

IN THE COURT OF MS. SHIVALI BANSAL
DISTRICT JUDGE-03 (NORTH)
ROHINI COURTS, DELHI



CNR No. DLNT010001812010
CS No. 58167/16

In the matter of:

Sh. Vinod Kapur.

S/o late Sh. Nand Lal,
H. No. 1448, Ground Floor,
Outram Lines, Kingsway Camp,
Delhi – 9.

.....Plaintiff

Versus

Sh. Vijay Kapur (son)

Sh. Vipin Kapur (son)

Sh. Vinay Kapur (son)

Smt. Swaraj Kapur(widow)

of late Sh. Nand Lal Kapur,

R/o A-29-B, Vijay Nagar,

Single Storey, Delhi – 9.

..... Defendants

Date of institution of the suit	:	19.11.2010
Date of arguments heard on the application under Order 12 Rule 6 CPC	:	19.03.2025
Date of pronouncement of order	:	08.04.2025

ORDER

1. Vide this order, I shall dispose off the application of the plaintiff filed under Order 12 Rule 6 CPC.
2. The brief facts of the case of the plaintiff are that the plaintiff is one of the co-owner in the property bearing no. A/29-B (pvt) (area about 68 sq. yards), bearing original

no. A/29, Vijay Nagar, Single Story, Delhi-110009 (hereinafter referred to as “**suit property**”). It is averred by the plaintiff that the suit property is in the name of his grandfather, Late Sh. Parma Nand Kapur along with Late Sh. Mohinder Singh. The total suit property admeasured 128 sq. yards. Late Sh. Parma Nand had three sons and one daughter, namely, Sh. Faqir Chand, Sh. Nand Lal, Sh. Gulshan and Smt. Darshan. It is stated that Late Sh. Parma Nand had compensated all his other sons in other properties, whereas out of this property, he had given 60 sq. yards to his son, Sh. Gulshan and about 68 sq. yards bearing private no. A/29-B to Sh. Nand Lal (father of the plaintiff and defendant no. 1 to 3 herein). It is stated that the plaintiff is a co-owner in the said property as per the family settlement that was arrived between the plaintiff and defendant no. 1 to 3 upon mutual understanding for attaining cordial relations between them. It was agreed between them that the four brothers i.e. plaintiff and defendant no. 1 to 3 shall share one floor each, while the mother i.e. defendant no. 4 shall live in the ground floor / first floor. It is stated that the defendant no. 1 on 02.10.2010 with *malafide* motive, got the possession of the third floor, which fell in the share of the plaintiff and therefore, the present suit is filed for seeking partition of the suit property. It is also stated that defendant no. 2, 3 and 4 are supporting the case of the plaintiff. The present application is filed for seeking a judgment on admissions. It is stated in the application that since all the defendants have admitted the claim of the plaintiff, the plaintiff is entitled to a judgment in his favour. During the course of arguments Ld. Counsel for the plaintiff has relied upon the following judgments:-

- (a) *Uttam Singh Dugal and Co. Ltd. v. Union Bank of India & Anr. (2000 AIR SC 2740).*
- (b) *Bhoop Singh v. Ram Singh Major & Ors. (1996 AIR SC 196).*
- (c) *Narendra Kante v. Anuradha Kante & Ors. (2010 (1) RCR (CIVIL) 465).*
- (d) *Smt. Asha Jain and Anr. V. Sh. Anil Kumar Jain & Anr. (2010) 117 DRJ 363.*

3. *Per contra*, Ld. Counsel for the defendant no. 1 in his reply to the present application submits that there are no admissions on his behalf. He submits that the application of the plaintiff is silent upon any categorical admissions made by the defendant no.1 herein and is a mere reproduction of the entire plaint. It is stated by the defendant in his reply/written statement that the plaintiff is not having any share in the suit property since the claim of the plaintiff in respect to the suit property has already been satisfied by the defendant no.1 and his father Sh. Nand Lal Kapoor, whereby the plaintiff after accepting the cash amount has surrendered his share in the suit property in the year 1978-88 and has been residing separately.
4. Heard. Record Perused.
5. Before proceeding further this court deems appropriate to reproduce Order XII Rule 6 CPC which reads as under:

“6. Judgment on admissions

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

6. Order XII Rule 6, CPC confers wide discretion on the court to pass a judgment at any stage of the suit based on the admission of facts made in the pleadings or otherwise without waiting for the determination of any question arisen between the parties.
7. Since the Order XII Rule 6, CPC permits passing of judgment at any stage without waiting for determination of other questions, it follows that there can be more than one decree that may be passed at different stages of the same suit. The legal principles behind Order XII Rule 6, CPC is to give the plaintiff a right to speedy judgment, so that either party may get rid of the rival claims which are not in

controversy. The object of Order XII Rule 6, CPC is to enable a party, to obtain speedy judgment, at least, to the extent of the admission of the facts by the defendant to which the relief, the plaintiff is entitled. For a court to act under Order XII Rule 6, CPC the admission must be clear, unambiguous, unconditional.

