

IN THE COURT OF SH. RAJESH KUMAR,
ADDITIONAL DISTRICT JUDGE-03, EAST DISTRICT,
KARKARDOOMA COURTS: DELHI

Suit No.: 1442/2016



IN THE MATTER OF:

SH. RAMESHWAR DAYAL
S/O LT. SH. SHANKAR SINGH
R/O VILLAGE & POST OFFICE,
MAIN KALANDARGARHI,
TEH. KHURJA,
DIST. BULANDSHAHAH (U.P.)

.....Plaintiff

Versus

1. SMT. SUMAN DEVI
W/O LT. SH. VED PRAKASH
S/O LATE SHRI SHANKAR SINGH
R/O A-330, BUDDHA MARG,
MANDAWALI, DELHI-110092

- 1 (i) SAHIL (MINOR)
THROUGH SMT. SUMAN DEVI (LEGAL GUARDIAN)
S/O LT. SH. VED PRAKASH,
R/O A-330, BUDDHA MARG,
MANDAWALI, DELHI-110092

- 1 (ii) KHUSHI (MINOR)
THROUGH SMT. SUMAN DEVI (LEGAL GUARDIAN)
S/O LT. SH. VED PRAKASH,
R/O A-330, BUDDHA MARG,
MANDAWALI, DELHI-110092

- 1 (iii) NITIN (MINOR)
THROUGH SMT. SUMAN DEVI (LEGAL GUARDIAN)
S/O LT. SH. VED PRAKASH,
R/O A-330, BUDDHA MARG,
MANDAWALI, DELHI-110092
 2. PT. BRAHAM PRAKASH
S/O LT. SH. SHANKAR SINGH
R/O VILLAGE & POST OFFICE,
MAINAKALANDARGARHI,
TEH. KHURJA, DIST. BULANDSHAHR (U.P.)
 3. SMT. GAYATRI DEVI
W/O SH. BAL KISHAN,
D/O LATE SH SHANKAR SINGH
R/O 396, SANSKRITI APARTMENTS,
SECTOR-19B, DWARKA,
NEW DELHI-110075
 4. SMT. SAVITRI DEVI
W/O SH. LATOOR SINGH,
D/O LATE SH SHANKAR SINGH
R/O B-671, J. J. COLONY,
INDERPURI, DELHI-110012
 5. SMT. YOGRANI
W/O SH. SURENDER PAL SINGH,
D/O LATE SH. SHANKAR SINGH
R/O PLOT-B-11, FLAT NO. - E- 3RD,
VINAYAK APARTMENTS,
(NEAR VIDYA PUBLIC SCHOOL),
HINDON VIHAR, P.O. BAROLA,
SECTOR-49, NOIDA
(GAUTAM BUDH NAGAR)
-Defendants**

Date of institution of the suit	:04.12.2015
Final Arguments heard on	:17.02.2022
Date of Judgment	:29.03.2022

SUIT FOR POSSESSION AND PARTITION, PERMANENT INJUNCTION AND RENDITION OF ACCOUNTS

JUDGMENT:

BRIEF FACTS:

By way of present judgment, this court shall adjudicate upon the suit for possession, partition, permanent injunction and rendition of accounts filed by the plaintiff against the defendants.

1. CASE OF THE PLAINTIFF, AS PER PLAINT

Succinctly, the necessary facts for just adjudication of the present suit as stated in the plaint are as under:-

2 It is averred in the plaint that plaintiff and defendants no. 2 to 5 are real brother and sisters. Defendant no.1 is the wife of late Sh. Ved Prakash (deceased brother of plaintiff and defendants no. 2 to 5 who is stated to be expired on 14.02.2014). Defendant No.1(i) Sahil, Defendant No.1(ii) Khushi and Defendant No. 1(iii) Nitin are children of Defendant No.1 and they being minor are being represented through defendant No.1. It is averred that the property bearing No. A-330, Buddha Marg, Mandawali, Delhi-110092, measuring 260 sq. yds (herein referred to as suit property) was purchased by late Smt. Prakash Devi who is mother of plaintiff and defendants no. 2 to 5. Late

Smt. Prakash Devi died intestate on 15.03.2007. Said Smt. Prakash Devi had constructed 3 shops in the suit property. However, in the year 2013, defendant no.2 Braham Prakash built 1/3rd of the suit property out of his own funds, however, the said construction on the part of defendant no. 2 was allowed by other defendants and plaintiff under consensus that the whole property belongs to all of the parties to the suit, without affecting their rights and interests, to which the defendant no.2, without any hesitation/ reservation, agreed. The further expansion of the suit property was done by the plaintiff and his brother late Ved Prakash who is the husband of defendant no.1. It is further averred that the plaintiff was preoccupied in taking care of his business in his village, therefore, he could not physically occupy his portion of suit property built jointly but late Sh. Ved Prakash, husband of the defendant no.1 alongwith his family, started residing in the portion of suit property which was built jointly. The plaintiff had transferred money to the husband of the defendant no.1 to the tune of Rs. 4.40 lacs for construction. Site plan of the suit property is also annexed with the plaint which mentions original layout of the property including three shops which was of the time when the property was purchased by late Smt. Prakash Devi. The portion shown in the red was built up by defendant no.2 and remaining portion which was constructed later on by Sh. Ved Prakash. Presently, the suit

property is built up, up to three floor with three shops on the ground floor. It is further averred that defendant no.2 out of his portion shown in red allowed his son Sh. Mukesh Kumar to occupy one room while the rest of the portion shown in red has been let out and is fetching approximately Rs. 20,000/- per month by way of rent. It is further averred that in spite of repeated demands by the plaintiff and others, defendant no.2 has failed to render the accounts of earnings arising out of said property.

