

IN THE COURT OF SH. SOMITRA KUMAR,
DISTRICT JUDGE – 06 (EAST DISTRICT),
KARKARDOOMA COURTS, DELHI

CNR NO.:- DLET01-004443-2016

SUIT NO.:- 2539/2016

IN THE MATTER OF :-

Mrs. Rajni Kakkar @ Munna
W/o Sh. Ramesh Kakkar
D/o late Sh. Harbans Singh
R/o 82, Sarojani Park, Shashtri
Nagar, Delhi-110031

....Plaintiff

VERSUS

1. Sh. Gurbachan Singh
S/o late Sh. Harbans Singh,
R/o 6/247, Block-06,
Geeta Colony, Delhi-110031.

2. Sh. Chand Singh
S/o late Sh. Harbans Singh,
R/o 254-A, Gali no. 4,
Saraswati Bhandar Colony,
Gandhi Nagar, Delhi-110031

3. Mrs. Lodhi (Now deceased)
Through her LRs.

3-i. Smt. Bharti
W/o late Sh. Guggi

3-ii. Mr. Tannu
S/o late Sh. Guggi

3-iii. Ms. Richhu

D/o late Sh. Guggi

3-i to 3-iii

All R/o C-25, Radhey Puri,
Delhi-110031.

3-iv. Sh. Manjeet

S/o late Ms. Lodhi

3-v. Sh. Laloo

S/o late Ms. Lodhi

3-vi Ms. Jyoti

D/o late Ms. Lodhi

3-iv to 3-vi

All R/o X-1235,
Gali no.1, Satsang Marg,
Raj Garh Colony, Delhi-110031

3-vii. Ms. Kiran Kaur @ Mari

D/o late Mrs. Lodhi,
W/o Sh. Babu Lal
R/o G-12, Ground Floor, Chander
Nagar, Delhi.

....Defendants

Date of institution of the suit	: 05.11.2011
Date on which Judgment was reserved	: 17.09.2025
Date of Judgment	: 08.12.2025
Decision	: Preliminary Decree

**SUIT FOR PARTITION, POSSESSION, DECLARATION
AND PERMANENT INJUNCTION**

JUDGMENT

1. By way of the present judgment, the court shall adjudicate upon a suit filed by the plaintiff against the defendants for partition, possession, declaration and permanent injunction in respect of the property bearing no. 254-A, Gali No. 4, Saraswati Bhandar Colony, Gandhi Nagar, Delhi-110031, (hereinafter referred to as “the suit property”).

CASE OF PLAINTIFF

2. The case of the plaintiff, as averred in the plaint, is that late Sh. Harbans Singh, S/o late Kanhaiya Singh was the actual owner of the suit property; and that the suit property was purchased and got constructed by the late Harbans Singh with his own funds and resources.

3. It is further averred in the plaint that Sh. Harbans Singh died intestate on 20.11.1989, leaving behind the following legal heirs i.e. Smt. Prakash Kaur (wife) (Now Deceased), Sh. Gurbachan Singh/ defendant no. 1 (Son), Sh. Chand Singh/ defendant no. 2 (Son), Smt. Rajni Kakkar @ Munna / plaintiff (Daughter); and that Smt. Prakash Kaur @ Santo also expired in the year 1999, and no other legal heirs of late Sh. Harbans Singh are left behind except the plaintiff and defendants No. 1 & 2.

4. It is further averred in the plaint that defendant no. 3, being the daughter of the elder brother of the late Sh. Harbans Singh, was living in the family of the plaintiff before the solemnization of her marriage and has been made a defendant no. 3 as she claims herself to be the adopted daughter of late Sh.

Harbans Singh, however, she was never adopted by him, as per the knowledge of the plaintiff.

5. It is further averred in the plaint that after the marriage of the plaintiff, she started residing at her matrimonial home, and the suit property is in the possession of defendant no. 1 & 2. Defendant no. 3 was married prior to the plaintiff's marriage, and she has been residing at her matrimonial home.

6. It is further averred in the plaint that on 20.08.2011, the plaintiff filed a suit bearing no. 255/2011 against the defendant no. 1 & 2, seeking a permanent injunction restraining them from creating a third-party interest in the suit property and in the said suit, the defendant no. 1 & 2 filed a relinquishment deed dated 30.06.1992, executed by the plaintiff and the defendants no. 1 to 3 in favour of Smt. Prakash Kaur @ Santo and also filed a Will dated 17.08.1992 of Smt. Prakash Kaur @ Santo in favour of defendant No. 1 & 2; that after knowing about the said relinquishment deed dated 30.06.1992, the plaintiff was astonished as she had never executed any such relinquishment deed in favour of her mother namely Smt. Prakash Kaur @ Santo.

7. It is further averred in the plaint that as per knowledge of the plaintiff she was taken to the office of Registrar by the defendant No. 1 & 2 on the pretext that they were taking some loan for which they required NOC from the plaintiff; that the document was prepared in English language and the contents of the said relinquishment deed were not read over to the plaintiff in her vernacular; that the plaintiff does not know English language and can only put her signatures in Hindi; and that the said

relinquishment deed dated 30.06.1992 has been got drafted in English and without knowledge of the plaintiff and prepared by defendant No. 1 & 2 by playing fraud upon the plaintiff.

8. It is further averred in the plaint that as the suit property was self-acquired by the father of the plaintiff, namely, the late Sh. Harbans Singh, who died intestate, so the question of bequeathing the suit property by the late Smt. Prakash Kaur @ Santo does not arise; that the alleged will dated 17.08.1992 is based on the Relinquishment Deed dated 30.06.1992, which has been prepared by the defendants in connivance with the late Smt. Prakash Kaur@Santo and therefore, the said Will dated 17.8.1992, is also null and void.

9. It is further averred in the plaint that defendant no(s). 1 & 2 are men of resources and defendant no. 1 & 2 both have many immovable properties besides the suit property; on the other hand, the plaintiff has been residing in the tenanted premises since her marriage; that the above facts were known to the parents (late Harbans Singh & late Prakash Kaur @Santo) of the plaintiff and defendants; that even, if it is presumed that late Smt. Prakash Kaur @ Santo had executed any said will as stated by the defendant no. 1 & 2, it is very surprising that neither the mother of the plaintiff, i.e. Smt. Prakash Kaur @ Santo nor any of the defendants nor any of the attesting witnesses of the alleged will ever disclosed the execution of the said will to the plaintiff, which creates doubts about the genuineness of the said will dated 17.08.1992, and rather the said Will is a forged and fabricated document created to cause wrongful gain to defendant the no. 1 & 2 and wrongful loss to the plaintiff.