8. No doubt, for this purpose, the court has to scrutinize the pleading in detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the court is also required to ignore vague, evasive and unspecific denial, as well as inconsistent pleas taken in written statement and replies. Even a contrary stand while arguing the matter would be required to be ignored.
9. In the case of ***Delhi Jal Board v. Surender P. Malik***, (2003) 111 AD(Delhi) 419, the Division Bench of the Hon'ble High of Delhi dealing with the provisions of Order XII Rule 6, CPC held that the test to determine whether an admission falls within the ambit of Order XII Rule 6, CPC, as under:
 - a. *whether admissions of facts arise in the suit;*
 - b. *whether such admissions are plain, unambiguous and unequivocal;*
 - c. *whether the defense setup is such that it requires evidence for determination of issues, and*
 - d. *whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the parties to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in pleading or not because such admissions could be gathered ever constructively for the purpose of rendering a speedy judgment.*
10. In ***Charanjit Lal Mehra & Ors. Vs Kamal Saroj Mahajan (SMT) & Anr.***, (2005)11 SCC 279, it has been held that if any admission can inferred from the facts and circumstances of the case without any dispute, then in such a case in order to expedite and dispose of the matter such admissions can be acted upon.
11. In the instant case, certain admissions are made on behalf of the defendant no. 1, which are crucial to determine the true factual situation. The defendant no. 1 in para no. 5 of the preliminary objections has stated as under:-

*“5. That the plaintiff has not come before this Hon’ble Court with clean hands and he has willfully and intentionally concealed material true facts from this Hon’ble Court. It is submitted that the father of the plaintiff and defendants no. 1 to 3 was the owner of the suit property having been purchased by grandfather namely, Shri Parma Nand Kapur and the sale consideration was adjusted out of sanctioned claim in respect of properties left by him which were ancestral, in Pakistan after partition of India in the year August, 1947 and migrated to India and Ministry of Rehabilitation constructed the properties for residential purposes for the refugees who migrated from Pakistan to India and the suit property was initially allotted to one Shri Mohinder Singh who transferred the property to grandfather of plaintiff and defendant no. 1 to 3 and was inherited by Shri Nandlal Kapur and his brother Shri Gulshan and father of plaintiff and father of defendant no. 1 to 3 in settlement gave a portion of property measuring 60 sq. yds. To his brother to satisfy his interest and claim and has been enjoying the said portion and for residence requirement, existing structure was demolished and new building was constructed consisting of Ground Floor, first floor and second floor alongwith one room on Terrace and major portion of amount was spent by the answering defendant so he was allocated by father of plaintiff and defendants the second floor portion alongwith Terrace over the second floor including room having as best to sheets roof to answering defendant while ground floor is in occupation of Vipin Kapur and Shri Vinay Kapur is in occupation of first floor after reconstruction of suit property. **The plaintiff was having love affairs and the answering defendant being elder brother and father of plaintiff and defendants no. 1 to 3 solemnised the marriage of plaintiff by spending huge amount and father of plaintiff and defendants no. 1 to 3 satisfied the all claims, interests of plaintiff in the suit property and he cased to claim any right or share in the suit property and has been residing at the address given in the title separately from the defendants since 1988 and has not raised any claim of any nature over the suit property from 1988 and / or after the death of Shri Nand Lal Kapur who died on 31.03.1993 till filing of the present suit. He has filed the present suit dishonestly to fulfill his lust and agrees of money to extort from the answering defendant, thus whole suit of the plaintiff is based on concocted facts which has no value in the eyes of law, thus, the plaintiff is guilty of suppressing and concealing material true facts from this Hon’ble Court as such the suit of the plaintiff devoid of any substance, merits dismissal with heavy cost.....”***

12. On perusal of para no. 5 of the WS of defendant no. 1, it is evident that as per the own admission of defendant no. 1, the suit property was initially allotted to one Sh. Mohinder Singh but subsequently, he transferred the property to the grandfather of the plaintiff and defendant no. 1 to 3 i.e. Sh. Parma Nand Kapur, from whom, the father of the plaintiff and defendant no. 1 to 3 i.e. Sh. Nand Lal Kapur along with his brother namely, Sh. Gulshan had inherited 68 sq. yards and 60 sq. yards, respectively.