3. It is further averred that the portion built out of the resources of the plaintiff and the husband of defendant no.1 is completely occupied by defendant no.1 who refuses to acknowledge the rights and interests of the plaintiff in the entire suit property. Two shops and one room on the ground floor are occupied by the defendant no.1 and rest building is on the rent which is collected by defendant no.1. It is further averred that defendant no.1 is earning not less than Rs. 50,000/- per month as rent since beginning without sharing the same with the plaintiff and she has not rendered the accounts thereof despite repeated demands of the plaintiff. It is also averred that it was commonly agreed upon that the rent collected by defendant no.1 will be shared equally between plaintiff and defendant no.1 but defendant no.1 has not paid any single penny to the plaintiff despite his repeated demands. It is further averred

that after demise of husband of defendant no.1, she is not allowing the plaintiff to enter into suit property, hence, in view of denial of the rights of the plaintiff by defendants, the plaintiff has no other remedy but to seek partition of the suit property. It is further averred that as the efficacious physical partition is not possible, by meets and bounds considering the haphazard construction, it would be expedient and just to sell the property at a market value and proceeds thereof be apportioned accordingly.

4. It is also averred that on 17.05.2015, when plaintiff approached defendant no.1 to settle the matter, she threatened the plaintiff of involving him in a false criminal case and even made a 100 number call and when plaintiff approached other defendants to resolve the matter, they showed their helplessness to resolve the issues. It is also averred that the plaintiff is deprived of annual income of at least Rs. 3,00,000/- which otherwise plaintiff would have earned, and therefore, plaintiff is suffering pecuniary loss due to deliberate, adamant act of defendant no.1 who is earning profits and refuses shares with plaintiff.

5. CASE OF THE DEFENDANT NO.1, AS PER WRITTEN STATEMENT;

2.1 Upon issuance of summons, defendant no.1 has appeared and filed written statement and taken preliminary

objections that the plaintiff has suppressed all true and material facts before the Court and he is liable to be prosecuted for submitting wrong facts before the Court. It is also stated in the WS that present suit is false, frivolous and vexatious and is without any cause of action. The plaintiff has suppressed all true and material facts, suit is not maintainable as no alleged offence/ incident ever happened with the plaintiff and plaintiff has not come with clean hands before the Court. The defendant no.1 admitted that her husband Ved Prakash, plaintiff and defendant no.2 to 5 are children of her mother in law Late Smt. Prakash Devi and suit property was purchased by late Smt. Prakash Devi on 15.02.1986. She also admitted that plaintiff alongwith other defendants including her husband were the co-owners in the suit property. Defendant no.1 denied that late Smt. Prakash Devi had constructed 3 shops in the suit property and in the year 2013, defendant no.2 had built 1/3rd of the suit property out of his own funds and said construction was allowed by other defendants under the consensus that whole property belongs to all of the parties to the suit without affecting their rights and interest to which, defendant no.2 without any hesitation/ reservation had agreed. Defendant no.1 also denied that late Smt. Prakash died intestate. It is stated by defendant no.1 that her mother-in-law Smt. Prakash Devi had executed a General Power of Attorney, Affidavit, Agreement to Sell and receipt

on 15.05.1998 in favour of Ved Prakash who is husband of defendant no.1 and after the execution of said documents, husband of defendant no.1 was absolute owner of the said property. It is also submitted that husband of defendant no.1 paid development charges to Delhi Jal Board on the basis of above said GPA. As per para no. 4 of written statement of defendant no.1, it is admitted that further expansion of the suit property was built by the plaintiff and husband of defendant no.1, but in the same para, it is stated by defendant no.1 that the said property was built up only by husband of defendant no.1 and plaintiff never transferred any amount of Rs. 4.40 lacs for construction in the name of her husband.

6. Defendant no.1 also denied that original layout of the property at the time Smt. Prakash Devi purchased the same, included the shops, and portion shown in red in the site plan was built by defendant no.2 and remaining portion was constructed later by plaintiff and husband of defendant no.1 out of the funds of both. It is also denied by defendant no.1 that she is earning not less than Rs. 50,000/- as a rent since the beginning without sharing the same with the plaintiff. Further, all the allegations of the plaintiff are denied by the defendant no.1. It is submitted that all other allegations leveled by the plaintiff are frivolous and further the plaintiff has cooked up false and frivolous story with the

intention to harass and humiliate the defendants no.1 and plaintiff wants to grab the suit property and extort the money from defendant no.1 by way of filing the present suit.