10. It is further averred in the plaint that the thumb impression apparently put on the alleged Will dated 17.08.1992 is not of the deceased Smt. Prakash Kaur @ Santo; that the said thumb impression is apparently forged and materially differs from the standard thumb impression of the deceased as she put on the other documents; that in fact, the above said Will dated 17.08.1992 was forged and fabricated by the defendant no(s). 1 & 2 to put the plaintiff to loss of her valuable right to inherit her share in the property of her father, who died intestate; that the relations between the plaintiff and Smt. Prakash Kaur @ Santo were always cordial, therefore, it is beyond the imagination that she would have executed any document/will in favour of defendant no. 1 & 2 only.

11. It is further averred in the plaint that the plaintiff approached defendant no(s). 1 & 2 several times and requested them to give her share in the suit property, however, defendant no(s). 1 & 2 are not paying any heed or attention towards the request of the plaintiff, despite the fact that the being a co-owner of the suit property has been residing in the rented accommodation since her marriage i.e. for the last about 32 years; that the plaintiff requested the defendants to allow her to reside in the suit property as she is also co-owner and co-sharer in the suit property and therefore she has every right, title or authority to live or reside in the suit property but the defendants flatly refused to allow the plaintiff and her family members to reside in the suit property; and that that the defendants have not permitted the plaintiff to reside/enter in the suit property.

12. It is further averred in the plaint that on 13.08.2011, the plaintiff went to the suit property and again requested the defendant No. 1 & 2 to give her share in the suit property, but the defendant no.1 & 2, being in collusion and conspiracy with each other and with defendant no. 3, flatly refused to give the share of the plaintiff or handover the possession in the suit property and when the plaintiff insisted upon to partition the suit property by metes and bounds then they again flatly refused to do the same and started to abuse in filthy language and threatened her stating that they would not give any share to the plaintiff; that the plaintiff rushed to the concerned police station but the police did not intervene in the matter and suggested the plaintiff to approach the court as the matter is of civil nature.

13. It is further averred in the plaint that the defendants threatened the plaintiff to sell the suit property to some other person without giving any share to the plaintiff, and if the plaintiff dares demand any share in the suit property, then she would have to face dire consequences; that the plaintiff came to know from the reliable sources that the defendants in connivance with each other wants to sell the suit property.

14. It is further averred in the plaint that the defendants have no right, title, interest, or authority to sell, transfer, alienate the suit property to some other person and as per law the plaintiff is entitled to a decree of 1/3rd share in the suit property as well as a decree of permanent injunction restraining defendants from creating third party interest in the suit property. Further, it is prayed that the plaintiff is entitled to a decree of declaration of relinquishment deed dated 30.06.1992, registered before Sub-

Registrar IV at Sl. No. 1479, Book No. 1, Vol. No. 2398 at page no. 82-83 and Will dated 17.08.1992 registered before Sub-Registrar IV at Sl. No. 24802, Book No. 3, Vol. No. 628 as null and void. Hence, the present suit for partition, possession, declaration and permanent injunction was filed by the plaintiff against the defendants.

WRITTEN STATEMENT OF THE DEFENDANTS

15. Upon service of summons of the suit, the defendants contested this suit by filing a joint written statement. In the written statement, the defendant pleaded that the present suit is barred by the provisions of the Limitation Act, hence, the present suit is liable to be dismissed in limine; that the plaintiff is seeking declaration of the document which were duly registered in the year 1992 including documents executed by her; that the present suit is barred by the provisions of Order II Rule 2 C.P.C as the plaintiff has omitted to claim all reliefs in the Civil Suit No. 255/2011 before the Senior Civil Judge, Karkardooma Courts, Delhi and now by way of present suit she is precluded from bringing the present suit based on the same cause of action; that the present suit filed by the plaintiff is without any cause of action against the defendants, therefore, the same is liable to be rejected under Order 7 Rule 11 C.P.C; that the suit filed by the plaintiff is also not valued properly for the purpose of Court fee as the market value of the suit property is worth Rs. 50 lakh and the plaintiff has undervalued the suit property; that the plaintiff is liable to pay the appropriate court fee on the same; that the plaintiff has cooked up facts for the sake of filing the present

case; that the plaintiff is guilty of suppressio-veri and suggestio-falsi and has concealed the factual position from the Court.

16. It is further averred in the written statement that the true facts of the case are that the suit property was originally owned and possessed by the deceased father of the plaintiff i.e. Sh. Harbans Singh who died intestate on 20.11.1989 leaving behind his wife Prakash Kaur @ Santo, two sons namely Gurbachan Singh and Chand Singh and two daughters namely Lodi W/o Mohinder Singh and Ramesh Kakkar @ Munna (sic) the plaintiff herein, as his five surviving legal heirs to succeed to his estates. Thereafter the said legal heirs of Mr. Harbans Singh namely Gurbachan Singh, Chand Singh and two daughters namely Lodi W/o Mohinder Singh Defendant no.3, and Ramesh Kakkar @ Munna (sic) executed a relinquishment deed dated 30.06.1992 registered as document No. 1479 in Additional Book No. 1, Book No. 2398 from pages 82 to 83 before S.R. IV relinquishing their respective 1/5th share to their mother Mrs. Prakash Kaur @ Santo. Subsequently, the said Mrs. Prakash Kaur @ Santo expired leaving behind her a duly registered Will dated 17.08.1992, registered at Serial No. 24802 in Additional Book no. 3 Book no. 628 before SR IV, in favour of her two sons namely Gurbachan Singh and Chand Singh of the present suit property; that in view of the aforesaid documents, Defendants no. 1 & 2, became the absolute owners of the suit property and thus, by virtue of the aforesaid Relinquishment Deed and the Will, the plaintiff has got no right, title or interest over the suit property. Hence, the present suit is liable to be dismissed with heavy exemplary cost.

17. It is denied by defendants that the late Sh. Harbans Singh left behind only four legal heirs. Rest, all the allegations or claims made in the plaint were denied by the defendant.

REPLICATION

18. In replication, the plaintiff reiterated the contents of the plaint and made necessary denials of the defendants' averment in the written statement.