It is further admitted by defendant no. 1 that his father allocated the suit property, after a new building was constructed thereupon, between the defendant no. 1 to 3. The only dispute as per defendant no. 1 is that the plaintiff was not given any share in the said property and he had surrendered his share on account of expenses incurred by defendant no. 1. Although defendant no.1 has admitted the case of the plaintiff to the extent that an oral family settlement had taken place between the plaintiff and the defendants but there remains a dispute qua the share of the plaintiff in the suit property. The defendant no. 1 had not made any unequivocal and specific admission that the plaintiff was allotted a share in the suit property. In fact, the stand of defendant no. 1 is that the plaintiff had surrendered his share in the suit property in lieu of cash receipts. This controversy requires adjudication and is a matter of trial between the plaintiff and defendant no.1. Just because the other defendants support the case of the plaintiff and states that a family settlement had taken place whereby plaintiff was allotted third floor in the suit property, the controversy between the plaintiff and defendant no. 1 would not come at rest. The defendant no. 1 shall be given a right to prove his defence as the same is a valuable right of the defendant no.1. Reliance is placed upon the judgment of the Hon'ble Supreme Court of India in ***"Vikrant Kapila & Anr. v. Pankaj Panda & Ors. (2023INSC897)"***, wherein it was held as under:-

".....16. The Learned Single Judge in terms of discretionary Jurisdiction under Order XII, Rule 6, read with Order XV, Rule 1 of the CPC, passed a decree without conducting a trial. While passing the decree on the alleged admission, it cannot be said that the objection of Defendant Nos. 4 and 5 was ignored. In the Judgment dated 10.05.2022, it is recorded that Defendant Nos. 4 and 5 through e-mail, conveyed to the Plaintiffs that the original Will of Sheila Kapila is with the mother of Defendant Nos. 4 and 5. However, Mrs. Bina Kapila filed an affidavit and vocally suggested that the original Will might, therefore, have been handed over by Sheila Kapila to her first daughter, Mrs. Sudha Panda. Without opportunity or trial of the issues, findings on the very existence of the Will are recorded by the Single Judge and read thus;

"The reference to the alleged Will of late Mrs. Sheila Kapila was made by the mother of the defendants no.4 and 5 for the first time in her email dated 29th July, 2021 written to the plaintiffs, wherein she had claimed that "she has a valid Will duly signed by late Mrs.Sheila Kapila". The subsequent e-

mail dated 2 nd November 2021 sent by the defendants no.4 and 257 5 along with their mother to the plaintiffs also suggests that the original Will of late Mrs. Sheila Kapila is with the mother of the defendants no.4 and 5. 12. However, in the affidavit of Mrs. Bina Kapila, placed on record by the defendants, it has been vaguely stated that “the original will may therefore have been handed over by Mrs. Sheila Kapila to Mrs. Sudha Panda.” 13. The contradictory stance taken by the defendants no.4 and 5 in respect of the possession of the Will, as noted above, creates a serious doubt regard to the existence of the alleged Will. The fact of the matter is that the original Will has not been produced before the Court. The plaintiffs and the defendants no.1 and 2 completely deny the knowledge or existence of the aforesaid Will. 14. Even though I have expressed my reservations with regard to the existence of the Will, I have proceeded to consider the alleged Will”.

17. We do not approve of the conclusion of the Learned Single Judge, to the effect that the above stated contradictory statements of Defendant Nos. 4 and 5 on the possession of the Will create a doubt on the existence of the alleged Will. It is further noted that the original Will has not been produced before the Court. It is also noted that the Plaintiffs, and Defendant Nos. 1 and 2 deny the knowledge or existence of the said Will. Notwithstanding the above, viz. that there is an issue for consideration in the trial, the Judgment proceeds to consider the testamentary succession contained in the Will dated 18.11.1999, and a Judgment on admission is delivered. The Judgment refers to the paragraphs already excerpted and interpreted the clauses in the Will allowing to the children of Sheila Kapila, an absolute right. The Single Judgment placed reliance on the e-mail dated 29.07.2021 exchanged between the parties. A categorical finding in paragraph 29 of the Judgment is recorded which reads thus:

“In view of the aforesaid discussion, there is no doubt in my mind, whether on the principles of intestate succession or in terms of the Will dated 18th November, 1999 propounded by the defendants no.4 and 5 that the plaintiffs no.1 to 3 together, defendant no.1, defendant no.2, and the legal heirs of late Dr. Rajendra Kapila, have an absolute 25% undivided share each in the Suit Property.”