7. CASE OF THE DEFENDANT NO.2 TO DEFENDANT NO.5 AS PER THEIR WRITTEN STATEMENT

Upon issuance of summons, defendant no.2 to defendant no.5 appeared and filed written statement and all of them admitted the contents of the plaint and prayed that suit may be decreed as prayed for by the plaintiff. It is pertinent to note here that plaintiff in his plaint stated that the defendant no. 2 Brahm Prakash out his portion shown in red , has allowed his son Mukesh to occupy one room while rest of the portion shown in red ,has been let out and defendant no 2 is earning approximately Rs.20,000/- (twenty thousand rupees) per month by way of rent and inspite of repeated demands by the plaintiff and others, the defendant no 2 has failed to render the accounts of the earnings arising out the said property. This fact is also admitted by the defendant. It is also admitted that defendant no.1 is occupying the entire space and does not permit the plaintiff to enter and even refuses to acknowledge the rights and interest of the plaintiff in the suit property. It is also stated that understanding of sharing the rent is within the knowledge of all the relative. It also

submitted that defense taken by the defendant no.1 in her WS is practically incorrect and false as much as if it is claimed that the entire property was agreed to be sold or a GPA was executed in favour of late husband of the defendant no.1 is not sustainable as the expansion, construction was carried out in the year 2013 and the husband of defendant no.1 died in Feb, 2014 and nobody objected for the said construction. It is further submitted that no GPA or agreement to sell was ever executed by their mother Prakash Devi in favour of husband of defendant no.1 and the portion built up by defendant no.2 was constructed when the husband of defendant no.1 was alive, in fact, he extended his support in the construction of said portion. It is further stated that the documents so produced by defendant no.1 are false and fabricated with the aim to usurp the whole suit property.

8. Replication:

3.1 In replication the averments made in the written statement filed on behalf of defendant no.1 are denied and averments made in the plaint are reiterated and reaffirmed.

9. Upon completion of pleadings, following issues were framed vide order dated 28.04.2017:-

1. Whether the plaintiff has concealed the material particulars from the Court as alleged by the defendant No.1 ? (OPD-1)

- 2. Whether the plaintiff is entitled to a decree of partition as prayed for? OPP**
- 3. Whether the plaintiff is entitled to a decree of possession in respect of his share, as prayed for? OPP**
- 4. Whether the plaintiff is entitled to a decree of rendition of the account, as prayed for? OPP**
- 5. Whether the plaintiff is entitled to a decree of permanent injunction, as prayed for? OPP**
- 6. Relief.**

Plaintiff's Evidence:

10. The plaintiff was examined as PW-1 and he had filed his affidavit of evidence Ex. PW-1/A. He relied upon GPA dated 15.02.1983 Ex. PW-1/1, Agreement to Sell dated 15.02.1983 Ex. PW-1/2, Receipt dated 15.02.1983 Ex. PW-1/3, death Certificate of Smt. Prakash Devi Ex. PW-1/4, death certificate of Shanker Singh Ex. PW-1/5 and certified copy of passbook of PNB Ex. PW-1/6.

11. Plaintiff was not cross examined by defendants no. 2 to 5 despite opportunity given as they have already admitted the case of the plaintiff and prayed that decree be passed as prayed for by the plaintiff. However, Plaintiff was duly cross examined by Ld. Counsel for defendant no.1. During cross examination, plaintiff consistently supported his case and deposed that he is engaged in business of agriculture and he possess his own land around 30-32 bigha of land which is his ancestral property. He admitted that

there is share of Ved Prakash (deceased husband of defendant no.1) in the said property. He further deposed that Smt. Prakash Devi was the absolute owner of the suit property. He was asked a specific question as to whether property documents Ex.PW-1/1 GPA, EX.PW-1/2 agreement to sell and EX.PW-1/3 bears the signature or the thumb impression of Smt. Prakash Devi to which the plaintiff/ PW 1 replied that Prakash Devi did not know how to sign and she used to put her thumb impression and witness also deposed that he did not have knowledge whether she had put her thumb impression on these documents or not. The witness further deposed that he did not have knowledge as to who had put signature on the abovestated documents. He further deposed that Smt. Prakash Devi had every right to dispose of the property the way she likes being the absolute owner. He also deposed that he does not know that Smt. Prakash Devi had transferred the suit property to Sh. Ved Prakash through GPA. He also deposed that he did not know any witness Sh Ram Jani and Sh. Chander Kumar. During cross examination, witness further deposed that:-

"I do not know the exact year but Smt. Prakash Devi got the construction raised in the suit property for residing there prior to year 1990. She had got two rooms constructed at that time for residing there. She did not get any other room constructed. Vol. there were already three shops on front side which were constructed by my father Sh. Shankar Singh prior to his death. Further

constructions was raised in the suit property in and around the year 2013 by me and my brother Sh. Ved Prakash after demolishing two rooms on ground floor which was initially constructed by Smt. Prakash Devi and four rooms were got constructed by me and Sh. Ved Prakash on ground floor and five rooms were constructed on first floor and five rooms were constructed on second floor. There is no kitchen on the ground floor but there is bathroom on ground floor. There are two latrines on ground floor. There is no other construction on ground floor. There are two shops on the ground floor still in existence as the third shop fell in the share of Sh. Braham Prakash, the eldest brother/defendant no.2 and he has raised his construction. There is one kitchen as well as one latrine and bathroom on the first floor. Vol. in which Suman Devi is residing."