FRAMING OF ISSUES

19. On the basis of the aforesaid pleadings of the parties, the following issues were framed on 01.04.2014.

- (i). Whether the consent of the plaintiff to the relinquishment deed dated 30th June, 1992 was obtained by misrepresentation and by playing a fraud on the plaintiff and if so to what effect? OPP
- (ii). Whether the document dated 17th August, 1992 is a validly executed last Will of the mother of the plaintiff? OPD
- (iii). Whether the defendant no. 3 is also the daughter of the parents of the plaintiff? OPD
- (iv). Whether the claim by the plaintiff of declaration qua the relinquishment deed is within time? OPP
- (v). Whether the suit is properly valued for the purposes of court fees and jurisdiction and whether appropriate Court Fees affixed on the plaint if no to what effect ? OPP
- (vi) Relief.

PLAINTIFF'S EVIDENCE

20. In support of her claim, the plaintiff examined three witnesses. She has examined herself as PW-1 and tendered affidavit, Ex.PW1/A-1 in her evidence wherein PW-1/ plaintiff deposed on the lines of plaint and relied upon documents viz. Copy of Site-Plan Ex. PW-1/A; Certified Copy of Plaint of Suit No. 255/2011 along with affidavit, Ex. PW-1/B; Certified Copy of Written Statement filed by defendant in suit No. 255/2011 alongwith affidavits, Ex. PW-1/C; Certified copy of application for withdrawal of Suit No. 255/2011 along with affidavit, Ex. PW-1/D; Certified copies of order sheets, Ex. PW-1/E (Colly); Copy of Relinquishment Deed dated 30.06.1992, Ex. PW-1/F; and Copy of Will dated 17.08.1992, Ex. PW-1/G. PW1 was cross-examined at length by Ld. Counsel for the defendants.

21. Ms. Harpreet Kaur@Baby examined as PW-2 and she tendered her evidence by way of affidavit, Ex.PW2/A. PW-2 was cross-examined by Ld. Counsel for the defendants.

22. PW-3, Sh. Shrawan Mehta, official from the office of Sub-Registrar-VIII, Geeta Colony, Delhi was examined as summoned witness. He has brought the summoned record i.e. certified copy of the relinquishment deed dated 06.04.2004 registered as document no. 3230 in additional book no. 01, volume no. 1206 from pages 114 to 118 on 17.04.2004. The same is Ex. PW3/A (colly 6 pages) (OSR). PW-3 was cross-examined by Ld. Counsel for the defendants.

23. Thereafter, plaintiff's evidence was closed on 20.03.2021.

24. During the pendency of the present suit, defendant no. 3

expired on 30.04.2021. LRs. of late Smt. Lodhi were served with notice of the application for impleadment of LRs. However, only LRs Sh. Manjeet. Ms Jyoti and Ms Kiran Kaur@Mari were represented by Ld. Counsel of the defendant no. 1 & 2 and other LRs. chose not to appear before the Court. Thereafter, vide order dated 06.02.2024 and 10.07.2024, all LRs. of the late Smt. Lodhi were substituted as defendants in place of late Smt. Lodhi.

DEFENDANT'S EVIDENCE

25. In their defence, defendants examined four witnesses. Sh. Naveen Gandas, Record lifter, Department of Delhi Archives, 18A, Satsang Vihar Marg, Special Institutional Area, New Delhi, was a summoned witness and was examined as DW-2. He has brought the summoned record i.e. Will dated 17.08.1992 which was registered on 17.08.1992 vide registration no. 24802, addl. Book no.3, Vol no. 628 from page no. 66 to 68 and certified copy of the same, **Ex.DW-2/1 (OSR)**. DW2 also brought on record Relinquishment deed vide registration no. 1479, addl. Book no.1, Vol no. 2398 from page no. 82 to 83 registered on 30.06.1992, **Ex.DW-2/2 (OSR)**. DW-2 was cross-examined by Ld. Counsel for the plaintiff.

26. Defendants examined Sh. Kuldeep Singh as DW-1 who is General Power of Attorney holder of defendant no.1 and 2, and has tendered affidavit Ex. DW-1/A in his evidence, wherein he has deposed in line with the written statement and has relied upon the following documents:-

1. Certified copy of Will dated 17.08.1992 is already **Ex.DW2/1 (OSR)**.

2. Copy of Relinquishment Deed dated 30.06.1992 is already **Ex.DW2/2 (OSR)**.
4. Death certificate of Ms. Prakash Kaur @ Santo, **Ex.DW1/4**.
5. Original General Power of Attorney dated 05.11.2024 executed by defendants no. 1 and 2 in favour of the deponent is **Ex.DW1/5**.
6. Medical documents / summary and reports of defendants no. 1 and 2 **Ex.DW1/6 (colly.)**.

27. DW1 was cross examined at length by Ld. Counsel for the plaintiff.

28. Sh. M. L. Bajaj, Advocate, Enrl no. D-144/75, was examined as DW-3 and he tendered his evidence by way of affidavit, Ex. DW-3/A and relied upon the documents viz. registered Will dated 17.08.1992, already Ex. DW-2/1 (OSR) and relinquishment deed dated 30.06.1992, already Ex.DW-2/2 (OSR). DW-3 was cross-examined by Ld. Counsel for the plaintiff.

29. Sh. Gurbachan Singh/Defendant no. 1 was examined as DW-4 and tendered evidence by way of affidavit, Ex. DW-4/A. He relied upon the documents which have already been exhibited in the examination-in-chief of Sh. Kuldeep Singh/DW-1. DW-4 was cross-examined by Ld. Counsel for the plaintiff.

30. Thereafter, vide separate statement of son of defendant no.1 and GPA holder of defendant no.1 and 2, defendant evidence was closed on 03.05.2025.