17.1 The objection to taking issues to trial has been brushed aside in Paragraphs 30 and 31 of the Judgment, by holding that the examination is confined to the interpretation of the clauses in the Will propounded by Defendant Nos. 4 and 5, where evidence is not required. Without further deliberation, we record that a decree has been passed, and it does not appear merely as a preliminary decree, but rather appears to be both, i.e., preliminary and final in more than one sense. We notice that the inference drawn by the Single Judge where a case for a Judgment and Decree on admission is made out, suffers from serious legal flaws. The very basis for the Judgment and Decree is that Defendant Nos. 4 and 5 failed to produce the original copy of the Will dated 18.11.1999. An adverse inference on non-production can be drawn even if the matter has been posted, issues have been framed, and the Suit has been posted for evidence of the parties. Even at the stage of admission and denial, the parties, namely the Plaintiffs, Defendant Nos. 1 to 3 on one side, and Defendant Nos. 4 and 5 on the other

side, are not admitting the very existence of the Will dated 18.11.1999 and are not on the same page. In our further consideration of the existence of admission, whether conditional or categorical, we will refer to the relevant record of the Trial Court. The inference drawn by the Learned Trial Judge is completely flawed.

18. Defendant Nos. 3 and 5 filed RFA O.S. No. 15/2022 through Impugned Judgment dated 11.10.2022, Division Bench of High Court of Delhi confirmed the Judgment dated 10.05.2022. A close look at the Impugned Judgment discloses that the Division Bench proceeded on the premise that the Will dated 18.11.1999 is not disputed, and an interpretation of clauses in the Will dated 18.11.1999 arises for consideration. The operative portion of the Judgment reads thus:

“The sole issue for consideration before us hinges upon the interpretation of one sanguine document – Will dated 18.11.1999, which, being admitted by all parties, is not under challenge. Relevant clauses for purposes of adjudication of disputes inter-se parties, being clauses (i), (ii) and (iii) of the said Will.”

Hence, the Civil Appeal.....

.....22.1 The judicial discretion conferred on the Court is structured on the definition of admission under Section 17 of the Evidence Act, 1872 and Rule 5 of Order VIII, Rule 6 of Order XII and Rules 1 & 2 of Order XV of the CPC.

22.2 An “admission” means, ‘a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned’.

22.3 Admission in pleadings means a statement made by a party to the legal proceedings, whether oral, documentary, or contained in an electronic form, and the said statement suggests an inference with respect to a fact in issue between the parties or a relevant fact. It is axiomatic that to constitute an admission, the said statement must be clear, unequivocal and ought not to entertain a different view. Coming to admission in pleadings, these are averments made by a party in the pleading, viz., plaint, written statement, etc., in a pending proceeding of admitting the factual matrix presented by the other side. To constitute a valid admission in pleading, the said admission should be unequivocal, unconditional, and unambiguous, and the admission must be made with an intention to be bound by it. Admission must be valid without being proved by adducing evidence and enabling the opposite party to succeed without trial. A court, while pronouncing a judgment on admission, keeps in its perspective the requirements in Order VIII Rule 5, Order XII Rule 6 and Order XV Rules 1 & 2, CPC read with Sections 17, 58 and 68 of the Indian Evidence Act.

22.4 The logic behind such jurisprudential examination of an admission is that a judgment pronounced on admission, not only denies the right of trial on an issue but denies the remedy of appeal. Hence, discretion has to be exercised judiciously and objectively while making a judgment on admission in a pleading. The existence of the power to pronounce a

judgment on admission under Rule 6 of Order XII and Rules 1 and 2 of Order XV, is not an issue in the appeal but rather the issue is whether pronouncing judgment on alleged admission is valid and legal.