He further deposed that he had visited the suit property in June 2015 for the last time.

12. Thereafter, official witness Sh. Akhlesh Chandra, UDC/ AZI from the office of EDMC 18 Block, Geeta Colony, Delhi was examined as PW-2 and he has brought the Demand and Collection Register pertaining to the suit property i.e. A-330, Buddha Marg, Mandawali Fazalpur, Delhi-110092. Further, he has also brought original survey form Ex. PW-2/1 (OSR), original notice u/s 123 D of DMC Amendment Act 2003 Ex. PW-2/2 (OSR) and original assessment order under unit area method dated

08.02.2012 Ex. PW-2/3, all for above said suit property and all are in the name of Smt. Prakash Devi. He also deposited the attested copy of relevant page of demand and collection register pertaining to House property tax of suit property and copy of the same was Ex. PW-2/4. This official witness not cross examined by defendants no. 3 to 5 despite opportunity given. However, he was duly cross examined by defendant no. 1. During cross examination, he deposed that he is working with the said office since 2015. After seeing Ex. PW-2/1 i.e. survey form he deposed that there is no date mentioned and he had no knowledge of the surveyor. Further, after seeing Ex. PW-2/3 i.e. Original Assessment Order, the witness deposed that these documents were received and signed by Sh. Ved Prakash. He further deposed that Ex. PW-2/3 does not necessarily bear the signature of depositor of house tax. Voluntarily, he stated that signature of Ved Prakash was received on this document in token of receipt of this order by him as a family member of tax payer.

13. Thereafter, PE was closed and matter was fixed for DE.

Defendants' Evidence:

14. Defendant no.1 Smt. Suman, wife of late Ved Prakash, examined herself as DW-1 and she tendered her evidence by way of affidavit Ex. DW-1/A. She relied upon the

documents i.e. Ex. DW-1/1 (OSR) is the copy of her AADHAAR card, Ex. DW-1/2 is the photocopy of general power of attorney, Ex. DW-1/3 is the photocopy of agreement to sell, Ex. DW-1/4 is photocopy of receipt, all in favour of her husband late Ved Prakash and all executed by her late mother-in-law namely Smt. Prakash Devi, Ex. DW-1/5 is the photocopy of death certificate of Smt. Prakash Devi, Ex. DW-1/6 (OSR) is the photocopy of death certificate of her husband Sh. Ved Prakash, Ex. DW-1/7 (OSR) is the copy of NCR dt. 15.10.2015 of loss of property document, Ex. DW-1/8 (OSR) is the receipt dt. 06.01.2008 of development charges paid to Delhi Jal Board by late Sh. Ved Prakash, Ex. DW-1/9 (OSR) is the voter I card of late Sh. Ved Prakash, Ex. DW-1/10 (OSR) is the ration card of year 2005 of late Sh. Ved Prakash, Ex. DW-1/11 (OSR) is her voter identity card, Ex. DW1/12 (OSR) is the surviving member certificate issued by revenue department and Ex. DW1/13 is the certified copy of special power of attorney dt. 09.09.2002 executed in favour of late Sh. Ved Prakash by Smt. Prakash Devi. However, during exhibiting the documents, Ld. Counsel for the plaintiff objected to the mode of proof of exhibiting the documents i.e. Ex. DW-1/2, Ex. DW-1/4 and Ex. DW-1/13

15. During cross examination, DW-1 deposed that she got married to late Om Prakash in 2001 and her mother-in-

law Prakash Devi used to live in village Maina, District Bulandshehar, UP and at the time of her marriage her *jeth* Rameshwar i.e. Plaintiff and Brahm Prakash i.e. defendant no.2 used to live together in the ancestral house in the village. She further deposed that her mother-in-law passed away in 2007 in the village itself and at the time of her demise, her mother-in-law used to stay with Rameshwar and Brahm Prakash. She did not know whether the property documents of the suit property used to remain in possession of her late husband. She denied the suggestion that the property documents had not been misplaced/lost by her. She admitted that she have not seen the originals of the photocopies which she had filed on record in support of her claim to the suit property. She further deposed that her husband was doing property dealing work prior to his demise. She further admitted that her husband had bank account in Punjab National Bank, Branch Madhuban, Delhi and along with her husband, she also used to keep track of the bank account of late Ved Prakash in PNB, Madhuban. She further denied the suggestion that she do not know from where her husband received funds in her bank account. She also deposed that Brahm Prakash has constructed a house on 80 sq. yards of land out of total 260 sq. yards of suit property in 2014. She also denied the suggestion that in May 2015, Rameshwar and his wife had come to her house for settlement purpose, however, she

admitted that she had called the police as they had come to demolish the house. She further denied the suggestion that no documents were executed by late Prakash Devi in favour of her husband and that the suit property in which she is residing was built jointly by plaintiff and her husband. She further denied the suggestion that the suit property is undivided joint family property. This witness was not cross examined by defendants no. 2 to 5 despite opportunity given to them.