FINAL ARGUMENTS

31. Final arguments were advanced at length by Sh. Brijesh Singh and Sh. Rajeev Kapoor, Ld. Counsel for the plaintiff, and Sh. Himal Akhtar, Sh. Unais, Sh. Javed, and Sh. Imran Kamal Ld. Counsel for defendant no. 1 and 2 and also for LRs no. 4, 6 and 7 of deceased defendant no. 3. Written arguments filed on behalf of the plaintiff as well as on behalf of defendants. Ld. Counsel for the plaintiff relied upon the judgments of the Hon'ble High Court of Delhi in the matter of **Chand Ram vs. Bhateri Devi & Ors.** (RSA No. 286/2015, Dod: 03.08.2015); judgment of Hon'ble Karnataka High Court in the matter of **Smt. Flora Margaret vs. A. Lawrence** (Dod: 23.02.2000); judgment of Hon'ble Punjab & Haryana High Court in the matter of **Satish Kumar vs. Chandi Ram** (RSA No. 3448/2017, Dod: 19.07.2017); and the judgment of Hon'ble High Court of Chhattisgarh, Bilaspur in the matter of **Abdul Majid & Anr. vs. Rato (Died) through LRs.** (Second Appeal No. 115 of 2008; Dod: 10.08.2020).

FINDINGS:

32. I have considered the submissions made by Ld. Counsel for the plaintiff and defendant and perused the record carefully. The written arguments filed on behalf of the plaintiff and defendants have been perused carefully. The issue-wise findings, in this suit, are as follows:

ISSUE NO. (i), (ii) & (iii):-

(i). Whether the consent of the plaintiff to the relinquishment deed dated 30.06.1992 was obtained by misrepresentation and by playing a fraud on the plaintiff and if so to what effect? OPP

&

(ii). Whether the document dated 17.08.1992 is a validly executed last Will of the mother of the plaintiff? OPD

&

(iii). Whether the defendant no.3 is also the daughter of the parents of the plaintiff? OPD

33. Issues no. (i) to (iii) are interlinked; therefore, they are being discussed and decided together. The onus to prove the issue no. (i) was on the plaintiff and onus to prove issue no. (ii) & (iii) was on the defendants.

34. It is the case of the plaintiff as averred in the plaint and as deposed in her evidence by way of affidavit that the father of the plaintiff and defendant no. 1 and 2, namely late Sh. Harbans Singh was the absolute owner of the suit property; that late Sh. Harbans Singh died intestate on 20.11.1989 leaving behind his wife Smt. Prakash Kaur @ Santo (now deceased), the plaintiff and defendants no. 1 & 2 as his legal heirs; that late Smt. Prakash Kaur @ Santo died in the year 1999, therefore, there are no legal heirs of the late Sh. Harbans Singh except the plaintiff and defendant no. 1 & 2; that defendant no. 3/Smt. Lodhi was the daughter of the elder brother of late Sh. Harbans Singh and she used to reside in the family of the plaintiff before her marriage and claimed herself to be the adopted daughter of late Sh.

Harbans Singh, but she was never adopted by late Sh. Harbans Singh; that during the pendency of a suit for permanent injunction bearing no. 255/2011 filed by the plaintiff against defendants no. 1 & 2; defendant no. 1 & 2 filed a Relinquishment Deed dated 30.06.1992 executed by the plaintiff, defendant no. 1 to 3 in favour of the Smt. Prakash Kaur @ Santo whereby the plaintiff and defendant no. 1 to 3 relinquished/released their share in the suit property in favour of the Smt. Prakash Kaur @ Santo; that the plaintiff never executed any such Relinquishment Deed in favour of her mother Smt. Prakash Kaur @ Santo; that the plaintiff was taken to the office of the Sub-Registrar by defendant no(s). 1 & 2 on the pretext that they were taking some loan for which they required NOC of the plaintiff; that the plaintiff does not know English language; that the said Relinquishment Deed was prepared in English language; that the plaintiff did not know the contents of the said document and the contents of the said Relinquishment Deed were not read over to her in vernacular and the said Relinquishment Deed was got executed from the plaintiff by playing fraud upon her; that in the said suit, defendants no. 1 to 2 also filed a Will dated 17.08.1992 of Smt. Prakash Kaur @ Santo whereby she bequeathed the suit property in favour of the defendant no. 1 & 2; that the alleged Will dated 17.08.1992 is based on the Relinquishment Deed 30.06.1992, which has been prepared by the defendants in connivance with late Smt. Prakash Kaur @ Santo, therefore, the said Will dated 17.08.1992 has been forged and fabricated by defendant no. 1 & 2 to deprive the plaintiff of her valuable rights, title and interest in the suit property and therefore, the same is also null and void; that the plaintiff approached defendants no. 1

& 2 several times and requested them to give her share in the suit property but they refused to do so and therefore, the plaintiff being one of the legal heirs of the late Sh. Harbans Singh is co-owner of the suit property; therefore, she is entitled to 1/3rd share in the suit property, and hence the present suit for declaration, partition, possession and permanent injunction has been filed by the plaintiff against the defendants.

35. Per contra, it is the case of the defendants that the original owner of the suit property, late Sh. Harbans Singh died on 20.11.1989, leaving behind five legal heirs, viz. his wife Smt. Prakash Kaur @ Santo; two sons namely Sh. Gurbachan Singh and Chand Singh, and two daughters, namely Smt. Lodi and Smt. Rajni/plaintiff; that aforesaid two sons and two daughters executed a registered Relinquishment Deed dated 30.06.1992, relinquishing their 1/5th share each in the suit property in favour of Smt. Prakash Kaur @ Santo; that subsequently Smt. Prakash Kaur @ Santo died leaving behind a duly registered Will dated 17.08.1992 whereby she bequeathed the suit property in favour of her two sons, namely Sh. Gurbachan Singh and Chand Singh; that in view of the aforesaid Relinquishment Deed and Will, defendant no.. 1 and 2 became the absolute owners of the suit property, and the plaintiff has no right, title or interest in the suit property; and that the plaintiff has concealed material fact and cooked up a story to file the present suit. Hence, the present suit for declaration, partition, possession, and permanent injunction is liable to be dismissed.

36. The issue no. (iii) taken up first for discussion and decision. The issue no. (iii) is whether defendant no. 3 is the

daughter of parents of the plaintiff i.e. late Sh. Harbans Singh and late Smt. Prakash Kaur@Santo. It is the case of the plaintiff that defendant no. 3 is not a daughter/legal heir of the late Sh. Harbans Singh. The onus to prove that defendant no. 3 is/was the daughter of the parents of the plaintiff was on the defendants. However, the defendants, except for the oral testimony of their witnesses, have not presented any other evidence to establish that defendant no. 3 is the daughter of the late Sh. Harbans Singh.