23. When the admissions are categorical and unequivocal, the remedies available against such a decree are limited. In a given case, as in the present appeal, if there is an argument on whether there is an admission of a fact or a document, before examining the merits of the matter, this Court ought to verify whether admission exists or not and also whether the circumstances relied upon by the Learned Single Judge can be constituted as admission for rendering a Judgment. At this juncture, we would like to place on record the answer of the Learned Counsel appearing for the Plaintiffs and Defendant Nos. 1 and 3, to our query, whether their clients are admitting the existence of the Will dated 18.11.1999 or the Will is contested. We notice that the Learned Counsel, going by the pleadings, reply that their clients do not admit the existence and the execution of the Will dated 18.11.1999, which is said to have been executed by Sheila Kapila.

*24. In **Uttam Singh Dugal v. United Bank of India (2000) 7 SCC 120**, reiterating the objects and reasons set out while amending Rule 6 of Order XII, CPC, it was stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled”.*

24.1 Further, the Trial Court can refuse to pass a decree “when a statement is made to a party and such statement is brought before the court showing admission of liability by an application filed under Order XII, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the court.”

24.2 In the same judgment, the scope and effect of “admissions” was examined and it was held that “admissions generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872”.

*24.3 Further, this Court in **Uttam Singh Duggal (supra)**, while adverting to Section 17, Indian Evidence Act, 1872, which provides for admissions through statements in oral, documentary and in electronic form, expanded the scope of admissions and recognised that “admissions are of many kinds: they may be considered as being on the record as actual if that is either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal. Secondly as between parties by agreement or notice”. The case on hand considers an alleged admission in the pleading including the reply given on admission and denial of documents. The provisions under Rule 5 of Order VIII, Rule 6 of Order XII, and Rules 1 and 2 of Order XV of the CPC, enable a court to pronounce a judgment on admission. The court is called upon to exercise judicial discretion conferred on it by the CPC and the Indian Evidence Act, 1872. The judicial discretion shall always be in addition to the provisions covering the judgment on admission and guided by the best of wit and wisdom of the Court in pronouncing a judgment on admission. The bottom line is that while ensuring judicial*

discretion, the court does not avoid a trial on an issue where a trial is needed, and findings recorded; alternatively, the court does not try an issue in which there is no contest between the parties. The weighing of options or judicial discretion is dependent on the peculiar circumstances of the case or the nature of the controversy that the court is considering.

25. In *Himani Alloys Ltd. v. Tata Steel Ltd* (2011) 15 SCC 273, it is held that ‘Admissions’ should be categorical and intentional, as Order XII, Rule 6, CPC allows discretion rather than obligation. Admissions result in judgments without trial which permanently deny any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous, and unconditional, the discretion of the Court is not exercised to deny the valuable right of a defendant to contest the claim. Hence, discretion should be used only where there is a clear and unequivocal admission. The relevant paragraphs read thus:

“11. It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear “admission” which can be acted upon. There is no such admission in this case.” (Emphasis Added)

26. The controversy is on the applicable legal principle to the dispute of partition between the parties. The crux of consideration narrows down to the existence, execution and validity of the alleged Will dated 18.11.1999. A will in legal parlance is a testament of a testator/testatrix and is a posthumous disposition of the estate of the testator, directing the distribution of his/her estate upon his/her death. The Indian Succession Act, 1925 provides for legal requisites of a will, and proof of the execution is a sine quo non for giving effect to a will. The reasoning of limited assumption of the Will dated 18.11.1999 for interpretative purposes of the operative portion of clauses ignores the method and manner of establishing a will as governing the estate of the testator/testatrix. It is useful to refer to *Gopal Swaroop v. Krishna Murari Mangal and others* (2010) 14 SCC 266, wherein this Court held that as per the provisions of Section 63 of the Indian Succession Act, 1925, the due execution of the Will consists of the following:

- i. The testator should sign or affix his mark to the Will;*
- ii. The testator’s signature or the mark of the testator should be so placed that it should appear that it was intended to give effect to the writing as a Will;*

- iii. Two or more witnesses should attest the Will;
- iv. Each of the said witnesses must have seen the testator signing or affixing his mark to the Will, and each of them should sign the Will in the presence of the testator.