16. Thereafter, DE was closed and matter was fixed for final arguments.

17. Final arguments heard. Record perused.

18. My findings on all the issues are as follows.

19. Issue no.1- **Whether the plaintiff has concealed the material particulars from the court as alleged by the defendant no.1? OPD-1**

Onus to prove the issue that plaintiff has concealed material particulars from the court was upon the defendant no.1. In the written statement, it is stated by the defendant no.1 that plaintiff has concealed material particulars from the court and plaintiff has cooked the a false and frivolous story with intention to harass and humiliate the defendant

no.1 in order to grab the suit property and extort money. But the defendant no.1 has miserably failed to produce any legally admissible evidence to prove that plaintiff has concealed material particulars from the court. According to defendant no.1 suit property was built up by her husband and plaintiff never transferred any amount in the name of her husband. Plaintiff produced certified copy of his pass book of PNB bank Ex.PW1/6 in order to show that he transferred Rs.4,40,000/- to the bank account of late Shri Ved Prakash husband of defendant no.1. But during cross examination of plaintiff/ PW1, no question were asked by Ld. counsel for defendant no.1 regarding the said transaction of Rs.4,40,000/-. Plaintiff even supported his statement during cross examination by stating that further construction in the suit property was made by him and his brother late Shri Ved Prakash. Hence, defendant no.1 has failed to prove that plaintiff concealed material particulars from the court. Hence, this issue is decided against the defendant no1 and in favour of the plaintiff.

20. Issue No.2. **Whether the plaintiff is entitled to a decree of partition? OPP**

Onus to prove the issue that plaintiff is entitled to a decree of partition is upon the plaintiff. According to plaintiff the suit property was purchased by late Smt Prakash Devi, Mother of the plaintiff on 15.02.1983, vide documents Ex.

PW-1/1 GPA, EX.PW-1/2 Agreement to sell and EX.PW-1/3 all dated 15.02.1983 and she was the absolute owner of the suit property on the basis of those documents. All the defendants have admitted this fact that Deceased Prakash Devi was the owner of the suit property. It is also submitted by the plaintiff that Prakash Devi died intestate on 15.03.2007. Defendant No. 2 to Defendant No. 5 admitted that deceased died intestate, but defendant NO.1, denied that deceased Prakash Devi died intestate. According to defendant NO.1 deceased Prakash Devi executed a General Power of Attorney EX.DW-1/2 , Affidavit , Agreement to Sell EX.DW-1/3 and Receipt EX.DW-1/4 on 15.05.1998 in favour of her husband Late Sh Ved Prakash and after execution of these documents, her husband became absolute owner of the suit property. Plaintiff and defendant No. 2 to defendant No. 5 denied that their mother Prakash Devi ever executed aforesaid documents in favour of late Shri Ved Prakash. It is pertinent to note here that defendant No. 1 did not produce original of aforesaid documents, only photocopy of the said documents were produced.

21. In order to adjudicate upon the issue of admissibility of the aforementioned photocopies of documents, it would be apt to peruse the relevant provisions and case law on the point, before embarking on a quest to ascertain the admissibility of photocopies of each

of these documents.

22. The relevant sections are [section 3](#), [63](#), [64](#), [65](#), and [66](#) of the Indian Evidence Act, 1872 the same are reproduced hereunder:

3 "Proved" A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists".

63. Secondary evidence - Secondary evidence means and includes (1) certified copies given under the provisions hereinafter contained; (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

64. Proof of documents by primary evidence. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

65. Cases in which secondary evidence relating, to documents may be given. Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:

(a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in [section 66](#), such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of [section 74](#);

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in to be given in evidence;

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of the contents of the documents is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

66. Rules as to notice to produce. Secondary evidence of the contents of the documents referred to in [section 65](#), clause (a), shall not be given unless the party proposing to

give such secondary evidence has previously given to the party in whose possession or power the document is, (or to his attorney or pleader,) such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case: Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it: (1) when the document to be proved is itself a notice;

(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;

(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force; (4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document; (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

23. Relevant extracts of certain judgments are also reproduced below which are germane to the facts in issue:

(a) [J. Yashoda vs K. Shobha Rani](#) (2007) 5 Supreme Court Cases 730, wherein it was held that:

"Secondary evidence, as a general rule is' admissible only in the absence of primary evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. However, if the original itself is found to be inadmissible through failure of the party who files it to prove, it to be valid, the same party is not entitled to introduce secondary evidence of its contents.

Essentially, secondary evidence is an evidence which may be given in the absence of that better evidence which law

requires to be given first, when a proper explanation of its absence is given. The definition in [Section 63](#) is exhaustive as the Section declares that secondary evidence "means and includes" and then follow the five kinds of secondary evidence.