37. On the contrary, the plaintiff examined PW-3/Sh. Shrawan Mehta, official from the office of Sub-Registrar-VIII, Geeta Colony, Delhi, as summoned witness, who brought on record a certified copy of the Relinquishment Deed dated 06.04.2004, Ex. PW3/A (colly 6 pages) (OSR), registered as document no. 3230 in additional book no. 01, volume no. 1206 from pages 114 to 118 on 17.04.2004. Perusal of the said Relinquishment Deed shows that it mentions defendant no. 3/Lodi as the legal heir (daughter) of one late Sh. Tirath Singh and vide the said Relinquishment Deed, Smt. Lodi/defendant no. 3 and other legal heirs of late Sh. Tirath Singh relinquished their share in the built up property bearing no. 10/10 (Block No. 10 Quarter No. 10), measuring area 100 sq. yds., situated in the layout plan of Jheel Khuranja, Geeta Colony, Delhi-92 in favour of Smt. Kiran, who is the wife of the deceased brother (late Sh. Kishan Singh) of defendant no. 3.

38. Further, DW-1/Sh. Kuldeep Singh, in his cross-examination conducted on 29.01.2025, identified the photo of Ms. Lodhi on the said Relinquishment Deed, Ex. PW3/A(OSR), and DW-1 also admitted that his grandfather, Sh. Harbans Singh,

and Sh. Tirath Singh were real brothers. DW-1 further deposed that he cannot bring ration card of Ms. Lodhi i.e. deceased defendant no. 3 and he cannot also produce the ration card of Sh. Harbans Singh, which mentions the name of Ms. Lodhi as daughter of the late Sh. Harbans Singh.

39. Further, the plaintiff also examined PW2/Ms. Harpreet Kaur. PW-2 deposed in her evidence by way of affidavit, Ex. PW2/A that she is the daughter of late Essar Kaur, who is the real sister of Smt. Lodhi / defendant no. 3. PW-2 further deposed in her affidavit that both late Smt. Essar Kaur and Smt. Lodhi/defendant no. 3 were/are daughters of late Sh. Tirath Singh. PW-2 also deposed that late Sh. Tirath Singh and late Sh. Harbans Singh were real brothers. The defendants during cross examination of PW-2/Ms. Harpreet Kaur could not impeach the deposition of the PW-2 in her evidence by way of affidavit, Ex. PW2/A.

40. Defendants in their written statement, and DW1 and DW4 in their evidence by way of affidavit, only stated that late Sh. Harbans Singh was survived by five legal heirs, including Smt. Lodhi/defendant no. 3. There is no mention either in the written statement or in the evidence by way of affidavit of DW1 and DW4, if Smt. Lodhi was the daughter of late Sh. Harbans Singh whether it was by birth or it was by adoption.

41. During cross examination of PW1/plaintiff, it was suggested by Ld. Counsel for the defendants that defendant no. 2/Smt. Lodhi is the real sister of the plaintiff. However, defendants did not produce any document in evidence to show that Smt. Lodhi was the real daughter of late Sh. Harbans Singh.

In fact, DW4/defendant no. 1 in his cross examination deposed that he cannot produce any document to show that Smt. Lodhi was the daughter of late Sh. Harbans Singh.

42. Therefore, defendants failed to produce any evidence to discharge the onus placed on them to prove that Smt. Lodhi/defendant no. 3 was the daughter of the parents of the plaintiff and defendant no. 1 & 2 or that she was legally adopted by them. On the other hand, the plaintiff, by producing the Relinquishment Deed Ex. PW3/A (OSR), examining PW2/Ms. Harpreet Kaur and by cross-examination of the DW1 established that Smt. Lodhi is the legal heir (daughter) of late Sh. Tirath Singh, who is the brother of the late Sh. Harbans Singh and she as a daughter/legal heir of late Sh. Tirath Singh relinquished her property rights in the property of late Sh. Tirath Singh vide Relinquishment Deed, Ex. PW3/A in favour of wife of her late brother. Thus, if Smt. Lodhi/defendant no. 3 was a legal heir to the late Sh. Tirath Singh being his daughter, she could not be a legal heir to the brother of the late Sh. Tirath Singh i.e. late Sh. Harbans Singh as his daughter. Hence, it is established that Ms. Lodhi/Defendant no. 3 was not the daughter of parent of the plaintiff and she was not a legal heir to the late Sh. Harbans Singh. Issue no. (iii) is accordingly decided against the defendants.

43. As defendant no. 3 was not the daughter of late Sh. Tirath Singh, therefore, she did not have any right, title or interest in the suit property. Therefore, it is inexplicable as to why and how defendant no. 3 executed the Relinquishment Deed dated 30.06.1992, Ex. PW1/F as co-owner of the suit property.

Evidently, there was a misrepresentation of defendant no. 3 as legal heir to the late Sh. Harbans Singh and as the co-owner of the suit property, when in fact defendant no. 3 did not have any right, title or interest in the suit property.

44. Further, the plaintiff in her evidence by way of affidavit deposed that she was taken to Sub-Registrar Office by defendant no. 1 & 2 on the pretext of taking some loan for which they required an NOC from the plaintiff; that she does not know the English language and she can put her signature in Hindi; that the contents of the Relinquishment Deed were not read over to her in the vernacular. PW1/plaintiff during her cross-examination conducted on 26.11.2014 deposed that she had not appeared before the Sub Registrar on that occasion and had not signed or put thumb impression on any document in front of the Sub-Registrar.

45. The aforesaid testimony of the plaintiff that she did not appear before the Sub-Registrar or she had not signed or put thumb impression on any document before the Sub-Registrar is corroborated by the deposition of DW-4/defendant no. 1 himself who deposed in his cross-examination that Munna (i.e. plaintiff) had not come outside the Sub Registrar Office and Munna had not come before the Sub Registrar or Sub-Registrar Office for registration of the Relinquishment Deed. Therefore, defendant no. 1/DW4 in his cross examination proved the case of the plaintiff about invalid execution and registration of the Relinquishment Deed dated 30.06.2012, Ex. PW1/F.