26.1 Section 63(c) of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872, stipulate the proof required of a Will. The proof of execution and attestation of a Will are strictly by the scheme of the Indian Evidence Act, and the Indian Succession Act. A Will by the execution is an instrument and becomes an enforceable legal document by proof in accordance with law. A court treats a Will as a legally enforceable document only upon proof in accordance with law. This Court in **Ramesh Verma (D) Through Lrs. v. Lajesh Saxena (D) By Lrs. and another**, (2017) 1 SCC 257 referred to **Savithri and others v. Karthyayani Amma and other**, (2007) 11 SCC 621, and held as follows:

“14. In *Savithri v. Karthyayani Amma* [*Savithri v. Karthyayani Amma*, (2007) 11 SCC 621] this Court has held as under : (SCC p. 629, para 17)

“17. ... A will like any other document is to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the will is on the propounder. The testamentary capacity of the testator must also be established. Execution of the will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the will. It is required to be shown that the will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exists suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before it can be accepted as genuine.”

15. It is not necessary for us to delve at length to the facts of the matter as also the evidence adduced by the parties before the High Court. Suffice it to note that the execution of the wills has to be proved in accordance with Section 68 of the Evidence Act.”

26.2 Upon complying with the requirements of Section 63 of the Indian Succession Act and proof in terms of Section 68 of the Indian Evidence Act, a Will is said to be in existence. The effect of proof of execution of the Will, the ordinary/customary rights of other legal heirs, who would acquire it on the death of the testatrix, will end. The difference between intestate succession and testamentary succession can thus, be appreciated from the above reasoning.

27. We have referred to, in sufficient detail, the pleadings of the parties, both supporting and contesting the Will dated 18.11.1994. The narrative between the parties centers around a few circumstances. At the foremost, from the perspective of the Plaintiffs and Defendant Nos. 1 to 3, the original

and absolute owner of the Suit Property, Sheila Kapila, died on 08.04.2003, leaving behind her four children as successors-in-interest to the Suit Property. The Plaintiffs in the Plaint, in unequivocal terms, deny and dispute the Will dated 18.11.1999, and contest the inheritance through testamentary succession. A careful reading of the plaint and the written statement of Defendant Nos. 1 and 2 makes the position clear.

27.1 On the contrary, Defendant Nos. 4 and 5 propound the Will dated 18.11.1999 as the last testament of Sheila Kapila and set up two legal issues on the claim for partition, i.e., firstly, the children of Late Sheila Kapila have life interest, and secondly, the grandchildren of Late Sheila Kapila have inherited absolute rights under the alleged Will dated 18.11.1999. The extended contention of the above plea is that Dr. Rajendra Kapila, father of Defendant Nos. 4 and 5, could not have bequeathed the interest in the Suit Property in favour of Defendant No. 3. The extended limb of the objection, no doubt, is left open for consideration in separate legal proceedings. The dispute inter se Defendant No. 3 and Defendant Nos. 4 and 5 is left open for decision in a separate proceeding and according to Mr. Mehta, such course is impermissible in a suit for partition, and this argument would be considered on its turn.

27.2 The foundation of the claim in the opposing parties can be summarised as intestate succession on one side and testamentary succession on the other. The plaint averments principally proceed for partition of Suit Property as co-sharers, but the Judgments impugned have laid emphasis on the interpretation of the Will, holding that the children of Late Sheila Kapila are entitled to the Suit Property as absolute owners and a decree for partition in four equal shares could be made.

.....37. The kernel of the matter is what Sheila Kapila left behind after her demise;

(a) the suit property, (b) children and grandchildren (Plaintiffs and Defendants). The succession to the Suit Property, whether intestate or testamentary would be the principal issue for adjudication. We record that the Impugned Judgment interpreted the clauses in the Will dated 18.11.1999 without the Will being brought on record. Secondly, the propounder has not proved the Will in the manner known to law, therefore, the Judgment on admission is an illegal exercise of discretionary jurisdiction under Order XII Rule 6 read with Order XV Rule 2 of the CPC. The case on hand, in our considered view, presents both triable issues in facts and law. For arriving at such a view, we also take note of the categorical reiteration of the Learned Senior Counsel appearing for the Plaintiffs and Defendant Nos. 1 and 2, from the pleadings, their clients are not accepting the existence of the Will dated 18.11.1999. Therefore, pronouncing a view on the operating clauses of document yet to satisfy the requirements of Section 63 of the Indian Succession Act read with Sections 58 and 68 of the Indian Evidence Act, is an illegal exercise of discretion. In our considered view in the case on hand, the admissions are not unequivocal and absolute to pave way for a Judgment on admission.....”

13. Accordingly, the application of the plaintiff filed under Order 12 Rule 6 CPC stands dismissed.

**Announced in the open
Court on 08.04.2025**

**Shivali Bansal
District Judge-03,
North District, Rohini Courts, Delhi**