The rule which is the most universal, namely that of the best evidence as the nature of the case will admit shall be produced, decides this objection that rule only means that, so long as the higher or superior evidence is within your possession or may be reached by you, you shall give no inferior proof in relation to it. [Section 65](#) deals with the proof of the contents of the documents tendered in evidence. In order to enable a party to produce secondary evidence it is necessary for the party to prove existence and execution of the original document. Under [Section 64](#), documents are to be provided by primary evidence. [Section 65](#), however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in [Section 65](#) must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in [Section 65](#). Only when the conditions prescribed in [Section 65](#) are satisfied, can documents be admitted as secondary evidence."

(b) [M. Chandra vs M. Thangamuthu and another](#) (2010) 9 SCC wherein it was held that:

"It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be

authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. The exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party."

(c) [Smt. Rami Bai, Appellant vs Life Insurance Corporation of India](#), AIR 1981 Madhya Pradesh 69 wherein it was held that:

"[Section 67](#) does not lay down any particular mode of proof for proving that a particular writing or signatures is in the hand of a particular person. Thus, the signatures may be proved in any one or more of following modes: (I) By calling the person who signed or wrote a document;"

".....(iv) By calling a person acquainted with the handwriting of the person by whom the document is supposed to be signed or written;"

".....(viii) By other circumstantial evidence."

(d) [Prem Chandra Jain & others vs Sri Ram & others](#) 2009 (113) DRJ 617 wherein it was held that:

"2. A practice appears to have developed in the Trial Courts for moving an application under [Section 65](#) of the Evidence Act seeking permission of the courts to adduce secondary evidence. There does not appear to be any sanction therefor in law. Neither the Evidence Act nor the CPC nor any other rules & regulations or statute requires the filing of such an application."

"..... Thus a litigant without seeking any permission from the court if satisfies the ingredients of [Section 65](#) of the Evidence Act i.e. of the existence of the contingency or situation when secondary evidence is permitted to be led is entitled to lead such evidence. Such evidence will have to be two fold. Firstly, as to the existence of the contingency or situation in which secondary evidence is permissible, viz that the original document is in possession or power of the

person against whom it is sought to be proved etc. or that the existence, condition or contents of original have been proved to be admitted by person against whom it is sought to be proved or that the original has been lost or destroyed or when original is not moveable etc. i.e. of the various situations mentioned in Clause (a) to (g) of [Section 65](#). Secondly, such evidence will have to be in proof of document as also prescribed in [Section 65](#) r/w [Section 63](#)."

(e) [H. Siddiqui vs A. Ramalingam](#) (2011) 4 SCC 240 wherein it was held that:

"The provisions of [Section 65](#) of the 1872 Act provide for permitting the parties to adduce secondary evidence. However, such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. Mere admission of a document in evidence does not amount to its proof."

24. DW1/ Defendant no 1 produced one document EX.DW1/7 regarding loss of property documents. Document EX.DW17 shows that it is an information report in respect of Article/Document lost in Delhi, which was filed by defendant no.1 on 15.10.2015 to the Police and it mentions that " I lost my property paper with other documents and electricity bill on 13.10.2015 at Mandawali Delhi 110092, so please it's a request register my lost complaint". Aforesaid information

report does not make clear as to what documents were lost. The description of documents is not mentioned in the information report. However, for the sake of argument, if it is presumed that the said information relates to loss of the documents relied upon by D-2, it appears that defendant No.1 lodged this report showing that prior to 13.10.2015 she was in possession of original property documents. But it pertinent to note that during cross-examination she admitted that she does know whether the property documents (EX.DW 1/1 to EX.DW1/3) used to remain in possession of her late husband. DW-1 also admitted that she had not seen the originals of the photocopies aforesaid property documents. Suit in the present case was filed on 04.12.2015, while aforesaid report regarding loss of documents was lodged on 15.10.2015 which is around one and half month prior to the filing of the present case. Disputes between the parties regarding the suit property was going on much prior to filing of the present case. Hence possibility cannot be ruled out that defendant no.1 might have lodged a false information report to police regarding the loss of the documents as she in her testimony admitted that she has not seen the original of those documents and she was not aware as to whether property documents used to remain in possession of her husband or not. In view of above mentioned case laws, it is settled position of law that in a case where the original documents

are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original.

25. Moreover, aforesaid photocopy of documents relied upon by the Defendant No 1 have not been proved in accordance with law as neither the concerned Notary Public nor the stamp vendor nor any attesting witness to said documents has been examined by the defendant no.1 in order to prove and show the existence of those documents and execution of those documents. Ld counsel for Defendant No. 1 during cross examination of PW1 specifically put question about attesting witnesses Ram Jani and Chander Kumar , to plaintiff/ PW1 but plaintiff replied that he did not know Ram Jani and Chander Kumar. Despite this the defendant No1 failed to examine attesting witnesses. In absence of the original documents it is hard to believe that deceased had executed any documents in favour of Ved Prakash, husband of defendant no.1. Defendant no1 has also failed to prove what amount was

paid by her husband as consideration to purchase the suit property from her mother and as through what mode payment was made by her husband to the deceased.