46. During the final arguments, Ld. Counsel for the defendants pressed on the objection raised on behalf of the defendants

during the cross-examination of defendant no. 1/DW4 before the Ld. Local Commissioner. During the recording of evidence of defendant no. 1/DW4 before the Ld. Local Commissioner, the Ld. Counsel for the defendants raised an objection that the question to which the aforesaid answer of Munna/plaintiff not appearing before Sub-Registrar is given by defendant no. 1/DW4 is vague as the same is without mentioning any date and place and without explaining the meaning of the relinquishment deed. However, the said objection qua said question and answer given by defendant no. 1/DW4 is not sustainable as the entire case of the plaintiff was about seeking invalidity of only two documents viz. Relinquishment Deed dated 30.06.1992, Ex. PW1/F and Will dated 17.08.1992, Ex. PW1/G. Further, defendant no. 1/DW4 in his evidence by way of affidavit deposed that vide the said Relinquishment Deed dated 30.06.1992, the plaintiff relinquished her 1/5th share in the suit property in favour of Smt. Prakash Kaur@Santo. The defendants have not averred that there were any other Relinquishment Deeds other than the one in question. Thus, the objection that the question was vague, as it did not mention the date and place of the said Relinquishment Deed or the meaning of the Relinquishment Deed, is not a valid objection.

47. In order to prove the said Relinquishment Deed dated 30.06.1992, the defendant also examined Sh. M.L. Bajaj as DW3. DW3 in his evidence by way of affidavit, Ex. DW3/A deposed that he is attesting witness of the said Relinquishment Deed. However, DW3 in his evidence nowhere deposed about the presence of the plaintiff before the Sub-Registrar at the time of registration of the said Relinquishment Deed. Further, the testimony of the said attesting witness does not say anything

whether the plaintiff at the time of execution of the said Relinquishment Deed was conscious of the contents of the said document. Therefore, free mental act as to the nature of the documents has not been established even by the testimony of the DW-3/Sh. M.L. Bajaj.

48. As regards the contention of the defendants that DW2, Sh. Naveen Gandas, summoned witness from the Department of Delhi Archives, proved the registration of the Relinquishment Deed dated 30.06.1992; therefore, said Relinquishment Deed is presumed to be genuine. It is seen that DW2 proved that the said Relinquishment Deed dated 30.06.1992 was registered in the office of the concerned Sub-Registrar. However, in view of the fact of execution of the said Relinquishment Deed by defendant no. 3/Smt. Lodhi despite the fact that she was not a co-owner of the suit property and the testimony of DW4/defendant no. 1, who is also one of the executants of the said Relinquishment Deed that the plaintiff did not appear before the Sub-Registrar for registration of the said Relinquishment Deed raises a serious doubt about the due execution and registration of the said Relinquishment Deed. Moreover, it is deposed by the plaintiff that she executed the said Relinquishment Deed, assuming the same to be a loan document, and the contents of the Relinquishment Deed were not read over to her. In view of these facts and circumstances of the case, mere registration of the said Relinquishment Deed does not confer validity as to its due execution and registration.

49. Ld. Counsel for the defendants during final argument argued that the execution of the Relinquishment Deed dated

30.06.1992 was duly proved by deposition of the plaintiff/PW1 in her cross examination conducted on 07.09.2016 wherein the plaintiff/PW1 admitted to signing of the papers after understanding contents of the same as well as by plaintiff's deposition in her cross examination conducted on 26.07.2017, wherein plaintiff deposed that she signs any document after somebody explains to her what is written in the document. In this regard, it is pertinent to note that the plaintiff deposed in her evidence by way of affidavit, Ex. PW1/A1 that she was taken to the office of Sub-Registrar by defendant no. 1 & 2 on the pretext that they were taking loan; that she never executed any such relinquishment deed in favour of Smt. Prakash Kaur@Santo; that she does not understand the English language, and the contents of the Relinquishment Deed were not read over to her in the vernacular; and that the said Relinquishment Deed was executed by playing fraud upon her. In her cross-examination, the plaintiff/PW1 also deposed that she did not appear before the Sub-Registrar nor did she sign or put any thumb impression before the Sub-Registrar. Further, defendant no. 1/DW4 in his cross examination deposed that the plaintiff has not come before Sub Registrar office for registration of the Relinquishment Deed. Furthermore, no evidence was brought on record on behalf of the defendants that the plaintiff understood the contents of the Relinquishment Deed dated 30.06.1992, Ex. PW1/F before signing the same.

50. The testimony of the plaintiff is to be seen in its entirety. The testimony of the plaintiff/PW1 read as a whole nowhere establishes that she signed the Relinquishment Deed conscious of the fact that by way of execution of the said Relinquishment

Deed, she relinquished her share in the suit property. The testimony of the plaintiff as a whole clearly indicates that the plaintiff signed the Relinquishment Deed believing the same to be a loan document. Therefore, merely because of the deposition of the plaintiff during cross-examination that she understood the content of the papers before signing the same does not vitiate the claim of fraud and misrepresentation of the plaintiff in execution and registration of the Relinquishment Deed. Further, the deposition of the plaintiff/PW1 during her cross examination that she put signature on documents after somebody explains as to what is written in the documents appears to be a general statement of her current practice of executing the papers and the same does not impeach her deposition that Relinquishment Deed dated 30.06.1992, Ex. PW1/F was got signed from her by defendant no. 1 & 2 on the pretext of the loan document without reading over the content of the same to her in vernacular. Moreover, misrepresentation in the execution of the Relinquishment Deed dated 30.06.1992, Ex. PW1/F is writ large in view of the fact that defendant no. 3, who was not a legal heir of the late Sh. Harbans Singh, executed the said Relinquishment, Deed claiming to be a co-owner in the suit property.

51. As regards the argument raised on behalf of the defendants that the plaintiff remained silent for over 19 years before claiming her right in the suit property, it is pertinent to note that the plaintiff claimed that she came to know about the said Relinquishment Deed and Will when defendants no. 1 and 2 filed said documents in earlier civil suit bearing no. 255/2011 filed by her, praying for relief of permanent injunction in respect of the suit property. The defendants have failed to bring anything on

record to show that the plaintiff had knowledge of the Relinquishment Deed and Will before 2011. Thus, the said argument of the defendants is without any merit and hence stand rejected.

52. During the final argument, Ld. Counsel for defendants also raised the contention that the plaintiff failed to prove on record that the late Sh. Harbans Singh was the owner of the suit property. In this connection, it is pertinent to note that the defendants, in their written statement and in evidence by way of affidavit of DW1 and DW4, stated that the late Sh. Harbans Singh was the owner of the suit property. Further, the fact of late Sh. Harbans Singh's ownership of the suit property is clearly reflected in the document viz. Relinquishment Deed dated 30.06.1992 and Will dated 17.08.1992, relied upon by the defendants in support of their case. In view of the admission of defendants in the written statement and affidavits of DW1 and DW4 as well as recitation of the documents relied upon by the defendants, there was no requirement for the plaintiff to prove that the late Sh. Harbans Singh was the owner of the suit property. Hence, the said contention of the defendants is without any basis.

