear evidence of the admitted position by Defendant no.1 and 2 that the father left behind three heirs including the Plaintiff. Each of the three heirs has 1/3 share in the father’s assets and that Defendant no.2 had relinquished her share to the Defendant no.1.

19. Partition suits of this nature involve close family members, who want



to see quick closure to their disputes. In the opinion of this Court, the written statement does not raise any plausible defence. The relinquishment deed admits the Plaintiff to be one of the surviving legal heirs of Late Shri Malkiat Singh. In view thereof, the Plaintiff is declared to be owner of 1/3rd shares of her father Late Shri Malkiat Singh. The preliminary decree is passed to the above effect.

20. In view of the fact that the preliminary decree has been passed, let the parties meet and try to reconcile their disputes. **Ms. Amrit Kumar Oberoi, Advocate (M:9899347698)**, who is present in Court, is appointed as the Mediator to try resolution of the disputes between the parties. If the resolution does not takes place, the parties are free to approach the Court for appointment of the Local Commissioner.

21. List before the Delhi High Court Mediation and Conciliation Centre on 15<sup>th</sup> May, 2024 at 3:00 pm.

22. List before the Court on 22<sup>nd</sup> August, 2024.

**PRATHIBA M. SINGH, J.**

**MAY 6, 2024/dk/ks**