26. Ld counsel of the defendant no 1 asked specific question from the plaintiff about signature / thumb impression of Prakash Devi on the property documents Ex.PW 1/1 to EX.PW 1/3 to which witness replied that her mother did not use to sign, as she used to put thumb impression on the documents. It is pertinent to note that these documents were the documents on the basis of which Prakash Devi was the absolute owner of the suit property. It is admitted case of both the parties that Prakash Devi was the absolute owner of the suit property and abovesaid documents were not disputed by both the parties. Hence why the questions regarding signature and thumb of Prakash Devi on abovesaid documents were relevant , has not been explained by defendant no 1.

27. Defendant no 1 / DW1 also relied on a document EX. DW-1/8 which is the receipt dated 06.01.2008 of the development charges paid to Delhi Jal Board by her husband Late Sh Ved prakash. But this document does not create title in favour of the husband of the defendant no 1. This document does not prove that Ved Prakash was the owner of the entire suit property. Moreover PW. 2 UDC/AZI, from EDMC produced some documents EX.PW 2/1 to EX.

PW 2/4 which are original survey form, original notice u/s 123D of DMC amendment Act 2003, original assessment order under unit area method and attested copies of relevant pages of demand and collection register (pertaining to House tax) all are related to the suit property and all are in the name of Smt. Prakash Devi and not in the name of Late Sh ved Prakash.

27. The onus to the issue that the plaintiff concealed the material particulars from the court was upon defendant No.1. But the defendant has miserably failed to prove as to what material facts were concealed by the plaintiff. The defendant No. 2 to Defendant No 5 admitted the fact that their mother Lt. Smt Prakash Devi constructed 3 shops in the suit property during her life time. They admitted that in the year 2013 Defendant no 2 built 1/3rd of the suit property out of his own funds, however the said construction was allowed by other defendants under the consensus that whole property belongs to all of the parties to the suit, without affecting their rights and interest to which defendant No.2 without hesitation /reservation agreed. But defendant no 1 denied that Lt. Prakash Devi constructed 3 shops during her life time. Defendant No. 1 also denied that 1/3rd of suit property was built by defendant No. 2 out of his own funds and he was allowed the said construction by other defendant under the the consensus that whole property belongs to all of the parties to the suit, without

affecting their rights and interest to which defendant No.2 without hesitation /reservation agreed. Defendant No.2 to defendant no. 5 also admitted that the further extension of the suit property was built by plaintiff and Late sh Ved Prakash ,Husband of the defendant No. 1 jointly and plaintiff had transferred Rs 4.40 lacs to Ved Prakash. Plaintiff produced copy of his bank passbook EX. PW-1/6 regarding the transfer of aforesaid amount of Rs. 4.0 lacs. Defendant No 1 deposed in her examination in chief that suit property was built by her husband and plaintiff never transferred any amount in the name of her husband. Here it is pertinent to note that except mere denials defendant has not been able to produce any legally admissible evidence to prove that suit property was built by her husband Late Sh Ved Prakash. Defendant no.1 has not proved as to how and from where her husband arranged the money to construct the suit property. Hence, in view of above said discussion, it is evident that defendant no.1 has failed to prove that deceased Prakash Devi ever executed any documents regarding sale of suit property in favour of late Shri Ved Prakash husband of defendant no.1. In view of this , issue no.2 is decided in favour of plaintiff against the defendant no.1.

28. **Issue No. 3 & 5-** are taken up together as they are connected.

Onus to prove that plaintiff is entitle to a decree

of possession in respect of share in the suit property and a decree of permanent injunction was upon the plaintiff.

In view of above discussion with regard to issue no.1 & 2, the defendant no.1 has failed to prove that plaintiff is not entitled for a suit for partition. Hence, these two issues are also decided in favour of plaintiff and against the defendants. Plaintiff is entitled for a decree of possession in respect of his share and he is also entitled for a decree of permanent injunction.

29. **Issue no.4.** Whether the plaintiff is entitled to a decree of rendition of account as prayed?OPP

Onus to prove this issue is upon the plaintiff. Defendant No. 2 to Defendant No. 5 admitted that presently suit property is built upto 3 floors with 3 shops on the ground floor. But defendant No 1 denied the same. Defendant No 2 to Defendant 5 also admitted that defendant no 2, out of his portion shown in red in the site plan has allowed his son Sh. Mukesh Kumar to occupy one room while rest of the portion is let out and earning approximately Rs. 20,000/- Per Month by way of rent. It is also admitted by Defendant No 2 to defendant 5 that inspite of repeated demands by the plaintiff and other defendant, the defendant No.2 has failed to render true accounts of the earning arising out of the said property. Defendant No. 1 denied the same in her written statement.