53. Ld. Counsel for the defendants also raised the contention during final argument that the plaintiff had knowledge of the partition of the suit property between defendant no. 1 and 2 and of the construction raised by them over the suit property, and as the plaintiff did not raise any objection to the same, she impliedly consented to the same. In this connection, it is pertinent to note that the PW1/plaintiff in her cross-examination conducted on

24.11.2017 deposed that she does not know whether the suit property has been divided into two by putting a wall in between. Further, merely non-raising of objection to the division of the suit property among defendants no. 1 and 2, as well as non-raising of objection to the construction on the suit property, does not amount to waiver of the right of the plaintiff in the suit property.

54. Further, during the final argument, Ld. Counsel for the defendants also raised the contention that, as the plaintiff is the executant of the Relinquishment Deed dated 30.06.1992, the plaintiff ought to have prayed for relief of the cancellation and ought to have paid the requisite court fees on the relief of cancellation of the said Relinquishment Deed. In this connection, it is pertinent to note that in both the cases of declaration and cancellation, a plaintiff sues to have the deed set aside or declared as non-binding, and whether the plaintiff has prayed for declaration or cancellation is only a matter of form, which does not affect the substantial merit of the case of the plaintiff. In the present matter, since the prayer has been made for the declaration of the Relinquishment Deed dated 30.06.1992 as null and void, it has the effect of cancellation of the said Relinquishment Deed. Regarding the contention that the court fees should be paid for the relief of declaring the Relinquishment Deed as null and void, the same has been addressed in the discussion of issue no. (v).

55. In view of the categorical testimony of the plaintiff that the defendant no(s). 1 & 2 obtained her signature on certain papers by misrepresentation to the effect that the plaintiff's signature was required on a No Objection Certificate (NOC) for obtaining a loan, and on that pretext, the Relinquishment Deed dated

30.06.1992, Ex. PW1/F was fraudulently got executed as well as the testimony of defendant no. 1/DW4, that the registration of the Relinquishment Deed dated 30.06.1992 was not done in the presence of the plaintiff, and the fact of inclusion of Smt. Lodhi/defendant no. 3, who was not the co-owner of the suit property, as one of the executants of the said Relinquishment Deed, clearly reflects fraud and misrepresentation on the part of the defendant no. 1 & 2 as to the nature and legal effect of the documents executed by the plaintiff. Now, the burden was on defendant no. 1 & 2 to establish the free consent of the plaintiff to the execution of the said Relinquishment Deed dated 30.06.1992. However, the defendants no. 1 & 2 failed to produce any evidence in this regard.

56. Hence, in view of the aforesaid facts and circumstances, it is held that the consent of the plaintiff for the execution of the Relinquishment Deed dated 30.06.1992 was obtained by misrepresentation and by playing fraud on the plaintiff. Accordingly, issued no. (i) is decided in favour of the plaintiff.

57. In view of the aforesaid finding on issue no. (i), the Relinquishment Deed dated 30.06.1992, registered before Sub-Registrar IV at Sl. No. 1479, Book No. 1, Vol. No. 2398 at page no. 82-83, is liable to be declared as void, and the same is also liable to be cancelled.

58. At the time of final argument, it is contended by Ld. Counsel for defendants that the present suit is barred by Order II Rule 2 of the Code of Civil Procedure, 1908. In this connection, it is seen that the said contention had already been dealt with by the Hon'ble High Court of Delhi vide order dated 01.04.2014 at

the time of framing of issues in the present matter, and the same was not found to be material even for framing of an issue in this regard. In view of this, no further discussion is required on the said contention.

59. As regards the issue of the validity of the execution of the Will dated 17.08.2012, in order to prove the Will dated 17.08.1992, the defendants examined attesting witness Sh. M.L. Bajaj as DW3. DW3/Sh. M.L. Bajaj deposed in his evidence by way of affidavit Ex. DW3/A that the said Will dated 17.08.1992 was executed by Smt. Prakash Kaur wife of the late Sh. Harbans Singh in his presence, and he was one of the attesting witnesses to the said Will. Further, the perusal of the said Will shows that it was attested by two attesting witnesses, namely Sh. M.L. Bajaj and Sh. Avtar Singh and the defendants have examined one of the attesting witnesses to prove the due execution of the said Will. On behalf of the plaintiff, nothing was brought in evidence to show that the Will is a forged and fabricated document as alleged by the plaintiff. There is no allegation from the side of the plaintiff that the testator of the said Will, Smt. Prakash Kaur@Santo was not of sound disposing mind at the time of the execution of the said Will. Thus, the said Will dated 17.08.1992 has been proved as per Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872.

60. In view of the aforesaid discussion, it is established that the Will dated 17.08.1992 was a validly executed Will. Hence, issue no. (ii) is decided in favour of the defendants.

61. However, as the Relinquishment Deed dated 30.06.1992 is a void document and stands cancelled, therefore, the said Will,

dated 17.06.1992, even if it is a validly executed Will, does not affect the plaintiff's share in the suit property as Smt. Prakash Kaur@Santo did not have the right to bequeath the plaintiff's share of the suit property. Therefore, the said Will dated 17.08.1992 shall not have any effect on the share of the plaintiff in the suit property.

62. Further, as Lodhi was not the co-owner of the suit property. Therefore, she did not have any share in the suit property, which she could have relinquished in favour of the Smt. Prakash Kaur @ Santo. Consequently, at the time of execution of the said Will dated 17.08.1992, the plaintiff had a 1/4th (one-fourth) share in the suit property which could not have been bequeathed by the Will dated 17.08.1992. However, said Will is valid to the extent of the bequest of a 1/4th (one-fourth) share of Smt. Prakash Kaur @ Santo in the suit property in favour of the beneficiaries, i.e. defendant no(s). 1 & 2.

63. Hence, the plaintiff is entitled to 1/4th (one-fourth) share in the suit property bearing no. 254-A, Gali No. 4, Saraswati Bhandar Colony, Gandhi Nagar, Delhi-110031 and defendant no(s). 1 & 2 are entitled to 3/8th (three-eighths) share each in the suit property.

ISSUE NO. (iv):-

(iv). Whether the claim by the plaintiff of declaration qua the relinquishment deed is within time?OPP

64. The onus to prove the said issue was on the plaintiff. The plaintiff has deposed that she filed a suit bearing no. 255/2011 praying for relief of permanent injunction against defendants no. 1 & 2 restraining them from creating third party interest in the suit property, and in the said suit, defendants no. 1 & 2 filed Relinquishment Deed dated 30.06.1992 executed by the plaintiff and defendants in favour of Smt. Prakash Kaur@Santo and Will dated 17.08.1992 executed by her mother, late Smt. Prakash Kaur@Santo in favour of the defendant no. 1 and 2, and only then did the plaintiff come to know about the said Relinquishment Deed and Will.

65. In view of the aforesaid discussion on issue no. (i), (ii) & (iii), it is established that defendants Nos. 1 and 2 got executed Relinquishment Deed dated 30.06.1992 from the plaintiff under misrepresentation and fraud, and the defendant was not aware of the nature and legal effect of the document she executed on 30.06.1992. Further, the defendants failed to controvert the plaintiff's deposition that she was not aware of the execution of the Relinquishment Deed dated 30.06.1992 until the defendants filed the same in the suit bearing no. 255/2011. Moreover, the defendants did not lead any evidence to establish knowledge of the plaintiff in respect of the Relinquishment Deed dated 30.06.1992, Ex. PW1/F or Will dated 17.08.1992, Ex. PW1/G at any time prior to the filing of the suit bearing no. 255/2011.

66. In view of the aforesaid discussion, on balance of probabilities, the court is of the view that the plaintiff came to know about the exact nature and contents of the Relinquishment

Deed dated 30.06.1992, Ex. PW1/F after the same was filed in the civil suit bearing no. 255/2011 in the year 2011.

67. Here, it is pertinent to mention here that as per Articles 58 and 59 of the Schedule to the Limitation Act, 1963, the period of limitation to seek a declaration that a document is null and void as well as the period of limitation to seek a cancellation/setting aside of a instrument is three years from the date when the right to sue first accrues or when the facts entitling the plaintiff to have instrument cancelled/set aside first become known to him/her.

68. In the present case, the plaintiff came to know in the year 2011 about the Relinquishment Deed dated 30.06.1992, having the effect of the plaintiff's share in the suit property being relinquished in favour of her mother, Smt. Prakash Kaur@Santo. Therefore, the present suit, having been filed in the year 2011, is not time-barred. Therefore, relief of declaration/cancellation qua relinquishment deed is within the prescribed limitation period as per the schedule of the Limitation Act. Accordingly, issue no. (iv) is answered in favour of the plaintiff.

ISSUE NO. (v):-

(v) Whether the suit is properly valued for the the purposes of court fees and jurisdiction and whether appropriate Court Fees affixed on the plaint if no to what effect ? OPP

69. The onus to prove the said issue was on the plaintiff. It is seen that in paragraph 24 of the plaint, the suit property has been valued at Rs. 24,00,000/- for the relief of partition and possession. It is the case of the defendants that the plaintiff

undervalued the suit property, and that its market value was Rs. 50 lakhs.

70. The plaintiff has not led any evidence on the market value of the suit property. In fact, in the evidence by way of affidavit of the plaintiff/PW1, there is not even a mention of the valuation of the suit property. Hence, the averment in the written statement, qua the market value of the suit property being Rs. 50 lakhs at the time of institution of the suit is to be admitted. Further, the plaintiff in her plaint averred that defendants no. 1 & 2 have not permitted the plaintiff to reside/enter the suit property. Therefore, the plaintiff herself has pleaded complete ouster from the suit property.

71. In view of the above facts and circumstances, the Court is of the view that the suit has not been properly valued for the purposes of court fee and jurisdiction. Therefore, the plaintiff is liable to pay court fees at the market value of the suit property, i.e., Rs. 50 lakhs as pleaded by the defendants in their written statement.

72. As regards question whether the plaintiff is required to pay court fees on relief of declaration of the Relinquishment Deed dated 30.06.1992, it is important note that as per the judgment of the Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors** reported as 2010 (2) SCC 112, in case a party to an instrument seeks its declaration/cancellation, the party is required to pay court fees on the amount of consideration mentioned in the instrument. In the present case, the only consideration mentioned in the Relinquishment Deed in question is love and affection for their mother, for which the releasees

allegedly released their share in favour of their mother. Further, as per the aforesaid discussion, the plaintiff is liable to pay court fees on the relief of partition and separate possession of the share claimed by the plaintiff in the plaint. In view of this, the court is of the view that no separate court fees are required to be paid on the relief declaring the Relinquishment Deed as null and void.

73. A perusal of the plaint shows that the plaintiff has paid the court fees for her 1/3rd share after valuing the suit property at Rs. 24 lakhs. Therefore, the plaintiff is directed to pay the differential court fees on the share of the suit property as claimed by her in the plaint, with Rs. 50 lakh as the market value of the suit property. Issue no. (v) is accordingly answered.

RELIEF

74. In view of my aforesaid findings, a preliminary decree is passed as under:

(i). The Relinquishment Deed dated 30.06.1992, registered before Sub-Registrar IV at Sl. No. 1479, Book No. 1, Vol. No. 2398 at page no. 82-83, is decreed as void, and the same stands cancelled.

(ii). A decree of partition is passed declaring that the plaintiff is entitled to 1/4th (one-fourth) share in the suit property bearing no. 254-A, Gali No. 4, Saraswati Bhandar Colony, Gandhi Nagar, Delhi-110031 and defendant no(s). 1 & 2 are entitled to 3/8th (three-eighths) share each in the suit property. The suit property shall be partitioned in terms of the share of plaintiff and defendants no. 1 and 2 as per the preliminary decree.

75. The preliminary decree shall be operative only upon the payment of the requisite court fees as per the finding on issue no. (v). Therefore, the Preliminary Decree sheet be prepared only upon the deposit of the deficient court fees.

76. A copy of the decree be sent to the concerned Sub Registrar for compliance of sub section (2) of Section 31 of the Specific Relief Act, 1963.

**Pronounced in the open court
on this 8th day of December, 2025**

**(SOMITRA KUMAR)
District Judge-06, East,
Karkardooma Courts, Delhi.**