30. Defendant NO 2 to Defendant No. 5 also admitted that portion of suit property built out of the resources of the plaintiff and the husband of the defendant no 1 is completely occupied by the defendant No 1 who refuses to acknowledge the rights and interest of the plaintiff in the entire property. Defendant NO 2 to Defendant No. 5 also admitted that there are two shops on the ground floor, one room on the ground floor is occupied by defendant no. 1 and she is earning not less than Rs. 50,000/- Per month as a rent, without sharing the same with plaintiff and she has not rendered the accounts of the same. But defendant no.1 denied the same in her written statement. But again except mere denials the defendant no1 has not been able to adduce any evidence to disprove that she was not earning Rs. 50,000/- per month as a rent. However initial burden to prove that defendant No 1 is earning Rs. 50,000/- as rent from the suit property is upon the plaintiff but plaintiff has not produced any evidence to prove the same, however other defendants have admitted that defendant no 1 is earning rental income from the suit property and she has not rendered true account of her said income. The defendant no.1 has not denied that she is not in possession of said portion of suit property from which as per plaintiff she is earning rental income of Rs.50,000/- p.m. Plaintiff has sought the relief of rendition of account. The relevant

provision has been mentioned in order 20 rule 16 CPC. The said provision does not create or confer any substantive right to seek rendition of accounts in any particular type of cases, nor in all types of cases. It merely refers to a rule of procedure and would apply where there is an existing right to seek rendition of accounts having regard to the relationship between the parties. It is now well settled that the right to claim rendition of accounts is an unusual form of relief granted only in certain specific cases and to be claimed when the relationship between the parties is such that the rendition of accounts is the only relief which will enable the plaintiff to satisfactorily assert his/her legal right. A suit for rendition of accounts can be maintained only if a person suing has a right to receive an account from the defendant. Such a right can either be (a) created or recognised under a statute; or (b) based on the fiduciary relationship between the parties as in the case of a beneficiary and a trustee; or (c) claimed in equity when the relationship is such that rendition of accounts is the only relief which will enable the person seeking account to satisfactorily assert his/her legal right. Such a right to seek accounts cannot be claimed as a matter of convenience or on the ground of hardship or on the ground that the person suing did not know the exact amount due to him, as that will open the floodgates for converting several types of money claims into suits for accounts, to avoid payment of

Court fee at the time of institution.

31. Defendant no.1 has merely denied the same while other defendants have admitted that defendant no.1 is earning around Rs.50,000/- per month as rent and defendant no.2 is earning Rs.20,000/- per month. There is no reason to disbelieve the same. The photocopies of the documents relied upon by the defendant no.1 are neither helpful nor sufficient to deny the claim of the plaintiff. There is no substance or merit in the defence raised by the defendant no.1. As the plaintiff is entitled to partition of suit property with other legal heirs. They also have to share the rent as stated above. No account whatsoever has been given or provided either by plaintiff or defendants. Therefore, it is required that rendition of accounts of rent received be carried out. In view of the same this issue is also decided in favour of plaintiff and against the defendant no. 1 & 2. Both defendant no.1 & 2 are liable to render true account of rental income from the suit property.

32. Defendant no. 2 to Defendant no 5 have admitted the case of the plaintiff and prayed that suit may be decreed as prayed for against all the defendants and in favour of the plaintiff. Defendant no.1 has failed to prove that she is the owner of suit property and plaintiff is not entitled for decree of partition of the suit property. Hence in view of above discussion the plaintiff and defendant no 1 to defendant no

5 are entitled for 1/6th share each in the suit property i.e the property bearing No. A-330, Buddha Marg, Mandawali, Delhi-110092, measuring 260 sq. yards,as prayed in the suit. The defendant no 1 and 2 are directed to render the account of their earning from the rental income and share the same with the plaintiff.

33. RELIF.

For the reasons recorded above, the plaintiff is found to be entitled to the following reliefs:

(a) a preliminary decree is passed and it is declared that the plaintiff Shri Rameshwar Dayal, Defendant no.1 Smt. Suman Devi (minor children Sahil, Khushi and Nitin are represented by defendant no.1), Defendant no. 2- Pt. Brahm Prakash, defendant no.3 Smt. Gyatri Devi, defendant no.4- Ms. Savitri Devi and defendant no.5 Ms. Yograni are entitled for 1/6th share each in the suit property i.e the property bearing No. A-330, Buddha Marg, Mandawali, Delhi-110092, measuring 260 sq. yrds,as prayed in the suit.

(b) A decree of permanent injunction is also passed in favour of the plaintiff and against the defendants directing the defendants not to sell out, mortgage or create any third party interest in respect of suit property.

(c) A preliminary decree is also passed for rendition of accounts in respect of the suit property, and the defendant no 1 and 2 are directed to render the true account of their earnings from the rental income and share the same with the plaintiff.

(d) Preliminary decree Sheet be prepared accordingly.

(e) Parties are also directed to suggest ways and means by which suit property could be partitioned by metes and bounds as per share specified in the preliminary decree.

Put up for further proceeding on 14.07.2022.

**Pronounced in
the open Court
On 29.03.2022**

**(RAJESH KUMAR)
Additl. District Judge-03
East District
KKD Courts, Delhi**